SENATE—*Thursday, June 18, 1981*

(Legislative day of Monday, June 1, 1981)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, LL.D., D.D., offered the following prayer:

Gracious, loving God, in the extraordinary, exclusive environment which is the Senate of the United States, protect those who labor here from the seductive, corrupting influence of power and prestige. Deliver them from the delusion of self-importance which their position so subtly nurtures. Remind them of the example of the greatest Man who ever lived who taught that "He that would be greatest must be the servant of all."

In disagreement and confrontation help them to respect and love each other as they struggle together for resolution of complex issues. Help them never to take for granted the many who serve them faithfully day after day. As they face a weekend away from legislation, grant them some relaxed and precious hours with their families to strengthen and deepen relationships with spouse and children.

Father God. who art love. make genuine love, which is the fulfilling of the law, the dominant force in our lives. In the name of Him who in love laid down His life for us all. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

THE JOURNAL

Mr. BAKER. Mr. President, I ask unanimous consent that the Journal of the proceedings of the Senate be approved to date.

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

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, there are three special orders, are there not, for the recognition of Senators this morning?

The PRESIDENT pro tempore. The Senator from Tennessee is to be recognized for 15 minutes; the Senator from South Carolina is to be recognized for 15 minutes; and the Senator from Virginia is to be recognized for 15 minutes.

Mr. BAKER. I thank the Chair.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the sequence of special orders and morning business be reversed, and that there now be a period for the transaction of routine morning business in advance of the recognition of Senators under special orders.

The PRES.DING OFFICER (Mr. HATFIELD). Without objection, it is so ordered.

Mr. BAKER. Mr. President, could I inquire of the distinguished minority leader if he is today in a position to consider two bills identified to him last evening?

Mr. ROBERT C. BYRD. Calendar Orders 102 and 156 are cleared, provided they are considered en bloc.

Mr. BAKER. I thank the minority leader.

S. 923—PRETRIAL SERVICES ACT OF 1981

S. 823—PAYMENT OF LOSSES DUE TO BAN ON USE OF THE CHEMICAL TRIS

Mr. BAKER. Mr. President, I ask unanimous consent that the two calendar numbers identified by the minority leader, Calendar No. 102 (S. 923) and Calendar No. 156 (S. 823), be considered en bloc.

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

The clerk will state the first bill identified by title.

The legislative clerk read as follows:

A bill (S. 923) to amend chapter 207 of title 18, United States Code, relating to pretrial services.

The PRESIDING OFFICER. The clerk will state the second bill by title.

The legislative clerk read as follows:

A bill (S. 823) to provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes.

The Senate proceeded to consider the bill S. 923 to amend chapter 207 of title 18, United States Code, relating to pretrial services, which had been reported from the Committee on the Judiciary without amendment; and the bill S. 823, to provide for the payment of losses incurred as a result of the ban on the use of the chemical tris in apparel, fabric, yarn, or fiber, and for other purposes, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause, and insert the following:

That (a) the Court of Claims shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, as a result of the actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate: *Provided, however,* That such children's sleepwear and such fabric, yarn, or fiber contained in or intended for use in children's sleepwear was subject to the requirements of or was subject to use in compliance with the mandatory Federal flammability standard FF3–71 or FF5–74, at the time of its manufacture.

(b)(1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

(B) Whether it would have been feasible, or reasonable, for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government, or other nationally known researchers tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith upon assurances from suppliers that the products containing Tri (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

(H) The degree to which a claimant, in good faith, complied with the export provisions of the Federal Hazardous Substances Act and the Consumer Product Safety Act.

(2) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any such resulting loss suffered by any producer, converter, manufacturer, distributor, or retailer of such children's sleepwear, or to any producer, or manufacturer of fabric, yarn, or fiber.

(c)(1) The measure of losses for producers or manufacturers of children's sleepwear shall be the cost of producing or manufacturing the sleepwear garment, plus the cost of the fabric, yarn, or fiber used for such production or manufacture, or the cost of such goods held in stock on the date of enactment of this Act, less the fair market

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

value, if any, of the sleepwear garment, or the fabric, yarn, or fiber. If such garment, fabric, yarn, or fiber was resold after April 8, 1977, but prior to the date of enactment of this Act, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber less the proceeds from any such sale.

(2) The measure of losses for producers, converters, or manufacturers of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber, plus the cost of the raw materials used for such production, converting, or manufacturing or the cost of such goods held in stock on the date of enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber on such date. If the fabric, yarn, or fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacturing less proceeds from any such sale.

(3) The measure of losses for distributors and retailers shall be the distributor's or retailer's purchase price for goods referred to in paragraphs (1) and (2) of this subsection, held in stock on the date of enactment of this Act, less the fair market value, if any, of such goods, and less the amount of any reimbursement received. A distributor or retailer shall, notwithstanding the lack of possession of such merchandise, qualify to claim for the unreimbursed portion of its losses, as limited by this paragraph.

(4) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for unreimbursed costs of transportation paid for the return of such sleepwear garments, fabric, yarn, or fiber.

(d) No claim under this Act may be brought as a class action nor may any claim under this Act be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties.

(e) Upon payment of any claim under this Act, regardless of whether such payment is the result of a court judgment or a settlement, the United States shall be subrogated to the claimant's rights to recover losses or to assert a claim against any person or organization relating to the subject matter of such claim paid by the United States. The claimant shall execute and deliver instruments and papers and take whatever steps are necessary to secure such rights in the United States in order to be entitled to the entry of a judgment by the Court and payment under this Act, and the failure of the claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and payment. The failure of the claimant to perform such acts or to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under this Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of enactment of this Act.

(g) No payment shall be made under this Act upon any claim for losses sustained by any such producer, processor, manufacturer, distributor or other retailer, for apparel, fabric, yarn or fiber containing Tris phosphate until such time as the claimant produces proof of the proper disposal of such goods.

S. 923—PRETRIAL SERVICES ACT OF 1981

Mr. THURMOND. Mr. President, this bill would mandate pretrial services in all judicial districts which will be provided by the chief probation officer and other probation personnel for a period of 18 months after enactment.

During that period only the chief probation officer will be responsible for providing these services, but will also have the capability to use contract authority or other outside services to accomplish the goals of the legislation.

Mr. President, after the 18-month period, there is a provision that would allow, with the approval of a three-judge panel, a judicial district to opt into provisions that permit the designation of a separate pretrial service officer within the probation office to handle pretrial, as well as other probation and parole responsibilities assigned by the chief judge.

The bill does not provide for any separate agency, any new bureaucracy, or division of the probation office. It simply allows for the designation of an officer within the various probation offices to handle pretrial services, if necessary to do so to meet heavier case loads.

The bill also continues the operation of the existing pilot pretrial services offices currently in place in 10 judicial districts.

Mr. President, I have no objection to the passage of this bill.

S. 823—PAYMENT OF LOSSES DUE TO BAN ON USE OF THE CHEMICAL TRIS

Mr. THURMOND. Mr. President, today, the Senate considers a bill to provide for the payment of losses incurred as a result of the ban on the chemical tris.

Mr. President, this legislation seeks to correct economic losses sustained by the ban of the chemical flammability retardant tris by the Consumer Product Safety Commission on April 8, 1977.

The cost to apparel manufacturers of repurchasing all unsold or unwashed garments for children made from fabric containing tris and disposing of unsold inventories of clothing made from fabric containing tris, has been estimated to be over $50 million.

In a statement by the American Apparel Manufacturers Association before the special hearing panel on July 26, 1977, the amount of the loss was stated to be $150 million. The AAMA now believes the actual losses suffered by all sleepwear manufacturers to be about $50,100,000. This includes garments, uncut fabric in apparel plants, and the "to-date" indirect costs, such as transportation, administration, and storage. Of course, some smaller additional costs will be incurred as storage costs continue and potential disposal costs appear.

The harm to these sleepwear makers was considerable. It imposed an immediate obligation upon the apparel manufacturers to repurchase the garments they have sold. It left the entire industry without an adequate recourse or remedy. Some apparel manufacturers face bankruptcy because their losses as a result of the ban could exceed their net worth.

This legislation is not a bailout. It is simply legislation to confer jurisdiction on the U.S. Court of Claims to determine the dollar value and render judgment for losses sustained by producers, processors, manufacturers, distributors, dealers, and other persons as a result of actions taken by the Federal Government under the Hazardous Substance Act relating to the ban on apparel, fabric, yarn, or fiber containing tris.

Mr. President, the basis for the claim of industry for indemnification rests upon the double-edged aspect of Government regulation. That is, the Department of Commerce on the one hand, required the industry to use a chemical like tris in sleep wear and, when in good faith the industry did so, the Consumer Product Safety Commission banned the tris-treated sleep wear. This is just one example of layer of regulation being placed upon layer of regulation. As the long arm of the overregulators continues to grow, the image of Government as a responsible and responsive unit diminishes.

The passage of tris legislation in this Congress is imperative. It is a recognition that private industry has been overregulated by the Federal Government, and in so doing, has suffered an economic loss that is not its fault.

Mr. President, this legislation will affect a number of apparel and textile firms in my State of South Carolina. It will also affect similar firms in a number of States throughout the country. This legislation is long overdue and should be passed promptly in this Congress and signed by the President.

The PRESIDING OFFICER. Without objection, the bills are considered en bloc, the committee amendments to the bill S. 823 are agreed to, the bills are engrossed for a third reading and considered read the third time, and the bills, as amended, if amended, are passed en bloc.

The text of the bill S. 923, the Pretrial Services Act of 1981, is as follows:

S. 923

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PRETRIAL SERVICES ACT OF 1981

SEC. 101. This title may be cited as the "Pretrial Services Act of 1981".

SEC. 102. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services in all districts

"The Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the 'Director') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise, to such extent and in such

amounts as are provided in appropriation Acts, for the establishment of pretrial services in each judicial district (other than the District of Columbia). Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title or by a chief pretrial services officer appointed pursuant to section 3152A of this title.".

SEC. 103. Chapter 207 of title 18, United States Code, is amended by inserting after section 3152, the following new section:

"§ 3152A. Establishment of pretrial services in special districts

"(a) If an appropriate United States district court and the circuit judicial council jointly recommend the establishment of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

"(b) The pretrial services established under subsection (a) shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district or their designees. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3654 of this title.".

SEC. 104. Section 3153 of title 18, United States Code, is amended to read as follows:

"§ 3153. Organization and administration of pretrial services in all districts

"(a) With the approval of the district court, the chief pretrial services officer in districts in which pretrial services are established pursuant to section 3152 of this title, or the chief probation officer in all other districts, shall appoint such other personnel as may be required. The position requirements and rate of compensation of the chief pretrial services officer, the chief probation officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS–16 of the General Schedule under section 5332 of title 5, United States Code.

"(b) The chief pretrial services officer in districts in which pretrial services are established pursuant to section 3152 of this title, or the chief probation officer in all other districts, is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff, other than clerical staff, may be drawn from law school students, graduate students, or such other available personnel.

"(c)(1) Except as provided in paragraph (2) of this subsection, information contained in pretrial services files, presented in any pretrial services report, or divulged by a pretrial services officer, a chief probation officer, or a staff member during the course of any hearing, shall be used only for the purposes of a bail determination and shall otherwise be confidential. The report shall be made available to the attorney for the accused and the attorney for the Government.

"(2) The Director shall issue regulations establishing the policy for release of information contained in pretrial services files. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

"(A) by qualified persons for purposes of research related to the administration of criminal justice;

"(B) by persons under contract under section 3154(4) of this title;

"(C) by probation officers for the purpose of compiling presentence reports;

"(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

"(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

"(3) Information contained in pretrial services files, presented in any pretrial services report, or divulged by a pretrial services officer, a chief probation officer, or a staff member during the course of any hearing, shall not be admissible on the issue of guilt in any judicial proceeding, except that such information may be used in proceedings to determine guilt or penalties for failure to appear or a violation of the conditions of release, in perjury proceedings, and for the purpose of impeachment in any subsequent proceeding.".

SEC. 105. Section 3154 of title 18, United States Code, is amended to read as follows:

"Pretrial services functions shall include the following:

"(1) Collect, verify, and report to the judicial officer prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, and recommend appropriate release conditions for each such individual.

"(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3146(e) or section 3147 of this chapter.

"(3) Supervise persons released into its custody under this chapter.

"(4) Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services.

"(5) Inform the court and the United States attorney of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions.

"(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

"(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

"(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

"(9) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

"(10) To the extent provided for in an agreement between a pretrial services officer in districts in which pretrial services are established pursuant to section 3152 of this title, or the chief probation officer in all other districts, or a staff member in his or her official capacity, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(11) Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.

"(12) Perform such other functions as specified under this chapter.".

SEC. 106. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer in districts in which pretrial services are established pursuant to section 3152 of this title, and each chief probation officer in all other districts, shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of pretrial services. The Director shall be required to include in the Director's annual report to the Judicial Conference under section 604 of title 28, United States Code, a report on the administration and operation of the pretrial services for the previous year.".

SEC. 107. The table of sections for chapter 207 of title 18, United States Code, is amended—

(1) so that the item relating to section 3152 reads as follows:

"3152. Establishment of pretrial services in all districts.";

(2) by adding after the item relating to section 3152, the following:

"3152A. Establishment of pretrial services in special districts.";

(3) so that the item relating to section 3153 reads as follows:

"3153. Organization and administration of pretrial services in all districts.";

and

(4) so that the item relating to section 3155 reads as follows:

"3155. Annual reports.".

SEC. 108. (a)(1) Except as provided in paragraph (2), this title and the amendments made by this title shall take effect on the date of enactment of this title.

(2) The amendment made by section 103 of this title shall take effect eighteen months after the date of enactment of this title.

(b) During the period beginning on the date of enactment of this title and ending on the effective date specified in subsection (a)(2) of this section, the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this title may continue to operate, employ staff, provide pretrial services, and perform such functions and powers as are authorized under the provisions of chapter 207 of title 18 of the United States Code.

SEC. 109. (a) There are authorized to be appropriated, for fiscal year 1982 and each succeeding fiscal year thereafter, such sums as may be necessary to carry out the provisions of chapter 207 of title 18 of the United States Code, as amended by section 103 of this title.

(b) There are authorized to be appropriated for the period beginning after September 30, 1981, and ending on the effective date specified in section 108(a)(2) of this title, such sums as may be necessary to carry out the activities of the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this title.

The text of the bill S. 823, relating to payment of losses due to ban on use of the chemical tris is as follows:

S. 823

A bill to provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Court of Claims shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer or fabric, yarn, or fiber contained in or intended for use in children's sleepwear, as a result of the actions taken by the United States under the Federal Hazardous Substances Act of April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate: *Provided, however,* That such children's sleepwear and such fabric, yarn, or fiber contained in or intended for use in children's sleepwear was subject to the requirements of or was subject to use in compliance with the mandatory Federal flammability standard FF3–71 or FF5–74, at the time of its manufacture.

(b) (1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government flammability standard referred to in subsection (a).

(B) Whether it would have been feasible, or reasonable for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government, or other nationally known researchers tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith upon assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

(H) The degree to which a claimant, in good faith, complied with the export provisions of the Federal Hazardous Substances Act and the Consumer Product Safety Act.

(2) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any such resulting loss suffered by any producer, converter, manufacturer, distributor, or retailer of such children's sleepwear, or to any producer, or manufacturer of fabric, yarn, or fiber.

(c) (1) The measure of losses for producers or manufacturers of children's sleepwear shall be the cost of producing or manufacturing the sleepwear garment, plus the cost of the fabric, yarn, or fiber used for such production or manufacture, or the cost of such goods held in stock on the date of enactment of this Act, less the fair market value, if any, of the sleepwear garment, or the fabric, yarn, or fiber. If such garment, fabric, yarn, or fiber was resold after April 8, 1977, but prior to the date of enactment of this Act, then the measure of lossees shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber less the proceeds from any such sale.

(2) The measure of losses for producers, converiers, or manufacturers of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber, plus the cost of the raw materials used for such production, converting, or manufacturing or the cost of such goods held in stock on the date of enactment of this Act, less the fair market value, it any, of the fabric, yarn, or fiber on such date. If the fabric, yarn, or fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacturing less proceeds from any such sale.

(3) The measure of losses for distributors and retailers shall be the distributor's or retailer's purchase price for goods referred to in paragraphs (1) and (2) of this subsection, held in stock on the date of enactment of this Act, less the fair market value, if any, of such goods, and less the amount of any reimbursement received. A distributor or retailer shall, notwithstanding the lack of possession of such merchandise, qualify to claim for the unreimbursed portion of its losses, as limited by this paragraph.

(4) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for unreimbursed costs of transportation paid for the return of such sleepwear garments, fabric, yarn, or fiber.

(d) No claim under this Act may be brought as a class action nor may any claim under this Act be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties.

(e) Upon payment of any claim under this Act, regardless of whether such payment is the result of a court judgment or a settlement, the United States shall be subrogated to the claimant's rights to recover losses or to assert a claim against any person or organization relating to the subject matter of such claim paid by the United States. The claimant shall execute and deliver instruments and papers and take whatever steps are necessary to secure such rights in the United States in order to be entitled to the entry of a judgment by the Court and payment under this Act, and the failure of the claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and payment. The failure of the claimant to perform such acts or to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under this Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of enactment of this Act.

(g) No payment shall be made under this Act upon any claim for losses sustained by any such producer, processor, manufacturer, distributor or other retailer, for apparel, fabric, yarn or fiber containing Tris phosphate until such time as the claimant produces proof of the proper disposal of such goods.

AMERICANISM FOR THE CARRISON SCHOLARSHIP OF BOB JONES UNIVERSITY IN GREENVILLE, S.C.

Mr. THURMOND. Mr. President, the topic of Americanism has long been the central theme for numerous books, speeches, and articles. It has also been a popular—and needed—subject for students in all levels of education.

David M. Dersch, a student at Bob Jones University in Greenville, S.C., is the author of a winning essay and recipient of the Daniel J. Carrison Scholarship which was set up in 1971 for Americanism essays. The funding for this scholarship comes from the John P. Gaty Charitable Trust which I had the honor of establishing for such accomplishments.

Mr. President, in order to share this excellent paper on Americanism with my colleagues, I ask unanimous consent that this essay appear in the RECORD at the conclusion of my remarks.

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

OUR GOVERNMENT: PROTECTOR OR PROVIDER?

(By David M. Dersch)

What is the function of the United States Government? Exactly what type of role should it play in the lives of today's citizens? Should it be the protector or provider of its subjects? To answer this question, one ought first look to the past, viewing the foundational principles of our government, and then look at the present to ascertain any deviations. If differences are found, then the product from each philosophy should be weighed, and the more beneficial role chosen.

Over 350 years ago a small group of men banded together before setting foot on a strange, new land. They did not know what lay ahead of them, but they did discern that facing unknown perils together rather than separately was much wiser and safer. These Pilgrims realized unless they united together for protection under an established authority, that they would fall prey to the savages on shore.

A century and a half passed and another group of men, this time representing some three million people, again banded together to form a government. These men, our Founding Fathers, also realized that a central authority was needed—one strong enough to "insure domestic tranquility" and to "provide for the common defense," yet weak enough to allow the individual his rights of "life, liberty, and the pursuit of happiness," in whatever manner he should choose. The philosophy of our forefathers is clear: government is needed for protection, not for the individual from himself, but for the liberty of the individual from outside aggressors. They furthermore believed that government should provide the individual with the freedom to choose his own economic destiny.

A person's economic well-being ought to be proportionate to his talents and willingness to better himself, according to the an-

cient law, one reaps what one sows. From this philosophy sprang the cornerstones of our political and economic structure, the Constitution and the Free Enterprise System.

The next 150 years saw thirteen struggling colonies grow from obscurity to become the undisputed international leader following World War II. Our government, assuming a laissez faire approach toward business and a protectionist attitude toward its citizens' liberties, successfully steered our country during this period of unparalleled growth. A citizenry with character coupled with opportunity provided by a free enterprise government permitted this tremendous expansion.

But recently our government has assumed another role. Instead of protecting the individual from outsiders, it has also determined to protect him from himself. Instead of providing the individual with the economic freedom to determine his condition, the government has resolved to provide him with guaranteed economic security. The United States Government now seems to view as its duty to put a steak in every stomach, an education in every child, and clothes on every back. Through Social Security, Medicaid, Welfare, and the Food Stamp Programs, to name a few, our government has assumed social responsibilities that were once left to the individual or to the family unit.

At first glance this trend may appear harmless enough. What does it matter if government wishes to provide economic security as well as physical security? But steak, education, and clothes cost money; somehow the price must be paid. To provide these social "rights," government, not inherently self-supportive, must turn to its supporters for the material or monetary resources. Any service or product that the government provides, therefore, ultimately is paid for by the people (that is, the people who work). Those who receive the benefits but do not support the system constitute "dead weight." In essence, government in such a situation is not a provider, as many falsely believe, but rather a distributor, who transfers wealth from the worker to the non-worker.

The result of our government acting as a "provider" is an ever-increasing problem. At first the productive working class, comprising a large majority of the population, could support the minority of non-workers. People, however, easily see in such a system a chance to get something-for-nothing, and being human, begin to use it to their advantage. After all, why work when one does not have to? Because the initiative to work and be productive has largely been taken away, the ratio of non-workers to workers is continually increasing. Add to this growth the non-productive, inevitable administrative cost in the distribution of funds, and the system is doomed to economic failure. Our government, therefore, acting as the "provider," is in reality bankrupting our country.

Our government . . . protector or provider? As shown, when its governmental philosophy consisted of protecting the citizens' rights and providing the individual with an incentive to work, the United States prospered greatly. But when the government decided to protect the individual from himself, providing guaranteed economic security by redistributing wealth, stagnation set in, and our national economy began its present downhill slide. Our government, in a sense, must be both protector and provider: it must provide protection of the citizens' liberty and also protect the providers of our national wealth. But it must not, as it does today, provide economic protection for the non-worker, or protect the non-provider from his own laziness. The United States Government is both a protector and a provider, but it must administer these roles in the proper perspective.

ILLEGAL ALIENS AND THE WELFARE SYSTEM

Mr. THURMOND. Mr. President, more and more news reports reveal that all too many illegal immigrants in the United States are not only taking away jobs from American citizens but are also becoming an increasing burden on the welfare system.

Los Angeles County, Calif., has even gone to the extreme of suing the Federal Government for millions in unpaid medical bills for illegal aliens.

James Reston of the New York Times, in fact, has called illegal immigration and all of the burdens that it is creating "one of the most complicated human and political problems before the Nation."

A recent article by reporter Mary Elson in the Chicago Tribune expresses some of my concerns about the welfare system becoming a haven for illegal aliens.

Mr. President, in order to share this excellent journalistic piece with my colleagues, I ask unanimous consent that this article appear at this point in the RECORD.

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

[From the Chicago Tribune, Apr. 12, 1981]

"WELFARE SYSTEM A HAVEN FOR ILLEGAL ALIENS"

Federal and state officials are aiding a growing number of illegal Mexican aliens to become part of the United States government welfare system, openly thwarting attempts by immigration officials to identify and deport the aliens.

Illinois Department of Public Aid officials say they routinely permit illegal aliens to receive Public Aid Grants for their children born in the U.S., because the children qualify as citizens for the payments.

The officials say they do not report the illegal aliens to the U.S. Immigration Service because privacy regulations prohibit disclosure of information about welfare applicants.

The result is that an increasing number of illegal aliens are able to remain in the U.S. without working, surviving solely on income from the U.S. government, immigration officials say.

"It's something they've (illegal aliens) recently tumbled onto," said Ted Georgetti, an Immigration Service investigator in Chicago. "The longer they're here, the more knowledge and sophistication they get about how the system operates. They come originally to work. But they certainly find out they needn't really work to make ends meet.

"They certainly have no compunction about going on the federal dole."

Public Aid documents reveal that caseworkers plainly describe applicants as "illegal aliens" on forms that include the names, addresses, and phone numbers of the aliens.

Laurel Loughnane, a spokesman for the Illinois Department of Public Aid, acknowledged that illegal alien "guarantees" are a source of discussion in the department. But she said, "We can't report them to Immigration. It's the law. We follow the law."

Cook County hospital officials keep records of the number of illegal aliens treated at the financially troubled institution, and hospital personnel privately say that the responsibility for taking care of the illegal immigrants is one reason for the hospital's economic woes.

Asked why the hospital did not report the aliens to the Immigration Service, spokesman Margo Phillips said: "We don't feel it's our responsibility.

"There are more coming to the door. What do we do? We can't turn them away. But we're stuck with the bill."

During February, Phillips said, records show that the hospital treated 112 illegal aliens. Of those, only six were able to pay all or part of the bill. Phillips said, however, that the number of illegal aliens treated probably is even larger because the aliens frequently are able to obtain fraudulent Social Security cards and pass as U.S. citizens. She said the hospital treats 1,300 to 1,400 patients a day.

Georgetti said there is no way to tell how many illegal aliens are benefitting through their children from welfare grants. But he said there are "hundreds of thousands" of illegal aliens in the Chicago area, and that "they're certainly becoming a bigger part (of the welfare system) as the knowledge be-

• • • • •

not wish to be identified, said about 10 per cent of each worker's 200-plus cases in her office involved illegal aliens and that in the last six months the numbers have increased dramatically.

"Now that word is out, you'd think you were in some town in rural Mexico when you walk into our office," the caseworker said. "They tell all their friends back in Mexico, and they say, 'By God, those Americans are even crazier than we thought.' "

Last week, the public aid department reported that the number of public aid cases in Illinois—more than one million—is at the highest level since the Depression. President Reagan last week also called for a data bank on welfare recipients that would make now-private case information available to federal and state agencies. Reagan asserts that the system would reduce fraud, abuse, and waste.

Maria (a psuedonym), an illegal alien who was interviewed by The Tribune in her West Side home, is a typical case. The 23-year-old woman came to Chicago two years ago. She said her husband already had moved here but deserted her shortly after she joined him.

Like an increasing number of the women, she was pregnant when she arrived. She had her baby, now 2 years old, at Cook County Hospital at taxpayers' expense. The hospital sent her a bill for $120, but she said she did not pay it.

After the baby was born, she went to a Public Aid Office, where she applied for and was granted food stamps and $79 a month for the baby under Aid to Families with Dependent Children. She was designated as the "grantee" on a Public Aid form.

Next to the blank for "Social Security number," the caseworker had written: "None." Another part of the form lists the names of three persons living with her, with the word "illegal" after each name.

Another routine notation by the caseworker stated: "RPY (Represenative Payee—or grantee) is illegal alien—speaks no English."

Asked if she had any fear of identifying herself to Public Aid officials as illegal, she said, "No, a friend of mine (also illegal) was already on Public Aid, and she took me and said there would be no problem." In January, about 600,000 persons in Illinois were receiving AFDC grants totaling nearly $68 million a year.

Maria now lives with three young male illegal aliens in a four-room apartment that

rents for $130 a month. She said, "They let me stay here, and I do laundry, iron, and cook for them."

Maria is pregnant again. She said she probably will have her next baby at Cook County Hospital and get welfare payments for that child, too.

The caseworker said it was common for the young women with new babies born in the U.S. to keep house for other illegal aliens.

"Obviously these girls aren't coming here to work," she added. "They're coming here pregnant, either to live with someone, a common-law spouse who is working, or they're coming here specifically to get on Public Aid."

Although the AFDC grants are meager, they seem like gold to illegal aliens who are accustomed to even greater poverty in their native land, the caseworkers say. Asked why she came to the U.S., Maria said: "People in Mexico said it was a good place to go; $50 here has the buying power of $1,200 in Mexico."

Officials say illegal aliens also are easily able to obtain unemployment insurance by presenting false Social Security cards. Stella Cuthbert, state unemployment insurance commissioner, listened during an interview as, an employee explained that if an applicant had a Social Security card, employment, verification, "and stated that he was a U.S. citizen, we wouldn't usually go any further. We don't witch-hunt." Cuthbert said, however, that the number of fraud cases identified is "minimal."

A Latino social worker in Evanston, who refers illegal aliens to social service agencies in the area, agreed. "At unemployment compensation offices, they ask, 'Are you legal to work in this country?' If the answer is yes, they (the illegal aliens) have no problem."

Bob Kichura, an official at Chicago's Department of Human Services Community Service Center, 2550 W. North Ave., said illegal aliens frequently are given free baskets of food and counseled about how to get Public Aid for their children.

"We provide whatever services we can to them. We don't ask if they're illegal or not," Kichura said. He estimated that 15 to 20 per cent of the approximately 30,000 persons who come to the center each months are illegal aliens.

The privacy regulations in both the Illinois Department of Public Aid code and the U.S. Department of Health and Human Service Code state that the officials are "prohibited from disclosing the contents of any records, files, papers, and communications, except for purposes directly connected with . . . administration" of the program.

Johnetta Jordan, a Public Aid department spokesman in Springfield, said the most common reason for disclosing applicant information was to aid in fraud investigations. But she said since the U.S.-born children of illegal aliens are entitled to the benefits, no fraud is involved in designating the illegal parent as "grantee."

Cook County Board President George Dunne, who officially is charged with overseeing the finances of Cook County Hospital, was asked why the hospital did not report the aliens. He said "that's the first time that's come to my attention" and said he would "check into the policy."

However, he said: "I don't think I would want to put that imposition on the people at the hospital. We treat people every day who have broken the law of the government—people injured in the act of a crime. If someone presents himself and he's sick, he ought to be taken care of, whether he's an alien or not."

Georgetti said the attitude taken by other government bodies toward illegal aliens is frustrating but legal.

"Obviously, the circumstances are not appealing to me as an enforcement officer, he said. "I'd welcome the opportunity to get information from state officials." But he said that under current regulations, withholding identity of the aliens is a "legitimate interpretation" of the statutes.

"About the only thing we can hope for is that by virtue of more people becoming cognizant of the situation, they'll demand of their representatives that something be done," Georgetti said. "Ultimately, we hope for legislation to change it."

PROSECUTIONS INVOLVING CLASSIFIED INFORMATION

Mr. THURMOND. Mr. President, sometimes Federal criminal cases are not prosecuted because the Government is faced with a "Hobson's Choice"—whether to disclose sensitive classified information in a trial or not prosecute a case of clear guilt. The Attorney General has sent to me a copy of the guidelines to be used by the Department of Justice in making this delicate decision. Since the issue is one of general interest to every Senator, I ask unanimous consent that a copy of these guidelines and the forwarding letter from the Attorney General be inserted in the RECORD.

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 10, 1981.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Attached are the guidelines I have issued for the prosecution of cases which may involve the disclosure of classified information. Issuance of these guidelines was required under section 12(a) of the Classified Information Procedures Act of 1980 (Pub. L. No. 96-456, 94 Stat. 2025) which provides in pertinent part that:

". . . The Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed."

While it is inevitable that there will continue to be cases in which the potential damage to national security interests that could result if classified information were revealed at trial is such that prosecution is precluded, the procedures set out in the Classified Information Procedures Act should enable the Department to prosecute more effectively those cases in which classified information may be at issue. Furthermore, these guidelines should facilitate more reasoned and uniform decisionmaking with respect to the determination of the propriety of initiating or declining prosecution of such cases.

Sincerely,

WILLIAM FRENCH SMITH,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C.

ATTORNEY GENERAL'S GUIDELINES FOR PROSECUTIONS INVOLVING CLASSIFIED INFORMATION

1. Introduction:

The determination of whether it is appropriate to decline prosecution of a violation of federal law is a matter within the discretion of the Executive Branch. It is the policy of the Department of Justice that where it is believed that a person has committed a federal offense and there is sufficient evidence to secure conviction, prosecution should be sought unless no substantial federal interest would be advanced by the prosecution or unless there are other substantial federal interests that would be served by declining prosecution.

This principle was among those articulated in the recently published "Principles of Federal Prosecution."[1] Paragraph 2 of Part B of the "Principles", which addresses the decision to decline prosecution, provides that:

"The attorney for the government should commence or recommend federal prosecution if he believes that the person's conduct constitutes a federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless, in his judgment, prosecution should be declined because:

"(a) no substantial federal interest would be served by prosecution;

"(b) the person is subject to effective prosecution in another jurisdiction; or

"(c) there exists an adequate non-criminal alternative to prosecution."

However, in cases in which there is a possibility that classified information may be revealed if the prosecution is pursued, an additional consideration must be addressed in determining whether it is appropriate to continue with the investigation or prosecution; that is, whether the need to protect against the disclosure of the classified information outweighs other federal interests that would be served by proceeding with the prosecution. In such cases, therefore, it is the responsibility of the Department of Justice, in consultation with the agency or agencies whose classified information is involved, to identify and assess these competing interests so that a reasoned decision may be made with respect to continuing the investigation or prosecution.

The purpose of these guidelines is to identify those factors which should be considered in determining whether to prosecute a violation of federal law where it appears that there is a possibility that classified information will be revealed if prosecution is pursued. While these guidelines do not provide an exhaustive list of all factors which may properly have a bearing on this determination, an attempt has been made to enumerate those factors which are most important and are likely to arise with some frequency.

2. General Provisions.

a. Authority:

These guidelines are issued pursuant to section 12(a) of the Classified Information Procedures Act of 1980 (Pub. L. No. 96-456, 94 Stat. 2025), which provides in pertinent part that:

". . . The Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision whether to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed."

b. Definitions:

As used in these guidelines—

(1) the term "classified information" means any information or material that has been determined by the United States Government, pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph *r* of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 201 (y)); and

(2) the term "national security" means the national defense and foreign relations of the United States.

[1] The "Principles of Federal Prosecution," which apply to all federal prosecutions, were published by the Department of Justice in July 1980, and are set out in section 9-27.000 of the U.S. Attorneys' Manual.

c. Functions of the Attorney General:

The functions and duties of the Attorney General under these guidelines may be exercised by the Deputy Attorney General, Associate Attorney General, or an appropriate Assistant Attorney General. However, the exercise of these functions and authorities by an official other than the Attorney General shall in no way limit the authority of the Attorney General to review, reverse, or amend any decision made under these guidelines.

3. Initiating or Declining Prosecution:

a. Determination of the propriety of initiating or declining prosecution:

Where, in the judgment of the Attorney General, it appears that the prosecution of a violation of federal law may result in the disclosure of classified information, the Attorney General shall determine whether the potential damage to the national security that might result from such disclosure outweighs other federal interests that would be served by the prosecution of the offense. If it is determined, after review of all relevant factors, that the potential damage to national security interests posed in prosecuting such a case outweighs other federal interests in proceeding with prosecution, prosecution of the offense may be declined.

In making this determination, the Attorney General shall assess all relevant information and evidence, consult with and seek the advice of the appropriate interested departments and agencies, and, whenever appropriate, fully utilize the procedures set out in the Classified Information Procedures Act of 1980 in order to assess more accurately the probability that classified information would be disclosed if the case were prosecuted, and the likely nature and extent of such disclose.

b. Factors bearing on the decision to initiate or decline prosecution:

In rendering a decision whether to prosecute a violation of federal law where there is a possibility that classified information may be revealed, the following factors, among others, should be considered:

(1) The likelihood that classified information will be revealed if the case is prosecuted. All relevant considerations bearing on this issue should be weighed, including:

(a) whether it will be necessary for the government to reveal classified information publicly in order to establish an element of the offense;

(b) whether the introduction of classified information will be sought by the defendant as a means of establishing a defense;

(c) whether the government will be required to disclose classified information to the defendant under the *Brady* doctrine, the Jencks Act, or in fulfillment of due process or other requirements;

(d) the likelihood that, under the procedures of the Classified Information Procedures Act, classified information sought to be disclosed publicly by the defendant would be found to be inadmissible, or the government would be permitted to use a substitute for the disclosure of specific classified information;

(e) the number and nature of persons to whom disclosure of classified information may be necessary, and the nature and extent of protective measures that may be available to prevent disclosure beyond authorized recipients; and

(f) whether the government's refusal to permit disclosure of classified information would result in dismissal of the indictment or a lesser sanction.

(2) The damage to the national security that might result if the classified information is revealed. All relevant considerations bearing on this issue should be weighed, including:

(a) the nature and extent of anticipated harm to the foreign relations or national defense of the United States;

(b) the level of classification and sensitivity of the information at issue;

(c) the extent of any previous unauthorized disclosure of the information;

(d) the likelihood that disclosure of classified information in the course of the prosecution would confirm the accuracy of classified information previously unsubstantiated; and

(e) the likelihood that disclosure would adversely affect future cooperation with individuals, organizations, or governments in obtaining classified or other confidential information.

(3) The likelihood that the government would prevail if the case were prosecuted. As in all Federal prosecutions in any case where proceeding with prosecution may result in disclosure of classified information the likelihood of a successful prosecution based on the available evidence should be established.

(4) The nature and importance of other federal interests that would be served by prosecution. Although an assessment of the federal interests that would be served by prosecution is a consideration in the decision to prosecute any case, where proceeding with prosecution may result in the disclosure of classified information that would create a risk of damage to the national security, all relevant considerations bearing on this issue should be carefully weighed, including:

(a) the seriousness of the offense charged;

(b) the extent of the prospective defendant's involvement in the commission of the offense;

(c) the likely sentence that would be imposed if conviction were obtained;

(d) the likely deterrent effect of conviction; and

(e) the availability of adequate noncriminal alternatives to prosecution.

4. Reservation:

a. Relation to the authority of the Attorney General:

Nothing in these guidelines shall be construed to limit the authorities or responsibilities of the Attorney General under the Constitution or laws of the United States.

b. Non-litigability:

The guidelines set forth herein are solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any party to any matter, civil or criminal.

5. Term and Effective Date:

These guidelines shall become effective on June 10, 1981, and shall remain in effect until modified in writing by the Attorney General.

Issued this 10th day of June, 1981.

WILLIAM FRENCH SMITH,
Attorney General.

WARREN RICHARDSON

Mr. HATFIELD. Mr. President, there is a growing concern in this Chamber about the methods and tactics used when we, or the general public, are feeling antipathy toward a Presidential nominee.

One of the objectives of every President is to select talented people to help him carry out the mission of the executive branch. Innate ability, complementary experiential background, and impeccable character are all important ingredients one hopes to find in people selected for high-level Government posts. It matters not that we may be for or against a particular nominee, for hopefully objective reasons, that we should be concerned about the unfortunate treatment that several recent nominees have received.

What we have perceived in the media and sensed in the behind-the-scenes rumor mill have not aided us or the American people in coming to just conclusions on these nominees. I trust that commenting about it today will at least have some ameliorating effect as we will soon have before us again controversial nominees.

Once more, I want to assert that it does not matter whether we are for or against particular nominees that this issue should be raised. But rather we should be concerned that possibly a few less-than-principled people have prevailed and could again, in short-circuiting the objective analysis of candidates' qualifications.

For my own part, it is my conviction that I should support the President in his nominations unless there is a compelling reason not to. In that light I supported Mr. Warren Richardson for the post of Assistant Secretary of Legislation at Health and Human Services, and I was prepared to vote against Ernest Lefever as the Assistant Secretary for Human Rights at the State Department. But notwithstanding my position on these nominations, my concern grew through the process of each man's consideration that facts were put aside for fiction to the detriment of society.

In Mr. Richardson's case it is my belief that the Government has lost a fine man and effective public servant. I wrote to him recently to extend empathetic support and to ask for a "thorough debriefing" from his perspective, with the belief that his insights gained through his difficult experience would be helpful to the Senate.

I was not disappointed. His response not only addresses candidly, and with thorough documentation, his own treatment in being wrongly charged with anti-Semitism, but also explores the dangers of McCarthy-era guilt by association and the difficulties of having stories like his handled factually in the press. I commend his letter and its attachments to your study.

Mr. President, I ask unanimous consent that Mr. Richardson's letter and the copies of correspondence to him be entered into the RECORD.

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

WASHINGTON, D.C.,
June 15, 1981.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HATFIELD: Thank you for sending me a copy of the booklet, "For Those Who Hurt." It was very thoughtful of you and helpful to me. In your letter of June 9, 1981, you ask if it is possible to provide you with a "thorough debriefing" from my perspective of the "unfortunate treatment" I received as a nominee for an assistant secretary position.

At your suggestion, I am pleased to set forth an account of the recent ordeal involving the withdrawal of my name from consideration by the President for nomination to the position of Assistant Secretary for Legislation at the Department of Health and Human Services (HHS). This account will deal with three major aspects of the controversy: the political battle, the battle of personal integrity, and McCarthyism.

At the outset, let me state clearly that I have no personal animosity towards the cast of characters who played out their parts in this drama on the stage of life.

THE POLITICAL BATTLE

The synopsis of events began on Tuesday, April 14, when a local official of the Anti-Defamation League of B'nai B'rith called Mr. David Newhall, who now holds the title of Chief of Staff at HHS, and informed him that the League would oppose my proposed nomination. Upon being informed of this development late that afternoon, I tried to locate former Senator Richard Stone. The next day I talked to him in London, England, and he called the Anti-Defamation League, asking them to postpone publicizing this matter until after he returned to the United States on Saturday, April 18, and we could talk with the individuals concerned. There was apparent agreement to proceed in that fashion.

Unfortunately, a Member of Congress issued a press release on the subject, and it became a topic of newspaper reports on Friday, April 17. More stories appeared in subsequent days. The allegation was put forth that I am anti-Semitic, hence not qualified to serve as the Assistant Secretary for Legislation at HHS. The following week, beginning Monday, April 20, the intensity of the press campaign increased. I wrote an apology for whatever misunderstanding may have arisen over any of my actions. I also visited with the Washington chiefs of two well-known Jewish organizations. A United States Senator informed the Secretary that he was going to lead a filibuster to try to stop my confirmation if the nomination reached the floor.

By mid-week it became clear that the war was being fought on two levels. Level one was an attack on my character, i.e., the charge of anti-Semitism. Level two was political, i.e., the liberal establishment telegraphing its desire to battle the Reagan administration over my appointment.

The growing importance of the political battle also became very clear because of three events:

1. A leader of one Jewish organization assured me that this affair was "nothing personal."

2. Letters from Americans of Jewish descent who have known me for at least 25 years declared, and explained, that I am not anti-Semitic. These were ignored by Jewish leaders and the press.

3. A Jewish friend of mine called to explain that this was a liberal scheme to embarrass the Reagan Administration.

There is yet another reason why it became apparent that the battle was now essentially political in nature. Nothing ever just happens in politics—it is planned. Timing is one of the key factors in political wars, just as it is in bullet wars. The whole offensive against me was timed to reach a crescendo when President Reagan appeared before the joint session of Congress to bring them, and a nationwide TV audience, his very important message about the economic recovery program.

There is independent verification that the whole attack was timed and not spontaneous. As noted above, Tuesday, April 14, 1981, was the date the Department was notified that my appointment would be opposed. Six days prior thereto, namely, April 8, a political observer in Washington with excellent connections called to tell me that a decision had already been made to oppose my nomination in order to attack the Reagan Administration. Why the delay? Timing, of course.

It was not until the week beginning Monday, April 13, that it became generally known that President Reagan would address the nation when Congress returned from its Easter recess. The timing pattern was almost upset by the phone call from Senator Stone. Had there been no press statements until after he arrived at his office on April 20, and had we met with Jewish leaders about their concerns, the opponents' critical timing sequence would have been ruined.

On Friday, April 24, the White House made its formal announcement that the President would address Congress the next Tuesday, April 28. That same Friday afternoon it became clear that there was no evidence to support the charge of anti-semitism, and it was equally clear that the liberal establishment timing sequence was on course, thus allowing them to ride the issue into a filibuster in order to embarrass the President. Their ploy was checkmated when I withdrew my name from consideration.

My decision was made without any pressure from the Secretary or the President, both of whom had been extremely supportive.

One of my colleagues at HHS commented afterward on the irony of the situation. He pointed out that I had been employed, in large measure, because of my ability to understand political situations and to arrive at sound political judgments. In exercising these abilities, I removed myself from the position.

Thus it goes in political wars. There are winners and losers. I was a loser in this one. From a political perspective only, I must say that the liberal establishment planned and executed its battle well. But there will be other battles, other winners and other losers.

THE BATTLE OF PERSONAL INTEGRITY

American political history is replete with examples of mudslinging, name-calling, and other assorted political dirty tricks. Likewise, the victims of such battles litter the pages of history. My case is no different from the others. All of us have a duty to be graceful losers in the political battle, but none of us is under an obligation to allow false allegations relative to our personal life to go unanswered.

In terms of the battle over my personal integrity, I was exonerated. In his statement accepting my request to withdraw my name, Secretary Schweiker said:

"A careful review produced no convincing evidence that Warren Richardson is or ever was anti-Semitic or racist."

His conclusion was based upon personal knowledge and upon the letters which were sent to the Department in my behalf.

These letters came about because many friends called to offer help. They either read or heard about the headline, "Charges of Anti-Semitism Peril Nomination for Key HHS Post," which appeared in the first story carried by the Washington Post on April 17. Most of them were outraged over the untrue characterization of me since all have known me to be non-anti-Semitic.

Fortunately, two of the people who offered to help are American citizens of Jewish descent. One of these individuals is Mr. Albert A. Rapoport, who wrote, in part:

"I am an American of the Jewish faith. In the past, I have been a member of B'nai B'rith, B'rith Sholom, and the Jewish War Veterans. Because of my background, education and practice as a lawyer for over 27 years, I feel well-qualified to judge whether a person is anti-Semitic or not. Anti-Semitism is a condition of a person's character. It cannot be imputed. It either exists, or it doesn't exist.

"Warren is not anti-Semitic in any way, shape or form. This judgment is based on the many years I have known him as a friend, and to be a sensitive human being. We met in September of 1951, at law school in Washington, D.C. Warren and I went to classes together, studied together, and endured the trauma of studying for and taking the bar examination together. We socialized at parties and family gatherings. During all of these years, I have never heard Warren utter an anti-Semitic remark; tell a racist story of any kind; or speak unfeelingly of a person, because of his race, religion, or national origin. You can understand my sense of outrage at seeing groundless allegations that Warren is anti-Semitic. The only obvious thing to be gleaned from these Post articles is that Warren is being used as a political football for the selfish interests of others, regardless of consequences to a really decent human being, and his family. Is it any wonder that we have difficulty in getting the best people for government service when they have to bear unfounded slings and arrows?"

In short, Mr. Rapoport says that I'm not anti-Semitic.

The second citizen of Jewish descent is Mr. Irwin Richman. He states:

"At the outset, I would stress that as a Jew, I have known anti-Semites and experienced their hatred first hand. I have known Warren Richardson for over 25 years (since December 1955) and state that Warren Richardson has never by word or deed shown or expressed anti-Semitism. On the contrary, Warren Richardson is one of the most fair-minded, objective persons I have known."

Again, I am not anti-Semitic. Copies of both letters are attached.

Also attached are copies of other letters which were received. Mr. and Mrs. George Hewitt, who have known us for over thirty years and come from "mixed heritage and religious backgrounds," say that the allegation of anti-Semitism is "the most unfortunate, false, and unfounded accusation and abuse of our freedoms that I have ever known." Two people, Congressman Gene Snyder and Mr. William E. Pursley, Jr., were lobbied by me when I was employed at Liberty Lobby, and they both testify, in effect, that I was not then, and am not now, anti-Semitic.

The next three people—Hubert Beatty, James D. McClary, and R. M. Chastain—all worked with me at the Associated General Contractors (AGC) from 1973 to 1977, after I had left Liberty Lobby, and testify as to my competency as a lobbyist.

Mr. Charles T. Carroll, Jr., worked with me at AGC on a daily basis for almost four years. His testimony is that "not once" during that period did I ever express any thought that could be viewed as anti-Semitic. During the past eight years I have worked as a lobbyist with a great many people. Four of them—Argyll Campbell, Hal Coxson, John S. Bush, Jr., and F. Patricia Callahan—spent many, many hours with me. All of them testify, in effect, that I am not anti-Semitic.

Another business friend is Mr. Kenneth C. O. Hagerty, Vice-President of the American Electronics Association (AEA). AEA was a client to my firm when I was in business for myself from 1977 to 1981. Mr. Hagerty states:

"What I can speak to that you may not know are Warren's philosophic and religious views. He and I have had numerous extended conversations over the years on religion, politics, and the interrelation between them. Those private conversations took place long before he had any thought of returning to government service. They have ranged over all economic, political and geopolitical issues. Never in that time can I recall a single statement or reference that might reasonably be construed as anti-Semitic. I can vouch for the fact that Warren's view of the world is not antagonistic toward Jews or any other ethnic group."

The next attached letter is from Mr. Bruce Klein who knows me socially through his association with my wife in their place of employment. He, too, states that I am not anti-Semitic.

Mr. Svend Petersen, from Florida, writes:

"At no time did I hear Mr. Richardson utter a remark that could be even remotely construed as anti-Semitic. In fact, it

seemed to me that one could assume from his conversation that he was opposed to putting people into ethnic categories, as he vigorously expressed his opposition to labeling people as ethnic stereotypes.

"All of my people, except for immediate family members, were, from 1940 to 1945, under the rule of the National Socialists, while Germany occupied Denmark, my birthplace. Had Mr. Richardson been anti-Semitic or pro-National Socialist, I would have discontinued our friendship."

Finally, here are the words of Miss Yvonne M. Chicoine, who writes:

"We were speaking of the role of God in society and why communism could not be tolerated by anyone with a faith in God because it was not only non-God, but anti-God. As I recall, you were 'somewhat' angered by the infighting that exists between people with different religious beliefs because of your concern that it detracted from the more important objective—that of preserving an atmosphere where individuals have the freedom to worship God at all.

"These certainly are not the sort of words that would be spoken by someone who found Judaism the most dangerous element in today's society."

The sum of all these letters is that those who know me state unequivocally that I am not anti-Semitic and/or that I am a good lobbyist. Their statements, moreover, are identical to my own self-perception. Having been raised in a Christian home, I have long known and believed that the single God of the universe loves all peoples, regardless of race, creed, or color, equally well. That is why I know that I am non-anti-Semitic—because I am not anti-anybody.

Let us compare my true character, as evidenced by the testimony above, with the charges against me. When the words from the newspaper stories have been clarified, the furor can be reduced to two allegations:

1. I had authored an op-ed piece for the New York Times (May 18, 1971) which contained an anti-Semitic reference in one sentence of the last paragraph.

2. I had worked for Liberty Lobby.

Regarding the first item, it should be noted that I did not write the last paragraph of the by-lined column for The New York Times. I did not know about its existence until after publication, and I was disturbed by the addition. A letter by the true author of that paragraph is attached. That leaves only the second item, a statement which attempts to paint my character by the ancient art known as guilt-by-association.

Mr. Rapoport, quoted above, puts his finger on the cardinal fact that "anti-Semitism is a condition of a person's character. It cannot be imputed. It either exists, or it doesn't exist." The idea that anti-Semitism is a condition of a person's character finds support in the words of Mary Cunningham of corporate America fame. In an article in The Washington Star's "Comment" section on May 10, 1981, adapted from a recent speech by her, Miss Cunningham devotes some attention to the high cost of prejudice. She says:

"Prejudice is a moral failing in the souls of the people who harbor it."

Anti-Semitism is a prejudice, and whether it is a moral failing of the soul or a condition of character, the essential fact is that it cannot be imputed from circumstances outside the soul and/or character. Thus, in weighing direct testimony against an allegation based upon guilt-by-association, there is no question but that the direct testimony vitiates any conclusion reached by the attempted imputation. The matter can be put another way, as it was by Mr. Hagerty, also quoted above:

"As you know, it is impossible to prove a negative. Warren cannot refute these charges in any absolute sense—nor could anyone else. The burden of proof must be on those asserting his anti-Semitism to show it affirmatively."

Those who made the charge did not show any affirmative proof that I am anti-Semitic. Perhaps they showed a prima facie case of guilt-by-association, but they failed to rebut the positive, affirmative proof that I am non-anti-Semitic provided by the testimony of the people discussed above.

These people have known me from different periods of my life and under such intimate circumstances that if I had ever been anti-Semitic, they would have observed it.

At this point it could be fairly said that a mistake had been made in not taking this positive evidence to the press and having my side of the story presented to the public. When the whole affair started, the Secretary asked his Chief of Staff to conduct a complete review of my proposed nomination. He believed that the review could be conducted in a responsible way, with everybody trying to produce positive evidence on one side or the other. Because of this concept of fair play on his part, he made a determination that there would be a news blackout as to his activities and mine. The case would not be tried in the papers. With this decision I concurred. Unfortunately, the news media thought otherwise and carried on the battle in a one-sided manner.

But the individual members of the press should not bear all the criticism for their incomplete coverage of the event. The news business in this country is so competitive that reporters and feature writers are under great pressure to produce copy, whether it is checked for accuracy and balance or not. We are all familiar with the case of Janet Cooke, late of the Washington Post, who almost won a Pulitzer Prize for the story of "Jimmy"—almost, that is, until it turned out there was no Jimmy. Then, the Washington Star for Saturday, May 9, 1981, carried the story (page A–4) of New York Daily News columnist Michael Daly, who resigned the day before over an article about some events which followed the death of Bobby Sands. Michael O'Neill, editor of the News, is quoted as saying:

"In the absence of independent corroboration of disputed points and in view of his use of misleading journalistic techniques, his resignation was accepted."

This insatiable drive for sensationalism, regardless of the cost in truth and accuracy, cannot be laid entirely at the feet of the reporters. It can be partly attributed to the system. Reporters, too, work for others, and their superiors must look at the mirror of introspection to decide how this wild trend can be halted.

The news media itself recognizes that there is a problem. A front page story in the Wall Street Journal for May 14, 1981, by Paul Blunstein addresses the situation. The headline is: "Bad News." Mr. Blunstein mentions both the Janet Cooke and Michael Daly cases along with others. He refers to Mr. Ben H. Bagdikian, "a former Washington Post editor who teaches journalism at the University of California at Berkeley."

Later in the article Mr. Blunstein says:

"But Mr. Bagdikian believes that competition—especially competition from the strong visual imagery of television—has produced pressure 'to reward reporters who are stylistically distinctive, without looking at them closely enough to see that they're factually distinctive.'"

Later on, Mr. Blunstein says:

"But Mr. Felker [Clay Felker, current editor of the Daily News afternoon edition] disagrees with Mr. Bagdikian about the pressure on reporters. He thinks the problem is with the writers themselves, especially those who aspire to become junior versions of Tom Wolfe, an erstwhile Felker star who sometimes spends months with the people he writes about. Writers are 'much better educated than they used to be, and much more difficult to deal with,' Mr. Felker says. 'Editors have lost control of their writers.'"

"That has been troubling critics since before the Janet Cooke affair. In the Yale Review last August, writer John Hersey argued that the time had come to 'redraw the line between journalism and fiction.'"

Even TV is not spared from comment by the press. Judy Bachrach, in her column for The Washington Star of May 27, 1981, wrote about the "four left-wing terrorists" who "hijacked a Turkish jetliner." She explained:

"Another headline, another show. One figured it would have a brief run on ABC's Nightline; interviews with hostages' relatives, four-minute analysis of Turkey Today, fuzzy long-lens shots of terrorists, slap-dash reconstruction of who they are and what they want. After years of practice, the news organizations have become as expert at absorbing, *mythologizing* and *inciting* the bad news as the terrorists themselves. Every detail, every bullet is bathed in the glamour of action and anonymity (Who was that masked man?)." (Emphasis added)

Whether it be competition among themselves, competition with television, lack of talent, loss of control by editors, the need to redraw the line, or the expertise at mythologizing and inciting the bad news, it is obvious that the system is in dire need of a return to lost ideals. Because we believe in the tradition of a free press, we pray that the news industry will pump the bilge water out of its own ship.

Regardless of what motivated the press to present only a one-sided view of the false charges leveled at me, and notwithstanding the positive proof of my non-anti-Semitism, some people have exhibited much interest in one aspect of my career—the four years spent at Liberty Lobby. Why did I go there? Why did I stay? Wasn't I in a policy-making position? All these questions are irrelevant, because they are part of the attempt to find me guilty by association, whereas it has been established by positive means that I am non-anti-Semitic. However, to satisfy the curiosity of those who feed upon the irrelevant, I shall briefly answer these questions.

I went to Liberty Lobby in June 1969 because of the opportunity it offered to alleviate the economic distress caused by a serious auto accident involving my wife four months earlier. The accident resulted in five serious operations over a 7-year period, including three on the spine, which continued the financial drain. My wife wore neck braces night and day for nearly four years. In addition to attending to her health problems, I was required to drive my children over 65 miles per day to and from school. I stayed at Liberty Lobby because it was difficult to find a comparable job which allowed me the freedom to make the transportation commitment. Middle-class Americans of all faiths and ethnic backgrounds understand these family problems. In response to the third question, I was not in a policy-making position.

M'CARTHYISM

We all know that political battles can become messy. The possibility of losing such a battle is a risk we take when we enter the political war zone. But one risk not assumed is the personal vilification heaped upon a person—not directly, but through guilt-by-association. Many years ago the liberal establishment cried "foul" when the late Senator Joe McCarthy pursued these tactics for his own political ends. Recently, in the Washington Star for Thursday, April 30, 1981, columnist Edwin M. Yoder, Jr., wrote an article on "Senator Denton and Memories of McCarthyism." One paragraph follows:

"But while historical perspective broadens, it does not alter the verdict on McCarthyism. However motivated, McCarthy's

techniques—falsehood, innuendo, slander, the general disregard of judicious and responsible inquiry so central to democracy—were evil. The late Richard Rovere speculated that McCarthy, so far as motives were concerned, was essentially a nihilist, and maybe he was right. In most affairs of state, in any case, motive matters far less than effect."

McCarthyism means evil techniques; specifically, falsehood, innuendo, slander and the general disregard of judicious and responsible inquiry so central to democracy. The whole concept of McCarthyism has become mired in political rhetoric. This is a tragedy because beneath the rhetoric, beyond the evil technique, we find human beings involved, not checkers on a political checkerboard.

Mr. Yoder has performed a fine service by illuminating and refining the definition of this evil. While his terminology "the general disregard of judicious and responsible inquiry so central to democracy" may lack specificity in the eyes of McCarthy-lovers, it is not obscure to most Americans. Clearly, those words embrace the idea of a general disregard for one of the great hallmarks of Anglo-American law—a person is innocent until proven guilty. Regardless of how many hundred victims (of which I am only one, therefore, not unique) have resulted from the application of McCarthyism, very few, if any, were allowed their birthright of being declared innocent and requiring their detractors to prove in a positive (not guilt-by-association) manner their transgressions. This basic unfairness, which tears the warp and woof of the American culture, is the reason why most Americans abhor McCarthyism.

The practices of McCarthyism (including the evil techniques, denial of the concept that we are innocent until proven guilty, and the tragic personal consequences) produces a result which goes far beyond my own case. It is an unjustifiable flaw in the national conscience. The cumulative result of this virus means that our American civilization shall never mature until we rid ourselves of this disease.

My own bona fides as an anti-McCarthy fighter were established when Senator Joe McCarthy was practicing his art. As stated by Mr. Rapoport in his letter (copy attached):

"Warren and I were in law school during the McCarthy era. We were almost alone in our opposition to McCarthyism. In the afterclass discussions and arguments, which were so much a part of the law school experience, Warren and I would go against as many as 15 to 20 other students, expressing our immense distaste for Senator McCarthy's tactics. How ironic that one of the great anti-McCarthy debaters is now being subjected to 'McCarthyism' by the very institution which deplored that reprehensible tactic."

I opposed McCarthyism 30 years ago, and I oppose it now. Perhaps my opposition is more meaningful now since I have been victimized by this un-American evil.

In my own case the most notable aspect of McCarthyism was the general disregard of judicious and responsible inquiry. The person who released the information to the press was asked why I had not been notified and given the opportunity to verify the facts before publication. All of the information and letters contained herein could have been supplied prior to release to the press just as easily as after the fact. There was no adequate response to the question.

Another example of the general disregard of judicious and responsible inquiry was reported at length in The Washington Post "Outlook" section for Sunday, May 10, 1981. In a story entitled "The Nazi Who Never Was" and subtitled "How a witch-hunt by judge, press, and investigators branded an innocent man a war criminal," Flora Johnson tells the story of Frank Walus. In her words she says:

"Overwhelming evidence shows that Walus was not a Nazi war criminal, that he was not even in Poland during World War II. *Much of this evidence was available to the U.S. government before Walus was even charged, long before he was brought to court.* (Emphasis added)

* * * * *

"And the Walus case can, for the moment, stand as another monument to the stupidity of witch-hunting of any type, however laudable the ostensible aim."

I am sure it is no consolation to Mr. Walus, who has lost his life savings in attorney's fees and court costs, to be welcomed aboard that stately ship which carries the victims of McCarthyism.

Putting aside, for a moment, consideration of McCarthyism as a technique to be used in political battles, let us look at the effect of such an unfounded accusation on the life of the victim. I have spent my entire life learning and honing the skills of a lobbyist. These skills are recognized by my peers and by Secretary Schweiker. To be selected as the person to be the Assistant Secretary for Legislation in the Department of this government, which has the third largest budget in the world, was a recognition by the Secretary and the President of my high standards and professional achievement. I shall always treasure this endorsement of my talent and hard work. It is with great difficulty that I shall forget, however, the experience of having this appointment so unfairly torn from me at the hands of McCarthyism. Neither fair play nor democracy appear to have been well served under the circumstances.

The thrust of this lengthy debriefing was essentially summarized in your letter of June 9, 1981, when you said:

"Once again it appears that a few unprincipled people prevailed without there being the benefit of objective analysis of candidate qualifications."

I hope that you and some of your colleagues can design a way to change the Senate confirmation system to focus on critical factors, such as ability, and curtail the trivialization of the process.

Finally, I wish to thank you for taking a personal interest in this aspect of statecraft—the selection of excellent people to serve our country.

Sincerely,

WARREN S. RICHARDSON.

ALBERT A. RAPOPORT,
Washington, D.C., April 19, 1981.

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: As an American citizen of Jewish decent, I could not think of anyone I would rather have as the Assistant Secretary for Legislation than Mr. Warren Richardson.

Today's story in *The Washington Post* by Spencer Rich is outrageous. His story in Friday's edition of the *Post* was no better. The gist of the allegations is that Mr. Warren Richardson is anti-Semitic and, therefore, unfit for public office. I consider the charge absolutely false, and I object to the methods which have been utilized to smear him.

I am an American of the Jewish faith. In the past, I have been a member of B'nai B'rith, B'rith Sholom, and the Jewish War Veterans. Because of my background, education, and practice as a lawyer for over 27 years, I feel well-qualified to judge whether a person is anti-Semitic or not. Anti-Semitism is a condition of a person's character. It cannot be imputed. It either exists, or it doesn't exist.

Warren is not anti-Semitic in any way, shape or form. This judgment is based on the many years I have known him as a friend, and to be a sensitive human being. We met in September of 1951, at law school in Washington, D.C. Warren and I went to classes together, studied together, and endured the trauma of studying for and taking the bar examination together. We socialized at parties and family gatherings. During all of these years, I have never heard Warren utter an anti-Semitic remark; tell a racist story of any kind; or speak unfeelingly of a person, because of his race, religion, or national origin. You can understand my sense of outrage at seeing groundless allegations that Warren is anti-Semitic. The only obvious thing to be gleaned from these Post articles is that Warren is being used as a political football for the selfish interests of others, regardless of consequences to a really decent human being, and his family. Is it any wonder that we have difficulty in getting the best people for government service when they have to bear unfounded slings and arrows?

I am indignant that this is a media smear campaign, using innuendo to achieve a political purpose. In Friday's article, Post writer Rich quotes Nathan Perlmutter that he "believes" that Liberty Lobby was anti-Semitic for the last 20 years. So what? The critical issue is whether Warren is anti-Semitic!

Today's Post article of Sunday, April 19th, is more of the same. Mr. Rich refers to code words which I have never heard. Warren was probably just as surprised to learn that he spoke some kind of code language not taught us at law school.

Warren and I were in law school during the McCarthy era. We were almost alone in our opposition to McCarthyism. In the afterclass discussions and arguments, which are so much a part of the law school experience, Warren and I would go against as many as 15 to 20 other students, expressing our immense distaste for Senator McCarthy's tactics. How ironic that one of the great anti-McCarthy debaters is now being subjected to "McCarthyism" by the very institution which deplored that reprehensible tactic! If Warren's nomination is stopped because of guilt by association, I shall be in the forefront of a defense committee, organized to stop this terrible disease of McCarthyism, which I thought had been done away with years ago.

Another innuendo which I object to strongly in the Rich articles, is that Warren should have somehow silenced others from voicing their opinions. During our law school years, both in and out of classes (and particularly during the McCarthy debates), Warren reminded us that we are not entitled to freedom of speech if we deny it to others. It is entirely within Warren's character to let others say whatever suits their fancy.

I have always thought of Warren as a brilliant, intellectual type, who cared about the problems of people. In nearly thirty years of our knowing each other, and discussing matters ranging from politics, to religion, to sports, to social problems and foreign affairs, Warren has never expressed an extremist view; on the contrary, they are balanced, rational and moderate.

Respectfully yours,

ALBERT A. RAPOPORT.

APRIL 19, 1981.

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I write this as an American Jew and a friend of Warren Richardson and to express my strong disagreement with the allegations of anti-Semitism made against Warren Richardson as reported in the Washington Post of April 17, 1981.

At the outset, I would stress that as a Jew, I have known anti-Semites and experienced their hatred first hand. I have known Warren Richardson for over 25 years (since December 1955) and state that Warren has never by word or deed shown or expressed anti-Semitism. On the contrary, Warren Richardson is one of the most fair-minded, objective persons I have known.

This is not to say that Warren and I agree about everything. On the contrary, we have argued together, disagreed in certain areas, and agreed in others. But never has there been acrimony or hatred shown by Warren and I have always considered him a friend.

During the period December 1955 through September 1959, Warren and I, as attorneys at the General Accounting Office, were close. We ate lunch together, had many talks on life, religion, raising children, and almost any other subject that close friends discuss. Warren is a man of strong convictions, but even if you disagree with him (as I did on some matters), you recognize him as an honest, straightforward person. As a political liberal I saw this in Warren's conservatism.

Our contacts have not been restricted to the office. Warren and his wife, Nancy and myself and my wife have socialized together. In fact, Warren held my first-born son in his arms at my son's bris (circumcision ceremony) and participated in our religious celebration. This was not the act of an anti-Semite.

And so, as a matter of conscience, I have written this on my Passover and Warren's Easter to refute the allegations of anti-Semitism against Warren Richardson. These allegations have no basis in substance or fact.

Sincerely yours,

IRWIN RICHMAN.

ROCKVILLE, MD., *April 17, 1981.*

Mr. DAVID NEWHALL III,

Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: We have studied, raised families, worked, and socialized with Mr. and Mrs. Warren Richardson for over thirty years. Since my wife and I have mixed heritages and religious backgrounds we are very perceptive to anyone who discriminates against others on racial or religious bases. We know that Mr. and Mrs. Richardson do not have prejudiced thoughts, never entertain discriminatory attitudes, and have never spoken or acted in an anti-Semitic or racist manner. They have sacrificed greatly in order to strive for and obtain the highest ideals, educational standards, morals and motivations for themselves and their children. Their success is witnessed by their professional achievements as well as the accomplishments of their children. They and their children are the perfect example of what America stands for.

The allegations of anti-Semitism that have been made against Warren Richardson are the most unfortunate, false, and unfounded accusations and abuse of our freedoms that I have ever known.

Yours respectfully,

GEORGE HEWITT.
JACQUELINE A. HEWITT.

HOUSE OF REPRESENTATIVES,
Washington, D.C., April 20, 1981.

Hon. RICHARD S. SCHWEIKER,

Secretary, Department of Health and Human Services, Washington, D.C.

DEAR DICK: During my tenure on the Hill representing the Fourth District of Kentucky, I have had a good voting record on pro-Israeli issues.

I have known Warren Richardson for many years, going back to the days when he worked for Liberty Lobby. He has lobbied me on a variety of issues at the time (and since). On every encounter I found him to be a warm, sensitive and immensely capable lobbyist. Never at any time did Warren exhibit any anti-Semitic attitude or posture.

I trust this will assist you in making a determination as to whether or not to go forward with his nomination.

With best wishes, I am

Sincerely yours,

GENE SNYDER.

ARLINGTON, VA.,
April 20, 1981.

Mr. DAVID NEWHALL III,

Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I am writing this letter on behalf of Warren Richardson, my friend and colleague for the past eight years, in view of certain allegations made against him, in effect, describing Mr. Richardson as "anti-Semitic." At present I am the Chief Legislative Assistant to Senator Frank H. Murkowski of Alaska.

I have worked with Warren Richardson over the past eight years in my capacity as Chief Counsel of the Senate Judiciary Subcommittee on Revision and Codification of Laws (1972–74), Chaired by Senator Sam J. Ervin, Jr. of North Carolina, and as Chief Legislative Assistant to Senator Richard Stone of Florida (1975–80). In all of my dealings with Warren Richardson, in his capacity as a representative of the Liberty Lobby, a representative of the Associated General Contractors, and more recently representing his own consulting firm, Warren Richardson has always been an advocate of principle and legitimate political philosophy. He has never expressed or intimated in any way whatsoever an opinion or attitude that demeans any individual or group on the basis of race, color, creed or national origin. For anyone to imply the contrary is to indicate to me that such a person simply does not know Warren Richardson nor has ever worked with him.

My first association with Warren Richardson was during the period while he was serving as general counsel of the Liberty Lobby and I was working with Senator Ervin on the staff of the Judiciary Committee (1972–73). Senator Ervin, who holds his constitutional views with integrity and determination, was strongly opposed to the Senate ratification of the so-called "Genocide Convention." The Liberty Lobby also opposed this treaty. On many occasions Warren Richardson and I talked about legislative tactics and substantive issues relating to the Senate's consideration of the "Genocide Convention." In the course of many meetings which I had with Warren Richardson on this subject, our discussions were based on Senator Ervin's concern that this pending treaty would fundamentally undermine the constitutionally-guaranteed rights of American citizens who might be subject to international criminal tribunals where such constitutionally-guaranteed rights would not be provided for. Senator Ervin and I both appreciated greatly Warren Richardson's knowledge on this subject which was useful in Senator Ervin's active opposition to the convention during the 1972–73 period.

Subsequent to my getting to know Warren Richardson during the 1972–73 period, I worked with Warren Richardson while I was the Chief Legislative Assistant to Senator Stone. I had occasion to work with Mr. Richardson on labor relations issues while he was representing the Associated General Contractors and on the "Heinz-Stone" constitutional amendment to limit Federal spending, when he was representing his own consulting firm. Throughout this period of time I found Warren Richardson to be a man of complete personal and professional integrity, a man of unusual intellectual energy and a man of fairness and good spirit.

While I am not personally familiar with the circumstances surrounding the allegations of "anti-Semitism"' made against Warren Richardson, I do unqualifiedly state that I have never heard from Warren Richardson any expression or witnessed any action on his part that would in any way imply racial, ethnic or religious prejudice. In brief, Warren Richardson could not possibly be "anti-Semitic."

Any new Administration needs men and women of intelligence and integrity. Warren Richardson is such a man. I recommend him most highly for the Assistant Secretary's position and believe he would be a great asset to your Department and to the Congress.

Sincerely,

WILLIAM E. PURSLEY, Jr.

THE ASSOCIATED GENERAL
CONTRACTORS OF AMERICA,
Washington, D.C., April 20, 1981.

Mr. DAVID NEWHALL III,

Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: Mr. Warren Richardson was employed by The Associated General Contractors of America, as Director, Legislation, from July 15, 1973 until July 1, 1977, which was the effective date of his resignation.

Warren Richardson's professional competence during his employment by this association contributed significantly to establishing the foundation for our current legislative activities.

Mr. Richardson worked diligently and well for our organization. His knowledge of the federal legislative process, and how to influence that process effectively were excellent.

Mr. Richardson resigned from The Associated General Contractors of America's staff to establish his own business.

Sincerely,

HUBERT BEATTY,
Executive Vice President.

BOISE, IDAHO,
April 20, 1981.

Mr. DAVID NEWHALL III,

Executive Assistant to the Secretary, Secretary of the Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I am writing you regarding the appointment of Warren Richardson as Assistant Secretary of Health and Human Services. It appears from news releases that this may be in jeopardy because of a presumed affront to one organization in an editorial written by Mr. Richardson ten years ago.

I have known Mr. Richardson for some eight years, starting with his employment in the Legislative Division of the Associated General Contractors of America. I was National President of the AGC in 1972. I served on the Executive Committee from 1962 until 1978. From 1973 to 1976, I was Chairman of the Legislative Committee, and Mr. Richardson was in charge of the staff of that committee.

During those three years under my direction Mr. Richardson organized the Legislative Network of the AGC. That network now has established an AGC member of an associate member as liaison with each of the 535 members of Congress. This is a lobbying effort which is extremely effective on legislation concerning the construction industry.

As you may know, construction in all of its ramifications is the largest industry in the United States.

I was gratified by the proposed appointment of Mr. Richardson in an area where

he is eminently competent. The appointment of such second and third tier individuals is a requisite for the successful accomplishment of President Reagan's program. Frankly, if the Administration starts to compromise its appointments because of the outcries of every special interest group that raises its head, it is going to be "business as usual" for the next four years—as it has been for far too long—and the President will not be able to do what I believe he can do and what must be done if this country is ever to realize its true potential.

As to my bonafides, prior to my retirement three years ago, I was Chairman of the Board of Morrison-Knudsen Company, Inc., of Boise, Idaho, a leading construction and engineering firm which has an annual volume of $2 billion. The Company works worldwide.

I am a lifelong Republican having held county, state and national positions. For any information you may need about me personally, my integrity, ability, patriotism and so forth, I refer you to the entire Idaho delegation—Senators McClure and Symms, and Congressmen George Hansen and Larry Craig. They will tell you I don't make any endorsements lightly.

This letter is written because I believe the decision to make this appointment of Mr. Richardson was excellent, and I would not like to see the Secretary needlessly lose the services, advice and counsel of capable individuals like Warren Richardson for what appear to be specious reasons.

Thank you for any consideration you may give this letter.

Sincerely,

JAMES D. MCCLARY.

MORRISON-KNUDSEN COMPANY, INC.,
Boise, Idaho, April 20, 1981.

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary, Secretary of the Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I recently learned of criticism directed toward the confirmation of Warren Richardson as Assistant Secretary of Health and Human Services.

As a friend and colleague of Warren through an association commencing during his employment with the Associated General Contractors, I want to personally voice strong endorsement of Warren's confirmation. Warren has some splendid qualities, to include intelligent, innovative, resourceful, competent and experienced; capabilities which have kept him on the success side of past efforts and which has earned him an excellent reputation as a very good legislative advocate.

Coupled with the above, his integrity and common sense provide an employer with an adroit ability to accomplish with the utmost probity.

I would hope to reinforce the qualities which first brought Warren's talents to your awareness and nomination, to not now utilize so capable an individual would not appear to be in the administration's best interest.

Sincerely,

R. M. CHASTAIN.

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
Washington, D.C., April 20, 1981.

Hon. RICHARD S. SCHWEIKER,
Secretary, Department of Health and Human Services, Washington, D.C.

DEAR MR. SECRETARY: I note from recent press reports that the nomination of Mr. Warren S. Richardson has been placed in jeopardy because of allegations of anti-Semitism on Mr. Richardson's part.

I have known Mr. Richardson since September 1973 and worked directly for him, on a daily basis, for almost 4 years thereafter. *Not once* during this time did Mr. Richardson express any thought that could be viewed as anti-Semitic. Indeed, I have heard no words expressing any form of bigotry from Mr. Richardson on any occasion.

In this 4 year period Mr. Richardson and I repeatedly discussed world events and problems. On these frequent occasions any bigotry on Mr. Richardson's part would have been apparent.

Mr. Richardson is a knowledgeable, conscientious, and analytical individual who is well qualified to be an Assistant Secretary at HHS. The charges against him should be dismissed immediately, as they are without basis.

I deplore the tactics of those that are seeking to scuttle Mr. Richardson's nomination. It's too bad that, in their zeal to achieve their goals, they are willing to go to such extremes.

Sincerely,

CHARLES T. CARROLL, Jr.,
Counsel Subcommittee on Labor.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington D.C., April 21, 1981.

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: Even though I did not know Warren Richardson until after he had worked for Liberty Lobby, I can state with conviction that my friendship and close working relationship with him as a fellow lobbyist never showed Warren to be, in any way, anti-Semitic—or, for that matter, prejudiced against any person because of his race, religion or national origin. True, Warren does hold certain convictions—he does have a philosophy—about the role and the size of government in our society, but this in no way has ever manifested itself—in my observation—in any personal prejudices against any person, because of his heritage and background.

I do not, for a minute, believe that Warren Richardson shares any of the views attributed to his former boss, Curtis Dall, in a 1970 interview in True magazine as reported in Sunday's Washington Post. He simply is not that kind of man.

The details of this exaggerated "flap" aside, I can state without hesitation or equivocation that Warren Richardson is a superb lobbyist of indefatigable energy and skill who knows and understands well the legislative process. There is no doubt in my mind that Warren brings to any Congressional liaison post in any major department all the requisite ability and skill to perform such a job to the credit of our government. Among Washington lobbyists who worked on recent labor-management issue battles, Warren was—and is—recognized as a splendid leader; in the case of the defeat of common situs picketing by the House of Representatives, Warren was THE PRINCIPAL LEAD BUSINESS LOBBYIST (then working for the Associated General Contractors of America) in orchestrating the rejection of that undesirable legislation. He works well with people of varying temperaments; his knowledge and wisdom, his understanding of Congress and the legislative process, his solid working relations with many members of Congress, has engendered great respect among fellow lobbyists who view him as a natural leader.

I would urge the Secretary to stand by Warren Richardson and retain him in the service of the Department. I hope that Secretary Schweiker and you and his other top advisers will recognize this allegation (if I can dignify it with that word) against Warren as untrue and unwarranted. Certainly it is being blown all out of proportion to its very dubious merit.

From my experience and knowledge of Warren Richardson, I can assure you that you and the Secretary will never regret standing by him and retaining him in the service of the Reagan Administration in a key post in your Department.

Best wishes.

Sincerely,

ARGYLL CAMPBELL.

P.S. The views expressed above are my own personal convictions; they do not represent the official position of the National Association of Manufacturers, or its arm which I serve, the National Industrial Council.

Mr. DAVID NEWHALL III,
Chief of Staff, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I am writing to express my concern regarding what certainly must be unfounded allegations and unjustified character attacks involving Warren Richardson, the Assistant Secretary-Designate for Legislation at the Department of Health and Human Services.

I have known and have worked closely with Warren since 1975, when I was first a labor law attorney and later the Director of Labor Law at the U.S. Chamber of Commerce. He and I worked together on several legislative issues and we were in almost daily contact during the many months he helped direct the efforts of the business community on the so-called labor law reform bill. During that time, I never detected anything that would substantiate the allegations concerning racial or religious biases. To the contrary, Warren has always impressed me as being a very decent, moral and unbiased individual.

It is a tribute to Warren Richardson that his friends and allies in the business community, as well as his erstwhile legislative foes from organized labor, have the highest personal regard and professional respect for him. It would be a tragedy for the Department, and for the Administration in general, to lose someone of his ability and character.

Sincerely,

HUNA P. COXSON.

JOHN S. BUSH, Jr.,
Washington, D.C., April 24, 1981.

Mr. DAVID NEWHALL III,
Chief of Staff, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I have served long and intimately with Warren Richardson on several successful legislative lobbying campaigns. He is very experienced and highly competent in this line of work and commands the respect and attention of a large number of congressmen, senators and their staffs.

During hundreds of hours where Mr. Richardson and I were alone visiting congressional offices, over luncheon, coffee, and dinners, I have never heard him utter a single anti-Semitic nor "racist" statement. He is not only a gentleman but indeed a truly gentle person.

It is a profound tragedy that Mr. Richardson is now the center of one of the periodic hysteria episodes in the media. I believe any thinking person would happily trade in a brief lapse in his life of which he is not particularly proud. So let the Liberty Lobby case be with Warren Richardson.

Secretary Schweiker will suffer the loss of a talented and dedicated legislative professional if the news media succeed in destroying him.

Very truly yours,

JOHN S. BUSH, Jr.

WASHINGTON, D.C., *April 20, 1981.*

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary/Executive Secretary to the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I wholeheartedly support the nomination of Warren S. Richardson to be Assistant Secretary for Legislation at the Department of Health and Human Services. I was stunned to read the allegations in the press against both his personal integrity and his qualifications for the position.

From 1974 to 1980, I represented Sears, Roebuck and Co. as a lobbyist in Washington. During that time I had the opportunity to work closely with Mr. Richardson on several major legislative campaigns, including common situs picketing both in 1975 and again in 1977 and the labor law reform filibuster in 1978. I can categorically state that in my six year association with Mr. Richardson, he displayed the utmost professional regard for all persons irrespective of race, religion, sex or national origin. Mr. Richardson is a fine and accomplished professional whose reputation for fairness, quality and effectiveness is beyond reproach.

Those allegations by the press are false and malicious and deserve nothing less than a resounding condemnation.

Yours truly,

F. PATRICIA CALLAHAN.

COLUMBIA, MD.,
April 20, 1981.

Subject: Appointment of Warren Richardson as Assistant Secretary.

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I am an engineer with the firm MPR Associates here in Washington, and have worked with Mr. Richardson's wife for the last five years. During that time I have frequently spoken with Mr. Richardson in my office. I have met him socially numerous times, and have visited with him both at his home and mine.

As long as I have known him, Mr. Richardson has always brought great energy and dedication to his work. In general, he has been associated with more conservative causes, and as a result I have from time to time had ideological differences with him. However, in all the time I have known him I have never heard him express any opinions or make any statements which were even slightly anti-Semitic or racially biased. I have never even heard him tell a joke with racial overtones. I am unable to understand the basis for any of the statements which have been made against him.

In my opinion Mr. Richardson is a dedicated and hard worker who will be a credit to the Department of Health and Human Services. Please count me as one of those who believe that allegations that he is anti-Semitic or racially biased are completely unfounded.

Sincerely,

BRUCE KLEIN.

AMERICAN ELECTRONICS ASSOCIATION,
Washington, D.C., April 17, 1981.

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary, Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: I was distressed to read this morning that the nomination of Warren Richardson is being questioned on grounds of alleged anti-Semitism. I have known Warren for some years and worked closely with him on a number of legislative projects. I am sure you already know he is an unusually effective and professional legislative advocate who is able to work well with people of diverse viewpoints and backgrounds.

What I can speak to that you may not know are Warren's philosophic and religious views. He and I have had numerous extended conversations over the years on religion, politics, and the interrelation between them. Those private conversations took place long before he had any thought of returning to government service. They have ranged over all economic, political and geopolitical issues. Never in that time can I recall a single statement or reference that might reasonably be construed as anti-Semitic. I can vouch for the fact that Warren's view of the world is not antagonistic toward Jews or any other ethnic group.

As you know, it is impossible to prove a negative. Warren cannot refute these charges in any absolute sense—nor could anyone else. The burden of proof must be on those asserting his anti-Semitism to show it affirmatively. To my knowledge, they have not done so. I do not think they will be able to.

All we have seen so far has been guilt-by-association. Many people would be surprised and disappointed if that were enough to deprive this administration of a person as able as Warren Richardson.

Sincerely,

KENNETH C. O. HAGERTY,
Vice President, Government Operations.

APRIL 18, 1981.

To Whom It May Concern:

I have known Warren S. Richardson, of Washington Grove, Maryland, since 1961. For a number of years, while I lived in neighboring Rockville, he and I were seatmates on the Baltimore & Ohio Railroad's morning and evening commuter trains. We visited in each other's homes occasionally and I met his wife and children, just as he met my wife and children.

At no time did I hear Mr. Richardson utter a remark that could be even remotely construed as anti-Semitic. In fact, it seemed to me that one could assume from his conversation that he was opposed to putting people into ethnic categories, as he vigorously expressed his opposition to labeling people as ethnic stereotypes.

All of my people, except for immediate family members, were from 1940 to 1945, under the rule of the National Socialists, while Germany occupied Denmark, my birthplace. Had Mr. Richardson been anti-Semitic or pro-National Socialist, I would have discontinued our friendship.

While I am confident that B'nai B'rith is a fine fraternal organization, I have mixed feelings about the Anti-Defamation League or, as some of my Jewish friends designate it, the Defamation League. While it naturally and commendably fights organized anti-Semitism, I can recall when it joined in the smear campaign against Charles A. Lindbergh before the United States intervened in World War II. During the hate campaign against the Republican presidential candidate, Barry M. Goldwater (who is half-Jewish), in 1964, the League was very active. As an employee of a senator and several members of the House of Representatives, I read quite a bit of its propaganda.

I believe that a person can be anti-Zionist without being anti-Semitic, just as I believe that a person can oppose the idolatry of the Kennedy cult without being anti-Catholic. I further believe that one can oppose the efforts of the King cult to canonize Martin L. King, Jr., without being anti-Negro.

Millions of Americans want the national government cut down to size. This can be done only by either reducing the number of jobs in the bureaucracy or by replacing collectivistic incumbents with conservatives. If my Social Security payments are reduced and my Civil Service annuity is cut, I will say "Amen!", provided, of course, that millions of other recipients have their payments reduced.

Mr. Richardson has graduated from law school, he is a certified public accountant, and he has had experience selling real estate. He is civic-minded, having served on the Washington Grove city council.

I hope the Committee on Finance of the Senate will report the Richardson nomination to the Senate with a recommendation that he be confirmed.

With all good wishes, I am,

SVEND PETERSEN.

JACKSON HEIGHTS, N.Y., *April 22, 1981.*

Mr. WARREN RICHARDSON,
Washington Grove, Md.

DEAR WARREN: Reading the news accounts of your alleged anti-Semitism make me wish that more people had been present at the lunch we had shortly before I left for New York.

We were speaking of the role of God in society and why communism could not be tolerated by anyone with a faith in God because it was not only non-God, but anti-God. As I recall, you were 'somewhat' angered by the infighting that exists between people with different religious beliefs because of your concern that it detracted from the more important objective—that of preserving an atmosphere where individuals have the freedom to worship God at all!

These certainly are not the sort of words that would be spoken by someone who found Judaism the most dangerous element in today's society.

My prayers continue for your speedy confirmation as the new Assistant Secretary.

Warm regards,

YVONNE.

ALEXANDRIA, VA., *April 16, 1981.*

Mr. DAVID NEWHALL III,
Executive Assistant to the Secretary/Executive Secretary of the Department, Department of Health and Human Services, Washington, D.C.

DEAR MR. NEWHALL: Warren Richardson has asked me to explain to you the circumstances of the New York Times letter of May 18, 1971.

In early March of that year Warren had testified before Congress that Liberty Lobby had been opposed to the war in Vietnam. This generated many phone calls and inquiries. I believe the New York Times initiated a request for the Lobby to prepare an op-ed piece on that subject. Since Warren had testified, I asked him to prepare the draft.

After the draft was prepared and forwarded to me, Warren left the office for the day. I reviewed the document and made few changes, except I added the last paragraph. If you read the piece carefully, you will see the difference in writing style. It was my prerogative as a policy maker to make whatever changes I deemed appropriate. Because Warren had left for the day, I dropped the letter in the mail.

I can recall how upset Warren was when he saw the published version of the piece with the added paragraph. He thought it was off the subject and objectionable.

Sincerely yours,

CURTIS B. DALL.

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 Acting President pro tempore 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.)

PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on June 16, 1981, he had approved and signed the following act:

S. 1070. An act to extend the authorization for youth employment and demonstration programs, and for other purposes.

MESSAGES FROM THE HOUSE

At 2:19 p.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 bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3807. An act to make technical corrections in the Defense Officer Personnel Management Act; and

H.J. Res. 287. Joint resolution in support of the implementation of the World Health Organization voluntary code on infant formula.

HOUSE MEASURES REFERRED

The following bill and joint resolution were read the first and second times by unanimous consent, and referred as indicated:

H.R. 3807. An act to make technical corrections in the Defense Officer Personnel Management Act; to the Committee on Armed Services.

H.J. Res. 287. Joint resolution in support of the implementation of the World Health Organization voluntary code on infant formula; to the Committee on Foreign Relations.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1430. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation relative to certain regulations governing excepted service technicians of the National Guard; to the Committee on Armed Services.

EC–1431. A communication from the Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a proposed foreign military sale to Canada; to the Committee on Armed Services.

EC–1432. A communication from the Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on the Department of the Army's proposed letter of offer to Kuwait for defense articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC–1433. A communication from the Director of the Export-Import Bank of the United States, transmitting, pursuant to law, the annual report of the Bank for fiscal year 1980; to the Committee on Banking, Housing, and Urban Affairs.

EC–1434. A communication from the Secretary of Energy, transmitting, pursuant to law, a study of the compliance problems of small electric utility systems; to the Committee on Energy and Natural Resources.

EC–1435. A communication from the Secretary of Energy, transmitting pursuant to law, the quarterly report on Biomass Energy and Alcohol Fuels for the period January-March 1981; to the Committee on Energy and Natural Resources.

EC–1436. A communication from the Secretary of Energy, transmitting, pursuant to law, the annual report required under the Public Utilities Regulatory Policies Act of 1978, dated May 1981; to the Committee on Energy and Natural Resources.

EC–1437. A communication from the United States Trade Representative, transmitting, pursuant to law, notice that the President has decided to renew the U.S.-Romanian and U.S.-Hungarian Trade Agreements; to the Committee on Finance.

EC–1438. A communication from the Secretary of Labor, transmitting a draft of proposed legislation to amend the Federal Employees' Compensation Act, as amended, to provide for more equitable benefits, to reestablish a waiting period for benefits, to promote the return of disabled workers to employment, and for other purposes; to the Committee on Governmental Affairs.

EC–1439. A communication from the Assistant Secretary of Energy (Management and Administration), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC–1440. A communication from the Librarian of Congress, transmitting, pursuant to law, the annual report on the activities of the Library of Congress for fiscal year 1980, including the Copyright Office, four issues of its supplement, and a copy of the annual report of the Library of Congress Trust Fund Board; to the Committee on Rules and Administration.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–216. A resolution adopted by the Mayor and Councilmembers of Homerville, Georgia, favoring full funding of the "Priority Primary" program in the Department of Transportation; to the Committee on Commerce, Science, and Transportation.

POM–217. A resolution adopted by the Napa, California, Chamber of Commerce, favoring legislation to repeal section 301 of the Powerplant and Industrial Fuel Use Act of 1978; to the Committee on Energy and Natural Resources.

POM–218. A resolution adopted by the Healdsburg, California, Chamber of Commerce, favoring legislation to repeal section 301 of the Powerplant and Industrial Fuel Use Act of 1978; to the Committee on Energy and Natural Resources.

POM–219. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"RESOLUTION

"Whereas, Toxic and hazardous waste, which is often carcinogenic, is a threat to the natural environment and a danger to public health; and

"Whereas, While the incidence of cancer in the United States and the quantity of toxic and hazardous waste produced in the country is increasing, the number of dump sites that are safe and capable of receiving such waste is declining in number, with only one such dump site in the Los Angeles basin; and

"Whereas, Although it is in the public interest to reduce or remove toxic chemicals from the environment, there is a significant economic risk associated with new technology to treat toxic and hazardous waste; and

"Whereas, There is a need for investments in technology to reduce, eliminate, detoxify, neutralize, and recycle toxic and hazardous waste; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact appropriate legislation to provide a 40 percent investment tax credit for equipment and facilities which reduce, eliminate, detoxify, neutralize, or recycle toxic and hazardous waste at the site of generation of that waste or at a regional collection facility, and to provide a 60-month amortization and depreciation for such equipment and facilities; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives and to each Senator and Representative from California in the Congress of the United States."

POM–220. A resolution of the County Council of Clinton County, New York, opposing the early retirement proposal as to retiring at sixty-two years of age under the Social Security System; to the Committee on Finance.

POM–221. A resolution adopted by the San Luis Obispo, California, City Council, expressing its support of the efforts by the Federal administration to return powers to local entities and urging a careful implementation of those efforts in ways that will enhance, not further impede, home rule; to the Committee on Governmental Affairs.

POM–222. A resolution of the Four State Inter-Tribal Assembly, constituting an Inter-Tribal Assembly made up of federally-recognized tribes, stating their position on certain issues in legislation adopted at an Inter-Tribal Assembly in Duluth, Minnesota; to the Select Committee on Indian Affairs.

POM–223. A resolution adopted by the Medical Staff of Owensboro-Daviess County Hospital, Owensboro, Kentucky, relating the repeal of PSRO programs; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

S. Res. 141. Resolution to express the sense of the Senate that combating violent crime should be a national priority.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources:

Daniel N. Miller, Jr., of Wyoming, to be an Assistant Secretary of the Interior.

Richard Mulberry, of Texas, to be Inspector General, Department of the Interior.

Shelby Templeton Brewster, of Maryland, to be an Assistant Secretary of Energy (Nuclear Energy).

J. Erich Evered, of Nevada, to be Administrator of the Energy Information Administration.

(The above nominations were reported from the Committee on Energy and Natural Resources with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation:

Alan Green, Jr., of Oregon, to be a Federal Maritime Commissioner for the term of 5 years expiring June 30, 1986.

(The above nomination was reported from the Committee on Commerce, Science, and Transportation with the recommendation that it be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. TOWER, from the Committee on Armed Services:

Mr. TOWER. Mr. President, from the Committee on Armed Services, I report favorably the following nominations: Maj. Gen. Sinclair L. Melner, U.S. Army, to be lieutenant general, Gen. Bryce Poe II, U.S. Air Force (age 56), for appointment to the grade of general on the retired list, Lt. Gen. James P. Mullins, U.S. Air Force, to be general, and Maj. Gen. Nathaniel R. Thompson, Jr., U.S. Army, to be lieutenant general. I ask that these names be placed on the Executive Calendar.

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

Mr. TOWER. In addition, in the Air Force and Reserve of the Air Force there are 73 appointment/reappointments/promotions to the grade of colonel and below (list begins with Irving Freedman), in the Air Force Reserve there are 40 promotions to the grade of lieutenant colonel (list begins with David C. Billow), in the Navy there are 643 temporary/permanent promotions to the grade of commander (list begins with Ronald J. Abler), and in the Navy and Naval Reserve there are 50 temporary/permanent appointments to the grade of commander and below (list begins with Bruce R. Dailey). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of June 9, 1981, at the end of the Senate proceedings.)

By Mr. STAFFORD, from the Committee on Environment and Public Works:

Nunzio J. Palladino, of Pennsylvania, to be a Member of the Nuclear Regulatory Commission for the term of 5 years expiring June 30, 1986; and

Charles H. Dean, Jr., of Tennessee, to be a member of the Board of Directors of the Tennessee Valley Authority for the term expiring May 18, 1990.

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. THURMOND:

S. 1386. A bill to amend chapter 5 of title 18 of the United States Code, relating to arson in executing a scheme to defraud; to the Committee on the Judiciary.

S. 1387. A bill to provide a waiting period for the purchase of a firearm within the special territorial jurisdiction of the United States; to the Committee on the Judiciary.

S. 1388. A bill to amend section 1751 of title 18, United States Code, dealing with Presidential assassination, kidnaping, and assault; to the Committee on the Judiciary.

By Mr. WARNER (for himself, Mr. HEFLIN, Mr. FORD, Mr. MATTINGLY, Mr. HUDDLESTON, Mr. ANDREWS, Mr. MURKOWSKI, Mr. RANDOLPH, Mr. HARRY F. BYRD, JR., Mr. STEVENS, Mr. DENTON, Mr. PACKWOOD, Mr. SPECTER, Mr. SASSER, Mr. JEPSEN, Mr. HAYAKAWA, and Mr. BRADLEY):

S. 1389. A bill to declare and recognize the vital importance of deep-draft commercial ports to this country's economy and national defense, and the world's economy and energy self-sufficiency, and to establish a process to promote, finance, and facilitate on an expedited and priority basis the improvement of deep-draft commercial ports in the United States in order to promote domestic commerce and U.S. export capabilities for coal, grain, and other agricultural commodities, manufactured goods for export, iron ore and other commodities; to the Committee on Environment and Public Works.

By Mr. PROXMIRE:

S. 1390. A bill for the relief of Kenneth W. Hunke and Virginia F. Hunke; to the Committee on the Judiciary.

By Mr. BENTSEN:

S. 1391. A bill for the relief of Dr. Oscar Raul Espinoza Madariasa, his wife, Maria Inez, his son Felipe Andres and daughter Claudia Paola; to the Committee on the Judiciary.

By Mr. MITCHELL:

S. 1392. A bill to repeal the tariff on casein blanks; to the Committee on Finance.

By Mr. MITCHELL (for himself and Mr. DURENBERGER):

S. 1393. A bill to amend the Internal Revenue Code of 1954 to increase the charitable contribution deduction allowable for property constructed by the taxpayer and contributed for use for educational purposes or for research or experimentation; to the Committee on Finance.

By Mr. DECONCINI:

S. 1394. A bill to improve the ability of the Secret Service to protect the President and other designated protectees; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND:

S. 1386. A bill to amend chapter 5 of title 18 of the United States Code, relating to arson in executing a scheme to defraud; to the Committee on the Judiciary.

S. 1387. A bill to provide a waiting period for the purchase of a firearm within the special territorial jurisdiction of the United States; to the Committee on the Judiciary.

S. 1388. A bill to amend section 1751 of title 18, United States Code, dealing with Presidential assassination, kidnaping, and assault; to the Committee on the Judiciary.

LEGISLATION RELATING TO FRAUD, PURCHASE OF A FIREARM, AND PRESIDENTIAL ASSASSINATION, KIDNAPING, AND ASSAULT

The remarks of Mr. THURMOND on this legislation appear earlier in today's RECORD.

By Mr. WARNER (for himself, Mr. HEFLIN, Mr. FORD, Mr. MATTINGLY, Mr. HUDDLESTON, Mr. ANDREWS, Mr. MURKOWSKI, Mr. RANDOLPH, Mr. HARRY F. BYRD, JR., Mr. STEVENS, Mr. DENTON, Mr. PACKWOOD, Mr. SPECTER, Mr. SASSER, Mr. JEPSEN, Mr. HAYAKAWA, and Mr. BRADLEY):

S. 1389. A bill to declare and recognize the vital importance of deep-draft commercial ports to this country's economy and national defense, and the world's economy and energy self-sufficiency, and to establish a process to promote, finance, and facilitate on an expedited and priority basis the improvement of deep-draft commercial ports in the United States in order to promote domestic commerce and U.S. export capabilities for coal, grain, and other agricultural commodities, manufactured goods for export, iron ore, and other commodities; to the Committee on Environment and Public Works.

DEEP-DRAFT PORTS

The remarks of Mr. WARNER and Mr. HEFLIN on this legislation appear earlier in today's RECORD.

By Mr. MITCHELL:

S. 1392. A bill to repeal the tariff on casein blanks; to the Committee on Finance.

REMOVING THE TARIFF ON CASEIN BUTTON BLANKS

● Mr. MITCHELL. Mr. President, I am introducing a bill to remove the tariff on imported casein button molds, also referred to as blanks. This tariff no longer serves its original purpose and is putting domestic firms at a competitive disadvantage.

The Ball & Socket Manufacturing Co., which has a plant in Waldoboro, Maine, manufactures casein buttons used on work gloves and uniforms. To manufacture these buttons, the firm must purchase casein button blanks. Since 1979, there have been no domestic manufacturers of blanks, so Ball & Socket has had to purchase imported blanks. The tariff on imported finished buttons is only 6.8 percent.

This tariff schedule puts Ball & Socket at a competitive disadvantage. They have no alternative to purchasing imported blanks and paying a tariff. Furthermore, if they pass on this cost in the form of higher prices, foreign suppliers are at clear advantage because of the lower tariff.

Mr. President, the tariff on casein blanks is unnecessary and unwise. It is unnecessary because there are no domestic blank producers to protect with the high tariff. It is also unwise because domestic manufacturers such as Ball & Socket, by buying raw materials and manufacturing the buttons themselves, create jobs in the United States. The differential in tariffs encourages purchasing finished buttons manufactured overseas. I urge the Senate to act swiftly to repeal this tariff.●

By Mr. MITCHELL (for himself and Mr. DURENBERGER):

S. 1393. A bill to amend the Internal Revenue Code of 1954 to increase the charitable contribution deduction allowable for property constructed by the taxpayer and contributed for use for educational purposes or for researcher experimentation; to the Committee on Finance.

RESEARCH AND EXPERIMENTATION EQUIPMENT DONATIONS ACT

● Mr. MITCHELL. Mr. President, I am pleased to join with Senator DURENBERGER in introducing the Research and Experimentation Equipment Donations Tax Act of 1981. This bill would improve the existing tax incentive for the donation of newly manufactured equipment to universities, colleges, and vocational schools.

This bill addresses two pressing national needs. First, it would aid financially hard-pressed educational institutions in expanding their research and experimentation programs. Second, it would improve the innovative capabilities of U.S. Business Enterprises by reducing the shortage of trained technical personnel.

One of the biggest obstacles faced by schools trying to create or expand technical programs is the prohibitive cost of state-of-the-art technical equipment. The problem is compounded by the rapid pace of new technical development, which makes costly equipment obsolete in a short period of time. Schools have to rely to a greater degree than ever before on equipment donations from the private sector.

Prior to 1969, the full fair market value of equipment donated to a school was tax deductible. The flow of donated equipment was adequate to meet educational needs. Since, then, however, this tax deduction has been limited to the cost of manufacturing the donated equipment. This is substantially less than what these products would be sold for. It places an unnecessary constraint on the amount of inventory that is contributed to educational institutions each year.

As a result, the amount of equipment being donated by the private sector has not kept pace with industries' demand for more qualified technical people. From local vocational schools to America's leading colleges of engineering, there is a pressing need for laboratory and instructional equipment. And the amount of technical equipment, such as computer systems and laboratory test gear, that schools can afford to purchase is sadly inadequate.

Another urgent national priority, one which will certainly be addressed in the upcoming tax bill, is the need to encourage American businesses to bring innovative products and production technologies to the marketplace. A number of bills have been introduced that would provide incentives for firms to expand their research and development efforts.

Yet these efforts will not be successful unless policies are adopted to deal with the labor shortage facing high technology industries. Many firms in these industries have annual growth rates of 30 to 40 percent and create thousands of jobs each year. Often the constraint on a firm's growth is not inadequate demand for its product or shortages of equipment, but rather it is the shortage of trained technical staff.

An increased flow of donated equipment could help solve both the universities' cost problems and the industries' trained-labor shortage. To accomplish this, however, the tax incentive for the donation for equipment to educational institutions must be improved.

The bill we are introducing today would restore the full fair market value deduction for donated equipment. The increased tax deduction would be available for equipment that was constructed by the taxpayer within 3 years of when it was donated. In the case of used equipment, the amount of tax deduction would be reduced by the amount of previous depreciation deductions or tax credits that may have been taken by the taxpayer.

Recipient schools must agree, in writing, with the donor that the equipment will be used solely for educational or R. & D. purposes and that the property will not be transferred by the recipient. This is to insure that the equipment is for administrative purposes and that it would not be sold. As is the case of other contributions under chapter 170 of the Internal Revenue Code, deductions would be limited to a maximum of 5 percent of the taxpayers' liability.

This bill serves clear public purposes and contains adequate safeguards to prevent abuse. A similar measure, H.R. 2472, has been introduced in the House by Representative SHANNON. I urge my colleagues to support this measure.●

● Mr. DURENBERGER. Mr. President, I am pleased to cosponsor the Research and Experimentation Equipment Donations Tax Act of 1981. This legislation would increase the tax incentive for corporations to donate state-of-the-art technology and up-to-date equipment to our colleges, universities, and vocational schools. Under present law, a corporation is limited to deducting only the costs of manufacturing for all gifts of equipment.

The legislation that I am today introducing with my colleague, Senator MITCHELL, increases the corporate deduction for state-of-the-art equipment to the fair market value of such gifts. In so doing, our legislation removes the substantial disincentive under current law to give the most technologically advanced equipment to our Nation's colleges, universities, and vocational institutions. Indeed, this legislation would equalize the choice between corporate sale and donation of such valuable equipment.

The beneficiaries of this legislation are numerous: Our students who will gain hands-on experience and become knowledgeable about the most up-to-date technology available; the private sector which today suffers from a shortage of trained personnel in many fields; and our academic researcher who today must, at times, limit or delay their inquiries for lack of funds to purchase the necessary laboratory instrumentation or computer systems. The need is both urgent and real.

Colleges and universities have been deeply affected by the economic vagaries of the times. As a whole, higher education has held its own in the last decade by extreme financial belt-tightening and by mortgaging the future of their physical and human capital. The drawing down of reserves, the deferred maintenance of buildings, the failure to keep pace in faculty and staff compensation are familiar and distressing facts. Also of importance is the financial inability of many institutions to purchase new equipment for instruction and research to overcome obsolescence or to keep pace with technological advances.

To illustrate, the 1965 National Academy of Sciences report on chemistry recognized the need for updating our Nation's laboratories, yet failed to recognize the revolution in the experimental approach to chemistry, biology, and other fields occasioned by equipment innovations such as on-line data acquisition and the minicomputers. Such equipment is today a prerequisite for many types of research. Increasing the tax incentive for corporations to donate these badly needed resources will contribute importantly to the goal of better education and research on our Nation's campuses.

The need to rehabilitate the Nation's research and teaching laboratories has been well documented in recent years. In June 1980, for example, the Association of American Universities presented a report to the National Science Foundation that documented the serious condition of research instrumentation in many leading academic laboratories. The laboratories of 16 leading universities were compared with those of leading commercial and Government facilities. The AAU found that the median age of research instruments in the universities is now twice that of leading commercial laboratories. The widening gap between industry and universities will seriously threaten the ability of our Nation's leading researchers to work at the cutting edge of their fields. The next generation of scientists and engineers also will have their educational experiences compromised by their lack of experience in working with up-to-date equipment. Industry and Government will see the adverse effects on their programs, especially in defense, energy, and health programs essential to our national security and economic and physical well-being.

Bruce Smith and Joseph Karlesky in their recent book, "The Universities in the Nation's Research Efforts," document the emerging instrumentation needs of our colleges and universities.

"A sampling of interview comments gives some idea of the widespread nature of the problem as it is perceived across a variety of fields and institutions." The vice president at a private university in the South cited the growing obsolescence of research equipment as one of his top two or three concerns, along with the impact of inflation and declining research awards. The chairman of a life sciences department in a private midwestern university declared that "my top priority is equipment, my next priority is equipment, and my third priority is equipment." The vice chancellor for academic affairs at a Southern public university saw the lack of equipment funds as "a major concern in chemistry, math, geology, and especially physics." The chairman of the chemistry department at a major northeastern private institution predicted that the availability and stability of funds for general research services, including sophisticated instrumentation, "will be a major factor affecting research over the next 10 years."

While equipment need spans the sciences, engineering programs perhaps illustrate the acute nature of this problem. As Smith and Karlesky report:

Engineering is largely a "hands on" field of endeavor. Therefore, both teaching and research equipment must resemble in some way those used currently in industry and commerce. Ideally the university engineering research laboratory today should be a forerunner of elements of tomorrow's new plant.

Engineering research depends heavily on the use of auxiliary instrumentation—such as sensors, detectors, meters, signal conditioners, and data display or recording systems, e.g., magnetic-tape and computer processors. This instrumentation also frequently includes specialized analyzers, mass spectographs, electron microscopes, gas chromatographs, and comparable devices for which the current unit price ranges between $50,000 and $200,000. Altogether, the auxiliary equipment needed for any modern engineering research undertaking costs about as much as the facilities with which it is used.

Some of the highest ranked institutions visited by Smith and Karlesky restrained in their research efforts because of the lack or insufficiency of expensive instrumentation, for example, microfabrication equipment, computer systems, and data banks. One leading private university reported special problems in the area of electronic materials and devices, where "the rapid obsolescence and high capital investments for laboratory equipment make it increasingly difficult to compete with industrial laboratories . . . We have not had the equipment to fabricate integrated circuits, which has forced an emphasis on materials research as opposed to circuit research.

The instrumentation problem is even more serious for the multitude of small engineering schools, those with perhaps only three or four departments. The cost to them for research facilities is the same per department as at the large schools but the relative cost of instrumentation is considerably more because it cannot be shared over as wide a base. While the equipment problem appears to be a major one for the larger institutions, it is of almost unmanageable dimension for the small engineering schools.

Equipment costs throughout the sciences have risen dramatically in recent years. The cost of an electron microscope basic to the day to day work of students and scientists has increased in cost from $45,000 to $105,000 in the last 5 years. Other basic elements of any normal lab each average between $10,000 and $100,000. It is our hope that corporations realizing the stake that they and the Nation as a whole have in increasing our Nation's innovation and productivity will utilize this tax incentive we propose today to help reequip our Nation's colleges, universities, and vocational schools.●

By Mr. DECONCINI:

S. 1394. A bill to improve the ability of the Secret Service to protect the President and other designated protectees; to the Committee on the Judiciary.

SECRET SERVICE REFORM ACT OF 1981

Mr. DECONCINI. Mr. President, on Monday, March 30, like a recurring nightmare, this Nation and the entire world was again shocked by a senseless and tragic assassination attempt on the life of the President of the United States. The horrible sight of the President, his press secretary, and the courageous law enforcement officers being wounded in front of the Washington Hilton should have pricked the national conscience and warned us in the Congress that something must be done to help our Secret Service win the battle against would-be assassins and terrorists.

The bill which I am introducing today, I believe, will take a major step toward providing the Secret Service with the necessary legislative assistance to overcome many of the obstacles which currently impede their efforts to investigate and apprehend potentially dangerous individuals before tragedy strikes—not after the fact. This legislation will also provide legislative relief to the Agency to enable it to improve the quantity, the quality and protect the confidentiality of intelligence data from all sources, including foreign, State and local governments. Finally, this bill will help to improve the Service's criminal investigative capabilities by expanding the criminal investigative jurisdiction of the Secret Service—not to supersede the criminal investigative authorities of other law enforcement agencies but to supplement the overall Federal law enforcement effort in specific, important areas.

Mr. President, on April 2, the Treasury, Postal Service, General Government Appropriations Subcommittee, of which I am the ranking minority member, held a hearing with the Secret Service, which, because of the tragic events of March 30, focused on the incident at the Washington Hilton, and more importantly, on the legislative changes that would facilitate the gathering of critical intelligence data for the Service in conducting their protective and investigative functions.

Secret Service Director Stuart Knight was very candid about the statutory roadblocks that impede the gathering of accurate, crucial intelligence data on potentilly dangerous groups and individuals. Since those hearings, I have worked closely with the Secret Service to fine-tune those legislative changes that would not only improve their intelligence gathering capabilities and toughen criminal penalties for threats to public officials, but expand and more clearly define the protective and criminal investigative functions of the Service. This bill is a culmination of several months of reviewing existing and proposed new Secret Service authorities in the wake of the March assassination attempt against President Reagan.

Mr. President, I would like to outline briefly some of the major provisions of the Secret Service Reform Act of 1981 and explain why I feel that these changes will substantially improve the protective and investigative functions of the Service.

First, the cornerstone of this legislation in an amendment to the Freedom of Information Act that would exempt from disclosure matters related to the protective functions of the U.S. Secret Service. The bill would also amend both the Freedom of Information Act and the Privacy Act to better assure the protection of the identity of confidential informants, who currently fear retaliation and disclosure of confidential sources of critical intelligence data.

During the April 2 hearings, Director Knight testified that the quantity of intelligence information being received from the FBI is about 60 percent of what the Service used to get and that the quality was also worse. These amendments to both the Freedom of Information Act and the Privacy Act should alleviate many of those problems without violating the rights of our citizens that are protected by the acts and the Constitution. The Service must have better information on potentially dangerous groups and individuals in order to protect our top public officials and visiting foreign leaders from the ever-present threats against their lives. This amendment should be a major help in this regard.

Second, extend "physical zone of protection legislation to all persons under the physical protection of Federal investigative or law enforcement agencies." Currently, this "physical zone of protection" authority exists only for the protection of the President. This legislation would provide a specific criminal offense for violation of this "zone of protection" for protectees of the Service and provide further deterrent for unauthoized personnel to penetate security areas established by law enforcement authorities. This was a legislative recommendation of the House Select Commission on Assassinations that has never been implemented.

Third, extend to various other specified protectees of the Service the same type of protection against threats of physical harm which is presently afforded the President and officer next in line of succession to the Presidency. This provision would provide protection similar to the so-called Presidential threat statute to former Presidents and members of the immediate family of the President, the President-elect, the Vice President, the Vice President-elect, a major candidate for the Office of the President or Vice President or the spouses of such major candidates. This legislation would enable the Secret Service to immediately investigate and prosecute persons making such threats against these highly visible and vulner-

able public figures. Investigation and prosecution of such threats has been hampered because of a lack of an applicable Federal statute similar to the "Presidential threat statute."

Fourth, continue protection of former Presidents during their lifetime, but limit protection of the spouse and minor children of a former President to a period of 6 months after the President leaves office, unless protection is declined. This provision would also authorize protection for a former Vice President for 6 months after the Vice President leaves office unless such protection is declined; and authorize the Secretary of the Treasury to extend or reinstate protection after any 6-month period if the Secretary determines that such protection is necessary.

Current protectees, who would no longer qualify for Secret Service protection would be provided protection for a 6-month period following the enactment of this legislation and then removed from protective service. However, the Secretary can reinstate protection if warranted and would continue to gather intelligence relating to the necessity of providing or reinstating such protection.

It is felt that the foregoing modifications in existing protection are justified on the basis of the experience of the Secret Service in its protective responsibilities especially during the past few years. The protective intelligence gathered by the Service regarding the number and kinds of threats against public officials and their families suggest that the manpower and resources of the Service can be better utilized in other areas of responsibility.

Fifth, extend to the Secret Service additional authority to conduct investigations of suspected violations relating to threats against other protectees of the Secret Service, and fraudulent dealings with Government loan programs and general fraud against the Government. These are areas in which the Secret Service has extensive experience and would serve to supplement—not supercede—the efforts of other law enforcement entities, while at the same time enhancing the Secret Service's criminal investigation functions around the country in its 96 field offices.

The criminal investigation function goes hand in glove with the Secret Service's more visible protective activities. Fraud against the Government is on the rise and the expertise of the Secret Service should be fully utilized in order to assist other law enforcement agencies to crack down on criminal activity in these important areas.

Again, it is not the intention of this legislation to vest exclusive jurisdiction in the Secret Service in these areas, but to allow the Service to maintain an active law enforcement capability, to facilitate its other investigative duties, and to bolster the overall Federal law enforcement effort in these important areas of responsibility. An enhanced criminal investigation program not only improves the Service and improves our Federal law enforcement effort, but tends to attract highly qualified, law enforcement personnel to the Service.

Sixth, authorize the reimbursement of Secret Service agents for the actual, reasonable cost of the meals they consume during protective assignments, when the agents, though not in travel status, are nevertheless specifically assigned to remain in close physical proximity to a protectee on a 24-hour basis.

Although this is not a major legislative change, it would help to improve morale and fairness among on-duty agents and rectify what is believed to be an inequity within the Secret Service. Maintaining the morale of agents who are under considerable pressure and working around the clock is an important goal that should not be overlooked in developing an improved protective and criminal investigation environment for the Service.

Seventh, make it a felony to forge an endorsement or signature on a Treasury check or bond or security of the United States; or to pass or attempt to pass such an obligation knowing that it bears a forgery. Also, make it a felony to knowingly exchange or possess, with knowledge of its false character, an obligation of the United States that has been stolen or bears a forged endorsement.

Currently, violations for forgery of endorsement or fraudulent negotiation of a Treasury check or bond or other security of the United States are being prosecuted under title 18, section 495 of the United States Code. However, that section was not specifically drafted to deal with Government obligations. Consequently, many of the variations of offenses involved with forgery of Government obligations are not covered by section 495.

The legislative proposal contained in this bill would make it possible to prosecute both forgeries of endorsements and related crimes involving obligations of the United States under one section and would be of tremendous help to the Secret Service—the agency with primary jurisdiction to investigate crimes involving obligations and securities of the United States.

Mr. President, I do not take lightly the new responsibilities and authorities which this bill provides for the Secret Service. However, I introduce this bill at this time in recognition of the fact that the Secret Service needs better intelligence data and a broadened criminal investigative jurisdiction to enhance its overall law enforcement and protective capabilities.

The evidence surrounding the assassination attempt to President Reagan makes it clear that the Service needs better sources of information; it needs to be able to offer assurances to its intelligence sources that their information will not be disclosed; and they need to be more involved in criminal investigation activities in order to sharpen their investigative skills and to contribute to our overall Federal law enforcement effort in their specific areas of expertise. Also, this bill recognizes that tougher penalties are needed to deter would-be assassins and those who threaten our elected public officials.

The time for providing the Secret Service with these important authorities is now. We cannot wait until another tragedy strikes one of our national leaders. I urge my colleagues on both sides of the aisle to join with me in supporting this bill and working toward its prompt enactment, and ask unanimous consent that the bill be printed in the RECORD.

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

S. 1394

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of section 552 of title 5, United States Code, is amended—

(1) in clause (8) by striking the word "or" after the phrase "financial institutions;";

(2) in clause (9) by striking the period and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new clause:

"(10) records maintained by the Secret Service in connection with its protective functions which are conducted in accordance with section 3056 of title 18, United States Code.".

(b) Section 552 of title 5, United States Code, is amended by adding the following new subsection:

"(f) A law enforcement agency shall exempt any record maintained for a law enforcement purpose including the protective functions of the United States Secret Service for a period of ten years from the date of the document, from the termination of the investigation, or in the case of judicial action from the termination of the probation, the term of imprisonment, or the imposition of the fine, as the case may be, whichever date is most recent."

(c) The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 2. Section 1752 of title 18, United States Code, is amended—

(1) by amending the title of such section to read as follows:

"§ 1752. Temporary residences and offices of the President and others";

(2) in subparagraph (1) of paragraph (1) of subsection (a) by amending such subparagraph to read as follows:

"(1) any building or grounds designated by the Secretary of the Treasury as temporary residences of the President or other person protected by the Secret Service or as temporary offices of the President and his staff or of any other person protected by the Secret Service, or";

(3) in subparagraph (ii) of paragraph (1) of subsection (a) by inserting the words "or other person protected by the Secret Service" after the word "President";

(4) in paragraph (1) of subsection (d) by amending such paragraph to read as follows:

"(1) to designate by regulations the buildings and grounds which constitute the temporary residences of the President or other person protected by the Secret Service and the temporary offices of the President and his staff or of any other person protected by the Secret Service, and";

(5) in paragraph (2) of subsection (d) by inserting the words "or other persons protected by the Secret Service" after the word "President"; and

(6) by adding at the end thereof the following new subsection:

"(f) As used in this section the term 'other person protected by the Secret Service' means any person authorized to receive the protection of the United States Secret Service pursuant to section 3056 of title 18, United States Code, who has not declined such protection.".

SEC. 3. (a) Chapter 41 of title 18, United

States Code, is amended by adding at the end thereof the following new section:

"§ 879. Threats against certain other United States Secret Service protectees

"(a) Whoever knowingly and willfully threatens to kill, kidnap, or inflict bodily harm upon a former President of the United States; a major candidate or the spouse of a major candidate for the Office of the President or Vice President; or a member of the immediate family of the President, the President-elect, the Vice President, or the Vice President-elect shall be fined not more than $1,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) 'major candidate or the spouse of a major candidate for the Office of President or Vice President' means any person receiving Secret Service protection pursuant to provisions of Public Law 90–331;

"(2) 'immediate family' includes—

"(A) any person who is related by blood, marriage, or adoption to the President, President-elect, the Vice President, or the Vice President-elect and who receives Secret Service protection; or

"(B) any person to whom the President, President-elect, Vice President, or Vice President-elect stands in loco parentis and who receives Secret Service protection; and

"(3) 'President-elect' and 'Vice President-elect' shall have the same meaning given those terms in section 871(b) of this title.".

(b) Section 3056(a) of title 18, United States Code, is amended by striking out in the fifth clause the phrase "and 871" and inserting in lieu thereof "871, and 879".

(c) The analysis for chapter 41 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"879. Threats against certain other United States Secret Service protectees.".

SEC. 4. (a) Section 3056 of title 18, United States Code, is amended—

(1) in the first clause of subsection (a) by amending such clause to read as follows: "Subject to the direction of the Secretary of the Treasury, the United States Secret Service, Treasury Department, is authorized to protect the person of the President of the United States, the members of the President's immediate family, the President-elect, the Vice President or other officer next in the order of succession to the Office of President, and the Vice President-elect, and the members of their immediate families unless the members decline such protection";

(2) in the second clause of subsection (a) by amending such clause to read as follows: "protect former Presidents during their lifetime, and the person of a former Vice President and the spouse or surviving spouse and children under sixteen years of age of a former President for a period of six months, unless such protection is declined and subject to the right of the Secretary of the Treasury to extend or reinstate protection for such persons after the six-month period if the Secretary deems such protection necessary";

(3) in the fourth clause of subsection (a) by amending such clause to read as follows: "detect and arrest any person committing any offense against the laws of the United States relating to coins, obligations, and securities of the United States and of foreign governments, including all laws applicable to offenses involving, or in any way relating to, the electronic transmission of transfer data for United States or foreign government funds";

(4) In the fifth clause of subsection (a) by amending such clause to read as follows: "detect and arrest any person violating sections 212, 213, 216, 285, 286, 287, 289, 371, 433, 493, 495, 508, 509, 641, 657, 709, 871, 878, 1001, 1002, 1003, 1006, 1007, 1011, 1013, 1014, 1907, and 1909 of this title and any offense against the laws of the United States relating to the counterfeiting or theft of marketable securities" and

(5) in the ninth clause of subsection (a) by amending such clause to read as follows: "pay expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of the Treasury and accounted for solely on the Secretary's certificate".

(6) The following new sentence is added as the second sentence in subsection (a) of section 3053 of title 18, United States Code: "Further, the United States Secret Service is authorized to conduct investigations of and make arrests for any fraud against the United States or any entity insured by an agency of the United States or entity insured by any Government corporation or Government controlled corporation, insofar as such fraud involves or relates to any electronic funds transfer."

(b) Any person whose protection would be terminated by the amendments made by subsection (a) shall continue to receive Secret Service protection for a period of six months from the date of the enactment of this Act.

SEC. 5. Section 102 of the Treasury Department Appropriations Act, 1970 (Public Law 91–74; 31 U.S.C. 1032) is amended to read as follows:

"SEC. 102. Under regulations prescribed by the Secretary of the Treasury, the Department of the Treasury is authorized to—

"(1) reimburse its agents working on protective missions, as provided by law, for subsistence expenses without regard to rates provided by section 5702 of title 5; and

"(2) reimburse its agents for subsistence expenses when working on protective missions, as provided by law, in a nontravel status on a twenty-four hour a day basis.".

SEC. 6. (a) Chapter 25 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 510. Forging endorsements on Treasury checks or bonds or securities in the United States

"(a) Whoever, with the intent to defraud—

"(1) falsely makes or forges any endorsement or signature on a Treasury check or bond or security of the United States; or

"(2) passes, utters, or publishes, or attempts to pass, utter, or publish, any Treasury check or bond or security of the United States bearing a falsely made or forged endorsement or signature shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

"(b) Whoever, with knowledge that such check or bond or security of the United States is stolen or bears a falsely made or forged endorsement or signature buys, sells, exchanges, receives, delivers, retains, or conceals any such check or bond or security of the United States that in fact is stolen or bears a forged or falsely made endorsement or signature shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

"(c) If the face value of the Treasury check or bond or security of the United States or the aggregate face value, if more than one Treasury check, bond, or security of the United States, does not exceed $500, in any of the above mentioned offenses, the penalty shall be a fine of not more than $1,000 or imprisonment for not more than 1 year, or both.".

(b) Subsection (a) of section 3056 of title 18, United States Code, is amended by inserting in the fifth clause the number "510," after "509,".

(c) The analysis for chapter 25 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"510. Forging endorsements on Treasury checks or bonds or securities of the United States.".

ADDITIONAL COSPONSORS

S. 441

At the request of Mr. NUNN, the Senator from Nebraska (Mr. EXON) was added as a cosponsor of S. 441, a bill to provide limited assistance by the Armed Services to civilian drug enforcement agencies.

S. 496

At the request of Mr. MELCHER, the Senator from New Mexico (Mr. SCHMITT) and the Senator from Oklahoma (Mr. BOREN) were added as cosponsors of S. 496, a bill to amend the Federal Mine Safety and Health Act of 1977.

S. 613

At the request of Mr. THURMOND, the Senator from Iowa (Mr. JEPSEN) was added as a cosponsor of S. 613, a bill to amend section 1951 of the United States Code, and for other purposes.

S. 732

At the request of Mr. NUNN, the Senator from Mississippi (Mr. STENNIS), and the Senator from Nebraska (Mr. EXON) were added as cosponsors of S. 732, a bill to insure the confidentiality of information filed by individual taxpayers with the Internal Revenue Service pursuant to the Internal Revenue Code and, at the same time, to insure the effective enforcement of Federal and State criminal laws and the effective administration of justice.

S. 814

At the request of Mr. NUNN, the Senator from Arizona (Mr. DECONCINI), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), and the Senator from Mississippi (Mr. STENNIS) were added as cosponsors of S. 814, a bill to improve the administration of criminal justice with respect to organized crime and the use of violence.

S. 966

At the request of Mr. SASSER, the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 966, a bill to amend chapter 13 of title 18 of the United States Code.

S. 1025

At the request of Mr. GRASSLEY, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1025, a bill to provide for penalties for persons who obtain or attempt to obtain narcotics or other controlled substances from any pharmacist by terror, force, or violence, and for other purposes.

S. 1073

At the request of Mr. ARMSTRONG, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1073, a bill to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act.

S. 1107

At the request of Mr. SIMPSON, the Senator from South Dakota (Mr. ABDNOR), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Mexico (Mr. DOMENICI), the Senator from New Mexico (Mr. SCHMITT), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 1107, a bill to amend certain provisions of title 28, United States Code, re-

lating to venue in cases of a local or regional nature which involve the United States as a party.

S. 1120

At the request of Mr. KASTEN, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1120, a bill to reduce the amount of funds available to an agency unless the agency has reduced waste, fraud, and abuse to the maximum extent feasible or demonstrates that no waste, fraud, or abuse exists in the administration of programs, and for other purposes.

S. 1131

At the request of Mr. DANFORTH, the Senator from Georgia (Mr. MATTINGLY) was added as a cosponsor of S. 1131, a bill to require the Federal Government to pay interest on overdue payments and to take early payment discounts only when payment is timely made, and for other purposes.

S. 1163

At the request of Mr. NUNN, the Senator from Arizona (Mr. DECONCINI), the Senator from Nebraska (Mr. EXON), the Senator from Mississippi (Mr. STENNIS), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of S. 1163, a bill to increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their convictions of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor.

S. 1181

At the request of Mr. JEPSEN, the Senator from Georgia (Mr. MATTINGLY) was added as a cosponsor of S. 1181, a bill to amend titles 10 and 37, United States Code, to increase the pay and allowances and benefits of members of the uniformed services and certain dependents, and for other purposes.

S. 1215

At the request of Mr. PROXMIRE, the Senator from Nebraska (Mr. ZORINSKY) was added as a cosponsor of S. 1215, a bill to clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws.

S. 1245

At the request of Mr. HATCH, the Senator from New Hampshire (Mr. HUMPHREY) was withdrawn as a cosponsor of S. 1245, a bill to provide for the cession and conveyance to the States of federally owned unreserved, unappropriated lands, and to establish policy, methods, procedures, schedules, and criteria for such transfers.

S. 1272

At the request of Mr. CANNON, the Senator from Michigan (Mr. RIEGLE), the Senator from Montana (Mr. BAUCUS), the Senator from Hawaii (Mr. INOUYE), and the Senator from Arizona (Mr. GOLDWATER) were added as cosponsors of S. 1272, a bill to modify certain airport and airway user taxes to provide appropriate funding for the Airport and Airway Trust Fund, and for other purposes.

S. 1279

At the request of Mr. DANFORTH, the Senator from Massachusetts (Mr. TSONGAS), the Senator from Wyoming (Mr. WALLOP), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Tennessee (Mr. SASSER) were added as cosponsors of S. 1279, a bill to amend the Internal Revenue Code of 1954 to exclude from gross income a certain amount of interest earned on the all-savers certificate offered only at savings institutions.

S. 1348

At the request of Mr. SASSER, the Senator from South Dakota (Mr. ABDNOR), and the Senator from Minnesota (Mr. DURENBERGER) were added as cosponsors of S. 1348, a bill to amend the Internal Revenue Code of 1954 to clarify certain requirements which apply to mortgage subsidy bonds.

S. 1365

At the request of Mr. DOLE, the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 1365, a bill to amend the Bankruptcy Act regarding farm produce storage facilities, and for other purposes.

SENATE JOINT RESOLUTION 59

At the request of Mr. ROBERT C. BYRD, the Senator from Illinois (Mr. DIXON) and the Senator from Georgia (Mr. NUNN) were added as cosponsors of Senate Joint Resolution 59, a joint resolution designating the square dance as the national folk dance of the United States.

SENATE JOINT RESOLUTION 64

At the request of Mr. SIMPSON, the Senator from New Mexico (Mr. DOMENICI), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Florida (Mrs. HAWKINS), the Senator from Virginia (Mr. WARNER), the Senator from New Jersey (Mr. WILLIAMS), the Senator from New York (Mr. MOYNIHAN), the Senator from Michigan (Mr. RIEGLE), the Senator from Michigan (Mr. LEVIN), the Senator from New Jersey (Mr. BRADLEY), and the Senator from Arizona (Mr. GOLDWATER) were added as cosponsors of Senate Joint Resolution 64, a joint resolution designating August 13, 1981, as "National Blind Veterans Recognition Day."

SENATE JOINT RESOLUTION 78

At the request of Mr. COCHRAN, the Senator from Colorado (Mr. ARMSTRONG) was added as a cosponsor of Senate Joint Resolution 78, joint resolution to provide for the designation of October 2, 1981, as "American Enterprise Day".

SENATE JOINT RESOLUTION 84

At the request of Mr. DECONCINI, the Senator from California (Mr. CRANSTON) was added as a cosponsor of Senate Joint Resolution 84, joint resolution to proclaim March 19, 1982, as "National Energy Education Day".

SENATE RESOLUTION 141

At the request of Mr. THURMOND, the Senator from Mississippi (Mr. COCHRAN), the Senator from Illinois (Mr. DIXON), the Senator from Hawaii (Mr. INOUYE), the Senator from Maine (Mr. MITCHELL), the Senator from Michigan (Mr. RIEGLE), the Senator from Tennessee (Mr. SASSER), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of Senate Resolution 141, resolution to express the sense of the Senate that combating violent crime should be a national priority.

SENATE RESOLUTION 144

At the request of Mr. PERCY, the Senator from Minnesota (Mr. BOSCHWITZ), and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of Senate Resolution 144, resolution to offer strong support for diplomatic efforts to resolve the current crisis in Lebanon, and to protect the right of Lebanese Christian and other communities to live in freedom and security.

SENATE RESOLUTION 150

At the request of Mr. QUAYLE, the Senator from North Carolina (Mr. EAST), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Florida (Mrs. HAWKINS), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of Senate Resolution 150, resolution to oppose efforts by the United Nations Educational, Scientific, and Cultural Organization to attempt to regulate news content and to formulate rules and regulations for the operation of the world press.

AMENDMENT NO. 69

At the request of Mr. HELMS, the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of amendment No. 69 proposed to S. 951, a bill to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

AMENDMENT NO. 72

At the request of Mr. DURENBERGER, the Senator from South Dakota (Mr. PRESSLER), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Illinois (Mr. PERCY), and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of amendment No. 72 proposed to S. 1193, an original bill to authorize appropriations for fiscal years 1982 and 1983 for the Department of State, the International Communications Agency, and the Board for International Broadcasting, and for other purposes.

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF JUSTICE AUTHORIZATION ACT

AMENDMENT NOS. 76–92

(Ordered to be printed and to lie on the table.)

Mr. BIDEN submitted 17 amendments intended to be proposed by him to the bill (S. 951) to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

AMENDMENT NO. 93

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI (for himself and Mr. THURMOND) submitted an amendment intended to be proposed by them to the bill S. 951, supra.

AMENDMENT NO. 94

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to amendment No. 69 to the bill S. 951, supra.

AMENDMENT NO. 95

(Ordered to be printed and to lie on the table.)

Mr. CHAFEE submitted an amendment intended to be proposed by him to amendment No. 69 to the bill S. 951, supra.

NOTICES OF HEARINGS

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

Mr. LUGAR. Mr. President, I wish to announce that the Senate Agriculture Subcommittee on Agricultural Research and General Legislation has scheduled hearings on S. 1295 sponsored by Senator HEFLIN. S. 1295 would establish a Soybean Research Institute.

The hearing will be held on Friday, June 19 beginning at 10 a.m. in room 324 Russell Building.

Anyone wishing to testify should contact Denise Alexander of the Agriculture Committee staff at 224–0014.

ADDITIONAL STATEMENTS

ENVIRONMENTAL STUDY CONFERENCE NAME CHANGE

● Mr. LEAHY. Mr. President, I should like to announce to Congress that the Environmental Study Conference has a new name: The Environmental and Energy Study Conference.

The new name was approved by a 126-to-47 vote of the conference membership. A two-third's margin was required. The new name represents a long-overdue recognition of the conference's extensive work on energy issues and more fully reflects the full scope of its activities.

As Senate chairman of the conference, I point out that the new name will not change our priorities or goals. We will continue to provide Congress with the kind of legislative and constituent support it needs to deal knowledgeably and responsibly with the whole range of environmental health, energy, and natural resources issues, as well as related economic impacts.●

FRINGE BENEFIT TAXATION

● Mr. MATTINGLY. Mr. President, on May 31, 1981, the temporary moratorium prohibiting the Internal Revenue Service from issuing regulations regarding the taxation of fringe benefits expired. With the expiration of this moratorium, the opening of a so-called "can of worms" is conceivable. If an individual parked on a lot owned by an employer, the value of free parking could amount to taxable income. If an individual worked in a store and received an employee discount, that individual could conceivably pay income tax on the amount of the discount. An individual could be required to pay income tax on the amount of employer-paid civic organization dues, and the cost of the company picnic or Christmas party could be considered taxable income to participating employees.

In an effort to prevent the Internal Revenue Service from issuing regulations regarding the taxation of fringe benefits, I introduced S. 1154, legislation to extend permanently the expiring moratorium. In addition, Senator JEPSEN and I, along with 62 other Senators from both political parties, wrote Secretary of the Treasury Regan requesting that he halt the publication of such regulations, since the possibility is remote that the Congress would allow such regulations to take effect.

In response to this effort, Secretary Regan announced yesterday that "no regulations or rulings altering the tax treatment of fringe benefits will be issued by the Treasury prior to July 1, 1982." I was pleased by this announcement.

Although we have temporarily won the battle, the war is not over. Next year, we will again be confronted with the threat of regulations by the Internal Revenue Service in the area of fringe benefits. I think we all agree that if fringe benefits are to be taxed, they should be taxed by the Congress, which must answer to a constituency at election time. Unfortunately, the bureaucrats at the Internal Revenue Service have no constituency to answer to and, therefore, their actions are obviously less sensitive to the wishes and desires of the electorate.

I would like to take this opportunity to thank those Senators who have joined me in cosponsoring S. 1154, to permanently eliminate the threat of such regulations. To keep this problem from reoccurring, I solicit support from my colleagues who have not joined me in cosponsoring this bill. We must act now to put the issue of fringe benefit taxation to rest once and for all.●

IN MEMORY OF IRVING H. STEINHORN

● Mr. JACKSON. Mr. President, it was with deep sorrow that we on the Committee on Energy and Natural Resources learned of the death last Sunday of Irv Steinhorn. For 8 years Irv has been detailed to the committee from the Government Printing Office to assist in preparing and printing committee documents.

This was not a 9-to-5 job. The congressional schedule frequently required the committee documents staff to work late and to work weekends. Irv carried his share of the workload willingly. He was particularly proud of his service with the committee, and we, in turn, drew great pleasure from our association with him.

Irv was a gentle, unassuming man whose sense of humor showed on his face in great abundance in those moments when stories and anecdotes are shared among friends and coworkers. His battle with the illness that eventually claimed his life was a long and difficult one. He bore this burden without complaint and provided an example of great courage and stoicism to all who knew him. He was buried Tuesday in his hometown of Baltimore, Md., in a portion of land reserved for Jewish war veterans.

We loved Irv Steinhorn. Our thoughts are with his wife, Harriet, his children, Pauline, Alan, and Mark, and the rest of the family to which he was so devoted.●

FARM PRODUCE STORAGE FACILITIES

● Mr. JEPSEN. Mr. President, the Senator from Kansas has introduced S. 1365 which, as a bill to amend the Bankruptcy Act regarding farm produce storage facilities, the Senator from Iowa is cosponsoring along with his colleagues, Senator KASSEBAUM and Senator DANFORTH, S. 1365, as a revised version of S. 839, which the Senator from Iowa also cosponsored, is the result of much constructive criticism and suggestion from representatives of farm groups, State regulatory agencies, the U.S. Department of Agriculture, banking groups, the feed and grain dealers association, and other concerned groups and individuals. After careful consideration of the facts presented by these persons, more acceptable provisions have been incorporated into S. 1365.

The Senator from Kansas, in a commendable action, has introduced this bill, designed to benefit the farm producer whose crops are stored in a commodity warehouse which has filed a petition for bankruptcy. The bill the Senator from Kansas has introduced has clarified and corrected those parts of S. 839 which provided a cause for concern among members of the farming community. The Senator from Iowa is indeed honored to be a cosponsor of S. 1365 as an effort to alleviate a hardship being experienced by an increasing number of farm producers.●

VETERANS PROGRAMS EXTENSION AND IMPROVEMENT ACT OF 1981

● Mr. LEAHY. Mr. President, I would like to take a moment to urge my colleagues to support these two amendments to the Veterans Programs Extension and Improvement Act of 1981. The first will allow Vietnam veterans to continue to use their GI bill benefits for readjustment counseling for an additional 3 years. The second amendment will make Vietnam veterans eligible for health care benefits once the Administrator determines that there is credible evidence linking the veteran's disability to exposure to agent orange, other dioxins, or other specific toxic substances during his or her military service. I have cosponsored these amendments, and believe that they will make significant and positive changes in the VA's efforts to assist veterans of the Vietnam era.

The VA has been painfully slow in evaluating the health effects of exposure to agent orange. It recently awarded a contract to the University of California to

design a study of these effects, but it will still be a matter of many months before the study itself is finished and the results are known. Yet there is already substantial evidence that exposure to agent orange and other dangerous substances do have definite health effects, whether they be on domestic workers or veterans who fought in the Vietnam arena. This amendment gives the Administrator of the VA the ability to grant medical care benefits to veterans who may be suffering from these health effects.

I am pleased that the Veterans' Affairs Committee will be holding hearings on the whole issue of agent orange later this session. This will give Congress an opportunity to check on the progress of the VA and this study. There will be opportunities for public input at this time, and I will hope that Vietnam veterans, as groups or as individuals, will take the opportunity to comment.

I urge my colleagues to adopt the amendment to extend eligibility for readjustment counseling by 3 years. These centers have enjoyed tremendous success, despite their relatively short existence. The center in Williston, Vt., was one of the very first centers to be opened in the Nation. Since then the small staff has traveled probably thousands of miles on back roads and in hazardous winter conditions to talk with the many veterans all over the State. This extension will grant them the certainty that they can continue their efforts without fear of interruption, and will assure veterans that it will be worth their while to seek this counseling.

One of the major problems that have faced the 92 counseling centers in recent months has been this uncertainty—uncertainty over their future. As some of you may know, the VA has held back on providing the additional staffing that was provided by my proposal in the Appropriations Committee last year to increase funding for these centers by $6 million. I recently joined in a suit, along with a number of my colleagues, to force the VA to use these funds for the purpose for which they were intended. This action, in addition to the amendment, is evidence of the Congress strong support for the future of the readjustment counseling program and centers.●

IMPORTANCE OF CORN AND OUR FARMERS

● Mr. GRASSLEY. Mr. President, today I would like to speak about something which is the life-blood of my home State of Iowa—corn. For years Iowa has been one of the leading corn producing States in the Nation. Moreover, during the last 3 years, the corn production in Iowa has been the highest in the Nation, averaging over 1½ billion bushels of corn per year.

Last week, the Washington Post carried an excellent series of articles that underscore how extremely important corn and our farmers are to all Americans. These articles discussed the vast number of uses for corn that I am sure that many of us have come to take for granted. These uses range from food and feed to fuels for our energy future.

The effect of corn on our individual lives is matched only by its effect on the economy of the Nation. To quote from the series:

The USDA estimates that 20 percent of all the country's jobs are related to agriculture, which means that corn, as the principal crop, plays a vital role in turning over the dollar. "For every farmer, there is a machinery plant, a truck factory, a fertilizer and pesticide industry, a trading company, a researcher, a seed producer, a railroad, a barge line, an exporter, a miller, a slaughterhouse, a processor and packager of foods who depend on the farmer's success in the field.

Mr. President, everywhere we turn, we see in some way or another, the farmer's hand. This Nation was built by pioneers who farmed the fertile lands of the Midwest. That land, now farmed by their children and grandchildren, continues to pump life into our country.

Mr. President, soon the Senate will be debating the 1981 Omnibus Farm Bill. In light of this, I believe that the timing of this series could have been no more appropriate. Our farmers are the backbone of America, and it is essential that my colleagues recognize this fact during their consideration of this new farm legislation. Consequently, I ask unanimous consent that the first part of this series be inserted into the RECORD for the benefit of those who may have missed the articles.

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

MIDWEST'S YELLOW GOLD—U.S. FARMERS PUT THE CORN IN CORNUCOPIA

(By Ward Sinclair)

Fanciful the thought might seem, but America will not make it through the rest of this day without corn.

We have nothing else like corn. Not oil. Not gold or uranium. Not wheat or soybeans. Not our assembly lines or our high technology. Corn is our major foodstuff and our major agricultural export. It finds its way into thousands of common industrial products.

Unknown to most Americans, corn has insinuated itself so thoroughly into food and industrial processes that we would be hard put to go on without it.

Across the Nation, but principally in the rich black earth of the Midwest, the seeds are growing on millions of acres, soon to become a bounteous harvest that is the American equivalent of the petroleum wealth of the Persian Gulf. Not even that is adequate description.

This is not the sweet corn that we eat off the cob, creamed or in kernels. It is field corn: dent corn to the farmer, *zea mays* to the botanist, maize to the storybook Indian. It is far more than a staple of the American diet, converted as it is to meat, milk, eggs, meal, starch and sweeteners.

Corn has become a great industrial generator, providing the basic ingredient of innumerable products and stimulating invention and ingenuity in the research laboratories. Beyond that, it will go abroad, bringing $7 billion or more in return, money that helps pay for the oil, the autos, the stereos and other geegaws we cherish.

Other crops—wheat, for example—may be more prestigious. But corn is quintessentially American, an extraordinary grain tracked through our history by romance and legend. Every schoolchild knows how the Spaniard found maize in the New World, how the pre-Columbian natives deified it, how the American pioneer thrived on it. We traded on corn, lived off it, boozed with it, embellished our language with it.

But that glorified past doesn't begin to reflect the bread-and-butter side of the humble kernel of corn. A more revealing way to look at corn is to parse its place in daily living.

You wake up on sheets of cotton, wearing pajamas of flannel, both woven with corn starch for sizing. You turn on the transistor radio—the dry cell batteries contain corn starch. You put on shoes with leather tanned from the lactic acid of corn. Out of bed, you bump the door and the wall. The plywood and the wallboard contain corn starch. Your bath powder contains corn, your cosmetics, a corn ingredient.

Breakfast begins with corn flakes. The milk came from a cow fed with corn; the eggs, fried in corn oil, from a chicken who got her energy from corn. The pig that became the sausage and bacon grew up on corn. The English muffin is rolled in corn meal. You spread it with margarine, made from pure corn oil, or butter from that corn-fed cow, then smear it with corn-sweetened jelly.

Your car may be driven by gasohol, made from corn distilled to alcohol. Your midmorning soft drink is sweetened with a powerful corn syrup, colored by a caramel from the corn, and carbonated by the carbon dioxide from the corn distilling process. The penicillin you're taking for that infection is made possible by another corn distillery byproduct.

Lunch is a hamburger, from a corn-fed steer. The bun has a wheat base, but it contains corn syrup. The paper wrapping was produced with a corn starch. The potato chips were fried in corn oil. Dessert is pie ala mode, with a filling thickened with corn starch and an ice cream topping made with the corn-fed cow's milk. Both the filling and the ice cream are sweetened with corn syrup.

At midafternoon, you mail a birthday card to mother. The card was treated with a corn derivative to hold the ink, the stamp and the envelope have a glue made from corn.

For dinner, you don a clean shirt or dress, gently stiffened with corn starch. The cocktail began in a cornfield—the bourbon is distilled from corn mash, and the mix that made it a whiskey sour is sweetened with corn sugar and blended with a dextrin from the corn.

You dine on ham (from the corn-fed hog), sweet potatoes (candied with corn syrup), sweet corn, cornbread (from cornmeal and salad doused with dressing that flows easier because of a gum extracted from corn. The beer and wine contain corn ingredients. Dessert turns out to be an imitation tapioca, made from corn starch, sweetened with corn syrup, blended with milk and eggs.

Impressive as this inventory might be, it only begins to describe the place of field corn in the American economy.

U.S. Department of Agriculture economists calculate that last year's drought-stricken harvest from 73 million acres was about 6.6 billion bushels of corn. It will be used in two principal ways: 4.1 billion bushels fed to livestock; 2.5 billion to be exported.

About 750 million bushels will be used for human food and for seed and industrial purposes. That corn is available from the reserve of around 1.6 billion bushels left over from the record 1979 crop and a tiny flow of imports.

These numbers keep changing, but the wet-milling industry that makes starch, sweeteners, alcohol and animal feed will use about two-thirds of the 750 million bushels. The rest will go to ethyl alcohol (for gasohol), for seed, for flour, meal, grits, flakes; for pet foods, beer and distilled spirits.

The largest overall use of corn, obviously, is for food. The American farmer markets his corn through the meat, eggs and milk he produces. That is, admittedly, not the most efficient use of the grain, for experts say it

takes roughly eight times more corn to produce food this way than the average American might need by eating the grain directly.

But the abundance of corn and the farmer's steadily rising productivity, made possible by hybrid seed development and more sophisticated farming techniques, have mooted questions of best-use for the time being.

The center of this prodigious harvest is the Corn Belt, composed of six midwestern states, Iowa, Illinois, Minnesota, Nebraska, Indiana and Ohio, which last year grew about 4.8 billion bushels, or roughly 72 percent of all the nation's corn. Iowa, with 1.46 billion bushels, and Illinois, with 1.06 billion, were far and away the leaders, together outproducing all other major corn-growing countries in the world.

Once that grain leaves the farm, an impressive ripple effect begins, spilling all across the American economy in ways seldom perceived. The USDA estimates that 20 percent of all the country's jobs are related to agriculture, which means that corn, as the principal crop, plays a vital role in turning over the dollar.

For every farmer, there is a machinery plant, a truck factory, a fertilizer and pesticide industry, a trading company, a researcher, a seed producer, a railroad, a barge line, an exporter, a miller, a slaughterhouse, a processor and packager of foods who depend on the farmer's success in the field.

There is no reliable dollar figure to quantify the place of corn in that panorama of commerce and industry, but suffice to call it in the multibillions.

Without wanting to appear too melodramatic about his place in this scheme of things, William (Bill) Fugate, an Illinois farmer who grows corn to feed his hogs, put it this way: "If the farmer doesn't have money to buy a combine or a car, somebody else cannot assemble it. Agriculture really is the backbone of our economy . . . Everybody wants to eat."

Yet while Americans continue the high-protein diet that Fugate and his corn help make possible, and which other nations try to emulate by buying U.S. grains in massive amounts, a quest goes on for a better, higher-yielding corn and more ways to use it.

Just as the corn spreads its wealth through the economy, it generates scientific inquiry and stimulates ingenuity that leads industrial processors into wondrous flights of technological fancy. Each new process leads to two more, and the future possibilities seem infinite.

The Archer-Daniels-Midland Co. at Decatur, Ill., for instance, the country's major producer of alcohol from corn, has found a way to utilize the heat and excess carbon dioxide from its corn-refining operations.

The carbon dioxide from its alcohol fermentation is captured, processed and sold—200 tons of it a day—for the fizz in soft drinks, for fire extinguishers, for fast-freezing of food. Waste heat is channeled into two half-acre experimental greenhouses, where garden vegetables are grown hydroponically and sold in local supermarkets. ADM foresees huge potential for commercial hydroponics, using the waste heat and carbon dioxide to stimulate plant growth.

Not far away, at the USDA's Northern Regional Research Center at Peoria, scientists have made formidable discoveries by probing deeper into the potential of corn.

The Peoria researchers discovered xanthan gum in the corn, which is now used widely in processed foods and by dozens of industries to make paint pigments, ceramic glazes, insecticides and herbicides, cosmetics and fire retardants. They found a way to convert corncobs into low-grade methane gas for drying grains, a major expense for farmers using petroleum products.

But the basic corn component they are exploring is the starch, which USDA scientists like Dr. William M. Doane say one day could help pry America away from its dependence on petroleum. "We think we have just scratched the surface of new technologies with starch," Doane said.

The array is impressive already: urethane plastics, for example, as well as a biodegradable plastic film for packaging that replaces plastics derived from petroleum, and a product called Super Slurper, a dust that can absorb 2,000 times its weight in water.

The implications of Super Slurper, now marketed in body powder, adult diapers, seed coatings to induce germination and as a moisture-holder for household and large-scale agricultural plants, are enormous. For example, a typical Corn Belt farmer plants 25,000 costly hybrid corn seeds to get roughly 18,000 seedlings. Treated with the moisture-attracting dust, that same planting may produce 24,000 seedlings, Doane said, boosting yield and cutting production costs.

"It creates a water reservoir," Doane explained, "and it draws water to the seed. It could aid crops in dry areas and it has potential for truck gardens and transplanting. But this is just one product. We have not yet really tapped the potential of starch."

Peoria scientists now are looking at the natural polymers in corn starch as a replacement for the synthetic polymers that come from petroleum.

"We use 1 million barrels of oil or their natural gas equivalent per day to make synthetics," Doane said, "Starch can replace some of that. We grow a lot more starch than what we need for food or animal feed. Less than 2 percent of the U.S. corn crop goes into starch: 2 billion to alcohol and half-a-billion into textiles. . . .

"Technologically, from plant materials we could make all the products we now make from petroleum. The cost still is not feasible, but we continue to search. . . ."

Which is a long way from the traditional notion of corn as a mainstay of the American pantry. But then, maybe it isn't at all.●

HERITAGE CONSERVATION AND RECREATION SERVICE

● Mr. LEAHY. Mr. President, my State of Vermont has been a leader in the historic preservation movement, and my fellow Vermonters have long appreciated the importance of retaining links to our past. As a member of the Appropriations Subcommittee that oversees the Department of the Interior, I have had a strong interest in the historic preservation program, which until recently was part of the larger Heritage Conservation and Recreation Service (HCRS). I say until recently, because HCRS has been abolished by the Secretary of the Interior. These activities have been transferred to the Park Service, where they had been located until 1977.

The historic preservation programs of the Federal Government were greatly strengthened at HCRS and brought under effective management. HCRS has played a significant role in preservation during the last 4 years, and I would like to include in the RECORD a list of its most important accomplishments. Among its most noteworthy achievements, HCRS computerized the National Register of Historic Places, accelerated the recording of projects for the Historic American Building Survey and the Historic American Engineering Record. HCRS also approved and certified over 1,300 Tax Act rehabilitation projects that have an investment of over $750 million.

I hope that the Park Service will support and further strengthen these historic preservation efforts. I ask unanimous consent that the list be included at this point.

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

[Excerpted from HCRS Accomplishment Report, 1977–1980]

CULTURAL PROGRAMS

A. NATIONAL REGISTER OF HISTORIC PLACES

1. Registration, Determinations of Eligibility, Certifications of Significance.

Streamlined the nomination, determination of eligibility, and certification of significance processes to more efficiently review all submissions. The program operations branch of the National Register was created to bring together technical support systems including computerization, word processing, control, correspondence, and microfilming.

Published standards and guidance for states, federal agencies, and others identifying and evaluating historic properties in six "How To" publications and six "National Register Standards and Guidelines" publications.

Listed approximately 7,000 nominations in the National Register from 1977 to 1980. Approximately 23,000 listings are now in the Register.

Reviewed approximately 6,000 requests for determinations of eligibility.

Implemented new property owner notification regulations for nominations.

Published proposed regulations to establish an appeals process for nominations.

Published proposed revisions to the determination of eligibility rules.

Worked with the Advisory Council on Historic Preservation to create an expedited review process for a major interstate pipeline project.

Began computerization of the National Register. Opened a center for the public to have direct access to this information.

National historic landmarks (NHL) program

Designated 57 NHLs in 1978 and 6 in 1980. There are now 1,555 NHLs.

Announced a recreation theme study for potential NHLs, and identified 26 properties with this potential.

NHL Task Force, created in 1979 to review all facets of the program, completed its work and made recommendations to the director. Interim regulations were published for the NHL program.

Published a preliminary inventory of sites to be considered for nomination to the World Heritage List.

B. STATE PLANS AND GRANTS

Refined state Historic Preservation Fund (HPF) grant application instructions to reduce paperwork by 54 percent.

Apportioned $13.9 million to states and $2.5 million to the National Trust for Historic Preservation in FY 1977, $36.7 million to states and $4.8 million to the National Trust in FY 1978, $47.1 million to states and $5.4 million to the National Trust in FY 1979, and $47 million to states and $5.2 million to the National Trust in FY 1980. During this four-year period all funds were obligated, 230 survey and planning projects were funded, and 3,300 acquisition and development projects were funded.

Implemented the Resource Protection Planning Process in the HPF program.

C. TECHNICAL PRESERVATION SERVICES

Reviewed, evaluated, and awarded to 37 states an "Expanded Participation" option

under the HPF to allow states to review proposed project work for conformance with standards. Cut HCRS review time to an average of two days in contrast to two weeks formerly needed to review applications including plans and specifications.

Implemented a new program authorized by Congress for the purpose of certifying rehabilitation projects in order to qualify property owners of historic buildings for tax incentives provided by the Tax Reform Act of 1976 and the Revenue Act of 1978.

Developed standards and guidelines that define allowable and unallowable treatments, and appropriate and inappropriate methods of applying those treatments, to National Register properties and certified historic structures.

Published "The Secretary of the Interior's Standards for Historic Preservation Projects" in the Federal Register of December 7, 1978.

Developed 10 preservation case studies in a new series for HPF and Tax Act projects. Approximately 8,000 case studies have been distributed to states, developers, trade associations, and lenders.

Administered, cooperatively with the states and the National Trust for Historic Preservation, the $5 million Maritime Heritage Grants Program of matching grants for the preservation and restoration of all types of ships and other watercraft, shoreline facilities, underwater archeology, and educational programs.

Administered the Secretary of the Interior's $2 million FY 1979–80 Historic Preservation Discretionary Fund Grant Program to preserve neighborhoods historically associated with minorities, native Americans, and ethnic populations. Also administered a $1,005,000 Challenge Grant program from the secretary's discretionary fund to support 10 innovative historic preservation projects which will benefit minority groups and the handicapped, and facilitate energy conservation in historic structures.

Prepared the portion of the annual Section 8 report (General Authorities Act of 1976) which lists national historic landmarks exhibiting known or anticipated damage or threats to their integrity.

Established a monitoring system cooperatively with regional offices to observe the condition of national historic landmarks which may develop signs of damage or threat.

Approved and certified over 1,300 Tax Act rehabilitation projects in 48 states that have an investment of over $750 million.

Developed a bulletin publication series "Interpreting the Secretary's Standards for Historic Preservation Projects" to explain preservation/rehabilitation decisions to state historic preservation offices.

Completed a study to evaluate and assess aspects of the 1976 Tax Reform Act preservation provisions, examining factors that influence the choice between preservation and new construction and assessing the effectiveness of tax incentives versus cash grant subsidies for historic preservation.

Completed the first phase of a long-term interagency project with the General Services Administration, the National Park Service, and the Environmental Protection Agency to monitor and evaluate damages to historic brick and stone buildings caused by air-borne pollutants and irresponsible human intervention.

Published a variety of materials in preservation technology and provided advice and assistance to a number of federal agencies.

D. NATIONAL ARCHITECTURAL AND ENGINEERING RECORD (NAER)

Implemented a backlog project to streamline procedures and realign personnel. Prior to 1979, NAER sent records to the Library of Congress at a rate of less than 75 structures a year. During FY 1980, NAER sent documentary records on 850 structures and inventories on another 200. The savings effected by the new procedures are over $25,000, including one work-year and $5,000 in supplies and reproduction costs. The NAER collection in the Library of Congress is one of the new national collections of its kind to be so readily and inexpensively accessible to the public.

Fielded 73 teams that have produced for local communities and other federal agencies documentary records on approximately 1,100 structures. Most of these records have immediate practical applications for planning, adoptive reuse, rehabilitation, and maintenance studies. The presence of a NAER team in a local community usually generates enough public interest in preservation to effect planning changes. Field team projects have provided on-the-job training for hundreds of students.

Helped federal agencies comply with their responsibilities under Section 2(c) of Executive Order 11593 by inventorying and recording cultural resources that will be adversely affected by federal projects; reviewing documentation produced by others in compliance with E.O. 11593; and advising private firms and state, local, and federal agencies who are developing NAER documentation in compliance with E.O. 11593. Records on 539 structures have been accepted.

Promoted programs to document historic resources associated with minority history, including projects in the Sweet Auburn Historic District in Atlanta, Georgia; the Victorian District in Savannah, Georgia; the town of Locke, California; the Barrio Historic District in Tucson, Arizona; and El Camino de Las Missiones in El Paso, Texas.

Initiated a project with funding from the Department of Housing and Urban Development to study energy-conscious design features in historic structures and publish a pamphlet to help homeowners make the best use of those features.

Developed a community rehabilitation action program in response to the President's Urban Policy challenge. From 1978 to 1980 NAER teams worked in 12 cities, including Claremont, New Hampshire; Danville, Virginia; Sault Ste. Marie, Michigan; Philadelphia, Pennsylvania; Lockport, Illinois; Butte, Montana; Seattle and Tacoma, Washington; Mauch Chunk, Pennsylvania; Laguna, New Mexico; Guthrie, Oklahoma; and Virginia City, Nevada.

Sponsored three historic bridge preservation symposiums attended by over 300 engineers, historians, and preservationists.

Documented during the past 3 years with photographs, measured architectural drawings, and historical monographs approximately 300 sites and structures with historic significance. This figure includes projects recorded in accordance with Executive Order 11593 provisions. Recording projects were done in 25 states. The sites and structures represent a variety of resources in historic archaeology and preservation. Documentation of these sites represents approximately 55,000 pieces of infomation available to the public through the NAER archives in the Library of Congress Prints and Photographs Division.

E. INTERAGENCY ARCHEOLOGICAL SERVICES (IAS)

Administered over 200 survey and data recovery contracts totaling over $7 million.

Developed methods, standards, and reporting requirements for data recovery.

Developed a nationwide program to compile information about archeological reports prepared in connection with federal projects. Over 3,000 documents have been reviewed, and the information is available through the National Technical Information Service.

Published a variety of reports and handbooks to assist in meaningful archeological research.

F. PRESERVATION POLICY

Drafted a manual to help local decisionmakers compare historic preservation with other development alternatives.

Participated coordinated HCRS's involvement in an interagency and private sector small town revitalization initiative. The National Main Street Center, coordinated by the National Trust for Historic Preservation.

Reviewed, evaluated, and revised the National Register and NHL criteria for evaluation.

GENERAL

At the end of the Carter Administration these historic preservation programs had been fully located in the 8 regional offices of HCRS. In most regions, processing time for grants applications and Tax Act certifications had been substantially shortened. A variety of joint projects with natural preservation and recreation were underway, thus achieving the pogram efficiencies obtainable only through a fully reorganized operation.●

LAW OF THE SEA

● Mr. PELL. Mr. President, we are all well aware that the Reagan administration is currently undertaking a comprehensive review of the draft convention of the Law of the Sea Treaty. The intention to undertake such a review was announced by Secretary Haig on March 3, just prior to the opening of the 10th session of the Third Law of the Sea Conference in New York. It is certainly fitting and proper that any new administration undertake such a review.

As one who has long been an advocate of establishing an international regime to govern the world's ocean space, I know that if this goal is to be achieved, there must be a resolution of many complex issues, and this takes time. My own efforts in the Senate to bring such a regime to fruition date back to 1967. At that time, I introduced Senate Resolution 172, which called for the negotiation of a comprehensive multilateral treaty governing all of the military and nonmilitary uses of ocean space. Once again, in 1969, I introduced another Senate resolution, Senate Resolution 33, which not only called for the negotiation of a comprehensive treaty but also contained a draft Law of the Sea Treaty. I was partially rewarded for my efforts in 1972, when the U.S. Senate gave its advice and consent to ratification of the Seabed Arms Control Treaty—a treaty to prohibit the emplacement of nuclear weapons and other weapons of mass destruction on or below the seabed floor.

As you can see, Mr. President, given the long history of this issue, we need not despair over a few months delay in the negotiations so that the United States can complete its study of the treaty—it need not irreparably damage the prospects for a comprehensive LOS treaty. However, I do think that this administration must be careful not to delay too long, lest hard-won gains, achieved during 8 years of negotiations, during the course of three different administrations, may be lost. In this regard, let me call to the attention of my colleagues a very persuasive editorial entitled "Reagan and the Sea Treaty," which appeared in the Boston Globe on June 15, 1981.

I ask that the article be printed in the RECORD.

The article follows:

REAGAN AND THE SEA TREATY

President Reagan's Administration has a chance to correct a bad impression made last March when it sidetracked negotiations in the multiyear Law of the Sea conference. It should work toward vigorous participation when the conference reconvenes in August.

The President's advisers seem to believe that it is better to risk the danger of having no treaty at all than to move ahead on the 320-article draft version that has been developing so tediously over the past eight years. The treaty covers a host of issues in addition to the mining of minerals, but it is this single question that evidently captures the greatest amount of Administration attention.

The draft treaty stipulates that minerals found on the floor of the sea are the property of all nations, in effect, and that their mining requires the international licensing of anyone who wishes to do so, with licensing fees, environmental controls, limits on the volume of production and royalty payments into an international fund for distribution to all nations, including those with no seashores. The treaty moreover requires that mining companies share their technology with other nations to expedite their access to such minerals.

There is room for argument about the content of the treaty and such argument can be conducted after the treaty is completed in its preliminary form.

The problem with delay, and with even the appearance of abandoning its provisions, is multifold. From the point of view of those potential American deep sea miners, the absence of an agreement could jeopardize their ability to obtain financing. The danger for them is that other countries might challenge their right to mine the seabeds. It is entirely possible, in the absence of a treaty, that coastal nations might attempt to assert sovereignty over the ocean bottoms off their coasts all the way out to wherever. During the period of disputes over the 200-mile limits, even such smaller countries as Peru were able to make life very difficult for fishing vessels from countries that did not accept such a claim. Now, of course, it is a matter of standard acceptance, but a new round of conflicts over the sea bottom could be messy.

The treaty also deals with the ticklish problem of assertions of sovereignty that might have the effect of closing vital straits—notably Malacca between Malaysia and Sumatra, Hormuz in the Persian Gulf and others in various archipelagoes around the world. Failure to complete work on the treaty could reawaken the temptation among strategically located nations along such straits to turn them into modern versions of the Rhine River, where once tribute had to be paid by all who passed the castles that still line its shores.

Finally, the principle of internationality contained in the treaty is one that the United States has long embraced in other contexts, sometimes against the strong claims of others. The most important case is Antarctica, where the principle is vital to our continued access to the entire continent for scientific and logistifcal reasons. That continent, which remains unmilitarized and is the site of many national efforts, might be subject to more stringent claims if the U.S. appears to renounce the principle in the case of the seabed.

The Administration may have been reasonable in asking for a pause to get its bearing on the Law of the Sea treaty. It will undercut its own objectives, especially those of encouraging economic development in a rational manner, if it insists on a total review of all the issues that have been largely resolved already by previous Republican and Democratic administrations alike.●

ANTICRIME PROPOSALS OF THE DEMOCRATIC CONFERENCE

● Mr. KENNEDY. Mr. President, the far-reaching proposals adopted today by the Senate Democratic Conference represent a major step forward in the national effort to deal with one of the most urgent domestic challenges facing our society—the problem of violent crime.

I am also pleased that many of the most important initiatives in this package are proposals we have developed on a bipartisan basis in recent years in the Senate Judiciary Committee, including a number of measures in the criminal code reform bill approved by the committee in the past. Of special significance are the following proposals:

First and most important, a comprehensive reform of the unsatisfactory two-century-old system of money bail. Henceforth, under the two key parts of this proposal, money bail will be strictly limited to ability to pay, and persons accused of crime will be detained in prison awaiting trial only if they are a danger to the community or likely to flee before their trial.

This proposal meets the basic goals of law enforcement. It is consistent with the basic standards of fairness and civil liberties. It will end the unacceptable age-old abuses of money bail, by requiring a candid and open judicial assessment of the need for pretrial incarceration of persons accused of crime.

No longer will truly dangerous defendants be released on money bail to kill or rob again. No longer will defendants who pose no danger to the community or risk of flight be unfairly sent to jail because they cannot afford to pay the cost of bail. This proposal has the potential to become a historic landmark in the war on crime and in our ongoing effort to fulfill the great goal of equal justice under law.

Second, a complete overhaul of current unworkable and open-ended sentencing procedures, including the abolition of parole; the adoption of a comprehensive system of guidelines requiring fixed sentences within a narrow range for specific crimes; appellate review of sentences; and mandatory prison terms for those who commit gun crimes.

Third, treatment of certain violent youth offenders as adults, including prison terms for those convicted of violent crimes.

Fourth, a thorough revision and retargeting of the Federal law enforcement assistance program to concentrate available Federal resources on areas of special need and programs of proven effectiveness, such as street crime, career criminals, violent youth offenders, and the festering epidemic of crime from drug addiction.

Crime in American society is not a new problem. But its seemingly unchecked growth has become more and more a source of fear and alarm for all our people.

One out of three households in the United States was touched by crime last year. Some experts claim that over a 5-year period, virtually every household in the country will be victimized.

It is bad enough that we are suffering from double-digit inflation and double-digit interest rates in our economy. It is even worse that we also suffer from double-digit increases in the rate of crime.

National security begins at home. It will do no good to arm America to the teeth against enemies abroad, while losing the war at home against enemies within.

Talking tough is not enough. Trading in our civil liberties is wrong—and we know it will not work. There is no refuge in easy rhetoric. We need solutions—and the solutions will not come carrying convenient philosophical labels, liberal or conservative.

Nor is this a partisan effort. I am proud of the bipartisan consensus we have achieved on crime in the Senate Judiciary Committee. I also commend the efforts of Senator BYRD, Senator BIDEN, Senator NUNN, and the other Senate Democrats who have worked hard to reach today's agreement, and I look forward to working closely with Senators of both parties in the days and weeks to come to enact effective legislation to deal with crime.

The public is increasingly apprehensive and angry. The lost opportunities of the 1970's have given way to the real possibilities of a new decade and a new administration.

Let us make no irresponsible promises. But we now have a reasonable chance of making real progress in the difficult but winnable war against crime in our society.●

VIEWS OF SENATOR SIMPSON ON IMMIGRATION

● Mr. EAST. Mr. President, our immigration policy is in disarray. Illegal immigrants flood into the country almost at will.

Immediate attention to this problem is needed. I commend my distinguished colleague, the chairman of the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee, for his leadership in speaking out in behalf of immigration reform. I ask that Senator SIMPSON'S thought-provoking letter to the editor of the Christian Science Monitor, published June 16, 1981, be printed in the RECORD.

The letter follows:

SOCIAL LIMITS ON IMMIGRATION

In an article of May 7 ["Why immigration won't be restricted"] Roger Fillion set out some valid and interesting obstacles which must be addressed if we are to effect a speedy resolution of this country's chaotic immigration problems. Yet, I must indeed disagree with his conclusion that US policy makers and the American people will simply bog down in the face of these challenges. Our failure to overcome these obstacles would mean the continuation of this nation's half-hearted immigration policies and the continued open and flagrant violation of our immigration laws.

Mr. Fillion's use of the term "restrictionist" throughout his commentary would seem to imply that our immigration reform is limited to one of two extremes—either virtually

closing our doors to immigration, or embracing some kind of "open door" policy. Legal immigration has been, and is, beneficial to our country, but I am firmly convinced that we can no longer absorb all of the people in the world who would wish to come here. Further, I believe that the social limits on immigration will be realized much sooner than the economic limits as is illustrated by the social problems directly related to immigration we have recently seen in South Florida, California and Texas.

We now accept more legal immigrants than the rest of the world combined, and, in addition, more people enter our country illegally than legally. This large illegal influx is estimated at 800,000 a year and it has resulted in some 3.5 to 6 million persons being present illegally in the country. These illegal aliens constitute a fugitive and fearful underclass in our society. The abuse and exploitation to which they are subjected has been well documented and is a serious national disgrace. We must have immigration reform or we shall be overwhelmed by sheer numbers.

In my view there is and will be substantial and continuing pressure from two important groups. The first is from the American people who have indicated repeatedly that they want immigration brought under control and to see a reduction in the numbers of people coming to this country. The second is from the House and Senate subcommittees dealing with immigration and refugee policy whose members believe strongly that the law needs to be reformed in the interest of the American people and their descendants.

The probability that reform legislation will be successfully enacted is greatly enhanced by the excellent working relationship between the two subcommittees—one chaired by a Democrat in the House and the other by a Republican in the Senate. This relationship and the seriousness of the subcommittees' determination to develop legislation which is substantively sound and politically realistic was shown in early May by the holding of a series of joint hearings on the Final Report of the Select Commission on Immigration and Refugee Policy. Such joint hearings are extremely rare, the last being some 30 years ago.

I believe that the most solid foundation of immigration reform rests on a "three-legged stool" comprised of (1) increased enforcement of our immigration laws at our borders and internally throughout the United States; (2) employer sanctions against those who have a persistent pattern and practice of exploiting this vulnerable underclass of society; and (3) a more secure form of worker identification. An improved counterfeit-resistant social security card has been suggested, or a card which would not have to be carried or presented except at the time of seeking employment. If a card were to be used it might simply state, "I am authorized to work and be employed in the United States of America." To these three cardinal parts of the program should be added the element of a legalization program for those illegal immigrants who have resided in the U.S. for a certain, yet to be determined, period of time; a redrafting of our immigrant preference system based on our national interest; a streamlining of our H-2 program for temporary workers; and a revitalization of the efficiency, professionalism and "esprit de corps" of our Immigration and Naturalization Service.

And of those persons who sincerely object to these proposals, I have only to ask again that they come forward with any alternate proposals to bring immigration under control. To Mr. Fillion I would make that same earnest request. What we need now are not seers or prophets, but rather committed politicians ready to prescribe the best way to bring illegal alien entry into this country under control in order that we might continue legal immigration into this country in a manner which will benefit both those who come to our shores and boundaries and those 230 million Americans who are already here.

WASHINGTON.

ALAN K. SIMPSON,
U.S. Senator.●

DISMEMBERING CONRAIL

● Mr. BIDEN. Mr. President, the Senate soon will have before it the administration's Conrail legislation, as amended by the Commerce, Science, and Transportation Committee. This bill, S. 1100, was introduced at the administration's request on May 4. A week later, without the benefit of a hearing as requested by the committee's Democratic members, S. 1100 was approved by the committee. The vote was 10 to 5.

Early last week, additional changes to the President's original legislation were announced by the distinguished chairman of the Commerce Committee, Senator PACKWOOD. These changes, worked out by Secretary of Transportation Drew Lewis, Senator PACKWOOD, Surface Transportation Subcommittee Chairman JOHN DANFORTH, and Senator HOWARD CANNON specify in greater detail the conditions and timing of how Conrail shall be sold. While this so-called compromise is an improvement on President Reagan's initial legislation, it still provides for Conrail's dissolution—even if Conrail is operating profitably. As a result, I cannot support S. 1100 as it is currently drafted.

Unfortunately, it appears likely that the Senate will not be given an opportunity to debate and get a separate vote on S. 1100. The Commerce Committee has chosen to include this 84-page bill in its budget reconciliation package. While some amendments might still be possible, many are likely to be ruled out of order under the restricted rules of procedure governing debate on the reconciliation bill. I find this attempt to eliminate debate on the President's Conrail termination bill regrettable. Unfortunately, as a Member of the Senate minority, there is little I can do to block this action.

Yesterday, the Commerce Committee finally held a hearing on S. 1100. Testimony was received from representatives of all concerned with Conrail and the transportation services it provides. Of all those who testified, the comments of Stephen Berger, Chairman of the U.S. Railway Association, most objectively described the impact this legislation is likely to have. Analyzing the bill's current language, Mr. Berger testified:

However, the Department of Transportation is recommending a process leading to the dismemberment and sale of Conrail lines. This recommendation is now embodied in the "compromise" bill now being considered by this committee, S. 1100. In my view, the Department's proposal as reflected in S. 1100 is a very high risk option that may lead to less rail service in the Northeast without saving any Federal expenditures. Specifically, S. 1100 would authorize the Secretary of Transportation to dismember Conrail at his own discretion after a brief waiting period, regardless of whether the railroad can become viable. This plan for automatic dismemberment of the Northeast rail system would create the "fire sale" atmosphere with its attendant economic uncertainties for the region that all of us were hoping to avoid. Moreover, there is great doubt that the scenario currently envisioned in S. 1100, namely an inexpensive transfer of the Conrail system to private sector operation, could ever be realized under the plan contained in the bill.

I share Mr. Berger's concern and concur with his analysis. Conrail should be given the opportunity to become profitable. Actions like the joint labor-management $239 million wage deferral agreement announced last month demonstrate it is possible. We should not predetermine Conrail's fate as I am afraid the administration's bill does. Conrail is simply too important to the country. I had hoped to see legislation enacted along the lines recommended by Mr. Berger. I urge my colleagues to read his entire statement. I ask that Mr. Stephen Berger's testimony before the Senate Commerce, Science, and Transportation Committee on June 17, 1981, be printed in the RECORD.

The testimony follows:

STATEMENT OF STEPHEN BERGER, CHAIRMAN, UNITED STATES RAILWAY ASSOCIATION

Mr. Chairman and Members of the Committee: I appreciate the opportunity to appear before you today to discuss options for Conrail. The principal choice facing Congress today is between two major courses of action. One is to make the changes necessary for Conrail to succeed, while preserving maximum flexibility for future action depending on the railroad's performance. The other is to adopt S. 1100, which, as current drafted, limits the options available for the future by predetermining Conrail's fate and dictating its ultimate dissolution.

Whatever course of action is decided upon will be vitally important to the Nation as a whole and particularly to the Northeast quadrant. The importance of the Northeast to the national economy is amply demonstrated by the fact that the region accounts for more than 45 percent of the personal income of the United States, 50 percent of the manufacturing employment, and 43 percent of the nonmanufacturing employment. At the same time, however, the Northeast's share of these is declining compared to the rest of the country. Indeed, all of us are aware of the problems facing the region.

It is therefore all the more necessary that we keep in mind the importance of Conrail as the Northeast's major rail system. In the Northeast's weakened economic condition, failing to ensure the continued orderly operation of that rail system could have a detrimental effect on large segments of the business community. Shippers would perceive a threat to the basic transportation network, switch from rail to truck, and begin planning the relocation of their plants and facilities to areas considered less prone to economic disruption.

Events like this would encourage disinvestment, accelerate the deterioration of the Northeast, and thus undermine the President's efforts to revitalize the economy. Ultimately, new pressures would be created especially in the South and the West, for enormous capital expenditures for new industry, housing, energy, and transportation. In short, there would be pressure to duplicate the existing economic and social infrastructure of the Northeast at a time when the Nation is facing a severe shortage of capital to rebuild its economic base.

The problem, then, is how best to resolve the Conrail dilemma while minimizing the risk of massive economic dislocation. In seeking a solution to this problem we can be guided by several criteria.

First, it is most important that the initial course of action be one which preserves the

most options. Unforeseeable and uncontrollable circumstances can render the best of plans useless in short order, but if we do not back ourselves into an economic corner, it will be possible to adjust to cope with future events to our advantage. In essence, the best solution is one that allows the most flexibility.

Second, any appropriate course of action must address the basic problem: Conrail's poor cost to revenue relationship. Whether Conrail is to continue to exist as a single entity or is to be dismembered and sold, it is imperative that its labor costs, including labor protection costs, be reduced; that its operating costs be brought under control; and that the passenger and Northeast Corridor problems be solved.

Third, the rail service needs of the region must continue to be met. If rail service is permitted to rapidly deteriorate or is brought to an abrupt end, detrimental results will be felt throughout the region's business sector.

Fourth, the best solution is one which will cause the least economic and social disruption by reducing uncertainty. In short, economic dislocation can be avoided best by choosing a course of action having a planned, realistic outcome in which the parties with a direct interest may participate.

Fifth, the problem should be solved at the least cost to the taxpayer.

Finally, the overall objective must be to return Conrail to the private sector.

I believe that a program aimed at making Conrail viable has the best chance of achieving these objectives. In its April report, Conrail at the Crossroads: The Future of Rail Service in the Northeast, NSRA recommended that Congress provide Conrail enough funds to enable it to achieve very substantial, visible progress throughout a two-year transition period as a condition of not dissolving the railroad. At the same time, and as dictated by predetermined signs of progress or lack thereof, a contingency plan for proceeding to dissolution should be formulated.

Since any dissolution strategy would require some preparation and implementation time under any circumstances, this transition approach is both practical and flexible. If Conrail possesses the ability to succeed and pay dividends to the region as a productive, competitive, self-sufficient force in the transportation market, this mechanism, though cautious and austere, gives it a chance to prove it. If Conrail cannot make its own way, the trial period will have better prepared the property and all parties involved for an orderly dissolution process which minimizes Federal and other costs.

In summary, several important steps must be achieved: Conrail must make aggressive use of the new economic flexibility provided by the Staggers Act; it must be relieved of the burdens of passenger service and labor protection; it must reduce its costs; and it must, both through management actions and negotiations with organized labor, attain appropriate employment levels and improve productivity.

Moreover, a program to improve Conrail's cost structure, tighten its management, and achieve necessary labor concessions would be an essential part of the transition even if the railroad were to be sold or dismantled. However, if it were ordained beforehand that Conrail was to be abolished, it would be more difficult to achieve the management-induced improvements and other interim goals that are essential before other railroads would agree to take over major portions of Conrail's lines.

It is particularly encouraging that the Department of Transportation, Conrail, and the ICC also agree that these objectives must be achieved. In addition, I am further encouraged by the recent agreement negotiated by Conrail and organized labor that will result in Conrail's costs being reduced by $229 million annually. The USRA April report incorporated a potential reduction of $225 million in labor expense as a major component in Conrail's ability to achieve a positive income from operations at an early date. Thus, the recent agreement with labor represents a major step toward accomplishing those elements which all parties agree are necessary.

However, the Department of Transportation is recommending a process leading to the dismemberment and sale of Conrail lines. This recommendation is now embodied in the "compromise" bill now being considered by this committee, S. 1100. In my view, the Department's proposal as reflected in S. 1100 is a very high risk option that may lead to less rail service in the Northeast without saving any Federal expenditures.

Specifically, S. 1100 would authorize the Secretary of Transportation to dismember Conrail at his own discretion after a brief waiting period, regardless of whether the railroad can become viable. This plan for automatic dismemberment of the Northeast rail system would create the "fire sale" atmosphere with its attendant economic uncertainties for the region that all of us were hoping to avoid. Moreover, there is great doubt that the scenario currently envisioned in S. 1100, namely an inexpensive transfer of the Conrail system to private sector operation, could ever be realized under the plan contained in the bill.

First, the S. 1100 provision for appropriations for interim funding and transfer costs is uncertain. The bill provides an authorization of "such sums as may be necessary" to maintain "essential services during the transfer process." Thus the bill does not specify a level of appropriations, nor does it shed light on what Conrail services the Secretary might deem "essential" and therefore fund. Our April report estimates that Conrail would require $400 to $600 million more in Federal funding to become viable. DOT has estimated that implementation of its fire sale proposal could require more than $600 million in Federal funds. In my opinion, it could cost more.

For example, one major requirement of a transfer process would be transition funding. Assuming that the transition process takes two years to prepare for the then "instantaneous" transfer of Conrail, the Federal costs of those two years should be comparable to continuing to operate Conrail and maintaining its service capacity for two years. While the management of a railroad scheduled for liquidation could severely limit plant and equipment replacement and maintenance, this reduction in capital expenditures might be balanced by traffic diversion as shippers anticipate service cuts.

Indeed, given heightened shipper concern about uncertain future service patterns, extensive traffic losses could result, stripping revenue out of the shrinking system faster than costs could be reduced. Moreover, management would have neither the incentive nor the capability to achieve potential cost reductions. In addition, a transfer process would have to address implementation costs and the acquiring railroads' possible need for financial assistance.

Second, as currently drafted, S. 1100 relies heavily on the assumption that potential acquirers will be eagerly waiting in the wings to take over the Conrail system. However, extensive conversations with other railroads that could logically pick up the pieces convince me that none of them is prepared at this time to acquire substantial portions of Conrail's lines and thus its cost problems. I believe that other railroads would require Conrail to make fundamental progress in addressing its cost structure before any significant segments of its lines would be attractive. This unwillingness to purchase Conrail's lines is not surprising, since the situation was the same in the early 1970s when the major railroads of the Northeast and Midwest, including the Penn Central, were bankrupt.

At that time, because no profitable railroads were willing to acquire the bankrupts' lines and their attendant cost problems, the Federal government had to step in to ensure continued rail service in the Northeast quadrant. Thus, in a sense both then as well as now the rest of the industry is demanding that Conrail's physical plant and human resources be reduced to a level commensurate with its real market potential, and this cannot be done overnight. In addition, other railroads are heavily preoccupied with consolidating their own organizations as a result of recent and prospective rail mergers and with trying to adjust to the business implications of the Staggers Act reforms.

Perhaps even more significant is the fact that there is little economic necessity for any railroad outside Conrail's service area to take an active interest in acquiring Conrail's lines. An analysis of Conrail's 1979 traffic base reveals that about 70 percent of Conrail's traffic originates and terminates within Conrail's service region and is never interchanged to or from other railroads outside the region. The principal cross-regional interchange is with the Southern region, which accounts for 11 percent of Conrail's traffic. Only 15 percent of Conrail's traffic is interchanged with railroads west of the Mississippi River, and that traffic is widely dispersed: 3 percent moving to or from the Pacific coast states, 5 percent to the Sunbelt west of the Mississippi, and 7 percent to the Rocky Mountain and Northern Plains states.

This distribution of Conrail's traffic suggests the railroads that should be most interested in gaining access to Conrail's traffic base are those presently serving the Conrail region, or the emerging cross-regional carriers that span the Conrail region and the Southern region, such as the CSX or the proposed NWS. As we note in our April report, these carriers would need to acquire relatively small portions of Conrail's physical and human resources to serve the bulk of Conrail's traffic. Assuming even modest acquisitions by those carriers, the bulk of the traffic now interchanged by Conrail with railroads west of the Mississippi could continue to move over the same gateways as it does today, so those railroads would not be compelled to seek Conrail lines to preserve their traffic.

Combining these economic factors with the clear reluctance of other railroads to consider acquiring Conrail lines at this time suggests strongly that, absent other circumstances such as substantial government intervention, committing the government to a transfer process now would produce an end result closer to the "small segments" than to the "major portions" end of the transfer spectrum.

S. 1100 does little to resolve these fundamental problems. If anything, it may exacerbate them, since it puts all parties in interest on notice that Conrail most likely will be dismembered after mid-1983. During the interim period, the railroad can be expected to deteriorate physically, employee attitudes can be expected to worsen, and the best of Conrail's employees—both labor and management—can be expected to seek their fortunes elsewhere.

In sum, I believe that the likely result of this process will be a Conrail which is less likely to look like an attractive acquisition than the Conrail of today. This will put further pressure on the Federal government to step into a permanent financing role as our hopes to return these rail properties to the private sector slip ever further from our grasp.

In dealing with possible approaches to a transfer process, the real issue remains how can the Conrail economic equation—namely, its revenue to cost relationship—be altered.

The analyses in our December and April reports conclude that change requires a fundamental alteration of costs. Transfer of small segments of Conrail to neighboring railroads could permit those enterprises to acquire a high proportion of Conrail's revenue base while absorbing relatively small portions of Conrail's physical and human resources, altering the present revenue/cost equation of serving Conrail's traffic. On the other hand, if to obtain Conrail's traffic, acquiring railroads would also have to acquire major portions of Conrail's physical and human resources, it is difficult to understand how much transfer and acquisition would by itself alter the revenue/cost relationship of serving Conrail's traffic. Either the essential changes must be made before other railroads would purchase, or the acquiring railroads must be expected to take the same steps we believe are essential and achievable by Conrail itself.

Therefore, I urge that legislation be adopted which undertakes to solve the economic problems of freight service in the Conrail region rather than to merely reorganize them. I am not persuaded that the economic ills attendant to current patterns of rail operations and service in this region will be ameliorated by merely changing Conrail's name.

Legislation designed to meet the criteria I mentioned previously would have as its main feature an "incentive" provision for Conrail. Specifically, Congress should provide Conrail with sufficient funds to enable it to implement, over a two-year transition period, a program designed to result in financial viability. Unlike S. 1100, however, if profitability were achieved, then the railroad would not be automatically dismembered.

Accomplishing this objective will require, of course, cooperation of labor, shippers, other railroads, and government at all levels. But we believe that without such cooperation the railroad has little future in its present form or as a transfer candidate. For this reason, we recommend that all of these parties continue to participate in the process of deciding Conrail's future.

A control board, similar to that proposed in the Lent-Lee bill in the House—with advisory assistance from a group reflecting various private sector interests, would maximize the potential for such cooperation. If, during this time frame, it became apparent that Conrail was not making substantial progress toward financial viability, this group could make such a determination based on an objective test of profitability. If, however, Conrail did make substantial progress, at the end of the period it could be a more attractive acquisition candidate or, if it were deemed appropriate, the Federal government could dispose of its stock position in the railroad through the normal offering process.

Of course, there are no low risk, low cost answers to the problems of providing an adequate and effective private sector rail system for the Northeast and Midwest regions. The one common thread of all the studies undertaken pursuant to the Staggers Act is that there is not any "no further Federal funding" solution to the rail service problems of the Conrail region.

However, I continue to believe that achieving a viable Conrail ought to be attempted because, if that goal is accomplished, it will be at less cost and produce more benefits than any other option. It will be the least disruptive of solutions and provide the most service. A viable Conrail will contribute to the general economic revitalization of the country, something which is of enormous concern to all. But while interim funding is made available, Conrail must be required to achieve definite performance objections throughout a two-year period. And specific plans should be developed for future action in the event Conrail is not successful in attaining those performance goals.

Most importantly, as USRA's April recommendations make clear, the end result of the process must be a Conrail fully restored to the private sector, either through having achieved viability and having been recapitalized with its ownership then being shifted from the government to private hands, or, if viability is not achieved, through transfer of its lines to other railroads.●

THE ADDITIONAL VIEWS ON RECONCILIATION OF THE DEMOCRATIC MEMBERS OF THE LABOR AND HUMAN RESOURCES COMMITTEE

● Mr. KENNEDY. Mr. President, I submit for the RECORD the additional views on reconciliation of the Democratic cerns as we approach the debate on reconciliation.

The Labor and Human Resources Committee's reconciliation package protects many of the essential principles for which the minority members have stood, however, there are a number of flaws which we have identified in our additional views. I urge my colleagues to give serious consideration to these concerns as we approach the debate on reconciliation.

The material follows:

ADDITIONAL VIEWS

INTRODUCTION

The Reconciliation package adopted by this Committee is the product of a long and difficult process. The Labor and Human Resources Committee, more than any other Committee of the Senate, is the people's committee. It helps parents and communities educate children. It assists elderly to heat their homes. It provides assistance to our nation's handicapped. It provides essential community and preventive health programs. It protects the health and safety of America's workers and supports vital training programs. It provides a wide range of needed human services for the poor, the elderly and the disadvantaged.

This reconciliation package protects many of the essential principles we enumerated earlier. One, the Legal Services Corporation is continued and funded. Two, the low income Energy Assistance Program is not part of a larger social services block grant; it is targeted on low income families, particularly the elderly to cover higher energy costs; and the funding level did not fall below $1.8 billion. Three, the Administration's proposals for comprehensive, all-inclusive, "no strings" block grants in education, health care and handicapped assistance were rejected. Four, the Title I, Handicapped Education, Adult Education and Bilingual Education programs—representing the vast majority of education funds—were not relegated to block grants. In higher education the drastic funding cutbacks in student aid to low and middle income families were rejected. Five, the identity and separate funding of neighborhood health centers, mental health centers and migrant health centers was maintained. Six, Childhood Immunization will remain a categorical program. Seven, the Nutrition program will continue as a separate, identifiable part of the Older Americans Act. Legal Services for the Elderly is continued.

These are significant accomplishments that make our Reconciliation proposal a major improvement over the Administration's original proposals. They have been achieved with bipartisan support on the Committee, and have been accepted by the Administration, the Majority Leader, and the Chairman of the Budget Committee.

The Reconciliation package retains a number of serious flaws, which we discuss below, subcommittee by subcommittee. But perhaps the most significant flaw is the process by which far-ranging changes in law have been made. The Committee has been forced to re-write a generations' worth of carefully designed legislation in the space of a few weeks. In most key areas, we have been without the benefit of hearings, or indeed of any public input by experts in the fields and those who will be affected by the changes. Much of the legislation has been written in haste, with limited or no opportunity for bipartisan consideration. The Budget Act was never designed to deprive the American people their right to an open, orderly and considered legislative process.

HEALTH

The Administration's proposals for health programs reflect a deep indifference to the serious health care needs of the poor and underserved in our nation's cities and rural areas. The Administration proposed an across-the-board 25 percent reduction in vital health and prevention programs such as community and migrant health centers, mental health, childhood immunizations, alcohol and drug abuse, family planning and others. In addition, the Administration would fold virtually all of these programs into two formless block grants, with little accountability and no assurance that vital programs will be continued by the states. The serious threat to the nation's health will be even greater in future years, when the Administration is likely to seek even further cuts in these vulnerable block grants.

The Committee's actions reject a number of the Administration's proposals. In conformity with the actions of Congress, $76 million have been restored for community and preventive health programs. Childhood immunization is kept as a separate program, at the 1981 level of funding, rather than the disasterous 25 percent cut proposed by the President. The block grant proposal has been modified to assure that community and migrant health centers and mental health centers will continue to be funded throughout the life of the block grant. States must continue to fund all existing centers for at least two years, unless they obtain a specific waiver from the Secretary of Health and Human Services. Thereafter, States must use objective performance criteria in deciding whether to continue to fund these centers, and must provide an independent review process for centers that are dissatisfied with the State's decision to discontinue funding. A 10 percent cap has been placed on administrative costs from federal funds.

Despite these improvements, we believe that there are deficiencies in the health package. The decision to turn oversight of the community migrant health centers and migrant health programs to the states, without adequate study or opportunity for an orderly transition, raises grave concerns. Many states are totally unfamiliar with the planning or delivery of primary health care. In fact, the New York State Health Commission in testimony before the House Energy and Commerce Health Subcommittee has stated:

"There are several programs slated for consolidation funding, such as community and migrant health centers, with which New York has no experience. In addition, there is no existing State mechanism to accommodate the allocation of significant funding reductions among programs. The Administration's proposal to consolidate public health funding is not acceptable or feasible, because it abruptly drops total program responsibility on the door steps of State governments. Moreover, it threatens to disrupt service delivery

and to adversely affect the health and welfare of New York residents."

The proposal adopted by the Committee eliminates the requirement of community involvement on community health and mental health centers' governing boards. This requirement is one of the most important and innovative features of these programs. The participation of center users on the board assures that services are responsive to the community's needs, and is a key component of the center's success.

Similarly, the decision to include mental health in the block grant represents an unnecessary and unwarranted turning away from the promising development of the Mental Health Systems Act. The Act, which was adopted with broad bipartisan support only last year, was an innovative attempt to develop an integrated approach to the problems of mental health on the federal, state and local level. We believe that the Mental Health Systems Act deserves an opportunity to demonstrate its considerable worth.

The Reconciliation package provides no assurance that states will continue to fund key health programs, such as alcohol and drug abuse, family planning, venereal disease programs and other essential service and prevention programs. Many of these programs face termination as early as next year, with the possibility of serious disruptions and the attendant adverse consequences on the public health. Although we support giving states additional flexibility in administering health programs, we believe that the public is entitled to assurances that federal dollars will continue to be available for these critical health programs.

We are also disturbed by the Committee's failure to recognize the importance of continuing identifiable family planning and alcohol and drug abuse programs, which, through the years, have provided needed services in a cost-effective fashion.

The National Hypertension Program, since its inception in 1973, has been remarkably successful. The heart disease death rate has declined 8 percent, preventing 195,000 premature deaths; the stroke death rate has been reduced by 25 percent, saving 127,000 lives. The number of hypertensives on treatment has nearly doubled. The Committee's decision to fold this important program into the preventive health block grant not only destroys the momentum of the private sector's effort to enhance public awareness of the dangers of untreated hypertension, it also threatens the progress that has been made in combatting this devastating condition.

We are also concerned with the lack of accountability in these block grant proposals. The taxpayers of this country are entitled to know how block grant dollars are spent and what results have been achieved. The Secretary must be able to determine whether states are complying with the assurances required of the states. And the Congress must know the effect of turning over administration of these programs to the states, in order to assess whether this approach should be continued, modified or abandoned.

Health planning

We are disappointed the Committee rejected our attempt to restore a portion of the funding for health planning. The health planning program has represented an important component of the national effort to bring under control skyrocketing health care costs. Without some form of constraint on capital investment, there will be little prospect for rationalizing the supply of hospital and health care facilities and controlling costs.

Health planning activities have demonstrated their effectiveness in placing a needed brake on capital expenditures. The 202 planning agencies annually review approximately $5 billion in planned expenditures, disapproving about 20 percent. Many hospitals have dropped or postponed nonessential construction and expansion plans as a result of certificate of need review.

Terminating the health planning program flies in the face of the President's goal to reduce Federal spending. In its absence, the nation faces the prospect of at least $10 billion in unnecessary hospital construction and improvement over the next four years. The effect of this excess investment on Federal health care reimbursement programs and on health costs generally will be highly inflationary.

Although much has been made about the salutary effect "competition" will have on controlling unnecessary health expenditures, the Administration has yet to submit any concrete proposals that would enhance competition in the health care field.

We believe that Federal expenditures for the health planning program can be reduced by better targeting Federal dollars to the most effective cost containing activities. We would eliminate requirements for appropriateness review, eliminate review of nonpatient care related to expenditures, and raise the trigger for review from $150,000 to $750,000 or even $1,000,000. By targeting health planning on the review of expensive construction projects and high cost new technology, we could continue to reap the benefits of health planning in terms of rational cost containment while we consider alternative proposals.

EDWARD M. KENNEDY.
JENNINGS RANDOLPH.
HARRISON A. WILLIAMS, Jr.
CLAIBORNE PELL.
THOMAS F. EAGLETON.
DONALD W. RIEGLE, Jr.
HOWARD M. METZENBAUM.

AGING, FAMILY, AND HUMAN SERVICES

OLDER AMERICANS ACT

We are gratified that the Committee continued existing funding levels, with slight inflationary adjustments, for most of the programs under the Older Americans Act of 1965. The Older Americans Act is the only categorical, federal social services program targeted exclusively on the elderly population. Any diminution of the essential transportation, in-home, legal, and nutrition services provided under its authority would impose great hardship on the growing segment of our population which is already being asked to make considerable sacrifice.

ENERGY ASSISTANCE

We fully support the continuation of a clearly targeted program of energy assistance to low-income households as embodied in the Home Energy Assistance Block Grant Act.

Congressional concern with protecting low-income households and individuals from the hardships of rapidly rising energy costs began shortly after the OPEC oil embargo of 1973, and has increased as the previous Administration began phasing out price controls on domestic crude oil in June 1979, and the Reagan Administration lifted most remaining price controls in January of this year. A series of federal low-income energy assistance programs, with funding ranging from $200 million in the first year of an energy assistance program to $1.85 billion in 1981 have resulted. The authority for this year's program, enacted as Title III of the Crude Oil Windfall Profits Tax Act of 1980, authorized an expanded program for 1981 at a funding level of up to $3.1 billion, and explicitly stated that up to 25 percent of net revenues generated by the tax from 1982 through 1990 were to be allocated to low-income households.

We are deeply concerned that the authorization continued in this legislation falls far below the previously authorized amount, and that there is no longer a direct link to the approximately $5 billion that might be available if the full one-fourth of the net windfall profits tax revenues were provided. Our concern is heightened by the knowledge that energy prices are projected to rise at a faster rate than inflation during the 1980's. Average prices for fuel oil, gasoline, and electricity are expected to increase at an annual rate at least one or two percentage points higher than the general inflation rate. Natural gas prices, currently subject to federal price controls, will undoubtedly soar as the Reagan Administration's scheduled phaseout of controls goes into effect.

We also regret that the compromise agreed to does not explicitly prohibit states from offsetting home energy assistance payments against other federal or state assistance programs. An amendment to reinstate this prohibition, offered by Senator Eagleton, failed by a vote of 9 to 7. In allowing each state to set up its own method for determining if and how energy assistance payments or allowances will be considered as income or resources of eligible households under the other federal or state programs, it is virtually certain that two households in precisely the same circumstances prior to receipt of home energy assistance will be affected differently as the assistance mechanism differs. We expect to monitor closely the states' policies of energy assistance benefits disregard with an eye toward identification of anomalies of double benefits for some and reduced benefits for others.

Finally, we would have preferred a strict income eligibility standard for the states to follow in allocating energy assistance payments, as has been contained in prior law, to assure that aid be targeted to those most in need. However, we believe it unlikely that the lack of such an eligibility ceiling will lead states to set unsatisfactorily high income limits. In 1981, the vast majority of states chose to set eligibility limits that were more restrictive than those contained in the statute. We believe the requirement that priority be given to households having at least one elderly or handicapped individual, and that the largest benefits be paid to the households with the greatest energy costs relative to their incomes, protects against assistance being diverted from the lowest income and most vulnerable households.

COMMUNITY SERVICES

We are particularly troubled by the Committee's action to eliminate the Community Services Administration, transfer only a portion of its program authority to the Department of Health and Human Services, and channel what limited funding is provided through the states.

In 1964, Congress enacted the Economic Opportunity Act, stating that it was "the policy of the United States to eliminate the paradox of poverty in the midst of plenty." Essential to that policy was the creation of the Community Services Administration as an independent, central point to maintain a national focus on the elimination of poverty.

One need only to look at the success of numerous CSA-developed programs, i.e., Headstart, weatherization, and energy assistance, to recognize that the existing model is an effective way to develop programs that are responsible to the needs of the poor yet flexible enough to produce local solutions within a national framework.

An amendment offered by Senator Metzenbaum to extend the existing authority of the Economic Opportunity Act would have preserved the national commitment to eliminating poverty, the one federal agency that is mandated to help poor people become self-sufficient, and the national network of community action agencies which have demonstrated the ability to operate efficient, effective and responsive program for the

elimination of poverty. The amendment failed 9 to 7.

However, we are gratified that a majority of the Committee recognizes the importance of maintaining the successful network of 893 community action agencies by the inclusion of the requirement that states give special consideration to existing community action agencies, or any successor agency. These agencies, with their longstanding tradition of local initiatives, are essential to continuing a comprehensive approach to the problems of the poor.

DOMESTIC VOLUNTEER SERVICES ACT

While we are pleased that the Committee has recognized the value of the services provided through the Older American Volunteer Programs under ACTION, we are concerned by the Committee's action with respect to VISTA. VISTA is a federal program that works. A recent evaluation found that VISTA volunteers mobilized a total of $6.5 million in resources for their local projects, and each recruited an equivalent of 15 non-ACTION volunteers. It is estimated that the program served or assured benefits to 1,200,000 of the nation's poor in FY 1980.

This Administration's proposed phase-out of the VISTA program, ratified by the Committee's action, turns its back on a successful domestic volunteer service program which exemplifies the American tradition of self-help and cooperative efforts.

Senator Metzenbaum, on behalf of the Democratic members of the Committee, offered an amendment to restore Fiscal Year 1983 budget authority to the proposed 1982 level, already a reduction of 25 percent from current funding. That motion failed 9 to 7.

LEGAL SERVICES CORPORATION

Of particular importance is the extension of authority for the Legal Services Corporation, albeit at a substantially reduced level.

Congress created the Legal Services Corporation seven years ago as a private, nonprofit organization to serve the legal needs of the poor, and to insure continued access to our country's system of justice for low-income individuals and families. During its short tenure, it has mounted an impressive record in extending the protection of the law to the poor in countless areas of daily life, helping them to grapple with the complex legal ramifications surrounding the flesh and blood problems they encounter, including unwarranted utility cut-offs, questionable eviction actions, improperly terminated Medicaid services to children and the elderly, consumer fraud matters, and employment problems.

President Reagan, and certain members of the Committee have recommended that the Legal Services Corporation be abolished and that the need for legal services for the poor be met solely by the private bar and through social services block grants to the states. While we support increased participation in Corporation projects by members of the private bar, that alone will not work. The volume of pro bono work by private attorneys has grown steadily, but these efforts can meet only a small portion of the legal needs of the poor.

It is totally unrealistic to expect that the states will move forward to provide an effective civil legal services program for their poor. Only about one percent of the funding for such services is now being provided by the states. The inherent conflicts of interest, combined with the states historical lack of any role in civil legal services, gives no indication that the states are willing or able to assume the role of provider of legal services to the poor.

Equal access to justice under law, the principle on which our nation was founded, can only have meaning and life if every individual has the means to enforce his rights and redress his grievances. Our continued commitment to this principle requires the continuation of the Legal Services Corporation.

EDWARD M. KENNEDY.
JENNINGS RANDOLPH.
HARRISON A. WILLIAMS, Jr.
CLAIBORNE PELL.
THOMAS F. EAGLETON.
DONALD W. RIEGLE, Jr.
HOWARD M. METZENBAUM.

ALCOHOLISM AND DRUG ABUSE SUBCOMMITTEE

The President's budget proposed to repeal four separate programs—grants to states for alcohol abuse services; alcohol abuse project grants and contracts; grants to states for drug abuse services; and drug abuse project grants and contracts—and to transfer seventy-five percent of the funds previously made available under these programs to the health services block grant.

While we are pleased that the Committee has modified this proposal by retaining two small ($15 million each) separate authorizations for alcohol and drug abuse demonstration grants, we are deeply concerned with the Committee's action in transferring the remainder of the project grant funds for both alcohol and drug abuse, as well as the two grants to states, into the health services block grant.

The Federal alcoholism and drug abuse effort was established ten years ago in response to the inability of the states to respond effectively and comprehensively to the alcohol and drug abuse treatment and rehabilitation needs of their citizens. The efforts of the last decade have begun to show success in increasing national awareness of the problems of alcohol and drug abuse and removing powerful social stigmas from illnesses which, left untreated, manifest themselves in myriad other health problems, family distress and instability, and enormous losses in human potential and productivity. Great strides have been made in extending the availability of community services for the victims of alcohol and drug abuse. But this network of services continues to have major gaps and significant population groups—such as women, older persons, Native Americans and youth—remain underserved or inappropriately served. Many state alcohol and drug abuse service delivery systems are relatively new and vulnerable. We are deeply concerned that these service delivery systems will experience a major disruption and diminution of support in the context of a large health services block grant which incorporates sharp reductions in funding across the board.

Although we believe that there is a continued need for direct Federal support for substance abuse services, we agree that some program consolidation is possible and that states can and should assume a larger role in the management and allocation of these funds. For this reason, we offered an alternative to the Committee's block grant proposal, which would have consolidated the four separate alcohol and drug abuse programs into a single grant to states and which would have given states significantly increased flexibility in using these funds. We are deeply disappointed at the Committee's action in rejecting this amendment by a vote of nine to seven.

EDUCATION

In the area of education, we wish to express our displeasure with the procedures that were utilized to virtually rewrite all of the Federal education laws. Programs that vitally affect the lives of millions of Americans were changed with scant attention to the impact these changes would have. In our opinion, the changes will have a devastating effect on our citizens, and many of their hopes and dreams will have to be deferred or dropped altogether. We believe that the true strength of our nation depends upon the sum total of the education and character of our people. These proposed changes ignore that basic reality.

The overall cut in the education budget is approximately 11%. Many programs, however, have been subjected to far more drastic reductions, and some will be eliminated altogether. But whether the cut is large or small, the general impact is the same. Because of these cuts, millions of Americans—disadvantaged young children needing basic skills assistance, students needing loans to attend college, men and women needing vocational training—will be denied crucial educational aid to help them improve their lives.

With respect to program consolidation, we had hoped this would not be accomplished through reconciliation. We would have preferred following the original timetable of the Chairman of the Subcommittee on Education, Arts, and Humanities, which called for an additional series of hearings and a markup in mid-July. This would have allowed serious and complete deliberation on this far-reaching proposal, as opposed to acting upon it in a precipitous and ill-considered manner through the reconciliation process.

Despite this situation, the Committee has adopted what appears to be a reasonable proposal for educational program consolidation. It does not include vitally important and successful programs, such as assistance to economically disadvantaged children, education for the handicapped, bilingual education, adult education, and vocational education and training. In most instances, it consolidates only the more experimental and innovative education programs. This should result in a considerable reduction of paperwork and much more program flexibility at the State and local level.

We are heartened by the fact that the Committee action recognizes the true value of certain categorical programs. Despite rhetoric to the contrary, Title I of the Elementary and Secondary Education Act is a program that works, and works well. By deciding not to drastically alter this program, the Committee has indicated quite forcefully the importance of targeting a major portion of Federal education dollars on groups who definitely need additional or special education services.

In the area of postsecondary education, we have been forced to make many unpleasant changes, particularly in the Guaranteed Student Loan program. Although these changes are ones we wish we did not have to make, they are changes that will not stop the program completely. This would have been the result had the Committee adopted the recommendation of the Reagan Administration. All of the testimony received by the Committee indicated that the loan proposals advanced by the Administration would have resulted in no guaranteed loans being made this fall. Over two million students would have found they could not obtain a loan, and it is estimated that college enrollments would have declined by 500,000 to 750,000 students. Such an occurrence would have been a national tragedy, and we believe that the proposals adopted by the proposals adopted by the Committee will help avoid such a situation.

The changes being proposed for Federal education programs are not ones that we agree to with any enthusiasm. They are, however, the least painful of many very painful choices. We believe the economic recovery program of the Administration, which encourages these types of changes, emphasizes the wrong set of national priorities. But, if we do make these changes, we are confronted with the possibility of having other committees—ones with a less comprehensive understanding of these important concerns—substantially alter education programs on which we have worked diligently for many years. We do not want to let this happen, and we believe that the changes rec-

ommended by this Committee are the best of many poor options.

EMPLOYMENT

The majority's recommendation calls for drastic reductions in the authorized funding for the comprehensive and employment and training act (CETA) and the Wagner-Peyer Act. The Committee Democrats disagree with the basic philosophy behind the reductions in this area, because we believe that forging a coherent policy to reduce inflation requires that we fully utilize this Nation's human resources.

At a time when we are deeply concerned with productivity, it makes no sense to take away from unskilled, disadvantaged and young Americans their opportunity to develop marketable skills through employment training. The majority's short-sighted recommendations in this area run counter to the nation's best interest.

Even with these programs in place, unemployment among young people is a severe national problem. Presently, the unemployment rate among teenagers is 19 percent. Among minority teenagers, the unemployment rate reaches the astronomical level of 35 percent: And in some inner-city areas, minority youth confront 50–60 percent unemployment levels. We face the prospect that a whole generation will reach adulthood without having a career or an occupation.

In that spirit, Senator Metzenbaum proposed an amendment which would have increased by $200 million, the recommended authorization level for Title IV–A of the CETA youth programs. The majority's recommendation was to fund this program at no more than $406,200,000. Current policy for this program is appoximately $1 billion. Obviously, the magnitude of the reduction recommended by the majority would severely retard any serious effort to close the gap between the unemployment rates of youth and those of the general population. The rejection by a 9–7 vote of the Metzenbaum amendment highlights the weakness in the majority's road to economic recovery. Without adequately preparing these young people for employment, we can be sure that many of them will in the future be unnecessarily dependent on public assistance.

EDWARD M. KENNEDY.
JENNINGS RANDOLPH.
HARRISON A. WILLIAMS, Jr.
CLAIBORNE PELL.
THOMAS F. EAGLETON.
DONALD W. RIEGLE, Jr.
HOWARD M. METZENBAUM.●

GERMAN DAY

Mr. SPECTER. Mr. President, I would like to bring to the attention of my colleagues a celebration of ethnic heritage which takes place in my city, Philadelphia, every year. On June 28, the German American community of Philadelphia will gather at the Bayerischer Volkfest Verein to hold their annual German Day celebration.

This gathering of the Philadelphia area German American community and their friends is a celebration of ethnic pride and heritage and the proceeds from the event help support the annual von Steuben Day parade in Philadelphia.

As history reports, Baron Friedrich Wilhelm Ludoff Gerhard Augustin von Steuben left his native Germany to join the demoralized troops of General Washington at a critical time during our Revolutionary War. He took the freezing, starving, and poorly trained and disciplined Continental Army and molded it into a first-class fighting unit which was able to take on and overcome the British Army, at that time considered to be the best in the world. The efforts of von Steuben helped to maintain the freedom of our fledgling Nation.

Today, the German American community has much of which it may be justifiably proud. From the first German settlers who came to America during the late 17th century and settled in Philadelphia's "Germantown" to those millions of others who followed in the ensuing centuries, German Americans have contributed greatly to the growth, prosperity and preservation of the United States. They came to America seeking only freedom and the opportunity to work. They found both and they helped to make the United States the great Nation it is today.

German Day is celebrated across our Nation on various days in recognition of these brave immigrants who came to a new world—like all of the ethnic groups which make up our Nation—bearing only their proud heritage and a hope for a new and better life. They stayed and worked and, together with their ethnic counterparts from all areas of our globe, helped to build our mighty Republic.

THE SAVINGS AND LOAN INDUSTRY

● Mr. MITCHELL. Mr. President, the problems confronting the savings and loan industry in today's economic climate need little explanation.

At a time when mortgage rates are around 15.5 percent, and when the average home price is around $70,000, it is not surprising that the savings and loans—indeed, the entire thrift industry—is in deep trouble. Today's mortgages are being written for an average amount of $65,000. That represents a basic interest and principal repayment of $848 per month. Even if that were the full monthly cost of homeownership, many millions of Americans would be priced out of the market. But of course, with the costs of insurance and taxes, the average monthly cost of homeownership today is approaching $1,000 per month. Middle-income families simply cannot qualify for mortgages. The American dream of a home of one's own is fast becoming a nightmare.

The combined effects of high interest and high-priced housing from recent years of inflation has had a disastrous effect on the institutions which traditionally finance the bulk of American homes.

At the same time, the deregulation of the banking industry occurred at a time when its effects could not have been more disastrous. In 1979, savings and loans held 53 percent of the money market certificates. At the time, they enjoyed the quarter-point interest differential which was designed to help them maintain the base of long-term savings that are essential to the long-term mortgage market. Since 1979, the savings and loans' share of money market certificates has fallen to 32 percent—in just 2 years. Nothing more clearly illustrates the difficulty of making fundamental adjustments in this industry in a time of rising inflation and high interest rates.

The results of the economic climate are clear evidence of the scope of the problem. The high yields available on other investments have drawn funds from the savings and loans: At a rate of $4.6 billion in April alone. At the same time, the return on long-term, low-interest mortgages cannot come close to matching the costs of attracting new deposits. The thrift industry this year anticipates an industry-wide loss ranging from $2.5 billion to $6 billion.

The Federal Savings and Loan Insurance Corporation has already had to liquidate one institution: The Economy Savings and Loan Association of Chicago. The corporation has merged seven other S. & L.'s to prevent their bankruptcy.

If this trend continues, we could see the end of the independent savings and loan component of our banking system.

This year, the FSLIC has paid out $375 million in insurance for deposits at troubled institutions. In 1980, at this time, the corporation had paid out only $195 million.

And yet, despite the clear evidence of problems in the thrift industry, the administration has failed to take action. Administration claims that the powers of the FSLIC and the bank board alone are sufficient to overcome the temporary problems facing various institutions overlook the fact that the economic climate is making fundamental and perhaps irreversible changes in the industry as a whole. Unless we want to see these changes occur without lifting a finger to prevent them, I believe it is imperative that we act now.

I am cosponsoring the All Savers Act, a measure which would provide substantial aid to the savings and loan industry by exempting from Federal tax liability the interest earned on a special type of certificate that these institutions could offer.

The intention of the All Savers Act is to provide a vehicle through which the thrift industry could compete on a more equal basis with other parts of the banking system.

These certificates would offer returns at rates pegged to 70 percent of Treasury bill rates. This rate of return, coupled with the tax advantage, should help provide a savings inflow that would offset, to some extent at least, the impact of the economic climate and would also provide a breathing space for the industry to adjust to the current regulatory climate.

In addition, this proposal would have the advantage of increasing savings, a goal of both the administration and the Congress. It would help make more mortgage financing funds available, an outcome which would, of itself, help lower mortgage interest rates and provide a much-needed boost to our beleagured homebuilding industry. Most importantly, it would help preserve the independent thrift component of our banking system, a goal I believe is essential.

I would do what I can to assure that this proposal comes before the Senate for debate and a vote as promptly as possible. I believe it is an important part of our efforts to help fight inflation and overcome the adverse effect of high rates of interest.●

FEDERAL LAND LEASES FOR DISPOSAL OF SPENT SHALE AFTER OIL EXTRACTION

● Mr. GARN. Mr. President, I have recently added my name as a cosponsor of Senator ARMSTRONG's bill, S. 1073, which would provide authority for the Secretary of the Interior to lease Federal land for the disposal of spent shale after the extraction of oil from it.

The situation requiring this legislation is very simple, Mr. President. The United States contains enormous reserves of oil in the form of shale. Much of this shale lies in the two States of Utah and Colorado. In order for the oil to be extracted, the shale must be heated, releasing the oil-bearing kerogen, which is then drawn off. The shale may be mined and heated in a surface retort, or it may be heated in situ.

In either case, Mr. President, a substantial amount of land is required for surface facilities. Land is also required for the disposal of the shale after treatment. Even in the in situ process, a substantial amount of shale, and in some cases overburden, must be removed and disposed of. Since there is plenty of land in the areas where this shale lies, disposal would not normally be a problem; nor would finding enough land for the location of the treatment facilities and other surface buildings.

However, there is an obscure provision of the Federal Land Management Policy Act which restricts leasing of Federal land for shale oil production to the lands where the shale actually lies. No adjacent land can be leased for location of ancillary facilities, or for disposal.

S. 1073 would correct that defect in FLPMA.

Mr. President, this is not an oil shale bill, per se. It does not commit the Nation to oil shale or to any other kind of energy. It has long been my position that oil shale as an alternative to existing energy sources must meet the test of the marketplace. If oil shale is economical, it will be produced. If it is not, it will not. But it is not a fair market test to impose barriers to rational construction of facilities and disposal of wastes, and that is what the present provisions of law do. They artificially bias the case against oil shale.

In recent months our dependence on foreign oil has declined somewhat, Mr. President, as it should, and as I predicted it would, given the rising prices that have come with decontrol. But we remain uncomfortably dependent on foreign, unstable oil sources. Mexico has just announced that it will raise the price of its oil $4 per barrel, again for purely political reasons. I doubt that the rise will stick, given the current state of the oil markets, but the action does indicate the need to continue our progress toward developing more domestic sources.

Mr. President, Senator ARMSTRONG is to be commended for his initiative in introducing this legislation. I know he has secured a large number of cosponsors of the legislation, and I hope it will move quickly through the Congress.●

THE SUPREME COURT COTTON DUST RULING

● Mr. KENNEDY. Mr. President, yesterday's Supreme Court decision upholding OSHA's regulation limiting worker exposure to cotton dust represents a truly significant victory for the workers of this Nation and a resounding defeat for the administration's efforts to undermine workplace health and safety standards.

When Congress enacted the Occupational Safety and Health Act in 1970, we promised to provide American workers the maximum protection against exposure to toxic substances. But industry, and more recently the Reagan administration, have opposed efforts to fulfill that promise by contending that regulations are too costly and that the act required that benefits to workers be balanced against the costs to industry.

The Court has now resoundingly rejected that argument by stating what should have been apparent to all of us—that in enacting OSHA, Congress placed "the benefit of worker health above all other considerations."

The issue before the Court was an OSHA standard regulating worker exposure to cotton dust in our Nation's textile mills. For over a century we have known that workers who breathe cotton dust day after day run a high risk of developing brown lung or byssinosis, a disease which can cause permanent, total disability and death.

Over half a million workers in the textile industry are exposed to dangerous levels of cotton dust on the job every day.

Today over 35,000 victims of brown lung disease in the United States are totally and permanently disabled; 85,000 of the workers who are exposed to cotton dust, or 15 percent, suffer from some degree of byssinosis.

It took almost 10 years to get OSHA to issue an effective standard to protect textile workers. Under those rules, which became effective in 1980, textile manufacturers were required to clean up their factories by installing new machinery which the Labor Department estimates will spare 74,000 workers from the agony of brown lung.

The industry said that these controls were too expensive and argued that workers could be adequately protected if they were required to wear protective masks.

The Reagan administration virtually announced its support for the industry position earlier this year.

In March the Secretary of Labor announced that he was beginning his review of OSHA health standards by performing a "cost-benefit analysis" of the cotton dust standard to explore alternative means of enforcement—including the use of respirators or protective masks.

Incredibly the Secretary also asked the Supreme Court not to decide the case it ruled on yesterday so that Department could rewrite the regulations.

Clearly the Department intended to weaken the protection textile workers and their union, the Amalgamated Clothing and Textile Workers, had fought so long and hard to achieve.

The Court's decision to reject that request is a victory for every worker in this country whose health may be impaired by toxic substances in the workplace. But while there is reason to celebrate, we will have to remain vigilant. We did not enact OSHA without a struggle. And we will not retain it without one.

We clearly declared our intention to protect workers 11 years ago. But that has not stopped industry from repeatedly resisting attempts to implement effective health standards. And there is every reason to believe their opposition will continue. Industry spokesmen have already indicated that further litigation will be pursued. And the fact remains that an administration which has openly declared its support for the antiseptic cost-benefit concept will determine how effective the law will be enforced for the next 3½ years.

As the ranking minority member of the Labor and Human Resources Committee, I intend to do everything I can to assure that the cotton dust standard is fully enforced and that the administration fulfills its responsibility to issue standards which will provide protection for millions of workers in other industries who face the threat of serious illness or death because of exposure to toxic substances.

I will also oppose any effort to undermine the Court's ruling legislatively. Congress should not succumb to the cost-benefit numbers game. Workers are entitled to a clean workplace free from recognized health hazards, as the Supreme Court has now made abundantly clear. I, for one, do not intend to see that judgment reversed in the 97th Congress.●

THE PRODUCTIVITY LEADERSHIP OF MR. THOMAS J. MURRIN

● Mr. SPECTER. Mr. President, the Westinghouse Electric Corp. of Pittsburgh, Pa., has had a history of industrial leadership which has made those of us from the State very proud. Mr. Thomas J. Murrin, the president of Westinghouse Electric Corp.'s public systems company is continuing that fine tradition.

The American Productivity Center recently recognized Tom Murrin for his preeminent productivity leadership. The productivity center cited his commitment to promoting productivity improvement in the Government and the private sector. The productivity center also recognized Tom Murrin's productivity work within the Westinghouse Electric Corp.

Under Tom Murrin's leadership, the Westinghouse Corp. has implemented numerous new productivity programs. In the last 2 years Westinghouse has doubled its rate of productivity improvement. This achievement is even more impressive in light of the fact that they were able to double an already above-average productivity growth rate.

Tom Murrin has also worked with

members of the executive and legislative branches of the U.S. Government in an effort to find ways to improve the productivity of our Nation's industries. His work with the Department of Defense has been of particular note. Westinghouse has sponsored trade union and management trips to Japan to visit industry and labor groups in that highly productive country.

I applaud the American Productivity Center's choice for productivity recognition. The kind of corporate thinking that Westinghouse has displayed within their own company and within our Nation's corporate world is very valuable to our country as a whole. Emphasis on productivity keeps a company's products competitive with foreign manufacturers that Americans from all industries are meeting in today's world market. Progressive corporate decisionmaking such as that displayed by Westinghouse will provide job security for our Nation's workers and, at the same time, strengthen our Nation's economy.●

Mr. BAKER. Mr. President, I ask unanimous consent that it be in order to consider the votes by which both bills were passed.

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

Mr. BAKER. Mr. President, I make that motion.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I have no further need for morning business time. I have no need for my time under the standing order. I am prepared to yield it to any Senator.

Does the distinguished Senator from South Carolina, the President pro tempore, have need for additional time?

Mr. THURMOND. Mr. President, I would like to have the time of the majority leader if he can spare it. I am due at the Armed Services Committee on the military construction bill in a little while. I would like to have the time between now and 9:30 to report on some crime bills.

Mr. BAKER. Mr. President, before the Senator from South Carolina proceeds, I ask unanimous consent to yield control of the time allocated to me under the special order this morning to the distinguished Senator from South Carolina.

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

Mr. BAKER. Mr. President, before I yield my time under the standing order to the Senator from South Carolina, which I will do, I wish to yield to the minority leader so that he may speak.

Before I do that, Mr. President, I now yield to the Senator from South Carolina such time as I have remaining under the standing order, with that time to begin running after the time for the recognition of the minority leader has expired.

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

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, I yield to Mr. PROXMIRE and then to Mr. HEFLIN.

Mr. HEFLIN. Mr. President, I will follow after the time of the Senator from South Carolina has expired. I will be supporting his statements.

ORDER FOR RECOGNITION OF SENATOR BOREN

Mr. BAKER. Mr. President, I ask unanimous consent that after the execution of the special order for additional time allocated to the Senator from South Carolina, the Senator from Oklahoma (Mr. BOREN) be recognized, on a special order, for not to exceed 10 minutes.

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

FREEDOM OF SPEECH AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, during the 22 years that the Genocide Convention has stood before the Senate, a number of objections have been raised and rebutted. One such charge is that the prohibition in the Convention of "direct and public incitement to commit genocide" would compromise our freedom of speech guaranteed by the first amendment.

Nothing could be further from the truth. First, "direct and public incitement to commit genocide" is in no way protected by the first amendment. The Supreme Court ruled in Brandenburg against Ohio that a State may forbid advocacy of the use of force or of law violation only where "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." The language of the convention is consistent with this decision. "Direct and public incitement to commit genocide" would clearly not be protected under the first amendment.

Second, were there any conflict, the Constitution would control the question. The Supreme Court decided in Reid against Covert that no treaty may supersede a provision of the Constitution. Furthermore, the enacting legislation which would follow ratification of the convention would also be subordinate to the Constitution, and subject to the review of the Supreme Court. The freedoms of speech which we so rightly cherish could be in no way jeopardized by ratification of the Genocide Convention.

The Senate's failure, however, to adopt the convention jeopardizes important interests of our Nation. Our record as a leader in human rights is marred by this omission. Our reluctance to condemn mass murder has implied to others that we are indifferent even to so heinous a crime as genocide.

Mr. President, that free speech would not be endangered is but one example that the United States has much to gain from adoption of the Genocide Convention, and nothing to lose. We have shown the world how highly we esteem the right to free speech. Let us show that we also value the most fundamental right—the right of a people to live. Let us ratify the Genocide Convention.

CBS SUPERB DOCUMENTARIES ON THE DEFENSE OF THE UNITED STATES

Mr. PROXMIRE. Mr. President, for the last four nights, and tonight will be the concluding night, CBS has had a series of articles on the defense of the United States. I think this has been one of the finest documentaries that television has been able to present to the American people in a long, long time. The defense of this country is a matter that has concerned many Senators.

The CBS participants discussed, it seems to me with great intelligence but in a provocative and controversial way, our problems on manpower; the adequacy of pay; the adequacy of training; the problem of women in the Army; whether or not we should have the draft; our technology, which, of course, is tremendously effective but is in many ways grossly misapplied and is resulting in enormous costs, paying too much and getting too little and with a tremendous amount of goldplating; our readiness and the lack of readiness of some of our divisions and our aircraft carrier task forces, and the inadequacy of the number of tanks, planes, and ships that we have available. Top generals, admirals, scientists, the Secretary of Defense and Members of Congress discussed and debated those matters and television films of our military forces in action drove home the problems dramatically.

Mr. President, I have noted that these prime time documentaries get terrific attention in my State, and I am sure that is true all over the country. I notice whenever I go to give speeches whatever is in the documentary that is current is the matter that provokes the interest of the people I address. So congratulations to CBS on a superb series and a great contribution to public understanding of this fundamental national problem.

I am sure the American people are more interested and concerned now about our defense than they have been in a long, long time, thanks in no small part to the remarkable job that the Columbia Broadcasting System is doing in this classic series on our Defense Establishment.

Mr. President, I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I reserve the remainder of my time.

CONCLUSION OF MORNING BUSINESS

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

RECOGNITION OF SENATOR THURMOND

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

S. 1386—ARSON IN EXECUTING A SCHEME TO DEFRAUD

Mr. THURMOND. Mr. President, a major area of criminal activity, especially by organized crime, is the so-called arson-for-profit schemes. The widespread growth of this type of crime has gained national attention in recent years. Last year the Subcommittee on Criminal Justice of the Senate Committee on the Judiciary held hearings on this problem. The bill I am introducing today is designed to provide Federal criminal penalties for his conduct in certain situations.

Arson is a unique crime. It generally occurs with no eyewitness present, and the evidence of the crime, if any exists, is extremely difficult to ascertain. In addition, the investigative resources required to determine the cause and origin of a fire are often beyond the ability of most jurisdictions. Arson investigators, even if knowledgeable and experienced, often are unable to find the clue or evidence necessary to make a criminal arson case.

Arson-for-profit cases go even further by requiring experienced investigators and prosecutors to make what is essentially a white collar crime case. Other evidence, besides testimony of an accomplice, is often required to support a conviction. In short, arson-for-profit crimes frequently go either unsolved or unprosecuted.

Mr. President, property damage from fires has increased dramatically in recent years. According to the National Fire Protection Association, fires of suspicious origin increased 7.1 percent between 1978 and 1979. More important, however, dollar losses in that same period increased 24.5 percent to $1.328 billion in 1979. Arson accounted for 14.3 percent of all structure fires and 26.8 percent of all property losses from structure fires.

Arson-for-profit schemes are the primary contributor to these increases in property damage figures. The way the scheme works is this: An investor, usually connected with organized crime, will go into an underdeveloped area of a city and buy a number of townhouses for say, $10,000 each. He then fraudulently enters into a series of paper sale-and-purchase transactions for the property over a period of time. Each transaction increases the apparent value of the property and, of course, increases the amount of fire and casualty insurance that can be purchased on the appraised value of the property. Finally, when the insurance coverage reaches a substantial amount, the property, usually still unoccupied, is burned. The original investors, who have never lost title to the property because of the fraudulent real estate transactions, collect a substantial insurance windfall. With the scheme successfully carried out, another group of buildings is then targeted for a similar scheme.

The Federal Bureau of Investigation has recognized the growth of this activity by organized crime and is devoting increased resources to solving these crimes. Unfortunately, the Federal law in this area is not specific enough to apply to many of these arson-for-profit schemes. My bill is intended to provide a statutory basis for the investigation and prosecution of these crimes.

Mr. President, I ask unanimous consent that the bill I am introducing be printed at this point in the RECORD. In addition, I ask unanimous consent that an article entitled "Arson in U.S. Reaches a Crisis Stage," from the June 8, 1981, issue of the U.S. News & World Report, be printed in the RECORD following the bill.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 5 of title 19 of the United States Code is amended by adding at the end thereof a new section as follows:

"SEC. 82. Arson in executing a scheme to defraud—

"(a) Whoever, having devised or intending to devise a scheme or artifice to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise, engages in conduct with intent to execute such scheme or artifice and the scheme or artifice affects interstate commerce and involves the obtaining of insurance proceeds of $100,000 or more by arson shall be fined not more than $250,000 or imprisoned not more than ten years, or both.

"(b) As used in this section, 'arson' means the substantial damage of a building, dwelling, or structure by fire or explosion.".

ARSON IN U.S. REACHES A CRISIS STAGE

America is being put to the torch by 10-year-old kids, hardened criminals, businessmen, psychopaths and vengeful citizens in a multibillion-dollar wave of arson for passion and profit.

Just in the past few months—

Fire raced through the Las Vegas Hilton, killing eight persons, and through the Stouffer's Inn in Harrison, N.Y., killing 26. Investigators said both fires were set intentionally.

An arson blaze in Brooklyn demolished a tenement and killed nine members of a single family.

A series of fires has destroyed over 400,000 acres of forest land in Florida. Officials estimate that 50 percent were set by "hell raisers" or other arsonists.

Conflagrations like these, along with fires set by professional "torches" and speculators to collect insurance, have risen astronomically in the U.S. over the past decade.

What's more, arsonists are getting away with it. Only 3 such fires in every 100 leads to an arrest, and not even 1 case in 100 results in a conviction.

From firefighters, federal officials and insurance investigators comes this checklist of what is going up in the smoke of deliberately set fires—

About 1.3 billion dollars in direct damage from all types of fires in 1979, the last year figures are available—more than 10 times the losses for 1968.

Indirect damage estimated as high as 15 billion dollars a year in lost tax revenues and wages, unemployment-insurance payments, relocation costs and other economic ripple effects.

At least 908 deaths and about 3,000 injuries from arson or suspected arson in 1979—when the number of structural fires was nearly four times the 1968 total of 50,000.

There is some evidence that soaring arson trends are starting to level off. But analysts say this is no time to let up on anti-arson programs that have begun to show results in some areas. "We're at a crisis stage," says Florida Fire Marshal Bill Gunter. "Arson is spreading out there, and it just can't be business as usual."

Behind that assessment, echoed by fire and insurance experts around the country, lie staggering statistics on the busy activity of fire setters. Totals vary with accounting methods, but the federal National Fire Data Center estimates that arsonists in 1979 ignited 177,000 buildings and other structures, 63,000 vehicles and 383,000 outdoor targets ranging from forests to city trash cans. Total arson fires: 623,000.

In the U.S., "the rule of thumb is that 1 fire in 4 is intentionally set," by far the highest arson rate in the world, says Philip Schaenman of the Fire Data Center. From the standpoint of direct dollar losses, he adds, arson is now in the same league with burglary or larceny.

Experts say the chief motives behind arson in the U.S. are psychological rather than economic, as in arson-for-profit insurance ripoffs.

According to the U.S. Law Enforcement Assistance Administration, vandalism accounts for 42 percent of all arsons, followed by arson for revenge at 23 percent; pyromania, 14 percent; arson for profit, 14 percent, and other motives, 7 percent.

The population of known fire setters is dominated by youngsters, who are often motivated by youth-gang peer pressure. In the decade of the '70s, 54.6 percent of all arrested arsonists were under 18 years of age, including 11 percent age 10 or under, according to the Federal Bureau of Investigation's Uniform Crime Reports.

One major target of youthful firebugs is the schoolhouse. A survey by the Insurance Company of North America found that arson accounted for about 26 percent of the damage done to vandal-plagued schools across the country.

As for revenge, one federal government study concludes: "In many inner-city neighborhoods, gasoline splashed on an apartment door has replaced the gun as a way to settle quarrels."

Nor is fire vengeance confined to the big city. In Ashton, Mich., last November, police reported that a schoolchild, allegedly a victim of parental abuse, confessed to setting fire to the parents' bedroom in such a way as to block all escape. They died, along with three children.

While most arson fires are the result of purely destructive impulses, arson for profit remains a major cause of fire devastation and economic loss. Indeed some federal fire officials estimate that blazes set to collect insurance proceeds account for as much as one-half of all direct annual dollar losses from arson.

Who are the culprits? John Lynch of the U.S. Fire Administration's Arson Prevention Program gives this answer: "Organized crime is involved. Business people are involved. Speculators are involved. Homeowners are involved. But in the main, arson-for-profit operations are not so much the work of a Mafia-type organization as they are the organized crime of a group of conspirators that gets together and buys a series of properties to burn down for profit."

Boston ring. Ostensibly model citizens made up one of the biggest economic-arson rings ever uncovered by authorities—an operation broken up by Boston authorities in 1977 following 35 fires that destroyed an estimated 6 million dollars' worth of property. Among the 33 persons arrested were a retired

fire chief, a police officer, lawyers, insurance adjusters and real-estate professionals.

Other major arson rings have since been smashed in New York City and elsewhere, while smaller-scale operations are believed to be widespread.

In the typical scan of this type, authorities say, the conspirators purchase a depressed property cheap—sometimes taking advantage of federal urban-renewal programs. The owner makes a few improvements and sells to a confederate at an exorbitant price, inflating the nominal market value of the property as a basis for fattening the insurance coverage. Then fire strikes.

But economic arson comes in many varieties. According to investigators, big-time examples range from extortion practiced by underworld loan sharks to fires set by "strippers," who scavenge plumbing, wiring and fixtures exposed in the gutted structure. Other types of arson reflect the everyday economic concerns of the average citizen. Among the insurance-arson trends are the burning of homes that cannot be sold and vehicles that are costly gas guzzlers.

In a crime spree as rampant and damaging as this one, why are arrests and convictions so rare? Authorities give these answers:

Arson is difficult to detect. There are seldom any witnesses, and the arsonist often takes pains to make the blaze look accidental.

Local fire and police departments tend to lack both the manpower and expertise to effectively combat arson. Coordination problems also arise among enforcement agencies. In one case in Connecticut, police ordered insurance investigators to leave the scene of a fire on a claimant's property.

Public support has been lacking. Many citizens perceive arson as, at worst, a minor crime against property. As a result, few cities spend more than 1 percent of their fire department budget on anti-arson programs.

Nonetheless, a number of localities have begun developing vigorous arson-control programs in recent years, including task forces that combine the talents of police, fire and insurance investigators and prosecutors. Along with these have come public-education programs, tipster hot lines and computerized arson-information files.

Among the communities that now have major anti-arson programs under way are Boston, New York, Philadelphia, Seattle, Baltimore, East St. Louis, Ill., and communities in Florida.

In getting these programs started, many cities have relied on the expert technical assistance and financial aid provided in recent years by the federal government and by insurance companies.

The insurance companies, too, have adopted a tougher stance. "In the past, the attitude was that you can't win in arson cases, and the insurance companies literally rolled over and played dead," says Janet L. Brown, a Florida attorney who defends insurance firms against false claims. "But that has all changed. There is a better attitude on investigating arson fires. Companies are becoming more reluctant to pay immediately."

The Feds pull out. Signs that these efforts are starting to pay off include a dramatic increase in arson arrests in some areas and a slight decline in arson fires nationwide from 1978 to 1979, according to figures compiled by both the federal government and the National Fire Protection Association. Still, analysts caution that a one-year decline is insufficient grounds for optimism. Local fire and law-enforcement authorities cite another cause for concern: Federal financial support for local anti-arson efforts is being reduced just as the programs are hitting their stride.

For example, the Law Enforcement Assistance Administration, the major source of such funds, is being dismantled. Its 9-million-dollar assistance program for local firefighting efforts, begun in 1979, will end when funds run out this year.

In all, officials say, the gains made in the battle against arson amount to little more than a promising start in a long fight. "We're attempting to deal with it," says John Barracato, a director of arson fraud for Aetna Life & Casualty, "but we're no closer today to solving the arson problem than we were 10 years ago."

S. 1387—WAITING PERIOD FOR THE PURCHASE OF A FIREARM WITHIN THE SPECIAL TERRITORIAL JURISDICTION OF THE UNITED STATES

Mr. THURMOND. Mr. President, today, I am introducing a bill to amend the Gun Control Act to provide for prompt notification of the Federal Bureau of Investigation when application is made to purchase a handgun on Federal property. To assure an opportunity for verification of information supplied by a prospective buyer, under the bill, the dealer would be required to wait 21 days before the sale of the handgun may be completed and the handgun may be delivered to the purchaser.

Mr. President, it should be noted that this measure applies to retail purchases made on Federal enclaves. I am introducing this bill to indicate my strong support for the concept of a waiting period as a part of the purchasing procedure for acquiring handguns. While I do not at this time favor the imposition of a waiting period by Federal mandate on the States, I urge the States to reexamine their laws and re-evaluate this procedure as one possible step to be taken to prevent the unlawful purchase of a handgun by a dangerous individual.

The rationale for this kind of procedure was outlined by the Ford administration in testimony on H.R. 9022 before the House Committee on the Judiciary on October 1, 1975, as follows:

> The . . . delay may, in itself, have some salutary effect. Surveys have indicated that there is a strong temporal correlation between handgun purchasers and illegal handgun usage, indicating that many handguns are purchased for the express purpose of engaging in criminal activity; a "cooling off period" may therefore occasion some benefit by delay in acquisition alone. The principal purpose of the . . . period, however, is to provide an opportunity for ascertaining the accuracy of the information supplied by the would-be purchaser . . . to establish whether he has a record of felony convictions or other disability that would disqualify him from purchasing a handgun.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 1387

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 922 of title 18, United States Code, is amended as follows:

(a) delete the word "and" at the end of paragraph (4);

(b) redesignate paragraph (5) as paragraph (6) and insert the following new paragraph (5):

"(5) any firearm other than a shotgun or rifle to any individual within the special territorial jurisdiction of the United States as defined in 18 U.S.C. 7(3), unless the Federal Bureau of Investigation is notified within seven days that an application to purchase or receive such firearm has been executed by the individual and twenty-one days has elapsed following execution of the application; and"; and

(c) delete the language "and (4)" in the next to the last sentence of the subsection and insert in lieu thereof "(4), and (5)".

S. 1388—PRESIDENTIAL ASSASSINATION, KIDNAPING, AND ASSAULT

Mr. THURMOND. Mr. President, the recent attempt on the life of President Reagan by a person involved in a prior gun incident in the vicinity of a President suggests that prompt reporting of such incidents could provide Federal authorities with information which could be valuable in protecting against assassination attempts on the President. While I am informed that the prior incident with respect to the assailant of President Reagan was promptly reported to the FBI, this practice—extended to the Secret Service as well—is important enough to be reflected in the statute.

Accordingly, today I am introducing a bill to require the FBI to request other law enforcement agencies to promptly report to the Bureau and the Secret Service all gun incidents in the vicinity or expected vicinity of the President, or a Presidential candidate, that might have relevance to the safety of the President or candidate for the Presidency.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 1388

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1751 of title 18, United States Code, is amended by adding the following sentence at the end of subsection (1):

"The Federal Bureau of Investigation shall request Federal, State, and local law enforcement agencies to promptly report to the Bureau and the Secret Service all arrests or other incidents involving the possession or use of a firearm in the vicinity or expected vicinity of the President, or a candidate for the Presidency, under circumstances that do not exclude the possibility that the possession or use might have been for purposes that would be in violation of this section.".

SENATE RESOLUTION 141—COMBATING VIOLENT CRIME SHOULD BE A NATIONAL PRIORITY

Mr. THURMOND. Mr. President, on May 20, 1981, I joined with a number of Senators in sponsoring Senate Resolution 141, a resolution to express the sense of the Senate that taking all appropriate action necessary to combat violent crime should be a national priority as well as a priority of the Senate, and should receive immediate attention. I am privileged today to report the resolution to the full Senate for its consideration.

At the time the resolution was submitted, I emphasized that "Government's primary responsibility is to protect the citizens against external enemies and also internal enemies, the chief of which today is crime." Also, I noted a 16-bill crime package—9 of which had already been introduced—which I intended to present or support in dealing with this problem. These measures include broad-ranging proposals that involve, among other things, reform of the Federal Criminal Code, sentencing reform, and bail reform.

Mr. President, I applaud the efforts of my colleagues in proposing action on legislation directed toward the reduction of the national crime rate. The suggestions of all who feel they can help us deal with the crime problem are welcomed. I am sure the Reagan administration will be responsive to our efforts. On April 22, 1981, Edwin A. Meese delivered a speech to a law enforcement group, in which he stated:

(C)rime has never been far from the top three or four concerns of the public over the past 10 or 15 years. And it's only been occasionally that it's been eclipsed by foreign affairs, or by inflation, or the state of the economy, or unemployment, that temporarily it becomes third, fourth, fifth, and then it seems to rise again as it is at the present time. Which is not unsusual, because you know far better than I that over the last 10 years violent crime has increased 59 percent in this country; and, of course, the statistics for 1980 show an increase of 10 percent overall for Part I crimes and 13 percent for violent crimes. This is a matter of great concern, people no longer feeling safe in their own homes, no longer feeling safe in their own cities; as a matter of fact, those of us who live in Washington wake up in the morning to a long list of the shootings that have occurred the previous night, which is a daily feature of our radio news programs in the morning. And so it's necessarily a matter that concerns the Reagan administration.

Mr. President, at this time I wish to commend the able Senator from Alabama (Mr. HEFLIN) for being the primary author and sponsor of this resolution, which is joined in by a number of other Senators. I now send the resolution to the desk.

Mr. President, why are we so concerned about crime? Criminal activity now encompasses every facet of our lives. Reports from the Department of Justice indicate that last year almost one-third of all households in the United States were victimized by crime. The following chart shows that in a time-offense relationship, there was a crime committed every 2.4 seconds last year in America.

Violent crimes give the most frightening report, with one murder committed every 24 minutes, one forcible rape every 6 minutes, one robbery every 56 seconds, and one aggravated assault every 48 seconds. Property crimes were also extremely numerous in 1980, with one burglary every 8 seconds, one larceny-theft every 4.5 seconds, and one motor vehicle theft every 28 seconds.

Mr. President, I ask unanimous consent to have the information printed in the RECORD.

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

CRIME CLOCK

ONE CRIME INDEX OFFENSE EVERY 2.4 SECONDS

One violent crime every 24 seconds.
One murder every 24 minutes.
One forcible rape every 6 minutes.
One robbery every 56 seconds.
One aggravated assault every 48 seconds.
One property crime every 2.6 seconds.
One burglary every 8 seconds.
One larceny-theft every 4.5 seconds.
One motor vehicle theft every 28 seconds.
Source: FBI Uniform Crime Report.

Mr. THURMOND. Mr. President, fear has begun to permeate our society. A security systems firm in Ohio recently sponsored a survey which discovered that 9 out of 10 Americans lock their house doors and will not open them to visitors until they know who is knocking; 7 of 10 lock their car doors while driving; and 6 of 10 telephone their friends when they arrive home safely after a visit. In addition to this, the poll indicated that 52 percent of the people interviewed own a gun for the purpose of protection.

Other public opinion polls have found that almost 50 percent of the people in the United States are afraid to walk in their own neighborhoods at night. Even in rural America, where people once kept their doors unlocked and their windows open, burglaries, and thefts of cars, trucks, and farm equipment run rampant. In essence, we are being held captive by those who have no respect for the rights of others.

George Gallup and others have found that people today favor stricter and harsher punishments to control the flourishing crime rate. Mr. Gallup suggests that these public feelings "coincide with a sharply rising fear of crime on the part of the American people." We must take action to combat this burgeoning problem.

In the United States there are more than 6 million known criminals. If we consider those criminals that are unknown to the authorities, this already huge number becomes even larger. The number of criminals in this country is so enormous that it exceeds the population of 42 of the 50 States. To illustrate this point further, in 1977 there were only 1,331,000 persons employed in the food products trade, 1,156,000 in the wearing apparel trade, and 1,010,000 in the motor vehicle trade, three of the largest employing trades in America. The number of criminals in the United States is nearly double the number of employees of all these trades combined.

In a Newsweek magazine article dated March 23, 1981, a survey was conducted in which the respondents were asked: "How much confidence do you have in the police to protect you from crime?" Forty-two percent of those responding said, "not very much." The question, "How much confidence do you have in the courts to sentence and convict criminals?" was also asked, and 59 percent answered, "not very much." Persons responding to a Gallup poll listed lenient court systems, second only to economic problems, as the major cause of the burgeoning crime rate.

Of course, State and local lawmakers must accept their responsibility to maintain law and order within their jurisdictions. They must take an active role in motivating the members of their communities to become involved in crime prevention. Strong community spirit has proved to be a major deterrent to crime in several areas of the Nation.

"Neighborhood Watch" programs in New York City and the District of Columbia have inspired communities all over the country to take an active part in the prevention of crime. Once people make a firm commitment to abolish crime in their neighborhood, criminal activity usually declines dramatically. A story in the New York Times of February 10, 1981, described such a community. This neighborhood is reportedly in a crime-ridden section of New York City—the South Bronx.

However, the people in this section of the city work, play, and relax without fear. Shops have no bars on the windows, children play in the parks, and old people walk the streets alone. The residents of this community work with the police and care about their neighbors. They have said "no" to crime in their neighborhood, and it has worked.

The possibility of achieving a safe society can become a reality. Although crime is usually a State and local matter, the need for aggressive Federal leadership has never been greater. A growing number of my colleagues and I have urged the administration and the Congress to make crime prevention and judicial reform a top priority issue, second only to the health of the economy.

Mr. President, what can we do about crime? First, we must collect ideas from every source, including the current Presidential Commission on Violent Crime. Several members of the Committee on the Judiciary have already introduced legislative proposals on issues ranging from capital punishment to livestock fraud. As previously noted, I have already introduced six bills and cosponsored three others that will strengthen the Federal law enforcement process. Just 1 month ago, Senators HEFLIN, NUNN, CHILES, BOREN, and KENNEDY added to this effort by submitting several proposals that would attempt to improve law enforcement and reform the judicial system. As chairman of the Committee on the Judiciary, I welcome any ideas from my colleagues that will assist in curbing the crime problem. Let me list a few of my ideas.

First, we must come to grips with the tremendous number of juvenile offenders. Youth between the ages of 10 and 17 represent 13.8 percent of the population; however, they account for more than 20 percent of the arrests for murder, forcible rape, and aggravated assault. Juveniles also account for 49 percent of the arrests for arson. Including arson, juveniles are responsible for approximately one-fourth of all the violent crime offenses.

We need to let our youth know that they will be punished for their wrong actions. If the young decide at their age that crime goes unpunished and actually pays, they will become the habitual offenders of our society. Attention must

be given to the juvenile justice programs that deter youth from a life of crime.

Second, we must adjust our criminal justice system to meet the needs and interests of victims and witnesses. The system has shifted so far toward the protection of the criminal that little concern has been shown for the rights of the innocent. This problem must be rectified by appropriate legislative action.

Third, the safety of the community should be taken into account before making bail release decisions. A tremendous number of crimes are committed by persons who are out on bail, probation, or parole. I feel that a large percentage of these offenses could be eliminated if the courts were able to consider danger to the community as a qualifying factor for release on bail.

Fourth, I support efforts to revise the sentencing procedures presently used in the judicial system. Uniformity of sentences for similar offenses should be a goal of the system. Traditionally, sentencing has been an individual decision by the judge—a subjective judgment about the appropriate punishment for a particular offense formulated within broad legal limits. I am very much in favor of a proposal that would establish guidelines for standardized sentences. Such a proposal should carry the provision that the defendant could appeal a sentence set above the guideline, and the Government could appeal a sentence below the guideline.

Fifth, sentences and punishments should be imposed and carried out. In his book "For Capital Punishment," Walter Berns stated that 98.3 percent of serious crimes go unpunished. From a materialistic viewpoint, the question is not, "Why do so many people commit crimes?" but rather, "Why do not more people commit crimes?"

In the course of administering justice, there is perhaps no judicial role more profound in its impact than the power to impose a punishment. The most important thing about a punishment is that it be one which fits the costs of the crime, and that it will, without doubt, be imposed. Today, judges impose punishments with the greatest reluctance, as if they are embarrassed or ashamed of doing so. The judicial system must acknowledge punishment as the expression by the community of its disapproval of a crime. If a society is too ready to forgive the wrongdoer, and punishment is not meted out, then the society may be condoning the crime.

Of course, latitude in deciding punishment for an offender does not reside solely with the judge. In many jurisdictions, the parole board or prison officials exercise considerable discretion in deciding how much of a sentence an offender will serve. I believe that a sound sentencing system would abolish parole and limit good time credits with respect to terms of imprisonment. To serve as a deterrent and a punishment, the sentence of the judge should be served in full. Also, a person convicted of multiple violent crime offenses should be labeled as an habitual offender and be made subject to life imprisonment without parole.

Sixth, capital punishment should be reinstated for certain serious and heinous crimes. The penalty of death is the only punishment that even comes close to recompensing for trampling on the sanctity of innocent life. As violent crime grows, the public sentiment increases in favor of the death penalty as a deterrent to crime. Approximately two-thirds of the American people favor the death penalty for persons convicted of murder.

Seventh, the entire judicial process must be speeded up. At some point, a decision and judgment must become final. Continued appeals as a means of delaying punishment have clogged the entire court system. By designating a point at which all appeals must end, the judicial system will become more effective.

Eighth, the so-called exclusionary rule, under which highly relevant evidence is excluded from consideration in a criminal trial because it was obtained through an illegal search and seizure, should be abolished. It makes no sense to turn the criminal loose as a method of punishment of a police officer for failure to comply with the often technical requirements of the search and seizure law. We should punish the criminal and at the same time provide a civil and administrative remedy to deal effectively with the erring police officer.

Several of the measures I have mentioned have long been included in the Criminal Code reform bills that have been considered in the Committee on the Judiciary. I have concluded that it is time to separate some of the more urgent reforms out of the Criminal Code bill for independent and immediate treatment. We must, however, continue the massive job of modernizing the Federal criminal laws as a whole to meet the needs of a modern society. As of April 1981, some 36 States had acted to revise and modernize their criminal laws. The need is as great, or greater, with respect to the Federal system.

Mr. President, I hope the point has been made that this country faces a crisis in crime and that we can do some things to help. Now is the time to begin. I intend to ask each subcommittee of the Committee on the Judiciary to act promptly on pending measures to deal with crime on both the Federal and State levels so that we will have the broad base of information and opinion necessary to judge the merits of these proposals and to establish priorities. With the cooperation of every member of the committee, we will make progress toward once again making this country a safe place to live and work.

Mr. President, we hope that what we are doing at the Federal level, I repeat, will have some effect on the States. We realize that crime is primarily a State responsibility, but what we do at the Federal level can be a model for some of the States to emulate and we feel can be an inspiration to them to take action to help alleviate this serious crime problem.

Mr. President, I yield to the able and distinguished Senator from Alabama.

Mr. HEFLIN. Mr. President, I express my sincere appreciation to the distinguished chairman of the Judiciary Committee for his support of the resolution and for his excellent remarks that he has just completed outlining a program against crime that could well be called a national war on violent crime. Chairman THURMOND has long been a leader in the search for effective methods of deterrence of criminal activity. He has contributed considerable time and effort to combating crime for which we are all thankful. His constant concerns for the welfare of the American people is deeply appreciated.

I also thank the members of the Judiciary Committee for their unanimous support of this resolution. The ever-increasing burden placed on the American people by criminal activity desperately needs the attention and concern exhibited by my colleagues. I am grateful for their dedication to the continuing war on crime.

Statistics compiled and published by the FBI reveal that violent crime is running rampant in every section and locale in the country. Their statistics indicate that, over the past 30 years, the number of murders in the United States has increased by 370 percent and the number of robberies by 300 percent. Also, in 1980, crime was up nationwide by 10 percent over 1979.

One significant result of this alarming increase in crime is the paralyzing effect it is having on the American people. In the past few years, crime has become more vicious and irrational and, therefore, more frightening.

The American people are virtually being held prisoner in their own homes by criminals who operate in the streets with impunity and with little or no fear of arrest or punishment. The criminals are waging war within our borders—and they are winning it.

Mr. President, I urge my colleagues in the Senate to join in this declaration that the deterrence of violent crime should be a national priority. I ask my fellow Senators to unite in a national effort to stem the rising tide of violent crime.

Mr. President, I ask unanimous consent that the following cosponsors be added to Senate Resolution 141: Senators BIDEN, COCHRAN, DIXON, INOUYE, MITCHELL, RIEGLE, SASSER, and WILLIAMS.

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

Mr. HEFLIN. Mr. President, I yield back my time to the distinguished Senator from South Carolina.

The PRESIDING OFFICER. Does the Senator from South Carolina wish recognition?

Mr. THURMOND. Mr. President, I now yield the floor.

RECOGNITION OF SENATOR BOREN

The PRESIDING OFFICER. Under the previous order the Senator from Oklahoma is now recognized.

HIGH INTEREST RATES

Mr. BOREN. Mr. President, as I have noted before, I intend to continue to take the floor each day until action is forth-

coming from the administration to take care of a serious developing situation in this country.

We have a problem that has become urgent. It demands an immediate solution. It is my hope that we will not wait until a severe crisis has developed before we act.

I am talking about the serious problem caused by the short-term impact of high interest rates on critical areas of our economy.

In a very short period of time, if action is not taken, many financial and thrift institutions will find themselves in deep trouble and many small businesses and small farmers will go further into the red. Many will be forced into liquidation.

Two articles which appeared in the press in the last 24 hours again demonstrate the urgency of this problem and the need for immediate action.

I wish to quote from those articles. The first is an article from last night's Washington Star by Sheilah Kast, Washington Star staff writer. It is headed "Drop in Housing Starts Supports Predictions of Sluggish Growth." I quote from that article:

Wilted by high interest rates, housing starts fell 14 percent last month, to their lowest level since the depths of the housing depression a year ago, the Commerce Department has reported.

That news, combined with the Federal Reserve Board's report yesterday that industrial production inched up just 0.3 percent in May, lent evidence to the view that the economy is growing only sluggishly during the second quarter.

It quotes chief economist Michael Sumichrast of the National Association of Homebuilders "who said he expects the housing industry to remain depressed through the summer."

Noting that weak homebuilding activity curtails jobs and demands in related businesses, Sumichrast said, "Without any question, the multiplier effect is so enormous, housing will bring down the whole GNP to the point where it might be neutral or negative in the third quarter."

We have now doubled the rate of unemployment for the Nation in the construction industry. High interest rates have led to the unemployment of over an estimated 1 million people in our country.

As I mentioned earlier, Mr. President, the related effect on the thrift institutions in this country is, perhaps, the most dangerous short-term problem of all.

In regard to that situation with the thrift institutions, I want to quote from an article which appeared this morning on the business page of the New York Times, written by Mr. Clyde H. Farnsworth entitled "Insurer of Troubled Thrift Units." The subhead is "U.S. Agency Offers Help To Prevent Default." I want to quote to you from that article, Mr. President. I ask unanimous consent that the entire article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BOREN. Mr. President, let me just read the highlights from this article. I think it points out the nature of the problem which we face. It is datelined Washington, June 17, and reads as follows:

WASHINGTON, June 17.—The discothèque in the basement of the Federal Home Loan Bank Board building a block from the White House is named, appropriately enough, the Buck Stops Here.

Upstairs in the offices of the Federal Savings and Loan Insurance Corporation, the subsidiary of the bank board that is the main insurer of deposits, computer simulations are being run on the 4,700 federally chartered savings and loan associations.

Fed by the monthly financial data generated by the institutions—numbers on income, net worth, deposits, withdrawals, mortgage portfolio yields and average cost of deposits—the computer spews out the names of "problem" institutions that could face insolvency within two years if corrective steps are not taken.

The insurer's computers are where the buck really stops, and they are now running overtime, having already identified 263 problem institutions, up from 246 in March and 120 at the end of 1980.

Mr. President, that means that in a 5-month period the number of troubled institutions that could face insolvency within the next 2 years has grown from 120 to 263—in 5 months.

I continue to quote the article:

SQUEEZE ON EARNINGS

As a result of paying high interest rates to attract or hold deposits while receiving the bulk of its income from much lower-yielding mortgages, the thrift industry is experiencing the most serious earnings squeeze of the last three decades.

And this in turn has focused attention on the bank board's insurance corporation, which, because it insures about $500 billion of deposits . . .

I want to read that again, Mr. President, that insurance corporation insures $500 billion worth of deposits "with a fund now worth only a little more than $5 billion." That is how much is in the insurance fund according to this writer, Mr. President, "$5 billion at current market values," and this insurance corporation, needless to say, has a strong interest in trying to prevent default.

I would point out, Mr. President, going further in the article, that so far this year the insurance fund, which has been growing at a rate of only about $700 million a year, so far in the first 3 months this year has already paid out $375 million in assistance to the savings and loan industry.

Last year it paid out $1.2 billion and, you can see, with the rate of troubled institutions almost tripling in the first 5 months of this year, that is going to be a very conservative figure compared to what is going to happen this year.

Mr. President, I regret to say it but we are going to have very, very serious problems in this country if action is not taken; whether it be an emergency program to help obtain and rediscount the old paper of these institutions; whether it be the creation of tax-exempt, interest-bearing accounts in our thrift institutions, our banks, our credit unions, which can be targeted back to housing to help the situation, all of these options must be considered.

Let us not wait, let us not wait until a serious situation develops which could shake the confidence of the American people in our economy before we devise an emergency program.

How long are we going to continue a situation where in the first quarter of 1981 the thrift institutions of this country overall had no new net savings or deposits but instead had an outflow of $1 billion? How long are we going to continue a situation in which in the last few months we had a drop in the reserves of the thrift institutions of $28 billion, the largest short-term drop in reserves in financial institutions in the history of the United States?

How long will we continue to allow such massive unemployment in the construction industry and in the building trades? How long will we allow a situation to continue where four out of five families cannot qualify for a home mortgage because of the short-term, high-interest rates? How long will we allow the threat of massive bankruptcies of small businesses and farmers to continue? How long must we wait, Mr. President, until we develop an emergency plan to deal with the urgent and immediate problem being caused in the short term by high-interest rates?

We may be embarked on the proper long-term cure for our economy, for the economic ills of this country, and I think we are. I think the administration is headed in the right general direction. But, Mr. President, if we let the patient die in the emergency room, we are not going to have time to devise the long-range cure and to have the beneficial effects of it.

If we allow the condition with our thrift institutions to continue without action, if we allow the continued effect on the homebuilding industry, if we allow a situation under which our income levels are such that over 80 percent of all the families in this country are totally foreclosed from an opportunity to undertake to buy a home, we are courting serious economic problems in the short range that could be so difficult that we will not have the long-range recovery that all of us hope for.

Let us not wait too long, Mr. President. I hope all of my colleagues will join with me in urging the administration to take action.

I yield the floor.

[From the Washington Star, June 17, 1981]

DROP IN HOUSING STARTS SUPPORTS PREDICTIONS OF SLUGGISH GROWTH

(By Sheilah Kast)

Wilted by high interest rates, housing starts fell 14 percent last month, to their lowest level since the depths of the housing depression a year ago, the Commerce Department has reported.

That news, combined with the Federal Reserve Board's report yesterday that industrial production inched up just 0.3 percent in May, lent evidence to the view that the economy is growing only sluggishly during the second quarter.

However, some economists who agree on that disagree about how strong a rebound the third quarter will see. In the first quarter, the Gross National Product grew 8.5 percent.

Among the most pessimistic is Michael Sumichrast, chief economist of the National Association of Homebuilders, who said he expects the housing industry to remain depressed through the summer.

Noting that weak homebuilding activity curtails jobs and demand in related businesses, Sumichrast said, "Without any question, the multiplier effect is so enormous, housing will bring down the whole GNP to the point where it might be neutral or negative in the third quarter."

By contrast, David Ernst, economist at Evans Economics, a Washington forecasting firm, said, "The recent decline in inflation in the United States should work its way into mortgage rates enough to give housing a boost . . . Housing will be expanding by the third quarter."

The Evans firm is predicting GNP growth of about 4 percent in the third quarter.

Several economists said the key factor in a housing recovery will be a noticeable drop, of about 2 percentage points, in mortgage interest rates. While some banks have recently cut their prime lending rates a notch or two, there is no evidence that mortgage rates have slid from the 16.1 percent national average of early May.

Sumichrast said builders struggling to weather their 29th month of shrinking activity face rates of 19 to 21 percent when they seek construction loans. The Commerce Department estimated that housing starts in May dropped to a seasonally adjusted annual rate of 1.15 million units, the lowest since the 938,000 level of May last year.

In the Northeast, housing starts remained about the same as in April. They dropped 16.5 percent in the South, 14 percent in the North-Central states and 13.6 percent in the West.

Issuance of building permits, a signal of future construction, rose only 0.3 percent last month, to an adjusted annual rate of 1.2 million.

The industrial production report said much of the tiny gain in output was concentrated in autos and auto parts. David Cross, a senior economist at Chase Econometrics in Bala Cynwyd, Pa., said that although auto sales have slumped since the first quarter, automakers are building up inventories in anticipation of closing their factories this summer to re-tool for new models.

Cross called the industrial production report "further evidence that the economy is virtually in a state of stagflation. There's very little hope we're going to see any significant recovery until the tail end of the year."

[From the New York Times]

INSURER OF TROUBLED THRIFT UNITS—U.S. AGENCY OFFERS HELP TO PREVENT DEFAULT

(By Clyde H. Farnsworth)

WASHINGTON, June 17.—The discotheque in the basement of the Federal Home Loan Bank Board building a block from the White House is named, appropriately enough, the Buck Stops Here.

Upstairs in the offices of the Federal Savings and Loan Insurance Corporation, the subsidiary of the bank board that is the main insurer of deposits, computer simulations are being run on the 4,700 federally chartered savings and loan associations.

Fed by the monthly financial data generated by the institutions—numbers on income, net worth, deposits, withdrawals, mortgage portfolio yields and average cost of deposits—the computer spews out the names of "problem" institutions that could face insolvency within two years if corrective steps are not taken.

The insurer's computers are where the buck really stops, and they are now running overtime, having already identified 263 problem institutions, up from 246 in March and 120 at the end of 1980.

SQUEEZE ON EARNINGS

As a result of paying high interest rates to attract or hold deposits while receiving the bulk of its income from much lower-yielding mortgages, the thrift industry is experiencing the most serious earnings squeeze of the last three decades.

And this in turn has focused attention on the bank board's insurance corporation, which, because it insures about $500 billion of deposits with a fund now worth only a little more than $5 billion at current market values, has a particularly strong interest in trying to prevent default.

When an association lands on the problem list, said H. Brent Beesley, a real estate lawyer from Salt Lake City who is the new director, "we tell it that it should contemplate taking some action—cutting expenses, reducing overhead, considering merger with a strong, safe harbor." He continued, "And if the situation is not rectified, we then ask the board of directors to authorize us to effect a merger for them."

FORCED MARRIAGES

So far this year the insurance corporation has liquidated one failing institution—the Economy Savings and Loan Association of Chicago—and merged seven others with stronger institutions. One of the recent forced marriages involved the New York and Suburban Savings and Loan Association of Scarsdale, N.Y., which was absorbed by the Anchor Savings Bank of Northport, L.I.

The "supervisory" or forced marriages, with the insurance corporation as the broker, are not especially popular in the industry. The practical consequences are that the managers of the troubled institution lose their jobs.

For this reason the industry has been pressing for some type of capital infusion program involving temporary Government financial assistance to strengthen the asset side of the balance sheet until general economic conditions improve.

INFLATION, HIGH RATES CITED

The industry has argued that the precarious financial condition of many thrift units has been caused less by faulty management than by high inflation and high interest rates, for which it is not responsible.

Fearing a large drain on the Treasury, the Reagan Administration has opposed any new extraordinary measures and taken the position that the bank board and its insurance corporation already have adequate powers and resources to deal with the situation.

The chairman of the bank board, Richard T. Pratt, said that the fund was earning $1 billion a year on insurance premiums from the institutions and investments, and that this should be enough to handle any losses this year without having to dip into principal.

So far this year the cost to the insurance fund of assisting the industry has amounted to $375 million, compared with $195 million over the same period in 1980. The money is spent on paying depositors and in assuming mortgages of troubled institutions.

EXPANSION URGED

Mr. Pratt argues that the industry does not need a bailout but should get the authority to enter new lines of business.

"Thrifts should be able to engage in real estate investment on a much wider basis than is currently permissible," he said. "Real estate is their strong suit, and I believe thrifts could be engaged in a much broader spectrum of real estate activity—for example, real estate acquisition and development, commercial construction loans, industrial land development loans, and real estate improvement loans—without compromising their housing finance mission."

More than new business, however, the industry needs lower interest rates to get out of its present imbroglio. Industry leaders say, as a rough rule of thumb, that annual earnings rise about $3 billion for every percentage-point reduction in short-term rates.

The insurance corporation, Mr. Beesley said, already has the power to grant financial assistance to problem thrift units, but he insists that such assistance is "not a bailout but a tool we use for our own purposes."

"I must be emphatic on this point," he continued. "We will not give assistance in any form until the board of directors has given us the right to merge the problem association into a strong institution. We have to handle the situation in the way that is least expensive and least disruptive from our point of view."

Armed with the computer printouts, field examiners of the insurance corporation call on all the associations at least once a year. They monitor the weaker institutions more intensively, calling on them monthly, weekly or even daily in extreme cases.

There are more than 1,000 such examiners, most of them accountants, who report to a managerial staff of 60 supervisory examiners. The supervisors analyze trends in money flows, the performance of management, the market potential.

"I think the system works reasonably well," said Dale F. Riordan, chief economist at the National Savings and Loan League. "The examiners are competent and professional. If anything, they could use more staff in Washington to make the judgmental calls."

Jonathan E. Gray, research analyst at Sanford C. Bernstein, an investment house that follows the thrift industry, noted that one area where there might be insufficient data was the position of the associations in mortgage and interest rate futures contracts undertaken often to speculate on turns in the interest rate cycle.

Chicago's Economy Savings and Loan Association, which was liquidated last month at an estimated cost to the insurance corporation of $60.2 million paid to insured depositors, was believed to have speculated on Ginnie Mae futures—contracts to buy and sell packages of mortgages put together by the Government National Mortgage Association and traded much as securities are.

In a liquidation or forced merger, the insurance corporation often has to take over the mortgage-backed securities of the failing institution that have yields far below current market rates. Given today's high interest rates, such securities would have to be sold at a substantial discount to realize cash from them.

The insurance fund has a book value of $6.5 billion. This includes about $1 billion of the mortgage-backed securities that it has assumed in earlier mergers; the balance is in Treasury securities. Because of high interest rates, the current market value of these assets is about 20 percent less than the book value, or $5.2 billion.

RECOGNITION OF SENATOR WARNER

The PRESIDING OFFICER. Under the previous order, the Senator from Virginia is recognized for not to exceed 15 minutes.

Mr. WARNER. I thank the Chair.

S. 1389—THE NATIONAL PORT AND NAVIGATION IMPROVEMENT ACT OF 1981

Mr. WARNER. Mr. President, in my life there is good news and bad news today. The good news is that I am introducing a bill for the dredging of American ports and harbors, and I am joined in this effort by no less than 13 of my distinguished colleagues. I have worked on this bill for almost a year.

The bad news is that today I am experiencing the worst case of laryngitis I have ever had since I have been a Mem-

ber of the Senate, so if the President and others will bear with me, I will do my very best to explain this legislation.

The bill I am introducing today is entitled The National Port and Navigation Improvement Act of 1981. It sets Federal contributions for the construction of navigational improvement projects at no less than 60 percent. For operation and maintenance the Federal contribution is set at 75 percent.

I mention that at the outset for the reason that earlier legislation introduced by myself and the distinguished Senator from Louisiana (Mr. JOHNSTON) did not reflect such cost-sharing measures. These cost-sharing measures are directly attributable to the efforts by President Reagan and the members of his administration to awaken the need in Congress and throughout America that, in future legislation of this type, the costs must be borne in part by the States with the ports and harbors, and in part by the Federal Government.

Changing the funding mechanism for deepwater port improvement projects is only one of the major conditions which any port improvement legislation must address.

Equally important are the provisions which will mandate expedited permitting, congressional authorization, environmental review, and judicial review processes.

This bill, if enacted into law, would produce these absolutely necessary reforms and integrate them with a responsible funding mechanism.

Mr. President, it is my belief that this bill will provide the remedies needed to make our ports acceptable for competitive world trade by providing funding in a manner compatible with the administration's benefit-receiving cost-sharing concept.

The new bill would be considered generic legislation and would allow any of our Nation's 170-plus deep-draft commercial ports to avail itself of the bill's various provisions regardless of the type of cargo which is exported or imported through its facilities.

I wish to reemphasize, Mr. President, that the bill, in my judgment, and in the judgment of others, provides advantages for not only coal exporters, but for any exporters who ship materials in such bulk quantity that the larger type of cargo vessels now being used or likely to be used in the future are required.

The National Port and Navigation Improvement Act of 1981 would provide the following benefits for our Nation's deep-draft commercial ports:

First, funding for navigation improvement projects; second, favorable tax treatments for money expended by non-Federal sources for navigation improvement projects; third, expedited review of deep-draft commercial port maintenance programs; fourth, expedited process for navigation improvement projects; fifth, expedited environmental review of such projects; sixth, expedited congressional review of such projects; seventh, expedited judicial review of claims filed in such projects; eighth, automatic authorization for projects which receive no Federal contribution; ninth, expedited process for shortsighted facility permitting; and last, tenth, advance moneys for feasibility study survey reports and environment impact statements for advanced engineering design for such authorized projects while awaiting congressional appropriations process.

Mr. President, the average navigation improvement project today—that is, the type covered by this bill—would require almost 24 years to complete. We, as a nation, simply can no longer afford the luxury of nearly a quarter of a century of delays from concept to project completion. Nevertheless, the bill would not obviate any current environmental, congressional, judicial, or other review requirement. It would merely speed them up so that projects may be completed as expeditiously as possible, substantially reducing the current completion times.

Mr. President, apart from the domestic consideration of this bill, I believe very firmly that it will help our balance-of-payments situation by making us more competitive in the world's market. But it is imperative, from the standpoint of national defense, that this Nation have the capability of exporting its coal worldwide, particularly to our allies, such that we can take a more active role in meeting their energy needs and, thereby, strengthening their nations—so that, in turn, we have the mutual reinforcement to work toward strengthening the national defense of each nation and advancing the cause of world peace.

Mr. President, for the past year, America has been accorded graphic examples of the inability of its coastal ports to meet the needs of the world's trading nations; of the ports' inability to meet the demand of energy-consuming nations for American coal; and of the ports' potential inability to meet world demand for American grain or other bulk commodities.

The alarming truth is that America's bulk loading ports, especially its coal-loading ports, have allowed their infrastructures, including harbor depth, to become dangerously out of step with the current trends of world shipping.

To transport their goods, especially bulk commodities, shippers more and more are turning to vessels larger in size and complexity than those of a generation ago. Prior to 1965, vessels of 20,000 deadweight tons (dwt) or smaller transported grain, coal and iron ore. Today, ships of 100,000 dwt or greater are becoming standard.

Over 25 percent of the coal trade in 1979 was carried in vessels of over 100,000 dwt. It is estimated that coal carried in large bulk vessels could rise to 40 percent in 1983 and possibly 50 percent in 1985.

Today there exist 388 bulk carriers and combination carriers of over 100,000 dwt with another 94 on order. The Japanese recently lanuched a 194,000 dwt coal-ore carrier and announced orders for two 200,000 dwt energy-saving coal-ore carriers from their shipyards. Several other countries have similar intentions.

Trading nations of the world are turning to these larger vessels for simple economic reasons. The bigger bulkers generally use less fuel, are more efficient, and more productive; greatly lowering the per-ton cost of the commodities, raw materials and manufactured products carried.

This trend in shipping to substantially larger bulk vessels is a "good news—bad news" story for America.

The good news is that this trend to vessels of 100,000 dwt or more lowers the cost to shippers and to consumers, makes U.S. goods more attractive in international trade, generates additional employment and reduces our balance-of-payments deficit.

According to a recent U.S. Maritime Administration study, the cost of ocean transport accounts for some 20 to 35 percent of the delivered price of coal. At current rates, utilizing a 120,000 dwt carrier could save shippers over 30 percent of freight charges incurred in moving the same volume in a 60,000 dwt vessel.

That is the good news. The bad news, however, is that very few U.S. ports are now able to fully load any ship of 100,000 dwt or more.

The vast majority of bulkers of 100,000 dwt or larger have a draft of over 50 feet; in fact, the average is about 55 feet.

The only major coal-loading port in the United States close to being able to handle these large bulk vessels is Hampton Roads. Its maximum loading depth is 46.5 feet, which equates to a maximum load approximating 100,000 tons.

Being competitive in today's world bulk commodity trade—whether it be coal, grain, iron ore, or other dry bulk trade—means a nation must have adequate capacity to meet the needs of world trading nations.

Adequate capacity requires port facilities and navigation channels which are both wide enough and deep enough to handle large ships economically and safely. The United States does not measure up today.

In 1980, lack of suitable port and navigation facilities cost the U.S. bulk industries many millions of tons in lost sales. In the coal industry alone, the National Coal Association estimates our current port inadequacies lost America the sale of at least 10 million tons of coal worth approximately $500 million.

To an industry which currently has 20,000 miners out of work, 10 million tons of lost sales due to inadequate port facilities is a terrible catastrophe and a national disgrace—lost jobs and lost opportunities never to be recovered.

Mr. President, the coal export market is a very competitive industry. For America to retain its position as the world's No. 1 coal exporter, it must do everything possible to see that its coal remains competitive in price and quantity.

To be competitive, and stay competitive in today's export market, our Na-

tion must improve and upgrade current coal-loading facilities, build new ones, and deepen its harbors.

A recent survey by the London shipbroker firm of Simpson, Spence & Young found there are currently nine coal-loading ports in the world capable of handling ships of 100,000 dwt or larger. By their definition, ports able to accommodate such ships must accept the necessary length and beam, plus a minimum draft of 46 feet.

I ask unanimous consent that a table showing existing ocean loading terminals be inserted in the RECORD at this point.

There being no objections, the table was ordered to be printed in the RECORD, as follows:

EXISTING OCEAN LOADING TERMINALS CAPABLE OF HANDLING VESSELS OF OVER 100,000 DWT

Country: Port	Maximum size (LOA, beam, etc.) of vessel in deadweight tons	Draft in meters	Approximate maximum size cargo on this draft	Effective annual coal capability in million tons
Australia: Hay Point	150,000	17.64	Full DW	11/15.0
Canada:				
Roberts Bank	160,000	18	Full DW	11.0
Neptune Terminal	125,000	14.5	100,000	3.5
Quebec	200,000	14.62	160,000	3.0
Poland: Gdansk	110,000	15	Full DW	10.0
South Africa: Richards Bay	160,000	17	150,000	26.0
United States:				
Norfolk Pier 6	150,000	14	112,000	20.0
Los Angeles	120,000	14	95,000	1.0
U.S.S.R.: Vostochny	125,000	15-16.5	Full DW	5.0

Mr. WARNER. Worldwide, the coal exporting nations have the opportunity to utilize 30 coal discharging ports capable of accepting 100,000 dwt vessels or larger. Of these 30 ports, about 20 were built specifically for the steel industry. Some are being adapted to meet the needs of the burgeoning thermal coal trade. Eleven of the ports are capable of taking tonnage of 150,000 dwt or even more.

I ask unanimous consent to have inserted in the RECORD a table showing the existing ocean discharging terminals.

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

EXISTING OCEAN DISCHARGING TERMINALS CAPABLE OF HANDLING VESSELS OF OVER 100,000 DWT

Country: Port	Maximum size (LOA, beam, etc.) of vessel in deadweight tons	Draft in meters	Approximate maximum size cargo on this draft	Effective annual coal capability in million tons
Belgium: Antwerp	125,000	13.71	100,000	10.0
Denmark:				
Ensted	140,000	15	125,000	5.0
Stignaes	125,000	15.3	117,000	3.0
France:				
Dunkirk	125,000	14.2	104,000	8.0
Le Havre	150,000	17	145,000	7.0
Fos	160,000	18	Full DW	4.0
Germany:				
Hansaport	280,000	13.72	160,000	2.0
Wilhelmshaven	110,000	14.32	100,000	2.0
Italy: Taranto	260,000	23	Full DW	6.0
Japan:				
Chiba	225,000	17	180,000	
Fukuyama	150,000	16-17.3	Full DW	
Kashima	180,000	17	160,000	
Kawasaki	250,000	20	Full DW	
Kimitsu	150,000	17	145,000	25.0
Mizushima	220,000	16	170,000	
Muroran	160,000	16	140,000	
Nagoya	160,000	14	120,000	
Oita	300,000	28	Full DW	
Wakayama	150,000	14	120,000	
Holland:				
Amsterdam	150,000	13.72	110,000	3.0
Rotterdam	250,000	20.65	Full DW	124.0
Ijmuiden	150,000	13.72	115,000	4.0
South Korea: Po Hang	170,000	14.5	140,000	4.0
Spain: Gijon	150,000	13.72	110,000	3.7
Yugoslavia: Bakar	150,000	17	full DW	2.0
Taiwan: Kaohsiung	150,000	14	120,000	3.0
United Kingdom:				
Hunterston	350,000	27.43	full DW	
Immingham	165,000	14	125,000	10.0
Port Talbot	125,000	14.93	110,000	
Redcar	160,000	17	150,000	

1 As from 1981.

Mr. WARNER. While America has two of the nine coal loading ports now capable of accommodating 100,000 dwt bulk vessels, it might appear our Nation has become complacent and satisfied with the status quo. We have not authorized any coastal port improvement project since 1976.

America's export competitors, as well as her customers, have not rested on their laurels. Seeing the trend to larger vessels and deeper ports, both our competitors and our customers are rapidly adding to their port capacity—either expanding and improving current ports, or building new ones.

Fourteen of these discharge ports will be capable of taking vessels of between 150,000 dwt and 200,000 dwt.

Unhappily, America's ports currently do not have the capacity to adequately service them.

I ask unanimous consent that there be inserted in the RECORD a table listing "New Developments in Coal Loading Terminals," and a table listing "New Developments in Coal Discharging Terminals."

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

NEW DEVELOPMENTS—COAL LOADING TERMINALS, INCLUDING UPGRADING EXISTING PORTS—TONNAGE OVER 100,000 DWT

Country	Definite	Proposed	Size DWT	Draft (meters)	Year	Planned annual coal-handling capability (million tons)
Australia	Hay Point (2d loader)		175/200, 000	19	1983	15–20. 0
	Newcastle (upgrading)		125, 000	15	1983	[1] 15. 0
	Newcastle (Kooragang)		150/175, 000	15. 2–17	1984–85	15. 0
	Port Kembla (new loader)		150, 000	16. 45	1983	14. 0
	Gladstone (Clinton)		120/150, 000	15. 4–16. 5	1982	12. 5
	Abbot Point (new loader)		120/150, 000	16. 4	1984–85	10. 0
		Brisbane				
		Fishermans Island	120, 000	15. 25	1987–88	10. 0
Canada	Roberts Bank (2d loader)		200, 000	19	1983	25. 0
	Prince Rupert (new loader)		200, 000	19–21	1984	15. 0
		Gros Cacouna	300, 000		1985–90	10–15. 0
		Point Noire	300, 000		[2]	5–10. 0
Colombia		La Guajira	130, 000		1985–86	15. 0
South Africa	Richards Bay (upgrading)		200, 000	19	1985	[1] 18
China		Shijiu Suo	100, 000			10. 0

[1] Additional. [2] Late 1980's.

NEW DEVELOPMENTS—COAL DISCHARGING TERMINALS INCLUDING UPGRADING EXISTING PORTS—TONNAGE OVER 100,000 DWT

Country	Definite	Proposed	Size DWT	Draft (meters)	Year	Planned annual coal-handling capability (million tons)
Belgium	Antwerp (upgrading)		150/170, 000	14. 62–15. 25	1985–86	[1] 5. 0
		Zeebrugge (new)	125, 000		1983	7. 0
Denmark	Ensted (upgrading)		170, 000	17–18	1983	[1] 4. 0
	Stignaes (upgrading)		170, 000	17–18	1983	[1] 4. 0
Eire	Money Point (new)		170, 000	19	1984	4. 0
France	Dunkirk (new)		200, 000	21	1983	10. 0
	Le Havre (new)		170/200, 000	17–20	1982–85	7. 0
	Fos (new)		250, 000	20	1984–85	5. 0
	Montoir (new)		140, 000		1983	3. 0
Holland	Maasvlakte (MCT new)		250, 000	30. 65	1983–84	15. 0
	Ijmuiden "Norcot" (new)		180, 000	17–18	1985	5–10. 0
Israel	Hadera (new)		170, 000	21	1982–83	4. 0
Hong Kong	Castle Peak		120/150, 000	15	1985–86	5. 0
	Lama Island		120/150, 000	17	1982	5. 0
Japan	Hibikanada (upgrading)		150, 000	17	1985	[1] 5. 0
		Tomakomai	150, 000	17	1990	8. 5
	Yokkaichi		120, 000	14	1986	5. 0
		Sakito	150, 000		1988	5. 0
	Matsuura		120, 000		1985	5. 0

[1] Additional.

Mr. WARNER. Mr. President, although these are the most up-to-date tables available, recent events and announcements of proposed port improvements have already made them dated.

Spain has announced plans for two new ports capable of handling 150,000 dwt vessels; Italy, one port of 160,000 dwt capacity; Taiwan, one port of 150,000 dwt capacity; and Colombia, one port capable of handling vessels in the 200,000 dwt size.

Not only are other nations building new deep-draft ports and deepening current ports, they are building vessels of over 100,000 dwt to carry their coal and maximizing their coal shipment economies.

France has ordered four 135,000 dwt vessels, Denmark is building two 132,000 dwt vessels, and Japan is building several 140,000 dwt ships.

Increasingly, coal importing nations will depend on coal exporting nations with ports able to accommodate 100,000-plus dwt vessels efficiently.

America does not have such ports at the present time.

Nor is America moving to deepen its ports in the foreseeable future.

America will lose an enormous economic shot in the arm if it fails to deepen its ports.

The Interagency's Coal Export Task Force's Interim Report succinctly highlighted the benefits that would stem from deepening our harbors:

> Lowering the delivered cost of coal by employing larger ships would bring the United States closer to the possibility of selling in a price competitive range, should additional efficiencies be realized in other parts of the coal chain . . . such savings would likely put the United States in a position where it could compete in Europe on the basis of price with Australia, even if Australia were to employ lower cost, coal fired ships for transport. On the other hand, failure to take any action to improve coal ports could generate adverse reactions abroad which, apart from purely economic consideration, might affect our export levels. Finally, enhancing coal trade, as part of the international effort to increase coal production and use in order to reduce dependency on foreign oil by our industrialized allies, involves security considerations which go beyond the trade-related benefits noted above.

Having ports which can service superbulk loaders will lower the ocean transportation cost of coal by up to $6 a ton—which will go a long way toward making America's coal competitive.

America's continued reluctance to deepen its ports is a signal for foreign buyers to look elsewhere for more readily available, cheaper coal.

An even bigger incentive for our foreign coal customers to go elsewhere is the enormous penalties they pay because of our inadequate port facilities. The French, it is estimated, paid at least $20 million in penalties because of port delays, while the Japanese paid a mind-boggling $150 million.

Currently American private industry is busily trying to cure some of its export ills by speedily modernizing coal facilities and building new ones. That will help.

However, one stark fact remains: America is still not deepening its ports. The world coal fleet of the future will not be able to anchor at our coal facilities because of pure economics. The fleet will go elsewhere where they can fully utilize their vessels.

Mr. President, it is one thing to identify a problem, but quite another to devise a generally acceptable solution.

While many parties agree that our ports need to be deepened and improved, there is not a broad consensus on the manner in which this should be accomplished.

As I became aware of the critical situation facing our Nation's ports and bulk industries, I examined the port navigation improvement process and how the Federal Government could help.

Up to and including this year, the Federal Government generally funded navigation improvement projects fully.

Since 1824, the Corps of Engineers had Federal responsibility for improvement and maintenance dredging of channels of our Nation's ports.

In the 157 years of corps involvement, a very elaborate process developed for studying, reviewing, authorizing, and funding coastal ports' improvement and maintenance projects.

The process is slow and cumbersome, and it is dramatically politicized. In fact, there have been no deep-draft navigation projects authorized in the last 5 years.

For the 36 recent improvement projects undertaken, it took an average of 24.4 years from authorization of a study to completion of construction.

Entirely too long. The process does not respond effectively to fast-breaking shipping trends.

The process is in need of drastic, total overhaul.

Toward this end, I introduced S. 3247, the Ports and Navigation Improvement Act of 1980, last December in the 96th Congress.

The Ports and Navigation Improvement Act of 1980 sought to expedite the process—including environmental review, permit review, congressional review and judicial review.

The President's Interagency Coal Export Task Force strongly endorsed such a fast-track concept in its January 1981 Interim Report:

> The need to simplify, coordinate, and remove unnecessary delays from governmental administrative and environmental reviews cannot be overstated.

The report found that the implementation process for harbor improvements took more than 20 years. Their conclusion was that the process must be sped up in every phase. As we had intended, the introduction of the 1980 bill generated helpful suggestions and constructive comments, many of which are reflected in the bill I introduce today.

The need for such legislation, if anything, is more urgent than before.

America faces difficult economic times. Past excessive Federal spending has taken its toll.

Enormous budgetary deficit and public debt have accrued. The people cannot, should not, and will not allow these to be increased.

November brought a new administration rooted in fiscal responsibility and in line with the thinking of the majority of the American public.

The Reagan administration demands all Federal funding programs be scrutinized closely. Those who benefit from a Federal program must pay their fair share for benefits received.

In the case of improving and maintaining our Nation's ports, the Reagan administration would end the longstanding practice of full Federal funding—and replace it with a shared funding concept. The parties benefiting share the cost.

I totally endorse the administration's concept.

It is a fiscally responsible concept to which all Virginians adhere, and which all of America should adopt.

The Reagan administration applied this concept to coastal port improvement and maintenance programs in S. 809, establishing a cost-sharing funding mechanism for these programs.

S. 809 is the administration's blueprint for funding for the coastal port improvement and maintenance process.

Like the administration, Mr. President, I believe that those who benefit should pay their fair share. Further, I believe that a coastal port improvement and maintenance program benefits many parties—all of whom should pay their fair share.

Not only do the parties which utilize harbor facilities benefit. So do the city, the State and the region in which the harbor is located. And, let us not forget, so does the United States as a whole.

This was strongly pointed out in a 1978 U.S. Maritime Administration study which concluded operations at our Nation's deep-draft ports represent a major national industry. It is an industry which employs 1,046,000 persons. It had gross sales of $28 billion, and contributed $15 billion to the gross national product in 1978. Moreover, the Nation's deep-draft ports support one in eight jobs in American factories, and one in four jobs in agriculture.

Testimony received by the Environment and Public Works Committee on June 12 of this year, addressing our inefficient port facilities and inadequate port depth for world bulk trade, also emphasized the significance of our ports to the national economy:

> The debilitating and counterproductive effect of port inefficiency is much like an invisible—and, usually unintended—additional tax levied on commodities exported and imported. U.S. import consumers, and export producers, ultimately pay the higher price which results from inadequate and/or inefficient port and transport services. That higher price often takes the form of business lost as U.S. exports become progressively more expensive and therefore less attractive in the increasingly competitive world market. Lost business equates to fewer jobs for American citizens, lost tax revenues, and higher payments for unemployment and other social services. U.S. taxpayers thus have a vital interest in the efficiency of the nation's transportation system, and particularly the port and navigation component thereof.

Just as important, our coastal port facilities contribute to our national security.

Our ability to move large quantities of food, fuel, and materials through our coastal ports to our allies, strengthening their economies and security, is a benefit which cannot be measured in mere dollars and cents.

America is only as strong and secure as its allies. Their security means America will not be forced to use its own resources—men and military hardware—to shore up an allied country.

Adequately maintained coastal ports allow our merchant marine to move goods to service the needs of our military forces stationed throughout the world.

S. 809, the administration bill, recognizes this fact and allows for a proration of costs between private parties and the Federal Government for Coast Guard navigation requirements, Department of Navy transportation requirements, or any other national defense transportation requirements.

However, S. 809 does not set a percentage for Federal Government contribution for the benefit it receives from the coastal port improvement or maintenance project. Rather, the Secretary of the Army is to determine that contribution at a later date.

I believe a figure can be and should be attributed to the Federal Government's benefit from and contribution to coastal port projects.

I believe the benefits to the Federal Government—the impact on our balance of payments, national employment, social services, gross national product, national security, trade treaties, security treaties, assistance to our military forces—exceed the benefits accrued by private, State, and local entities. Therefore, I believe the Federal contribution for coastal port improvement and maintenance projects should be greater than the non-Federal contribution.

The bill I am introducing today—the National Port and Navigation Improvement Act of 1981—recognizes this fact and sets the Federal contribution for construction of navigation improvement projects at no less than 60 percent. For operation and maintenance, the Federal contribution is set at 75 percent.

Where the national defense transportation requirements are greater, on a port-by-port basis, the Federal contribution would be increased.

The reasons for the differences in the Federal contribution for construction versus operation and maintenance are:

First, the Federal Government has a major responsibility to see that America has a free-flowing, integrated national transportation network. Our coastal ports are a major part of that network. If the ports are not properly operated or adequately maintained, the network fails and virtually all of America's foreign commerce will be blocked. The national need to maintain an effective transportation network is of greater importance than is the need to construct and improve individual ports—thus the differing contribution ratios.

Second, our foreign customers seek fees and charges for their goods which are certain in nature and which can be used as the basis for entering into long-term contracts. Long-term contracts cannot be entered into while operation and maintenance costs fluctuate from year to year. They do not lend themselves readily to fixed-fee schedules. Providing Federal contribution for operation and maintenance will reduce that uncertainty. The Nation as a whole will benefit.

Third, construction calls for a greater amount of capital investment up front for each project. Operation and maintenance is less of a financial burden on the United States than are construction costs of individual projects. Considering the current national economic situation, it was not my intent to increase Federal expenditures unnecessarily.

A grandfather clause in the bill exempts the depths existing within our Nation's ports from any operation and maintenance charges. Custom requires the Federal Government to fully fund operation and maintenance of current ports. Our Nation's ports are either their natural depth or a depth the Federal Government felt necessary and agreed to operate and maintain.

With the pending change in funding rules, principles of equity require our Nation's ports not to be compelled to pay for the maintenance of depths they were required to accept. After the enactment of this act, however, ports are clearly on notice that the funding rules of the game have been changed. They will have to pay their proportionate share of the improvement.

Changing the funding mechanism for deepwater port improvement projects is only one of the major conditions which any port improvement legislation must address.

Equally important is reform which will mandate expedited permitting, congressional authorization, environmental review and judicial review processes.

The National Port and Navigation Improvement Act of 1981 would produce these absolutely necessary reforms and integrate them with a responsible funding mechanism.

One of the major delays in improving and maintaining our deepwater commercial ports is the environmental impact statement process.

My bill seeks to expedite this process on two levels—current maintenance programs, and new construction and maintenance programs.

To expedite current maintenance programs, the bill requires the Secretary of

the Army to submit to Congress within 1 year from the date of the enactment of this act a 5-year deep-draft commercial port maintenance program setting forth a schedule of required maintenance dredging projects.

The Secretary will submit, along with the required maintenance program, a programmatic environmental impact statement addressing the various implications and effects of a dredging program to maintain and improve our Nation's deepwater commercial ports.

To assist in the preparation of these documents for submission to Congress, the Secretary of the Army is to enter into memoranda of agreement with appropriate agency and department heads, within 180 days of enactment of this act, delineating the responsibilities of each and assuring timely interagency cooperation. The agreements will establish schedules and time limits for interagency review and comment—90 days for review of maintenance dredging projects and 270 days for review of federally authorized channel improvement projects. These time limits will not be extended.

Congress has 60 days from the time it receives both the maintenance program and the final environmental impact statement (EIS) to disapprove the documents by a joint resolution of disapproval.

If Congress does not disapprove the documents, the Secretary is authorized to undertake the maintenance projects outlined in the documents for a 5-year period.

The maintenance program can be reauthorized by the appropriate congressional committee at the end of the 5-year period by a resolution of approval.

The Secretary shall periodically submit to Congress any revision of an existing EIS of a navigation improvement project previously authorized by Congress within 30 days of the completion of such revision.

Likewise, the Secretary shall revise, maintain, and submit to Congress within 30 days of its completion a final EIS for any navigation improvement project in a deep-draft commercial port authorized by Congress on or after the date of enactment of the act.

The bill authorizes the Secretary of the Army to undertake new construction improvements in any deep-draft commercial port in the United States which meets a criteria test set forth in the bill on an expedited and priority basis.

The Secretary is authorized to undertake a new construction project if:

First, non-Federal interests enter into a cost-sharing agreement with the Secretary;

Second, the Secretary finds the project feasible on the basis of acceptable engineering standards and environmentally acceptable; and

Third, Congress passes upon a detailed application submitted by the Secretary covering the project.

The bill sets forth an expedited process for review and authorization of any new construction project.

The Secretary has 2½ years—from the time a sufficiently detailed application for a navigation improvement project from any deep-draft commercial port is received—to submit to Congress a document containing a feasibility study, EIS and survey report on the project.

The feasibility study and survey report should be completed within 1 year of receipt of the request calling for such study and report.

The EIS must be prepared by the Army Corps District Engineer within 18 months of receipt of a sufficiently complete proposal for such project by that port.

The Secretary shall submit a final EIS to Congress within 30 days of its completion and before there is any discharge of material from the construction of the projects.

The bill sets forth in detail the information to be contained in the EIS.

There shall be prepared and submitted to Congress an advanced engineering and design plan and work schedule for the project within 18 months of the date of submission of the feasibility study and survey report.

In the preparation of the EIS, feasibility study, survey report, the advanced engineering design plan, and work schedule, the bill requires the Secretary to implement procedural reform regarding interagency review, comment, and consideration of EIS to include:

First, consolidated Federal assessment and regulatory proceedings, that is, joint public hearings, and

Second, preparation of joint Federal and State environmental impact assessments and coordinated regulatory review of the projects on a concurrent basis.

The Corps of Engineers is designated the lead Federal agency for purposes of joint environmental assessment and coordinated regulatory review of these projects.

Congress has 60 days upon receipt of the final EIS, survey report, and feasibility study for a proposed project to disapprove a proposed project by a concurrent resolution of disapproval.

If Congress does not disapprove the project within the allotted time, it shall be a conclusive finding that:

First, the EIS is adequate according to law;

Second, the national interest for purposes of the Federal-consistency provisions of the Coastal Zone Management Act and other related Federal laws is met; and

Third, there is compliance with section 404 of the Water Pollution Control Act.

Shoreside facility permits receive the same fast-track treatment as navigation improvement projects under the bill. Shoreside facilities undergo the same delays incurred by navigation improvement projects and the act would alleviate this major problem.

Judicial review of the act and projects authorized under the act receives expedited treatment in accordance with the precedent enacted by the Trans-Alaskan Pipeline Act.

The adequacy of environmental impact statements approved by Congress during the project authorization, findings and determinations by Congress pursuant to title II of the act, and actions taken to carry out projects under the act are not subject to judicial review. However, claims alleging the act is invalid may be brought within 60 days following enactment. Claims alleging that an action implementing a project under the act would deny rights under the Constitution of the United States, or alleging that action is beyond the scope of authority conferred by this Act, may be brought within 60 days following the date of that action.

A claim not filed within the time limit will be forever barred.

The district court in which the project or action complained of is located shall have exclusive jurisdiction over the legal action. The judicial proceeding shall be heard in an expedited fashion taking precedence over all other matters on the docket. The court will not have jurisdiction to give any injunctive relief except in conjunction with a final judgment in a case involving a claim filed pursuant to the act.

Any review of a final judgment, decree or order of a district court may be had only upon direct appeal to the Supreme Court.

The Federal Government, before undertaking any construction project, must enter into a cost-sharing agreement with non-Federal interests whereby the non-Federal interests agree to pay not more than 40 percent of the cost of the project's construction within the life of the project, but not to exceed 50 years from the date the project is put into use, and 25 percent of the future operating and maintenance cost of the project over its life.

The cost-sharing agreement only applies to those projects begun after the enactment of this law.

The project may be financed by the Federal Government subject to normal interest rates and agreement to repay the agreed-upon cost-sharing amount, or it may be financed by other means.

The bill allows for each deep-draft commercial port to recover its reimbursement obligation in whatever manner it chooses. However, fees cannot be assessed to vessels owned and operated by the United States or any other nations which are not engaged in commercial service, or vessels used by a State or a political subdivision for noncommercial purposes.

This bill allows the Federal contribution—60 percent for construction, 75 percent for operation and maintenance—to be greater in certain circumstances.

When a natural disaster occurs, the act does not require non-Federal public bodies to contribute to the rehabilitation or maintenance of the port.

In cases where a non-Federal body agrees with the Federal Government to contribute 100 percent of the project's costs, the project may be acted upon without a requirement for any further congressional authorization under this act.

The bill will amend the Internal Revenue Code to all for tax-exempt bonds to be issued for deep-draft commercial port navigation improvement projects authorized under this bill.

Finally, the bill allows any projects which have been authorized by Congress

or are currently undergoing the authorization process to receive the benefit of fast-track procedures set forth under this law incorporating work that has already transpired under the project's application.

Mr. President, it is my belief that this bill, if enacted, will provide the remedies needed to make our ports acceptable for competitive world trade, while providing funding in a manner compatible to the administration's benefit-receiving/cost-sharing concept.

I am joined in this effort by Mr. HEFLIN, Mr. FORD, Mr. MATTINGLY, Mr. HUDDLESTON, Mr. ANDREWS, Mr. MURKOWSKI, Mr. RANDOLPH, Mr. HARRY F. BYRD, JR., Mr. STEVENS, Mr. DENTON, Mr. PACKWOOD, Mr. SPECTER, and Mr. SASSER.

Mr. President, before I close, I certainly want to acknowledge the very able assistance by a number of staff members on the drafting of this bill and the holding of the innumerable meetings over the past year. Mr. Roger Sindelar, formerly of my Senate office staff and now of the Senate Energy Committee staff, has acted as the manager on this project. I would like to pay special recognition to the Corps of Engineers which has assisted in the drafting of this bill.

Mr. President, I ask unanimous consent to have the bill printed in the RECORD.

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

S. 1389

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE: FINDINGS AND PURPOSES AND OBJECTIVES; DEFINITIONS

SEC. 101. This Act may be cited as the "National Port and Navigation Improvement Act of 1981".

SEC. 102. The Congress finds and declares that:

(a) Many of the nation's deep draft commercial ports of this nation serve vital and essential national and public interests of this country in—

(1) providing for the safe and efficient conduct of defense transportation essential to this country's national defense and free world security;

(2) providing for the continued conduct of national and international waterborne trade, commerce, and transportation, of coal, grain and other agricultural commodities, manufactured goods for exports, iron ore and other commodities necessary to the economic stability and well-being of this country, our balance of trade with other nations, and the value of our currency; and

(3) assisting in our national effort to achieve energy self-sufficiency and promote free world energy independence including efforts to expedite the development, transportation, and export of the abundant deposits of coal processed by this Nation.

(b) The operation, maintenance, and improvement of deep-draft commercial ports in the United States has traditionally been fostered and promoted through a partnership entered into between the federal government and the several states and ratified in the United States constitution, through which port development has been a jointly undertaken, shared responsibility, with the federal government improving and maintaining the navigability of ports and waterways and facilitating the safe and efficient movement of commerce through the provision of aids to navigation and other port-related services, and with the States, operating through commercial ports, providing necessary port facilities and shoreside improvements to accommodate foreign and domestic waterborne commerce.

(c) Recent technological improvements in vessel construction and cargo handling, with the objective of increasing productivity, efficiency, energy conservation and marine transportation, have been reflected in the substitution of larger, deeper draft vessels with shorter turn-around times, in bulk, break-bulk and container trade and the requirement for dedicated shore facilities, thereby necessitating increased capital investment and operating expenditures by the federal government and commercial ports for navigation improvements, expansion of port facilities, and extension of necessary port-related services.

(d) Many of the Nation's deep-draft commercial ports, because of the trend towards larger, deeper draft vessels are seriously inadequate (including lack of adequate channel depth and dimension, and maintenance thereof) to continue to serve vital and essential interests of this country as specified in Section 102(a) of this Act.

(e) It is in the national interest to assure that the Nation's deep-draft commercial ports are and remain adequate to serve and further the essential national interests specified in this Section 102(a) of this Act by enacting a process which expedites on a priority basis the authorization, funding and construction of federally-authorized navigation improvement and maintenance projects.

(f) Users or other beneficiaries of federal navigation improvement projects done on deep-draft commercial ports should pay for or share in the expenditures for such projects through a uniform and flexible cost sharing arrangement between the federal government and commercial ports of the costs of constructing & maintaining federally-authorized navigation projects and providing necessary port-related services.

SEC. 103. The purposes and objectives of this Act are—

(a) to enact a process to congressionally authorize navigation improvements of the Nation's deep-draft commercial ports on an expedited and priority basis, in accordance with the procedure set forth in Section 2 of the Act, at locations designated by the Secretary of the Army, acting through the Chief of Engineers, upon a determination by the Chief of Engineers that:

(1) the affected deep-draft commercial port serves vital and essential national and public interests of this Nation as specified in Section 102 of this Act;

(2) such deep-draft commercial port is inadequate to continue to serve such national interests without the undertaking of the proposed navigation improvement;

(3) the national interest would be served by the undertaking of the proposed navigation improvement on an expedited and priority basis; and

(4) the navigation improvement is economically justified, engineeringly feasible.

(b) to provide a uniform procedure for judicial review of the navigation improvements authorized by this Act, and of all actions taken pursuant to this Act (and all matters pertaining thereto).

(c) to expedite and facilitate applications for federal permits for construction and operation of related marine cargo handling facilities (and related access thereto) at the Nation's deep-draft commercial ports.

(d) to set forth the options and the extent to which the users or other beneficiaries of federal navigation improvements for waterway transportation in United States deep-draft commercial ports should pay for or share in the expenditures for such improvements and federal measures to insure such payment.

SEC. 104. As used in this Act, the term:

(a) "Deep-draft commercial port" means any ocean or Great Lakes port, or harbor, in the United States that is open to public navigation, has a federally authorized channel at least 24 feet in depth at mean low water, has associated access channels and berthing areas, and is subject to operation by a state port authority.

a State, a combination of states or political subdivisions of states, with a federally-authorized depth of 24 feet or greater, and associated access channels and berthing areas other than those administered by the Saint Lawrence Seaway Development Corporation.

(b) "Navigation Improvement Project" shall include only deep-draft commercial port activities, channel dredging activities and the disposal, containment, storage, handling, or other disposition of dredged material associated with such activities which are necessary to achieve the purposes and benefits of such dredging activities and policies and objectives of this Act.

(c) "Secretary" means the Secretary of the Army.

(d) "United States" and "State" include the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory and possession over which the United States exercises jurisdiction.

(e) "State Port Authority" means a state, a political subdivision of a state, or an authority established for the purpose of operating a deep draft commercial port, under an interstate compact or under a law or ordinance of, or a charter issued by, a state or political subdivision thereof.

(f) "Vessel engaged in foreign commerce" means any vessel over one thousand gross tons, documented under the laws of the United States or of any foreign nation, and operated in the foreign commerce of the United States.

(g) "Maintenance project" means any required operation and maintenance undertaken by, or contract to, the Secretary, or with the approval of the Secretary, of a federally authorized channel in a deep draft commercial port authorized by Congress to accommodate public navigation, prior to the date of enactment of this Act.

TITLE II—PRIORITY NAVIGATION PROJECTS

SEC. 201. Deep Draft Commercial Ports Maintenance Program.

(a) The Secretary of the Army, acting through the Chief of Engineers, in furtherance of the purposes of this Act, and taking into consideration, among other things, the findings, conclusions, and recommendations of the study directed by Section 158 of the Development Act of 1976 (P.L. 94-587), shall prepare, periodically revise and maintain, and submit to Congress within one year from the date of enactment of this Act, a deep draft commercial port maintenance program. The Maintenance program shall include a schedule of required maintenance dredging projects, including access channels and berthing areas maintained by non-federal agencies, for deep draft commercial ports authorized by Congress prior to, on, or after the date of enactment of this act, for the five year period following the submission of the program to Congress for approval or reapproval.

(b) In conjunction with the maintenance programs required by the previous subsection, the Secretary shall also prepare and submit to Congress, in cooperation with the Administrator of the Environmental Protection Agency, a programmatic environmental impact statement including, among other things:

(1) An analysis of the adequacy of U.S.

deep draft commercial ports to accommodate increasing import and export trade, particularly in dry-bulk commodities including, but not limited to, coal, grain, iron ore, phosphate, and other dry-bulk exports.

(2) The economic, social, and environmental costs and benefits associated with maintaining and improving, and from failing to adequately maintain and improve, deep draft commercial ports of the United States to accommodate rapidly expanding international trade.

(3) A cost-effective ranking of alternative means of dredge spoil disposal, taking into consideration, among other things, the findings and conclusions of the Dredged Material Research Program authorized by Section 123(1) of the Rivers and Harbors Act of 1970 (P.L. 91–611) including, but not limited to the following:

(i) upland disposal;

(ii) confined disposal;

(iii) wetland disposal, including use of environmentally acceptable mitigation measures and mechanisms for offsetting losses through habitat development or restoration;

(iv) open water disposal, including clean material capping, borrow pit disposal, splitside disposal, use of hyper saline basins, submarine canyons, and selective placement;

(v) creation of offshore islands;

(vi) deep ocean disposal.

(c) Not later than the one hundred-eightieth day after the date of enactment of this Act, the Secretary shall enter into memorandums of agreement (MOA) with the Administrator of the Environmental Protection Agency, encompassing the discharge of his duties under Section 404 of the Federal Water Pollution Control Act, as amended (33 USC 1344) and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 USC 1413) as they relate to the disposal of dredged and fill material into the navigable waters of the United States, including the territorial sea, and in ocean waters, at specified disposal sites by, or under contract to, the Corps of Engineers incident to the maintenance and improvement of federally-authorized channels in deep draft commercial ports of the United States authorized by this Act, and with the Secretaries of the Departments of Interior and Commerce, in the exercise of their comment, review, and recommending authority relating to the environmental aspects of the maintenance and improvement of federally-authorized channels in deep draft commercial ports of the United States authorized by this Act, conducted by, or under contract to the Corps of Engineers, under Section 102 of the National Environmental Policy Act of 1969 (42 USC 4332), the Fish and Wildlife Act of 1956 (70 Stat. 119; 16 USC 742(a)), the Fish and Wildlife Coordination Act of 1958 (72 Stat. 563; 16 USC 661) and other relevant federal laws. Those agreements shall be developed for the primary purpose of assuring, to the maximum extent practicable consistent with existing law, inter-agency coordination by the agreeing parties in the discharge of their respective statutory responsibilities in order to facilitate the timely conduct by the Corps of Engineers of required maintenance dredging of federally-authorized channels in deep draft commercial ports within the schedule required by subsection (a) of this section, and with the expedited and priority consideration of navigation improvement projects authorized by section 202(a) of this Act. These agreements shall contain, among other things, fixed schedules for interagency review and comment, and consideration of required maintenance dredging and navigation improvement projects, including necessary approval of dredged spoil disposal sites, and the imposition of fixed time limits for interagency review, including time limitations for maintenance dredging in deep draft commercial ports of ninety days, and for federally-authorized channel improvement projects of 270 days, which may not be extended.

(d) Commencing with the sixtieth calendar day following the receipt by Congress of the maintenance program required by subsection (a) and the final environmental impact statement required by subsection (b), unless the Congress disapproves of that program and final environmental impact statement by concurrent resolution within that period of time, and except as herein provided and subject to the requirement of section (e), the discharge of dredged or fill material as part of the maintenance of a federally-authorized navigation project in a deep draft commercial port, authorized prior to, on, or after the date of enactment of this Act, is not prohibited by or otherwise subject to the requirements under section 404 of the Federal Water Pollution Control Act, as amended (33 USC 1344), or a state program approved under that section, or under section 301(a) or 402 of that Act (except for effluent standards or prohibitions under section 307), and under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC 1413), if information of a clear and convincing character as to the effects of that discharge, including consideration of the guidelines developed under section 4044(b) of the Federal Water Pollution Control Act and the guidelines developed under section 103 of the Marine Protection, Research and Sanctuaries Act, is included in an environmental impact statement, or the modification of an existing environmental impact statement concerning a navigation improvement project previously authorized by Congress, submitted to Congress in accordance with subsection 404(r) of the Federal Water Pollution Control Act, and before the commencement or continuation of required maintenance dredging in that port, unless previously authorized by the Secretary acting under his section 404 or section 103 permit authority. The Secretary is authorized for a period of five years, subject to reapproval by Congress in the form of a resolution of approval by the Committee on Public Works and Transportation of the House of Representatives, or the Committee on Environment and Public Works in the United States, to undertake required maintenance dredging of federally-authorized channels, incorporating the approval of required maintenance dredging of related access channels and berthing areas undertaken by non-federal agencies, in deep draft commercial ports of the United States in accordance with existing law and the provisions of this Act.

(e) The Secretary shall prepare, periodically revise and maintain, and submit to Congress within thirty days of its completion any modification of an existing environmental impact statement for a navigation improvement project in a deep draft commercial port previously authorized by Congress, incorporating required maintenance dredging of federally-authorized channels, access channels and berthing areas maintained by non-federal agencies, subject to those reasonable conditions set forth in detail in the proposed modification, as the secretary determines to be necessary and economically feasible to protect, and or minimize harm to the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of incorporating specific mitigating conditions. Likewise, for any navigation improvement project in a deep draft commercial port subsequently authorized by Congress on, or after the date of enactment of this Act, the Secretary shall prepare, periodically revise and maintain, and submit to Congress within thirty days of its completion a final environmental impact statement in accordance with subsection 404(r) of the Federal Water Pollution Control Act, containing that additional information and subject to those additional requirements set forth in this subsection.

SEC. 202. Deep Draft Commercial Port Improvement.

(a) General authorization.

In furtherance of the purposes of this Act, the Secretary of the Army, acting through the Chief of Engineers, is authorized to undertake navigation improvements in any deep draft commercial port in the United States on an expedited and priority basis—

(1) which he determines to be engineeringly feasible and meets the requirements set forth under Section 103(a) of this Act, subject to the approval of Congress under subsection (d) and the imposition of a requirement pursuant to subsection (a)(2) for local cost-sharing in lieu of a requirement for the determination of the economic justification of that project and

(2) those improvements are undertaken pursuant to an agreement between the Secretary and non-federal interests providing for local cooperation for those improvements, and between the Secretary and that commercial port providing for local sharing of the costs of improving and maintaining federally-authorized channels in that port in accordance with Title III of this Act.

(b) Before making such a determination, the Secretary shall prepare, periodically revise and maintain, and submit to Congress within two and one-half years of the receipt by the Secretary of a sufficiently detailed application by any deep draft commercial port regarding a proposed navigation improvement project, an adequate decision document on an expedited priority basis including (1) the requirement for the District Engineer for the District in which that deep draft commercial port is located, to prepare and submit to Congress within one year of the date of receipt of such a proposal by the District Engineer, and without the necessity for further administrative review, a feasibility study and survey report, pursuant to a resoluton requesting such a study and report by either the Committee on Public Works and Transportation of the House of Representatives or the Committee on Environment and Public Works of the United States Senate. The Secretary is further authorized to prepare such a study and report subject to reimbursement for the costs of preparation of the study and report, by a deep draft commercial report without requirement for further congressional authorization or appropriation of funds for that purposes; (2) the requirement for the District Engineer to prepare an environmental impact statement on any proposed navigation improvement project in a deep draft commercial port, to be completed within eighteen months of the receipt by the District Engineer of a sufficiently complete proposal for such a project by that port. The Secretary shall submit a final environmental impact statement to Congress within thirty days of its completion and before the actual discharge of any dredged or fill material in connection with the construction of such a project. That statement shall include, among other things: (1) an analysis of the economic, social, and environmental costs and benefits associated with improving, or failing to improve the navigability of that port, in relation to expanding export trade, particularly in dry bulk commodities; (ii) a cost-effective ranking of alternative means of dredge, spoil disposal available to that port; and (iii) any reasonable mitigating conditions set forth in adequate detail, which the Secretary determines to be necessary and economically feasible to protect, or minimize harm to the environment except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental cost of incorporating those mitigating conditions and

(iv) evidence of compliance with the guidelines developed under section 404(b)(1) of the Federal Water Pollution Control Act, as amended (33 USC 1344(b)(1)) applicable to the discharge of dredged or fill material into the navigable waters of the United States, including the territorial sea, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 USC 1413), applicable to the discharge of dredged and fill materials into ocean waters.

(3) The preparation and submission to Congress for approval, within eighteen months of the date of submission of the feasibility study and survey report for a navigation improvement project previously directed by Committee resolution, an advanced engineering and design plan and work schedule for that project without requirement for the provision of an economic justification or for further administrative review of the construction plan for schedule for that project.

(c) In addition to those procedural requirements regarding interagency review, comment and consideration of the environmental aspects of navigation improvement projects in deep draft commercial ports authorized under this Act set forth in subsection 101(c), the Secretary shall implement such other procedural reforms in the nature of expedited and priority review of navigation improvement projects as will accomplish the purposes of the Act, including but not limited to: (1) the use of consolidated federal environmental assessment and regulatory proceedings, including the conduct of joint public hearings with other federal agencies under the Administrative Procedure Act (80 Stat. 378; 5 USC 551), as required; and (2) the preparation of joint federal and state environmental impact assessments and coordinated regulatory review of such projects on a concurrent basis under relevant federal and state law, with particular application to dry bulk export facilities constructed on or after the date of enactment of this Act and associated with navigation improvement projects authorized under this Act, located in or immediately adjacent to the navigable waters of the United States. The Corps of Engineers is designated the lead federal agency for purposes of such a joint environmental assessment and coordinated regulatory review of those projects.

(d) The absence of a concurrent resolution disapproval by the Congress within sixty days following the receipt of a final environmental impact statement, survey report and feasibility study for a navigation improvement project in a deep draft commercial port authorized under this Act, shall constitute a conclusive finding and determination by the Congress of: (1) the national interest for purposes of the federal consistency provisions of the Coastal Zone Management Act of 1972, as amended (86 Stat. 1280; 16 USC 1451) and other related federal laws; (2) the adequacy of the final environmental impact, which determination shall not be reviewable in any court of the United States or of any state, territory or possession of the United States, or of the District of Columbia; and (3) compliance with Section 404 of the Water Pollution Control Act as amended (33 USC 1344) and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 USC 1413).

(e) Any study concerning a deep draft commercial port navigation improvement project currently ongoing or completed upon the enactment of this Act may utilize all of the procedures to expedite the remaining steps leading to authorization and implementation as provided for in this Title. For these studies the authorization and implementation procedures as provided for in this Act shall utilize all of the work already completed for these studies at the date of the enactment of this Act.

SEC. 203. Deep Draft Commercial Port Shoreside Facility Permitting.

(a) The Secretary and the Chief of Engineers are directed to expedite and facilitate applications for federal permits for construction and operation of marine cargo handling facilities (and access thereto) at the Nation's deep draft commercial ports and to expedite decisions on such permit applications.

(b) The Secretary is authorized in expediting shoreside facility permits to implement the same procedures as set forth in sections 201(c) and 202(c) of the Act.

SEC. 204. Judicial Review.

Environmental impact statements for projects authorized by this Act, findings and determinations by Congress pursuant to Title II of this Act, and actions to carry out such projects shall not be subject to judicial review under any federal or state law except that (a) claims alleging the invalidity of this Act may be brought within sixty days following enactment and (b) claims alleging that an action to implement a project authorized under this Act would deny rights under the Constitution of the United States, or that an action is beyond the scope of authority conferred by this Act, may be brought within sixty days following the date of that action.

A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States District Court, for a district where the project or action complained of concerning a project is located. The district court shall have exclusive jurisdiction to determine that proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, or of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction over any such claim, whether in a proceeding instituted prior to, on, or after the date of enactment of this Act. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by that court. The court shall not have jurisdiction to grant any injunctive relief against any project, or Act complained of concerning a project authorized by this Act, except in conjunction with a final judgment in a case involving a claim filed pursuant to this Act. Any review of a final judgment, decree or order of such District Court may be had only upon direct appeal to the Supreme Court of the United States.

TITLE III—PRIORITY NAVIGATION PROJECT FINANCING

SEC. 301. Mandatory Local Cost Sharing for Navigation Improvement Projects.

(a) In furtherance of the purposes of this Act, the Secretary of the Army, acting through the Chief of Engineers, before constructing any navigation improvement project authorized by Congress prior to, on, or after the date of enactment of this Act, or approving such a project in, or proposed by, a deep draft commercial port of the United States, shall undertake such a project, or condition such approval, upon the agreement in writing between the Secretary and that port, or amendment of an existing agreement between the Secretary and that port providing for the undertaking of such a project subject to local cooperation, that the port shall agree to pay no more than forty per centum of the project construction cost including interest during construction, within the life of the project but in no event to exceed fifty years after the date the project becomes available for use, plus not more than twenty-five per centum of the future operating and maintenance cost of such a project over the life of the project in accordance with this title.

(b)(1) The requirement in this Act for non-federal reimbursement to the federal government for federal construction or rehabilitation expenditures by the Corps for improvements of deep draft commercial port navigation improvement projects applies to any construction, rehabilitation or alteration project for which initial construction funds are provided to the Corps after the enactment of this law.

(2) The entire amount of the federal construction or rehabilitation expenditures to be reimbursed pursuant to the requirements of this Act, including interest during construction, shall be reimbursed within the life of the project but in no event to exceed fifty years after the date the project becomes available for use, as determined by the Chief of Engineers. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of each construction advance shall be determined by the Secretary of the Treasury, taking into consideration the average market yields during the month preceding the fiscal year in which each advance is made on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the project.

(3) This Act shall not be construed to prohibit non-federal public bodies from securing financing through means other than provided for in this Act.

(c) The requirement in this Act for non-federal reimbursement to the federal government for federal operation and maintenance expenditures extends only to federal expenditures by the Corps for operation and maintenance of any construction, rehabilitation, or alteration project for deep draft commercial port navigation improvement projects for which initial construction funds are provided to the Corps on or after the date of enactment of this bill.

(d) Agreements with non-federal public bodies to carry out obligations required by this Act may relate the timing and extent of such obligations to projects or to separable units, features, or segments of such projects as the Chief of Engineers determines to be reasonable and otherwise within the requirements of this Act and the authorizations for the improvements concerned. Such agreements may reflect that they do not obligate future State legislative appropriations for their performance or payment when obligating future appropriations or other funds would be inconsistent with State constitutional limitations.

(e) (1) Upon enactment of this bill, and in accordance with the provisions of this section and regulations promulgated by the Secretary pursuant to this section, an affected non-federal public body may provide for the recovery of its reimbursement obligations pursuant to this Act (including its administrative expenditures incurred therefor) by the collection of fees for the use by vessels in commercial waterway transportation in deep draft commercial ports of the United States (or appropriate segments thereof) whose federal operation, maintenance, or improvement occasions the reimbursements required by the affected non-federal public body.

(2) For purposes of this section:

(a) The term "commercial waterway transportation" means any use of a vessel in any deep draft channel or deep draft commercial port as defined in this Act—

(i) in the business of transporting persons or property for compensation or hire, or

(ii) in transporting property in the business of the owner, lessee, or operator of the vessel.

(b) Fees are not authorized for collection for—

(1) vessels owned and operated by the United States or any other nation or political

subdivision thereof and not engaged in commercial service; or

(ii) vessels used by a State or political subdivision thereof in transporting persons or property in the business of the State or political subdivision.

(3) The Secretary, in consultation with the Secretaries of State, Commerce, Transportation, Treasury, Energy, and Agriculture, the Attorney General of the United States, and the Director of the Office of Management and Budget, may promulgate, and may from time to time revise, regulations and guidelines to govern the programs of non-federal fee collection that may be undertaken pursuant to the authority of this section.

SEC. 302. Federal Contribution for Deep Draft Commercial Port Navigation Improvement Project.

This Act shall not be construed to prohibit or otherwise interfere with any Department of the Army or other federal authority to operate, maintain, or improve any deep draft channel or deep draft commercial port of the United States for purposes of Coast Guard navigation requirements. Department of Navy transportation requirements, or any other national defense transportation requirements. Moreover, this Act shall not be construed to require any non-federal contribution for navigation costs allocable to national defense transportation requirements, or to vessels not engaged in commercial service. The Secretary, in consultation with other concerned agencies, shall establish cost allocation guidelines to carry out this section that shall designate a cost allocation of or for national defense and non-commercial purposes of sixty per centum for construction and seventy-five per centum for operation and maintenance of deep draft commercial port navigation improvement projects which are begun on or after the date of enactment of this bill, except where higher cost allocations may be warranted on a port-by-port basis. In cases where a natural disaster may occur at a deep draft commercial port which has undergone or was undergoing a navigation improvement project non-federal public bodies will not be required to contribute to the rehabilitation or maintenance required because of said disaster.

SEC. 303. No Federal Contribution for Deep Draft Commercial Port Navigation Improvement Project.

Provided that an appropriate non-federal public body agrees, without benefit of the financing available under Title III of this Act, to reimburse the federal government for all of its construction costs of a project on an annual basis during construction and to begin such reimbursements not later than one year after construction is initiated, the Secretary, acting through the Chief of Engineers, is authorized to study, design, construct, and rehabilitate such deep draft commercial port navigation improvement project of the United States as defined in section 104(a) of this Act, and to operate and maintain such channels and ports, at such depths and dimensions and with such dredged material disposal and other related facilities, as the Secretary determines to be justified to insure the safe and efficient conduct of national defense and commercial waterway transportation. Such improvements may be provided and maintained as a federal project pursuant to laws and policies then in existence and without a requirement for any further congressional authorization.

SEC. 304. Tax Treatment for Construction Projects.

Subparagraph (d) of section 103(b)(4) of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by inserting the words "deep draft commercial ports navigation improvement projects" before the period.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. Authorization of Appropriations.

There are authorized to be appropriated to the Secretary of the Army such sums as may be necessary to implement the purposes of this Act, those sums to remain available until expended without regard to fiscal year. Pending the appropriation of those sums, the Secretary of the Army, acting through the Chief of Engineers, may transfer, upon approval of the Committee on Appropriations, from existing Department of the Army (Corps of Engineers) civil appropriations, such sums as may be necessary for the immediate prosecution of feasibility studies and survey reports, environmental impact statements, and advanced engineering design, and other necessary studies, for navigation improvement projects authorized under this Act.

SEC. 402.

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

SEC. 403.

This Act shall not be construed as limiting the authority or function of any officer or agency of the United States under any other law or regulation which is not inconsistent with of in conflict with this Act. All laws, regulations, executive orders, or other authorities are hereby repealed to the extent inconsistent with or in conflict with the provisions of this Act.

SEC. 404.

Monies paid to the Secretary, pursuant to this Act, shall be deposited in the general fund of the Treasury. The Secretary shall report to the Congress on or before September 30, 1982, and annually before the start of each fiscal year thereafter, on the actual and anticipated receipts of the United States pursuant to this Act and the condition and operation of the cost recovery program required by this Act.

Mr. HEFLIN. Mr. President, I rise to join the distinguished Senator from Virginia in cosponsoring S. 1389. He has done yoeman's work in drafting this measure and should be congratulated on this as well as his initial work on The Ports and Navigational Improvement Act of 1980 which I also cosponsored. It is important that we realize the importance of ports in this country in relation to the Nation's overall economy and defense. The importance of ports is nothing new. From the founding of this country, ports were an essential building block of local, State, and regional economic development. They have been used by farmers, manufacturers, and others throughout the years to make America the leading trade nation in the world.

Overall it has been stated that one out of every seven jobs in U.S. manufacturing depends upon our export performance and that performance is dependent on the ability of U.S. seaports to handle their volume of U.S. foreign trade. This industry provides employment for 1,246,800 persons. In addition, the Commerce Department estimates that the present volume of U.S. import and export tonnage will double over the next 20 years to over 600 million tons annually.

The importance of our exports to the United States economically speaks for itself. Within this context two primary areas are coal and agricultural exports.

As we well know, coal is the energy source of the future. We can and, in fact, ought to supply a substantially large portion of the world's energy needs. It is predicted by the International Energy Agency that the United States will have to export 100 million tons of coal by 1990 and 300 million tons by the year 2000 to meet the world energy needs. While the United States exports approximately 70 million tons of coal this year, statistics show that we could produce at least another 100 million tons of coal per year if we had the capability to ship it.

American agriculture also plays a vital role in the foreign commerce of the United States. Figures released by the U.S. Department of Agriculture reveal that the United States exported $32 billion worth of farm products during the fiscal year 1979. U.S. agriculture imports for the same period totaled $16.2 billion, leaving a net gain of $15.8 billion to the United States balance of trade. Again, this is an area that will do nothing but increase.

I might add that these areas are not only important to the United States, but they are particularly important to the State of Alabama. Alabama has tremendous agriculture resources and nearly one-tenth of the coal in the United States is located here. Four of Alabama's major coal fields are located in the Tenn-Tom region and the life expectancy of Alabama's coal reserves is approximately 1,000 years. Needless to say, the State of Alabama will play a vital role in domestic coal and agriculture markets for many years to come.

Ports also play a vital role in our Nation's defense. In time of war the United States and its allied forces overseas without necessary port facilities would be isolated without supplies and reinforcements. Those of us who participated in World War II realize this importance. It is just as true today as it was then.

There is another more subtle area that affects our national defense. Our national security is only as strong as our energy security. Further, America's national security is dependent upon the collective energy security of our allies. Japan and NATO are as vulnerable as we are.

To the extent we are able to provide our allies with a reasonable reliable source of coal, they will become less vulnerable to economic and military blackmail by foreign energy suppliers. We must recognize that no greater threat to peace exists than the danger that is born of energy instability.

Now that we have established the importance of ports, the question arises as to whose responsibility it is to continue upgrading port facilities. Traditionally, this function has revolved around a partnership of Federal, State and local government, and private initiative. This partnership which was forged at the founding of this country has been one of long standing; yet, it has problems.

The U.S. seaports are in the midst of an extensive and expensive technological change. In this regard, the current upgrading and modernization of U.S. port facilities have severely taxed industry's financial resources, making them less

economically viable at a time when, as indicated, the Nation's overseas trade is expected to increase tremendously.

Ports are doing their part. They have made investments which have amounted to $2 billion in the past decade. Yet, over the next 10 years there is an investment of at least $10 billion which will have to be made and that is probably on the conservative side.

We must realize that American seaports are a source of considerable direct benefit to the Federal Government itself. In addition to the indirect revenue arising from port economic activity, the Federal Government in fiscal year 1978 collected $5.6 billion in customs duties and $12 million in vessel fees at U.S. ports. In contrast, expenditures by the Corps of Engineers for 1978 for operation and maintenance and construction of navigation projects came to only $410.4 million. In short, Federal port expenditures are but a fraction of U.S. revenue intake from port activities.

Compounding the problem is that higher costs, when passed along to the shippers, make American exports more costly in relation to those of other nations, thus weakening the overall ability of the United States to compete in world markets. We must be careful not to have such a severe deterioration in the port industry that the only way out would be a massive infusion of Federal funds. Such an outcome is clearly undesirable and we should all work together to prevent this from happening.

Because of the problems outlined earlier I join Senators JOHNSTON and WARNER in cosponsoring the Ports and Navigation Act of 1980, which was introduced in the last session of Congress. Our primary purpose in introducing the legislation was to generate discussion and comment in an attempt to get all parties concerned, as well as the administration and Congress to focus on this problem. We feel our desired purpose has been achieved. After reviewing the recommendations from private, public, congressional, and administration sources the legislation has been redrafted and is being introduced today.

This legislation will allow any of our Nation's deep-draft commercial ports to avail themselves of its provisions regardless of the type of cargo which is exported or imported from its facilities. This legislation is termed "The National Port and Navigation Improvement Act of 1981" and will provide the following:

First, funding mechanism for navigation improvement projects;

Second, favorable tax treatment for moneys expended by non-Federal sources for navigation improvement projects;

Third, expedited review of deep-draft commercial ports maintenance program;

Fourth, expedited process for navigation improvement projects;

Fifth, expedited environmental review of such projects;

Sixth, expedited congressional review of such projects;

Seventh, expedited judicial review of claims filed against such projects;

Eighth, automatic authorization for projects which receive no Federal contribution;

Ninth, expedited process for shoreside facility permitting, and

Tenth, advance moneys for feasibility studies, survey reports, environmental impact statements for advanced engineering design for such authorized projects while awaiting the congressional appropriations process.

While I am in support of the overall concept of this legislation and feel that we must move expeditiously, there is one aspect that has troubled me from the beginning which I still feel requires a lot of study. That is the funding problem.

This legislation calls for a cost sharing between Federal and non-Federal parties. It calls for at least 60 percent Federal funding for the construction of such projects and 75 percent Federal funding for operation and maintenance. We must study this aspect of the bill very carefully. We cannot penalize ports and make them noncompetitive both nationally and internationally through fees that would be collected. There are a number of questions that should be studied in this regard: whether or not all ports should share equally in the cost; whether these fees should be levied on all import and export tonnage with provisions to cover exports and imports shipped by Canadian and Mexican ports; whether or not the U.S. Customs, rather than the port organization should collect these moneys; and who should determine the assessment and cost-sharing fees? These and other areas concerning the funding should be carefully weighed and studied before legislation is passed.

As I have stated earlier ports are essential to the future competitiveness of this country and world market. This is the time for the public and private sector to work together for the common good of all America. Time is of the essence. The lead time in developing ports can be as much as 24 years. I firmly believe that working together we can devise a workable solution to this problem and pass legislation by both a short- and long-range plan for our Nation's ports.

I therefore, urge my colleagues to study this matter carefully, provide the necessary input and move as expeditiously and carefully as possible to insure the revival of our ports in such a way that we will maintain a competitive edge in the international markets.

Again I congratulate the distinguished Senator from Virginia for his work and vision in this area.

● Mr. HUDDLESTON. Mr. President, it is a distinct pleasure for me to join the distinguished Senator from Virginia in cosponsoring the Ports and Navigational Improvements Act of 1981. I believe that the Senator has done an outstanding job in assimilating into this bill the best of the many approaches which have been put forward to deal with a critical flaw in our Nation's transportation network. This flaw, the poor condition and lack of capacity in our Nation's ports, must be addressed soon. If not, one of the potentially most significant export markets, our Nation's domestic coal production, will be forced to radically reduce its expectations in a day when we are seeking in every way possible to promote the market for this valuable commodity. We simply cannot allow the bottlenecks in our transportation network to continue.

Having attempted to secure Federal assistance for the national problem of highway system inadequacy in carrying increasing amounts of domestic coal production, I can attest to the fact that securing favorable action on this legislation we present today will be a formidable task. However, as with the highway system this is a task that must be undertaken. The backup of coal cars in our port facilities graphically states the problem that we have today. Yet, the larger problem of no foreign markets for our coal because we cannot guarantee prompt and reliable delivery will be shown not in illustrative photographs but rather on the minus side of our balance of trade statements.

A clear example of what the extent of the problem could be lies in the current ongoing negotiation between Kentucky interests and the Italian Government for rather substantial amounts of Kentucky coal. It is my understanding the Italians have often stated that assured transportation is a vital factor in the successful conclusion of an agreement. Hopefully, our present transportation system is adequate to satisfy the needs of the Italians. I believe it is. However, in order for the projected coal export demands of future customers to be met, significant expansion of U.S. port capacity must take place.

The details of the process provided in the Ports and Navigational Improvements Act of 1981 have been clearly presented by the distinguished Senator from Virginia. I think it is important to note that this bill, in providing funding for navigational improvement projects, does not obviate any current environmental, congressional, judicial, or other review requirements. As the bill stresses, these reviews would merely be speeded up in order that port projects may be completed as rapidly as possible. Also, it should be understood that we are not talking about the Federal Government being the sole provider of construction and maintenance funds. Non-Federal parties are required to contribute to an extent which guarantees that the Federal Treasury will not be tapped to an unacceptable degree.

As I have stated time and time again with respect to inadequacy of the highways that carry our coal, what we have here is not a problem limited to the specific areas where the highways or in this case the ports are located. Rather, because our Nation's coal supply provides the entire country with untold benefits, the lack of port capacity is indeed a problem which the Federal Government has a very proper role in addressing.

I urge my colleagues to join with Senator WARNER, the other cosponsors, and me in taking prompt action on this most important legislation.●

● Mr. SASSER. Mr. President, I am pleased to join as an original cosponsor of S. 1389, a bill to expand U.S. port capacity so as to meet projected coal export demand. The bill addresses some of the most important problems which are currently limiting our coal export capacity.

Coal is America's most abundant energy resource. Moreover, America has more mineable coal reserves than any country in the world, with roughly one-third of the world's reserves lying beneath its soil. If studies are correct, and coal does become the world's growth fuel, the United States, with the largest known reserves, could become the world's prime exporter—the Saudi Arabia of coal.

In fact, we could probably be exporting more than 80 million tons of coal to overseas destinations this year if we had sufficient coal port capacity in the United States. I believe that the clear intentions of representatives of many foreign countries to use greater quantities of coal indicates to Congress that we must give legislative priority to expediting coal port improvements. Without these improvements, we will lose several million tons in overseas sales because our current transportation system cannot move coal out of the country efficiently enough. Current port congestion is turning away much of the future market.

This is not an easy task, though, Mr. President. There are many controversial issues which Congress must address, one of these being the issue of "user fees." I feel that such fees would be inconsistent with the purpose of the bill, that being to facilitate and encourage increased exportation of coal, and I hope that my colleagues in the Senate will join me in an effort to see that no fees are implemented which will afford unreasonable treatment to those who use our Nation's ports.

Worldwide, coal's future is bright, but there are important questions which Congress must address. In particular, the future demand for coal depends on our capability to address environmental concerns, the rate of growth in electricity demand and nuclear power capacity and, of course, the rate at which the coal transportation system can be improved.

Mr. President, coal is truly our most abundant energy resource. Government reports estimate that we have some 1.7 trillion tons of coal reserves with about one-fourth of this, or 435 billion tons, in the proven reserve category. Even with sharply expanded demand, we have reserves to last for hundreds of years.

Thus, although demand for coal in the United States increased sharply in 1979 and 1980, the U.S. coal-producing industry still has substantial excess productive capacity. Right now, we could be producing an additional 100 million tons of coal per year. In short, the United States has the ability to supply sharply expanded demands for coal, for both our domestic and export markets.

It does us little good, though, to produce all this coal, especially for a growing export market, unless it can be moved efficiently and quickly. The demand for our coal by foreign nations continues to rise, and by making the necessary improvements in our port systems, we can be guaranteed a large and growing share of the coal export market.

I am encouraged by the growing interest in Congress on this subject. I trust that the Environment and Public Works Committee will move expeditiously to consider S. 1389 and the other related coal ports bills that have been referred to the committee. It is time that the Congress stands foursquare behind sensible efforts to improve our coal export capacity.●

COMMERCIAL PORTS

Mr. FORD. I am pleased to join with my distinguished colleague from Virginia, Senator WARNER, and others in introducing this legislation to improve this country's deep-draft commercial port capability.

While this bill will benefit all of the Nation's deep-draft commercial ports, regardless of the type of cargo which is handled through its facilities, there is a critical need for eliminating the many obstacles and delays which have hindered much needed improvements to facilitate the increased demand for coal exports.

Last year, the Senate Energy and Natural Resources Committee conducted 3 days of extensive hearings at my request on the growing importance of coal in international trade.

The hearings focused on both the short- and long-term problems that must be resolved for the United States to accommodate any significant expansion in international coal trade. There is no question that this country has the coal to sell—but the ability to ship the coal to other continents in a timely, economical manner is where many uncertainties exist.

This constraint, if left unaddressed, could well prove to be the one factor which prevents a substantial increase in U.S. coal exports.

The legislation which we are introducing today would go a long way toward making it easier for deep-draft commercial ports to plan, finance, and complete much needed expansion and other improvements in a timely, orderly way.

All this would be accomplished without circumventing, thwarting or frustrating any current environmental, congressional, judicial, or other review requirements. It would merely provide for accelerated timetables so that the needed work could be finished in the shortest available time.

Let me just say, Mr. President, that as other countries turn more and more to coal as an alternative to Middle East oil, this country has the potential to contribute the greatest percentage to international exchange. By the year 2000, some expect that the United States will be producing and exporting between 137.8 and 220.5 million short tons of coal.

To move the projected tonnages, both exporting and importing nations will be required to upgrade ports to accommodate the much larger vessels that can carry significantly larger loads.

If these port improvements are not forthcoming, the United States can expect to lose much of the potential coal export market to nations such as Australia, Poland, South Africa, and the People's Republic of China.

Other coal-exporting nations are not waiting to put their house in order. One such example is South Africa's Richards Bay facility which is already much more advanced than any of this country's ports in its ability to handle large carriers.

So, Mr. President, I say that this legislation we are introducing today is vitally important, not for just coal, agricultural, and manufacturing, but all industries that are part of our international trade picture.

I hope that other Senators will take a close look at this legislation and recognize with us the need for prompt and favorable consideration of it.

● Mr. DENTON. Mr. President, the Ports and Navigation Improvement Act of 1981, would authorize channel-dredging to accommodate very large coal and grain vessels at several U.S. ports, including one from my own State of Alabama, the Port of Mobile. Mobile is now the ninth busiest seaport in the Nation. It is expected to play an even greater role after the Tenn-tom is completed.

The United States has reached a point in its history where major decisions, regarding the future of the country as a viable economic nation and dependable trading partner, must be made. If we are to take advantage of the current interest and future potential indicated by other nations in purchasing coal and grain from the United States, we must immediately formulate some hard and fast rules for development of our ports to fully capitalize on our future opportunities.

Expanding world coal and grain markets offer great opportunity to the United States. Exporting serves U.S. foreign policy goals by helping our allies reduce their dependence on OPEC energy supplies. It could mean substantial contributions to our international trade balance of payments as much as $16 billion by the year 2000. It would mean thousands of new jobs in the coal fields and supporting industries. Trade would increase national income and assist in greater tax revenues.

When foreign governments contract to buy U.S. coal and grain they analyze our ability to deliver the product, including such factors as labor dependability, our rail and water systems to transport, and our port handling capabilities.

The one restriction which comes to the forefront in most discussion is our Nation's bulk handling facilities, particularly at existing deep water ports.

We must help our Nation's foreign trade by insisting that American ports be dredged to 55 feet to handle supercolliers and grain carriers so that the United States can remain competitive in the world trade market.

A glance at any schedule of the U.S. merchant marine vessels will reveal a decrease in the number of ships from the previous year but an increase in the deadweight tonnage.

The administration and the 97th Congress must take prompt action to remedy our Nation's ports inadequacies to meet the projected world export shipping needs and demands. We can begin by passing intact, the Navigational Port and Navigation Improvement Act of 1981.

This new bill would call for at least 60 percent Federal funding for the con-

struction of such projects and 75 percent funding for operations and maintenance. Existing deep-draft commercial port depths would be grandfathered and would not be subject to operation and maintenance contribution.

The Navigational Port and Navigation Improvement Act of 1981 would remedy deficiencies affecting our Nation's ports in eight areas.

First, it would assist funding for navigation improvement projects.

Second, it would offer favorable tax treatment for money expended by non-Federal sources for navigation improvement.

Third, it would encourage an expedited review of deep-draft commercial ports maintenance programs.

Fourth, it would expedite the process for navigation improvements.

Fifth, it would expedite the environmental review of projects.

Sixth, it would expedite the judicial review of claims against such projects.

Finally, it gives automatic authorization for projects which receive no federal contribution.

It is an honor for me to be a cosponsor of Senator Warners' bill, Navigational Port and Navigation Improvement Act of 1981. I am deeply committed to the improvement of our ports and waterways and hope that the administration and this congress will pass this legislation, realizing that the improvement of our ports is an investment that will assure America's future in the world trading community and national security interests.●

DEPARTMENT OF STATE AUTHORIZATIONS, 1982 AND 1983

The PRESIDING OFFICER (Mr. SPECTER). Under the previous order, the Senate will now resume consideration of S. 1193, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 1193) to authorize appropriations for fiscal years 1982 and 1983 for the Department of State, the International Communications Agency, and the Board for International Broadcasting, and for other purposes.

The Senate resumed the consideration of the bill which had been reported from the Committee on Foreign Relations with amendments as follows:

S. 1193

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—DEPARTMENT OF STATE

SHORT TITLE

SEC. 101. This title may be cited as the "Department of State Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 102. (a) There are authorized to be appropriated for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law, the following amounts:

(1) For "Administration of Foreign Affairs", $1,318,754,000 for the fiscal year 1982 and $1,248,059,000 for the fiscal year 1983.

(2) For "International Organizations and Conferences", $523,806,000 for the fiscal year 1982 and $514,436,000 for the fiscal year 1983.

(3) For "International Commissions", $22,508,000 for the fiscal year 1982 and $22,432,000 for the fiscal year 1983.

(4) For "Migration and Refugee Assistance", $560,850,000 for the fiscal year 1982 and $467,750,000 for the fiscal year 1983, of which not less than $18,750,000 shall be made available only for the resettlement of Soviet and Eastern European refugees in Israel.

(b) Of the amounts authorized to be appropriated by section 102(a)(1) of this Act for the fiscal years 1982 and 1983, $2,085,000 shall be available for each such fiscal year only for expenses to operate and maintain consular posts at Turin, Italy; Salzburg, Austria; Goteborg, Sweden; Bremen, Germany; Nice, France; Mandalay, Burma; and Brisbane, Australia.

(c) Of the amounts authorized to be appropriated by section 102(a)(2) of this Act, $45,800,000 shall be available in fiscal year 1982 and $45,800,000 shall be available in fiscal year 1983 only for the Organization of American States for the payment of 1982 and 1983 assessed United States contributions and to reimburse the Organization of American States for payments under the tax equalization program to employees who are United States citizens.

(d) Of the amounts authorized to be appropriated by section 102(a)(4) of this Act, $1,500,000 shall be available in fiscal year 1982 and $1,500,000 shall be available in fiscal year 1983 only for the International Committee of the Red Cross to support the activities of the protection and assistance program for "political" detainees.

PALESTINIAN RIGHTS UNITS

SEC. 103. Funds appropriated under paragraph (2) of section 102 of this Act may not be used for payment by the United States, as its contribution toward the assessed budget of the United Nations for any year, of any amount which would cause the total amount paid by the United States as its assessed contribution for that year to exceed the amount assessed as the United States contribution for that year less—

(1) 25 percent of the amount budgeted for that year for the Committee on the Exercise for the Inalienable Rights of the Palestinian People or any similar successor entity), and

(2) 25 percent of the amount budgeted for that year for the Special Unit on Palestinian Rights (or any similar successor entity).

EX GRATIA PAYMENT

SEC. 104. Of the amount appropriated for the fiscal year 1982 under paragraph (1) of section 102 of this Act, $81,000 shall be available for payment ex gratia to the Government of Yugoslavia as an expression of concern by the United States Government for the injuries sustained by a Yugoslavia national as a result of an attack on him in New York City.

BILATERAL SCIENCE AND TECHNOLOGY AGREEMENTS

SEC. 105. In addition to the amounts authorized to be appropriated by section 102 of this Act, there are authorized to be appropriated to the Secretary of State $3,700,000 for the fiscal year 1982 and $3,700,000 for the fiscal year 1983 for payment of the United States share of expenses of the science and technology agreements between the United States and Yugoslavia and between the United States and Poland.

PASSPORT FEES AND DURATION

SEC. 106. (a) The first sentence of section 1 under the headings "FEES FOR PASSPORTS AND VISAS" of the Act of June 4, 1920 (22 U.S.C. 214), is amended to read as follows: "There shall be collected and paid into the Treasury of the United States a fee, prescribed by the Secretary of State by regulation, for each passport issued and a fee, prescribed by the Secretary of State by regulation, for executing each application for a passport.".

(b)(1) Section 2 of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 217a), is amended to read as follows:

"SEC. 2. A passport shall be valid for a period of ten years from the date of issue, except that the Secretary of State may limit the validity of a passport to a period of less than ten years in an individual case or on a general basis pursuant to regulation.".

(2) The amendment made by this subsection applies with respect to passports issued after the date of enactment of this Act.

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW AND THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

SEC. 107. Section 2 of the joint resolution entitled "Joint Resolution to provide for participation by the Government of the United States in the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law, and authorizing appropriations therefor", approved December 30, 1963 (22 U.S.C. 269g–1), is amended by striking out ", except that" and all that follows through "that year".

PAN AMERICAN RAILWAY CONGRESS

SEC. 108. Section 2(a) of the joint resolution entitled "Joint Resolution providing for participation by the Government of the United States in the Pan American Railway Congress, and authorizing an appropriation therefor", approved June 28, 1948 (22 U.S.C. 280k), is amended by striking out "Not more than $15,000 annually" and inserting in lieu thereof "Such sums as may be necessary".

PAN AMERICAN INSTITUTE OF GEOGRAPHY AND HISTORY

SEC. 109. Paragraph (1) of the first section of Public Resolution 42, Seventy-fourth Congress, approved August 2, 1935 (22 U.S.C. 273), is amended by striking out ", not to exceed $200,000 annually,".

INTERNATIONAL ORGANIZATIONS IN VIENNA

SEC. 110. Amend section 2 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e) by adding at the end thereof the following new subsection:

"(h) The President, by and with the advice and consent of the Senate shall appoint a representative of the United States to the Vienna office of the United Nations with appropriate rank and status who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. Such person shall, at the direction of the Secretary of State, represent the United States at the Vienna office of the United Nations, and perform such other functions there in connection with the participation of the United States in international organizations as the Secretary of State from time to time may direct.".

LIVING QUARTERS FOR THE STAFF OF THE UNITED STATES REPRESENTATIVE OF THE UNITED NATIONS

SEC. 111. Section 8 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e), is amended:

(1) by striking "the representative of the United States to the United Nations referred to in paragraph (a) of Section 2 hereof" and inserting in lieu thereof "the representatives provided for in Section 2 hereof and of their appropriate staffs", and

(2) by adding at the end thereof the following: "Any payments made by the United States Government personnel for occupancy by them of such leased or rented premises shall be credited to the appropriation, fund, or account utilized by the Secretary for

such lease or rental, or the appropriation, fund, or account currently available for such purposes."

SELECTIVE NONIMMIGRANT VISA WAIVER

SEC. 112 (a) Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end thereof the following new paragraphs:

"(9)(A) The requirement of paragraph 26(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly, in the case of an alien who—

"(i) is applying for admission as a nonimmigrant visitor for business or pleasure for a period not exceeding ninety days;

"(ii) is a national of a country which extends, or is prepared to extend, reciprocal privileges to citizens and nationals of the United States; and

"(iii) has been determined not to represent a threat to the welfare, safety, or security of the United States.

"(B)(i) For the period beginning on the effective date of this paragraph and ending on the last day of the first fiscal year which begins after the effective date of this paragraph, a country shall be considered to be within the purview of subparagraph (A)(ii) of this paragraph if, in the last fiscal year preceding the effective date of this paragraph such country had a nonimmigrant visa refusal rate, as determined by the Secretary of State in such manner as he shall by regulations prescribe, of less than 2 percent.

"(ii) For each fiscal year following the period specified in subparagraph (B)(i), a country considered to be within the purview of subparagraph (A)(ii) during such period shall not be considered to remain within the purview of subparagraph (A)(ii) unless, in the fiscal year immediately preceding such fiscal year, it had a rate of exclusion and withdrawal of application for admission and rate of violation of nonimmigrant status, as determined in both cases by the Attorney General in such manner as he shall by regulations prescribe, which did not exceed 1 percent. Determinations required by this subparagraph shall be made as soon as practicable after the end of each fiscal year.

"(iii) If, in any fiscal year following the period specified in subparagraph (B)(i), a country not previously considered within the purview of subparagraph (A)(ii) shall have a nonimmigrant visa refusal rate, as determined in the manner provided for in subparagraph (B)(i), of less than 2 percent, such country shall be considered to be within the purview of subparagraph (A)(ii) for the next following fiscal year and shall thereafter be treated in the manner specified in subparagraph (B)(ii).

"(C) Notwithstanding the provisions of subparagraph (A) and (B) of this paragraph, no alien shall be admitted without a visa pursuant to this paragraph if he has previously been so admitted and failed to comply with the conditions of his previous admission.".

(b) Section 214(a) of the Immigration and Nationality Act (8 U.S.C. 1184(a)) is amended by changing the period at the end thereof to a colon and by adding thereto the following: Provided, That no alien admitted to the United States without a visa pursuant to section 212(d)(9) shall be authorized to remain in the United States as a temporary visitor for business or pleasure for a period exceeding ninety days from the date of his admission.".

(c) Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)) is amended to read as follows:

"(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 210(b)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; (3) an alien admitted in transit without visa under section 212(d)(4)(C); or (4) an alien admitted as a temporary visitor for business or pleasure without a visa under section 212(d)(9).".

(d) Section 248 of the Immigration and Nationality Act (8 U.S.C. 1258) is amended by inserting after the word "except" the following: "an alien admitted as a temporary visitor for business or pleasure under section 212(d)(9),".

BUYING POWER MAINTENANCE FUND

SEC. 113. (a) Section 24(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696(b)), is amended to read as follows:

"(b)(1) In order to maintain the levels of program activity provided for each fiscal year by the annual authorizing legislation for the Department of State, no less than $20,000,000 of the fund authorized by section 102 may be used to offest adverse fluctuations in foreign currency exchange rates, or overseas wage and price changes, which occur after November 30 of the calendar year preceding the enactment of the authorizing legislation for such fiscal year.

"(2) In order to eliminate substantial gains to the approved levels of overseas operations, the Secretary of State shall transfer to the appropriation account established under paragraph (1) of this subsection such amounts in other appropriation accounts under the heading "Administration of Foreign Affairs" as the Secretary determines are excessive to the needs of the approved level of operations because of fluctuations in foreign currency exchange rates or changes in overseas wages and prices.

"(3) Funds transferred from the appropriation account established under paragraph (1) shall be merged with and be available for the same purpose, and for the same time period, as the appropriation account to which transferred; and funds transferred to the appropriation account established under paragraph (1) shall be merged with and available for the purposes of that appropriation account until expended. Any restriction contained in an appropriation Act or other provision of law limiting the amounts available for the Department of State that may be obligated or expended shall be deemed to be adjusted to the extent necessary to offset the net effect of fluctuations in foreign currency exchange rates or overseas wage and price changes in order to maintain approved levels.".

(b) Section 704(c) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1477b(c)) is amended by striking out "preceding" and inserting in lieu thereof "calendar year preceding the enactment of the authorizing legislation for such".

(c) Section 8(a)(2) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2287(a)(2)) is amended by striking out "preceding" in the first sentence and inserting in lieu thereof "calendar year preceding the enactment of the amendments to paragraph (1) which provide the authorization for such".

(d) The amendments made by this section shall take effect on October 1, 1981.

ASIA FOUNDATION

SEC. 114. In addition to the amounts authorized by section 102, $4.5 million is authorized to be appropriated in fiscal year 1982 for the Asia Foundation in furtherance of that organization's purposes as described in its charter. Such funds are to be made available to the Foundation by the Department of State in accordance with the terms and conditions of a grant agreement to be negotiated between the Department of State and the Asia Foundation. Funds appropriated under this section are authorized to remain available until expended.

INTER-AMERICAN FOUNDATION

SEC. 115. (a) Section 401(s)(2) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f(s)) is amended to read as follows:

"(2) There is authorized to be appropriated not to exceed $12,000,000 for the fiscal year 1982 to carry out the purposes of this section. Amounts appropriated under this paragraph are authorized to remain available until expended.".

(b) Section 401(h) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f(h)) is amended to read as follows:

"(h) Members of the Board shall serve without additional compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code, while engaged in their duties on behalf of the corporation.".

DEPENDENT TRAVEL

SEC. 116. (a)(1) The first sentence of section 5924(4)(B) of title 5, United States Code, is amended by striking out "American secondary or" and inserting in lieu thereof "American secondary education or, in the case of dependents of an employee other than an employee of the Department of State or the International Communication Agency, to obtain an American".

(2) Section 5924 of such title is amended—

(A) by inserting "(a)" immediately before the first sentence; and

(B) by adding at the end thereof the following:

"(b)(1) An employee of the Department of State or of the International Communication Agency in a foreign area is entitled to the payment of the travel expenses incurred by the employee in connection with the travel of a dependent of the employee to or from a school for the purpose of obtaining an undergraduate college education.

"(2) Paragraph (1) shall apply—

"(A) to two round trips each calendar year, and

"(B) to travel expenses which—

"(i) are extraordinary and necessary expenses incurred in providing adequate education for such dependent because of the employee's service in a foreign area or areas, and

"(ii) are not otherwise compensated for.".

(b) The amendments made by subsection (a) shall take effect on October 1, 1981.

TITLE II—INTERNATIONAL COMMUNICATION AGENCY

SHORT TITLE

SEC. 201. This title may be cited as the "International Communication Agency Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 202. There are authorized to be appropriated for the International Communication Agency $561,402,000 for the fiscal year 1982 and $482,340,000 for the fiscal year 1983 to carry out international communication, educational, cultural, and exchange programs under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, and Reorganization Plan Numbered 2 of 1977, and other purposes authorized by law.

CHANGES IN ADMINISTRATIVE AUTHORITIES

SEC. 203. (a)(1) Title III of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1451–1453) is amended—

(A) in section 301 by striking out "citizen of the United States" and inserting in lieu thereof "person"; and

(B) in sections 302 and 303 by striking out "citizen of the United States" and inserting in lieu thereof "person in the employ or service of the Government of the United States".

(2) Such title is further amended—

(A) in section 301—

(i) by striking out "Secretary" the first place it appears and inserting in lieu thereof "Director of International Communication Agency", and

(ii) by striking out "Secretary" the second place it appears and inserting in lieu thereof "Director"; and

(B) in section 303 by striking out "Secretary" and inserting in lieu thereof "Director of the International Communication Agency".

(3) Section 302 of such Act is amended—

(A) in the second sentence by striking out "section 901(3) of the Foreign Service Act of 1946 (60 Stat. 999)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980"; and

(B) in the last sentence by striking out "section 1765 of the Revised Statutes" and inserting in lieu thereof "section 5536 of title 5, United States Code".

(b) Section 802 of such Act (22 U.S.C. 1472) is amended—

(1) by inserting "(a)" immediately after "SEC. 802."; and

(2) by adding at the end thereof the following new subsections:

"(b)(1) Any contract authorized by subsection (a) and described in paragraph (3) of this subsection which is funded on the basis of annual appropriations may nevertheless be made for periods not in excess of five years when—

"(A) appropriations are available and adequate for payment for the first fiscal year; and

"(B) the Director of the International Communication Agency determines that—

"(i) the need of the Government for the property or service being acquired over the period of the contract is reasonably firm and continuing;

"(ii) such a contract will serve the best interests of the United States by encouraging effective competition or promoting economies in performance and operation; and

"(iii) such method of contracting will not inhibit small business participation.

"(2) In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be canceled and any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

"(3) This subsection applies to contracts for the procurement of property or services, or both, for the operation, maintenance, and support of programs, facilities, and installations for or related to radio transmission and reception, newswire services, and the distribution of books and other publications in foreign countries.".

(c) Paragraph (16) of section 804 of such Act (22 U.S.C. 1474(16)) is amended by inserting "and security vehicles" immediately after "right-hand drive vehicles".

(d) Title VIII of such Act (22 U.S.C. 1471–1475b) is amended by adding at the end thereof the following new section:

"ACTING ASSOCIATE DIRECTORS

"SEC. 808. If an Associate Director of the International Communication Agency dies, resigns, or is sick or absent, the Associate Director's principal assistant shall perform the duties of the office until a successor is appointed or the absence or sickness stops.".

(e) Paragraphs (18) and (19) of section 804 of such Act (22 U.S.C. 1476 (18) and (19)) are amended—

(1) by striking out "and" at the end of paragraph (18); and

(2) by striking out the period at the end of paragraph (19) and inserting the following: "; and

"(20) purchase motion picture, radio and television producers' liability insurance to cover errors and omissions or similar insurance coverage for the protection of interests in intellectual property.".

(f) Section 1011 of the United States Information and Educational Exchange Act of 1948, as amended, is amended by adding at the end thereof the following new subsection:

"(i) Foreign currencies which were derived from conversions made pursuant to the obligation of informational media guaranties and which have been determined to be unavailable for, or in excess of, the requirements of the United States and transferred to the Secretary of the Treasury, shall be held until disposed of, and any dollar proceeds realized from such disposition shall be deposited in miscellaneous receipts. As such currencies become available for such purposes of mutual interest as may be agreed to by the governments of the United States and the country from which the currencies derive, they may be sold for dollars to agencies of the United States Government.".

(g) Title VIII of the United States Information and Educational Exchange Act of 1948, as amended, is revised by the addition of the following section:

"SEC. 809. Cultural exchanges, international fairs and expositions, and other exhibits or demonstrations of United States economic accomplishments and cultural attainments provided for under this Act or the Mutual Educational and Cultural Exchange Act of 1961 shall not be considered "public work" as that term is defined in section 1 of the Defense Base Act, as amended (section 1651(b) of title 42 of the United States Code).".

LIQUIDATION OF THE INFORMATIONAL MEDIA GUARANTY FUND

SEC. 204. Section 1011(h) of such Act (22 U.S.C. 1442(h)) is amended by adding at the end thereof the following new paragraph:

"(4) Section 701(a) of this Act shall not apply with respect to any amounts appropriated under this section for the purpose of liquidating the notes (and any accrued interest thereon) which were assumed in the operation of the informational media guaranty program under this section and which were outstanding on the date of enactment of this paragraph.".

INTERNATIONAL EXCHANGES AND NATIONAL SECURITY

SEC. 205. (a) Congress finds that—

(1) United States Government sponsorship of international exchange-of-persons activities has, during the postwar era, contributed significantly to United States national security interests;

(2) during the 1970's, while United States programs declined dramatically, Soviet exchange-of-persons activities increased steadily in pace with the Soviet military buildup;

(3) as a consequence of these two trends, Soviet exchange-of-persons programs now far exceed those sponsored by the United States Government and thereby provide the Soviet Union an important means of extending its worldwide influence;

(4) the importance of competing effectively in this area is reflected in the efforts of major United States allies, whose programs also represent far greater emphasis on exchange-of-persons activities than is demonstrated by the current United States effort; and

(5) with the availability of increased resources, the United States exchange-of-persons program could be greatly strengthened, both qualitatively and quantitatively.

(b) It is therefore the sense of Congress that—

(1) United States exchange-of-persons activities should be strengthened;

(2) the allocation of resources necessary to accomplish this improvement would constitute a highly cost-effective means of enhancing United States national security; and

(3) because of the integral and continuing national security role of exchange-of-persons programs, such activities should be accorded a dependable source of long-term funding.

(c) Beginning in fiscal year 1982, exchange-of-persons programs administered by the International Communication Agency shall, over a four-year period, be expanded to a level, in real terms, three times that in effect on the date of the enactment of this Act.

TITLE III—BOARD FOR INTERNATIONAL BROADCASTING

SHORT TITLE

SEC. 301. This title may be cited as the "Board for International Broadcasting Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 302. There are authorized to be appropriated for the Board for International Broadcasting $98,317,000 for fiscal year 1982 and $98,317,000 for fiscal year 1983.

ADDITIONAL FUNDING

SEC. 303. Notwithstanding the provisions of section 8b of Public Law 93–129, not to exceed $6,195,000 of the gain realized during fiscal year 1981 through upward fluctuations in foreign currency exchange rates shall be made available to compensate for losses incurred as a result of the bomb explosion at RFE/RL, Inc., Munich headquarters on February 21, 1981, and for additional RFE/RL, Inc., operating expenses as might be deemed appropriate.

MERGER OF THE BIB AND THE RFE/RL BOARD

SEC. 304. Section 4 of the Board for International Broadcasting Act of 1973 is amended as follows:

"(c) Beginning January 1, 1982, no grant may be made under this Act unless the certificate of incorporation of RFE/RL, Inc., has been amended to provide that—

(1) the Board of Directors of RFE/RL, Inc., shall consist of the members of the Board for International Broadcasting and of no other members; and

(2) such Board of Directors shall make all major policy determinations governing the operation of RFE/RL, Inc.; and shall appoint and fix the compensation of such managerial officers and employees of RFE/RL, Inc., as it deems necessary to carry out the purposes of this Act.".

TITLE IV—ARMS CONTROL AND DISARMAMENT AGENCY

SHORT TITLE

SEC. 401. This title may be cited as the "Arms Control and Disarmament Agency Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 402. Section 49(a) of the Arms Control and Disarmament Act (22 U.S.C. 2589(a)) is amended to read as follows:

"SEC. 49. (a) To carry out the purposes of this Act, there are authorized to be appropriated—

"(1) for the fiscal year 1982, $18,268,000 and such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs, and to offset adverse fluctuations in foreign currency exchange rates, and

"(2) for the fiscal year 1983, such sums as may be necessary to carry out the purposes of this Act.

Amounts appropriated under this subsection are authorized to remain available until expended.".

SECURITY CLEARANCES

SEC. 403. Section 45(a) of the Arms Control and Disarmament Act (22 U.S.C. 2585(a)) is amended by inserting the following new sentence after the second sentence thereof: "In the case of persons detailed

from other Government agencies, the Director may accept the results of full field background security and loyalty investigations conducted by the Defense Investigative Service or the Department of State as the basis for the determination required under this subsection that the person is not a security risk or of doubtful loyalty.".

ANTISATELLITE ACTIVITIES

SEC. 404. Section 31(b) of the Arms Control and Disarmament Act (22 U.S.C. 2571) is amended by striking the "," and inserting the following phrase: "and of all aspects of anti-satellite activities;".

TITLE V—MISCELLANEOUS PROVISIONS

REPEALS; TECHNICAL AMENDMENTS

SEC. 501. (a) The following provisions of law are repealed:

(1) Section 408 of the Act entitled "An Act to authorize appropriations for fiscal years 1980 and 1981 for the Department of State, the International Communication Agency, and the Board for International Broadcasting", approved August 15, 1979 (22 U.S.C. 287c note).

(2)(A) Section 121(b) (22 U.S.C. 1175 note),

(B) section 122(b) (22 U.S.C. 2280 note),

(C) section 203 (22 U.S.C. 1461–1 note),

(D) section 504(e) (22 U.S.C. 2656d(e)),

(E) section 601(b) (92 Stat. 985),

(F) section 603(c) (22 U.S.C. 2656 note),

(G) section 608(c) (22 U.S.C. 2656d note).

(H) section 609(c) (92 Stat. 989),

(I) section 610(c) (22 U.S.C. 2151 note),

(J) section 611(b) (22 U.S.C. 1731 note),

(K) section 613(b) (22 U.S.C. 2370 note),

(L) section 705(a) (22 U.S.C. 2151 note),

(M) section 709 (22 U.S.C. 2151 note), and

(N) section 711 (22 U.S.C. 2220a note), of the Foreign Relations Authorization Act, Fiscal Year 1979.

(3)(A) Section 107(b) (91 Stat. 846),

(B) section 109 (a)(7) (22 U.S.C. 2384 note).

(C) section 414(b) (22 U.S.C. 1041 note),

(D) section 501 (91 Stat. 857),

(E) section 503(b) (91 Stat. 858),

(F) section 505 (22 U.S.C. 2151 note), and

(G) section 513 (19 Stat. 862), of the Foreign Relations Authorization Act, Fiscal Year 1978.

(4) Section 403 of the Foreign Relations Authorization Act, Fiscal Year 1977 (22 U.S.C. 2871 note).

(5) Sections 102(b) (89 Stat. 756) and 503(b) (89 Stat. 772) of the Foreign Relations Authorization Act, Fiscal Year 1976.

(6) Section 15 of the State Department/USIA Authorization Act, Fiscal Year 1975 (22 U.S.C. 2151 note).

(b)(1) The Foreign Relations Authorization Act, Fiscal Year 1979, is amended—

(A) in section 121, by striking out "(a)";

(B) in section 122, by striking out "(a)";

(C) in section 601, by striking out "(a)".

(D) in section 611, by striking out "(a)";

(E) in section 613, by striking out "(a)"; and

(F) in section 705, by striking out "(a)".

(2) The Foreign Relations Authorization Act, Fiscal Year 1978, is amended—

(A) in section 107, by striking out "(a)";

(B) in section 414, by striking out "(a)";

(C) in section 503, by striking out "(a)"; and

(D) in section 505, by striking out "(a)".

(3) The Foreign Relations Authorization Act, Fiscal Year 1976, is amended—

(A) in section 102, by striking out "SEC. 102. (a) Except as provided in subsection (b), no" and inserting in lieu thereof "SEC. 102. No"; and

(B) in section 503, by striking out "(a)".

Mr. STEVENS. Mr. President, I ask that the cloakrooms notify Senators that the Senate has resumed its consideration, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 72

Under the previous order, the Senate will now resume consideration of the amendment by the Senator from Minnesota (Mr. DURENBERGER).

Mr. DURENBERGER. Mr. President, as I indicated last evening, I have no further argument to make in favor of the amendment. I am not aware of anyone on this side of the aisle who does. At this time, I yield to the Senator from Vermont for whatever remarks he cares to make in addition to those he made last night.

Mr. LEAHY. Mr. President, I thank the Senator.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LEAHY. Mr. President, the discussions yesterday, which revolved primarily around procedural matters on this resolution, may have obscured some of the issues that we have before us. There is a great deal of concern and it is, I believe, bipartisan concern, as to the posture presented by the United States in its vote on the infant formula matter. The United States has an enviable record worldwide in efforts that it has made in combating hunger, in helping in refugee programs, and providing both medicine and food, not only within its own borders but without its borders, to Third World nations, emerging nations, wartorn nations, nations ravaged by natural disaster. These are items in the history of the United States which all of us, as Americans, can be extremely proud of.

That is why it is unfortunate that the United States voted as it did, for whatever reasons—technical or otherwise—to be the lone dissenting vote on the question of infant formula. That, really, is why I believe the other body, as well as this, has raised the issue as something to be discussed, debated, and voted upon in our respective bodies, to express a concern that the enviable U.S. record in these areas not be clouded or overcome by this one issue.

I think an example of it is the fact that there has been a great deal of discussion in newspapers throughout the United States, local newspapers that perhaps normally would be more involved in issues of the budget, either of their own State or of the Nation, their own local community, or in other national items. Let me read a few of those:

Tallahasssee Democrat—May 4, 1981:

The argument that any kind of marketing technique is acceptable to promote competition loses its effectiveness when manufacturers allow greed to become more important than their customers.

Journal of Commerce—May 7, 1981:

As a rule we are not overly enchanted with multilateral agreements or recommendations. . . . But if the United States abstains or votes no on the infant formula code, we believe that it will gain little and possibly lose much in its effort to restore U.S. credibility and influence with the developing world."

Chicago Sun-Times—May 12, 1981:

But now the U.S. delegation will withdraw support for the plan (code)—in effect, putting formula makers' profits before the health of Third World babies. It's a shameful switch.

Baltimore Sun—May 14, 1981:

That the administration instead is opposing the code makes it appear to be callous toward the welfare of infants in the Third World. . . . When they oppose the WHO code, the U.S. companies and the U.S. government appear to oppose a public health revolution which could yield immense benefits for the world's poor.

Washington Post—May 15, 1981:

The fact is that none of the administration's objections has anything to do with the health of babies. That is the sorry flaw in its handling of this issue.

Long Beach (Cal.) Press-Telegram—May 18, 1981:

But the "no" vote on the infant formula issue is a mistake. If the United States is alone in its "no" vote, or at best among the very few that vote "no" on this emotional issue, it will be marked as a nation that puts the interests of its own companies above concern for the nutritional needs and development of infants.

Lewiston (Idaho) Morning Tribune—May 19, 1981:

It is easy to understand why the proposed code would attract so much support. It is a recognition by a community of civilized nations that much harm has been done by aggressive baby food conglomerates who for years have been taking advantage of the huge third world market. It is harm that is measured not in dollars, but in human lives—babies' lives.

It is ironic, Mr. President, that at a time when this country and this Government have stated a great concern for the unborn of its Nation, when we have on the floor of the House and Senate legislation pending that does everything from trying to make a congressional determination of the ultimate theological question of when life begins, straight through, on an issue which could be considered as protective of human life as any in the world, the United States ends up in the unenviable position of appearing to be in favor of billions of dollars of profits for some of the multinational baby food manufacturers and not on the side of babies who will be using that formula.

It should not be forgotten, Mr. President, what we have here. We have a situation where the image of the Western World, the image of progress, the image of democracy, the image of civilization, is a baby bottle and baby formula. I do not think that it puts too fine a point on it, Mr. President, to say that in many areas of the world, the steps taken by some of these baby formula manufacturers are very much akin to drug peddlers and dope peddlers in this country—the free samples, the below-cost items.

Is it any more sinister to get somebody hooked on a narcotic habit in this country, that they cannot afford and cannot sustain but cannot live without, than to convince mothers in a country where there is a lack of pure water, lack of normal sanitation methods, to stop the traditional methods of breast feeding, certainly proved throughout eons of time,

through our whole evolutionary process, a safe hygienic method of feeding their children? Instead, to be telling them that they must stop and it is an irreversible stop—biology is biology. Once stopped, you do not start up again.

The formula companies say, "Take this free sample of baby formula. Start with that." What happens within a month or 2 months when the free samples run out?

Many times, in many of these countries, it is necessary to spend as much money for formula as a family normally would spend on food for the whole family.

We have come to a time when the symbol of Western development is the baby bottle. It makes no difference, then, what is put into the bottle, whether it is water that is contaminated, filthy and dirty, swimming with germs; whether it is an improperly diluted formula; whether it is a formula that has been exposed to every kind of unsanitary situation. That is what goes into it, because, by God, it is Western development. "We are coming into the free world by using this bottle."

I referred yesterday to the testimony of one of the missionary nuns who worked with those in a Third World country. She talks about the baby bottle costing nearly a month's salary or a month's income of a family. The bottle was fetid, putrid, black, dirty, crawling with bugs. It is that western baby bottle.

The mother's children are being fed with that bottle because, after all, the glossy, colorful ads showed that this is the modern way and this is the way to have healthy children. Yet, family after family would wonder why child after child would die.

We are talking about baby formulas going into countries where children are not even recorded—their births are not recorded, many times, for months and months, because so many of them die.

Again, I would refer to the many editorials on this issue—from all over the country.

The New York Times of May 19, 1981, said:

There thus appears no reason to cast the United States as the enemy of mothers and babies. It is unwise to contend that every society should observe American styles of commerce. And if there are wrong-headed provisions or precedents in such a code, they will be much better dealt with country by country, by an American Government that shows itself sympathetic to the most elementary concerns of others.

Washington Star, May 18, 1981:

The U.S. is isolating itself from a consensus that it is merely silly to blame on a malicious anti-capitalist cabal, and also exposing itself to a charge of bad faith.

Baltimore News American, May 19, 1981:

Let us hope the Reagan administration realizes the damage it proposes to do, changes its mind and decides to vote with an eye toward the well-being of hundreds of thousands of infants, and not in keeping with the wishes of a powerful industry.

St. Louis Post-Dispatch, May 20, 1981:

The no vote by the U.S. is a sorry commentary on the country's concern for the health of infants everywhere.

Milwaukee Journal, May 20, 1981:

The Reagan administration should take its anti-regulation bias off the backs of babies in Third World countries.

Columbus (Ga.) Ledger, May 20, 1981:

Maybe the Reagan administration next will announce that the U.S. Justice Department has no right to interfere with the marketing and sale of heroin because it interferes with the free enterprise system. That would surprise us, but not much.

Raleigh News & Observer, May 20, 1981:

The Reagan administration will send a callous message to poor countries if it votes against a proposed international advisory code of ethics for the marketing of infant formula.

Miami News, May 20, 1981:

The risk of course involves far more than how the world views the United States. The lives of children are at stake—and the Reagan administration would be both wise and humane if it changed its mind. And instead of accepting the resignations of Babb and Joseph it should give them large raises.

Fort Wayne Journal-Gazette, May 20, 1981:

But whether it stems from tortured reasoning or behind-the-scenes lobbying, the administration's opposition to the proposed WHO code could mean death for Third World infants whose mothers are encouraged to feed them easily contaminated formula rather than breast-feeding them.

Vancouver (Wash.) Columbian, May 20, 1981:

The ethics of a public policy that puts corporate profits before infant starvation are questionable, indeed.

Oskaloosa (Iowa) Herald, May 21, 1981:

We say human beings and the preservation of health and life are more important goals.

Hartford Courant, May 21, 1981:

The code, which the Reagan administration opposes for ideological reasons, is only a partial but necessary step toward protecting the health and welfare of mothers and children.

Conway (Ark.) Log Cabin Democrat, May 21, 1981:

America, the world's leader in sharing its medical knowledge, equipment and personnel with other nations, got a black eye with this vote.

Minneapolis Tribune, May 21, 1981:

But potential health benefits from application of the code outweigh its bureaucratic drawbacks.

San Francisco Examiner, May 22, 1981:

It's saddening that the government has given, for no good reason, adversaries of this country an emotional club with which to beat us over the head. Even if it happened to cost us something (which it wouldn't), we need to show a good deal more concern on this question, and reverse our national position.

Marshall (Minn.) Independent, May 22, 1981:

Surely the Reagan administration is operating out of ignorance. Surely our president and other top government officials do not want to cast our country in the role of a child killer and, worse, one who does so for profit.

The Catholic Review, May 22, 1981:

Despite overwhelming evidence that such marketing practices by multi-national corporations like Nestle and Bristol-Myers are detrimental to the health of young children, the U.S. took the risk of destroying its own credibility on world health and trade circles.

South Bend Tribune, May 23, 1981:

No amount of explanation will erase the stigma of our vote. We are giving up world leadership for business reasons.

Fayetteville (N.C.) Observer, May 25, 1981:

Is the Reagan administration allowing the interests of big business to prevail over those of mothers and children? That is the smell of it.

Kansas City Times, May 25, 1981:

In failing to support a humanitarian World Health Assembly resolution favoring mother's breast milk as infant food at the expense of commercial substitutes, the United States shamed itself. Not only did it decline to stand beside 117 other nations of the world declaring concern for the dangers to children in underdeveloped countries posed by infant formulas, this administration served unqualified notice that it is not interested in being a symbolic moral leader.

Buffalo Evening News, May 26, 1981:

It is unfortunate that the Reagan administration found it necessary to cast a vote that unduly stressed legalistic issues to the exclusion of the health concerns involved in the infant formula debate. The decision . . . contributed nothing to the image of either the present administration or the nation.

Valley Advocate (Northampton, Mass.), May 27, 1981:

Shame seems often to be the underbelly of bravado. Yet, in the government's latest swagger before the world community there is a schism that is becoming familiar. Those who committed the indiscretion remain smug while the outcry of high-ranking, respected officials and our consciences reveal a depth of humiliation.

Bucks County (Penn.) Times, May 1981:

It is painfully obvious that decisions like this one will not endear the administration to the leaders of the world's underdeveloped nations. In some cases, our legitimate interests make it impossible to accommodate them. But the controversy over infant formula appears to be a case of the administration going out of its way to be insensitive to their concerns.

Philadelphia Inquirer, May 1981:

The controversy is literally a motherhood issue, and the White House has put the United States on the wrong side of it.

I will now refer to the testimony of Dr. Alan Jackson, who heads the Tropical Metabolism Research Unit at the University of the West Indies, in Kingston, Jamaica. Dr. Jackson states:

Studies that have been carried out [in Jamaica] over the last 12 years show that there is a consistent pattern of infant feeding. About 70 percent of the mothers start off by breast feeding their children. But from a very early age, they introduce their children to bottle feeding, complementary feeding, usually with a milk formulation.

Initially, widespread advertising, free samples, and the use of milk nurses encouraged this type of feeding practice. The government has been fairly active in Jamaica, and they have attempted to limit the extent of the advertising and the accessibility of milk nurses to government institutions. But this has had little effect on the established pattern.

Furthermore, the influence of the advertising and the milk nurses has been found to outlast the period of their physical presence, so that unless definitively and strongly advised otherwise, the mothers persist in a pattern of bottle feeding in subsequent pregnancies. And this is something that is asso-

ciated, in fact, with the ambivalence itself of health professionals who, themselves, have been courted by milk companies, and help to promote an undesirable practice of feeding.

Now, the average family income in Jamaica for a family of, say, five or six people is of the order of $16 to $20 a week. Now, to properly feed a four-month-old baby [with formula]—it is difficult to get an accurate figure, because they are having rising costs of living—but it is a minimum of $7 a week out of total family income of, say, $20 a week. Obviously, that is prohibitive.

Mr. President, I have a letter which was sent to me by Miss Linda Kelsey in connection with this matter. Miss Kelsey is probably best known to Americans for her brilliance as an actress. Many see her on television each week on the Lou Grant program, but I believe that those of us who have worked the most in this area know her for the unstinting effort she has given to this whole issue. In her letter, she speaks of a trip she made into India, Bangladesh, Malaysia, Hong Kong, and the Philippines. She says:

I feel very strongly that the U.S. Government should support the World Health Organization/UNICEF efforts to stop the unethical promotion of breast milk substitutes. I have just returned from seeing babies afflicted with "bottle baby disease" in five Asian countries where I talked with their suffering mothers, and learned from local health workers of the difficulties they have stopping the trend away from breast feeding. What I experienced has made me very angry because it is all so preventable. But to do so requires the voice of the powerful, such as yourself, defending the silent voices of the children.

I was asked to visit India, Bangladesh, Malaysia, Hong Kong, and the Philippines by the International Organization of Consumers' Unions; my visit was coordinated by the consumer societies of each nation. They asked me in the hopes that my public image as a "reporter on the Lou Grant Show" would help stimulate support for an issue only casually treated in the press.

James Grant, Director of UNISEF, has termed this the "silent catastrophe," because the babies suffer and die with no political voice. It is estimated that four million infants will die each year—11,000 per day—as the result of inappropriate bottle feeding. (In the five days since I've returned to the time I've written this letter, the number of babies who have died has surpassed the deaths of all Americans in the Vietnam war.) Having seen one baby in Bangladesh suffering so unnecessarily, multiplying these figures to global proportions staggers me.

I visited health clinics and hospitals, talked with front line health workers, with women's groups, consumer organizations, and government officials. They were shocked when I told them that the new Administration was contemplating a vote against the WHO/UNICEF code of marketing for breast-milk substitutes, to be debated at this months' World Health Assembly. I was very moved by their sense of abandonment, of the sense of helplessness that an underfunded health worker feels when faced with the powerful interests of large commercial firms. They expressed the need for the code to help right the imbalance, and help them attain the political force needed to protect their children from the unnecessary and dangerous use of breast milk substitutes.

They showed me the promotion stickers, free samples, and advertisements of the baby milk companies. I saw stacks and displays of baby milks in tiny stores—the most visible and prestigious products of a poor shop—next to open sewage and slum conditions which insured that the babies would only suffer, deprived of the protective qualities of their mother's milk. In one hospital I visited in the Philippines, infant formula companies' western dressed sales personnel were so common with their samples, gifts and posters, that upon entering, I was asked what milk company I represented!

The companies involved were, of course, American and Swiss. But also English, Dutch, Japanese and even Indian. I couldn't have imagined the intensity of competition until I saw huge billboards advertising milk products near the slums of Bangladesh, by so many firms.

I know that the advocates of breast feeding and the marketing code are being accused of being political. It's true, of course, and my trip has convinced me of this necessity. A powerful institution—much less the combined forces of over thirty large milk companies—cannot be changed without political intervention. But this is not an issue that splits on traditional conservative/liberal lines. Those who do so have not seen the babies, or the advertising in the most appalling circumstances—or are motivated purely by self-interest. We must act now to conserve our most valuable resource: the world's future citizens.

It is not a question of banning the use of infant formula, but of insuring its safe use. It is a case of developing guidelines that will make corporations responsible for controlling the advertising, marketing and promotion activities which in and of themselves, create a market in spite of public health considerations. The World Health Organization (consisting of 155 member nations) will undertake this responsibility this month at its Assembly in Geneva, through consideration of its code of marketing for breast milk substitutes.

I believe your efforts with Senate Resolution No. 111 are essential to protect millions of innocent children. I have written to your colleagues to urge them to support your efforts. On behalf of those I spoke with, I thank you for caring enough to commit yourselves to help at this time.

I am convinced that the U.S. will suffer great political damage if we are the only nation in the world—as we might well be—to vote against the code. After my visits, I know that it will be interpreted by people around the world that we are more concerned with the health of our industry than the health of children. This would be an insult to American ideals—and the very real feelings of American citizens who support this effort.

Sincerely,

LINDA KELSEY.

P.S.—I'm enclosing a xerox of an article that appeared in Asia Week while I was there. I think it shows the extent of interest and depth of feeling I found wherever I went.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which Miss Kelsey referred.

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

SABOTAGE: BREAST VS. BOTTLE: A NEW BATTLEFRONT

MELY, 19, feels sluggish and untidy as her visitor clucks greetings from the foot of the hospital bed. The "nurse" is matronly but trim, her uniform spotlessly white, her hair pulled smoothly back by an economic combination of tortoiseshell clasp and prim little bonnet. She slips the neat blue shoulder-bag over the bed rail and begins to fuss around Mely. Isn't Mely lucky to have an adorable new baby daughter? Is Mely sure she has enough breast-milk to keep the little one contented? Mely looks tired—babies can be so demanding. Has Mely heard about this amazing new milk developed by doctors in America and Europe where all babies are so healthy and strong?

YUE-LING, 27, worries that her 3-day-old son isn't getting enough milk from her swollen, aching breasts. The baby seems fretful and cries a lot; each feeding is becoming a trial for both mother and child. Yue-ling feels like weeping with relief when the firm but friendly young woman in the starched trouser-suit and sensible shoes explains how infant formula is scientifically designed by babycare experts for modern mothers.

RAJ, 36, listen thoughtfully as the impeccably groomed "nutritionist" goodhumouredly scolds him. His wife, trying to hush their 4-year-old son and suckle the new infant at the same time, calls irritably from the door of their two-room hut: breast-feeding may be a labour she snaps, but at least it is free. Raj sees her anger, her desperation, her rumpled and prematurely stooped figure. He hears the "nutritionist" chide him with happiness, convenience and science . . .

All over Asia, those scenes are being repeated thousands of times every day, with countless variations. Always, the aim is the same: to convince mothers that "infant formulas"—milk-substitute preparations made and aggressively marketed by multinational corporations—are better than mother's milk. Unfortunately, their claims are not true. In some instances, the claims and activities of infant formula manufacturers constitute crimes against Asia and against the developing world as a whole. Now, just when the international community has finally begun a concerted effort to combat the menace, the big companies are gearing for a counter-attack.

At the World Health Assembly in Geneva, Switzerland, next month, representatives of more than 150 countries will debate a code of ethics for the sale of infant formulas and other baby foods. The code was drafted by the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) following a joint meeting of these two agencies in Geneva in October 1979. Many infant-formula companies participated in the discussions that led to the drafting of the marketing code; they did so out of a sense of moral obligation, having studied the evidence that misuse of their products endangers the health and even the lives of millions of children around the world. Yet as the Geneva conference draws closer, some of those same companies are preparing to sabotage the code or dilute it so heavily that it will be virtually meaningless.

The reason for that scandalous about-face has nothing to do with health, science or modernity. It is pegged directly to politics or, more accurately, to the shift in American and West European politics. With the advent of the Reagan Administration, some of the manufacturers who previously cooperated with the U.N. agencies have begun to "sense an advantage," as one angry UNICEF topsider puts it. They have made it clear they intend to fight in Geneva next month by characterising the code as a "restraint on free trade." They intend to portray the code's provisions against misleading or ambiguous advertising as a violation of the U.S. Constitution's First Amendment, which protects freedom of speech and freedom of the press.

By such means, the companies plan to obscure the real purpose of the code, which seeks not to ban infant formula but to prevent or minimise its abuse through aggressive marketing. Those marketing efforts go far beyond simple advertising: most glaringly, they include the use of "milk nurses"—salespeople employed by the companies to push their products in hospitals, towns and villages. Because they appear to function in an official or semi-official capacity, and because they are often abetted by corrupt or ignorant hospital staffers, the hucksters have little difficulty winning over Mely and Yue-ling or fathers like Raj who want to make life easier for their wives.

At the core of the current debate is the incontrovertible and mounting evidence of much higher sickness and death rates among bottle-fed babies than among breast-fed youngsters. The evidence is most startlingly clear in terms of diarrhoeal diseases: bad water, dirty bottles and unsterilised teats cause diarrhoea. And since infant formula makes a big dent in family income, parents habitually dilute the product to make it last longer. Result: progressive malnutrition. James P. Grant, UNICEF's executive director, believes worldwide adoption of the marketing code "could save a million children a year now dying of diarrhoea and [the effects of] malnutrition." The infant-food industry, adds WHO Director-General Halfdan Mahler, is "morally obliged to change its practices."

Many women, for one reason or another, are not able to breast-feed; for them, infant formula—properly used—is a godsend. WHO and UNICEF don't dispute this. What they do dispute is marketing aimed at convincing mothers that infant formula is "almost as good," "as good" or "even better" than mother's milk. They also want to put a stop to marketing that suggests substitute milk products are "more convenient" and "more modern," a tactic favoured in developing and industrialised societies alike.

"Want to be a real hero?" asks an ad published by Mead Johnson & Co. of Evansville, Indiana. "Buy Mom a two-week supply of Enfamil Nursette infant formula. . . . She'll appreciate your gift [because] Nursette is easy to use—it means less work, more rest. . . . Isn't your wife's happiness worth it?" Yet the American Academy of Paediatrics is unequivocal in asserting that "breast milk is the best food for every newborn infant."

Mead Johnson is a wholly-owned subsidiary of Bristol-Myers Co. (annual sales: US $2.5 billion). Ross Laboratories, which makes Similac, is owned by Abbott Laboratories (annual sales: $1 billion). These two companies are said to hold about 90 percent of the infant formula market in the U.S. Along with a third, American Home Products Corp., they have begun intensive lobbying in Washington to persuade American politicians to oppose the marketing code.

Those companies had previously supported the draft code; now, conscious that a Republican government is much more inclined to leave big business alone, they are reneging. The draft, they claim, is a "serious distortion of the original intent"—a charge that leaves WHO and UNICEF officials blinking in amazement. "They helped write it!" exclaims one.

From the outset, some other manufacturers actively opposed the international agencies efforts to draw up a code. One of them was the giant Swiss-based food corporation Nestlé, whose products are familiar in many Asian countries. Nestlé tried to skirt the issue, say UNICEF sources, by "insisting that it had never said breast milk wasn't best, by claiming that its products have improved baby nutrition in developing countries, by saying it doesn't advertise infant formula in poorer countries, and so on." Unfortunately for Nestlé, those lofty claims are easily brought down to earth:

Claim: "Nestlé actually encourages breast-feeding." Fact: While the company's products do carry the advice that "Breast-feeding is Best," Nestlé's promotional and marketing techniques effectively spread the opposite message. Through doctors, midwives and the mothers themselves, Nestlé clearly encourages the use of infant formula—hardly surprising, since it makes the stuff. The Interfaith Centre on Corporate Responsibility (ICCR), an activist wing of the National Council of Churches in the U.S., quotes a letter from a Nestlé "medical representative" who said her main responsibility "is to promote the Nestlé infant formula products" by visiting "people in the medical profession who are directly in contact with infants." In return for infant-formula samples, she wrote, "the recipients would of course recommend, in one way or another, Nestlé formulas."

Claim: Nestlé does no consumer advertising of infant-formula products in developing countries." Fact: While Nestlé supposedly ordered a halt to all such advertising in July 1978, it promoted formula to mothers at a baby show in Malaysia in October 1978. Formula promotion calendars were distributed by Nestlé in Indonesia in 1979.

Last month, a well-known European expert on child nutrition announced that he was quitting his post as consultant to a Nestlé subsidiary because of Nestlé's activities in developing countries. In a letter to the British medical journal The Lancet, Dr. Stig Sjölin of Sweden's Uppsala University Hospital declared: "Despite sharp and well-founded criticism from a number of organisations and individuals over the years, Nestlé has shown little interest in changing its attitudes and marketing policies." He added: "Nestlé, in its obstinacy, has even joined forces with other large manufacturers of breast-milk substitute—not, as is now clear, to establish rules of conduct that would protect child health, but to defend the manufacturers' activities and to protect their own economic interests."

The 1979 WHO/UNICEF meeting was attended by government representatives from eighteen countries including India, Japan, Malaysia, New Zealand, Papua, New Guinea, the Philippines, the U.S. and Britain. Also among the participants were experts from U.N. and other agencies such as the Food & Agriculture Organisation (FAO), the World Bank's Rural Development Department, the International Labour Organisation (ILO), the U.N. Conference on Trade & Development (UNCTAD), the U.N. Fund for Population Activities (UNFPA), the World Food Programme and the U.N. Industrial Development Organisation (UNIDO). Among the participants from the infant-formula industry itself were executives from Bristol-Myers, Mead Johnson, Abbott, Wyeth and Gerber (U.S.), Friésland and Nutricia (Holland), Dumex (Denmark), Meiji Milk Products and Snow Brand (Japan) and Nestlé (Switzerland). At that meeting, by consensus, it was agreed that "there should be an international code of marketing of infant formula and other products used as breast-milk substitutes. This should be supported by both exporting and importing countries and observed by all manufacturers." The code was duly drawn up in consultation with industry officials and approved two months ago by the executive board of the World Health Organisation; now it must be approved by the WHO Assembly next month.

The motion before the Assembly will take the form of a "recommendation" to member governments, rather than a "regulation"—a concession to the industry and a reflection of the industry's lobbying over the past year. The hope is that governments, once the recommendation is accepted, will quickly give the code the full force of law in their own countries.

If the code is weakened further or scuttled altogether by the manufacturers' new counterattack, Asian governments will have only two options: to legislate against improper marketing practices, or watch more of their youngest citizens suffer and perhaps die through misuse of infant formula. Plainly, there is nothing wrong with established breast-milk substitutes, used correctly and under the supervision of trained medical personnel. But there is a lot wrong with the manner in which leading companies exploit social pressures, ignorance or poverty in selling their products to mothers who may not need it and probably can't afford it. To Geneva in mid-May, the thoughts of all caring Asians must turn.

Mr. LEAHY. One of the articles in the Washington Post spoke of the use of baby formulas in Brazil and it presented a scientific study showing a large percentage of bottlefed babies in Brazil's largest city are undernourished.

In fact, as a result, the conservative military government of Brazil launched a campaign to encourage mothers to breastfeed their children, according to Jim Brooke of the Washington Post.

The report that they found that 32 percent of the bottlefed babies suffered from malnourishment, 32 percent compared to only 9 percent of the breastfed babies. Twenty-three percent of the bottlefed babies had to be hospitalized.

Mr. President, I shall read a few paragraphs from the Washington Post article of April 21, speaking of a survey done in Brazil:

The survey findings were echoed in random interviews with mothers in Rocinha, one of Rio's largest—and worst—favelas or shantytowns.

"I started giving [formula] to my baby boy at 1½ months, but he got a stomach infection that almost killed the child," one woman, known only as Nicinha, said as she sat in her two-room house, partially roofed with flattened soy oil cans.

Nicinha said her baby was consuming four cans of formula a week. To save money she diluted the mix with flour, corn meal and cream of rice cereal. At $2.50 a can, a month's supply of Nestogeno costs $40, while most wage earners of Rocinha earn Brazil's minimum salary—$80 a month. The São Paulo study found that formula feeding a baby for one year would require 43 percent of the income of a poor family of four, compared to the cost of breast-feeding, approximately 4 percent.

"The water here also doesn't help," Nicinha said, waving to a green-gray open sewer gurgling three feet from her doorstep. Favela residents get their water from nearby wells, but they say this water is polluted, frustrating efforts to sterilize baby bottles.

Across the sewer and down a narrow, slippery, alley Maria da Conceicão sat in her darkened room, nursing her 1-year-old son, Vito.

"They are much stronger," she said of breast-fed babies. "They don't get sick with diseases."

Dr. Amandio Ferreira de Souza, head pediatrician at Rio's Poor Mother Hospital agreed with Maria da Conceicão's comments.

"Almost all the diarrhea cases I see are bottle-fed babies," he commented.

Without hesitation, Dr. Amandio said his fellow pediatricians in Rio are "100 percent" in favor of breast-feeding, but for many years his profession was the target of a multifaceted promotional campaign by Nestlé.

Until recently, Nestlé gave a free, one year's supply of powdered milk to Brazilian pediatricians, nutritionists and maternity nurses when they or their wives had children. The São Paulo report found that Nestlé advertising helps support professional journals, and Dr. Amandio said the company frequently sponsors meetings of pediatricians.

Mr. President, as I said before, our country is a good country. It is a generous country. It is an honest country. But we have problems of malnourishment, malnutrition, and hunger in our country, and we are only now beginning to accept that and take steps to get rid of it.

We have expressed concern and we have demonstrated our concern in other parts of the world.

But what worries me is that we can wipe out that whole concern overnight by looking as if we are just jumping in bed with some of the multinationals and helping them make billions of dollars at the cost of the lives of thousands and perhaps millions of babies.

It is interesting when we have to pause for a moment and look at some of the issues. The Foreign Relations Committee is meeting now on a matter which I think is an extremely important one, the Israeli attack on the Iraqi nuclear facility, the questions that it raises on stability in the Middle East, the possibility and portentions that it makes for possible nuclear war in that area. These are significant issues.

They should not overshadow this issue because, believe me, from the mail I have received, the people I hear from, the people I have talked with in other parts of the world, this is a major item. When the United States wants to demonstrate its good faith to the rest of the world, when the United States seeks allies around the world, we do not necessarily get those allies by simply building bigger and better battleships or taking obsolete battleships out of mothballs to do it and sail them around the world as though we were Teddy Roosevelt and the great white fleet. We do it by our example. We do it by our respect of human rights. We do it by the constancy of our diplomacy. We do it as much in many areas by moral persuasion as anything else.

The United States must make sure that it does not give itself the image of babykillers because we are not. We are not. And the vote that we saw a few weeks ago unfortunately can be interpreted that way in so much of the world and our enemies will very quickly move to interpret it that way.

It is unfortunate, when so many good Americans of all political persuasions have made every effort possible to demonstrate the good will of America around the world and have spent billions of dollars of our tax dollars to help other countries. That in the almost frivolous action we can wipe out much of that good will because of a lack of realization of the steps that we have taken and without realizing the complexity of these issues and trying to go through on a wing and a prayer. And I think that that is what has happened here.

This is the way we wipe out years of efforts of trying to develop good faith around the world.

This reflects a catering to commercial interests without considering the overall best interests not only of the United States but also of our allies.

I hope that as a result of the resolution before the Senate and the resolution passed by the other body by a 3-to-1 margin that it will not happen again.

Mr. President, I have been pleased, during the discussions of this issue, with the great concern shown by my colleague from New England, the distinguished Senator from Maine (Mr. MITCHELL). Senator MITCHELL has discussed it with me in great detail, and has attended hearings on this issue. I know when I had the opportunity to serve with the distinguished Senator from Kansas on the Presidential Commission on World Hunger that I wished the distinguished Senator from Maine had already been in the Senate at that time because I think he might have been a welcome addition to those who testified and appeared before the Commission. He brings a sense of urgency to this vital issue.

I am reminded of another member of that Commission, one who did more really to get the Commission to start than anybody else, folksinger Harry Chapin. Mr. Chapin would come down like a man with a mission, strolled the halls of the House and the Senate to get that Commission started.

I think the sight of Harry Chapin and his guitar, various Senators and Congressmen striding very quickly down the halls with him, became a very familiar one until the Commission on World Hunger was founded.

As a member of the Commission, he urged, so eloquently, the issues we have before us.

So I have to think that on behalf of him, and so many others, that it is good to see new Members take up this issue. It is with a sense of respect that I yield to the distinguished Senator from Maine (Mr. MITCHELL).

Mr. MITCHELL. I thank the Senator.

Mr. President, the decision of the U.S. Government to cast the world's only negative vote against the adoption of the infant formula marketing code was regrettable.

The code is an advisory code; it does not have the legal force of a treaty or other international obligation. It does not require the United States to impose any limits on marketing practices for infant formula domestically, nor does it mandate any restrictions on such practices by U.S. companies operating abroad.

It would require the United States to report back to the World Health Organization as to what steps it has taken to prevent misleading and overly-aggressive selling of infant formula in circumstances where its use is not appropriate.

One hundred eighteen nations voted in Geneva to uphold that code. They are nations that range from industrialized countries like Britain, Canada, Switzerland to the very poorest countries whose babies are most at risk from inappropriate infant feeding practices.

Only the United States of America voted no.

This is not an action in which I, as a citizen of this land, or indeed in which any citizen should take any pride.

By a negative vote, we did not protect the right to free enterprise. Our own laws prohibit misleading advertising. We did not protect the first amendment. The first amendment does not condone unfair business practices.

In 1978, our Congress enacted legislation to protect the quality of infant formula sold here in the United States. That action did not infringe on the rights of any company to conduct its business within the law.

Yet, our Government voted against this international, advisory code because of claims that the restrictions it recommends against certain marketing practices represent an intrusion on Constitutionally guaranteed rights. That is simply not so.

The purpose of this advisory code is simple, not difficult to understand. It is intended to support the governments of poorer nations in their efforts to protect their people against the blandishments of advertising that implies infant formula is as good as breastfeeding, preferable to breastfeeding, or superior to breastfeeding.

It is designed to help limit the practice of companies dressing their saleswomen in uniforms that look like nurses' uniforms, and sending them to maternity clinics and villages to make the sales pitch to illiterate women that infant formula will make their babies as strong and healthy as European babies, or American babies.

It is designed to prevent these "nurses" giving free samples of formula to postparturient women for a few days, a practice which lets the mother's milk dry up and makes a return to breastfeeding impracticable.

The manufacturers have claimed that they do not engage in these and similar misleading practices any more under a voluntary code of self-restraint. But a report by health professionals, Peace Corps workers and others in the field last year found at least 700 individual instances of abuse.

The manufacturers claim that marketing does not encourage women who can breastfeed to switch to formula. They claim their only goal is to reach those women who cannot breastfeed. If these marketing practices do not, in fact, encourage sales, it is hard to understand why the companies are so adamant against any restrictions.

And it is even more difficult to understand in light of the fact that this code is purely advisory. It mandates nothing.

This question involves much more than ideological arguments over whether we should oppose the anticorporate attitude of some governments. It directly affects the health of new-born babies in Africa, Asia, and Latin America.

Infant formula is meant to be prepared under careful sanitary conditions. It is designed for mothers who understand the nutritional needs of their babies. When it is mixed from a contaminated water supply, when none of the utensils can be sterilized, when illiteracy or misunderstanding combines with poverty to stretch the precious formula by watering it down, when it cannot be refrigerated in a tropical climate, then the use of infant formula is surely inappropriate. When the disposable bottles American mothers use do not exist, and formula is given to a baby from a Coke bottle with a rag tied across the neck then, surely, infant formula is dangerous to infants.

So I am deeply concerned about the implications of our negative vote. Instead of sending the message that we support free economic activity—which we do—that corporate operations play an important constructive role in developing countries, are we instead sending

the message that the economic health of private interests far outweighs any other consideration in the world community?

That is why I am concerned about the administration's overruling the decision reached by the Department of State and Health and Human Resources to abstain on the vote as a mark of U.S. concern about overly broad restrictions on commercial activity. An abstention sends that precise message. A negative vote sends much more.

The drafting of the code had already been substantially modified at U.S. insistence. References to nonmilk-substitute baby foods were eliminated at our insistence. The code was made advisory, rather than being issued as a regulatory code, at our insistence. The language of the code was toned down at our insistence.

All this was done to maintain the unanimity of world concern about the nutrition and health of the most helpless among us, newborn infants.

But, apparently as the results of industry lobbying, the administration has vetoed this advisory recommendation.

A recognition of the sanctity of human life and support for the right of life itself surely goes beyond the most elementary goal of seeking to permit birth. It surely entails obligations to preserve newly-born life and to protect the health of the newborn, as well.

I deeply regret this wrong decision by the U.S. Government to vote against this code.

I thank the Chair and I thank my colleague, Senator LEAHY, for the opportunity to say a few words on this subject.

Mr. LEAHY. I thank the Senator, the distinguished Senator from Maine.

I appreciate the comments of the distinguished Senator from Maine who has expressed a great deal of concern about this issue in the past. I could not emphasize enough what the distinguished Senator from Maine refers to and that is a concern, a concern for life that all of us share. I hope that none of us feel or that no one in this country feels that it is only those who may use a rubric or a slogan, whether it be right to life or any other type of slogan that only they are concerned about lives. I cannot imagine any Member in this body. Republican or Democrat, who is not concerned with human life.

But it has to go beyond merely the rhetoric of being concerned with human life. One has to make sure that reality catches up with that rhetoric and, conversely, that the rhetoric does not overshadow the reality. It is not enough simply to give speeches that say we value and we cherish human life, which we do, it is not enough to say that we will make the world free and safe for all people, unless we take the steps to make sure that those people, especially the most defenseless of them, can live in such a world.

It is not enough to use the rhetoric on the one hand, but then to substitute the reality of a really Faustian alliance with corporations that obviously care little for life and care little for the well being of their customers but care only that there be customers. And so many of these multinational corporations could care less about the lives of the people in the third world of the emerging nations. They could care less about a right to life no matter how defined.

I think that instead of taking action which seems to appear to condone what they have done, that we should take action that condemns what they do—not just what they have done but what they do—because their activity condemns to death tens of thousands, hundreds of thousands, even millions of infants, born and yet to be born, in Third World countries.

I doubt very much if, for even a moment, these death sentences are discussed in the corporate headquarters of some of these multinationals, but rather, the billions of dollars of profits that are gained by them putting into commerce, putting into commerce, items that—because of the countries they are used in—are as dangerous and deadly as any drug peddler on the streets of any city in the United States or anywhere else in the world.

Is it any more deadly, I ask my colleagues, for a pusher in the cities or back alleys of this country to peddle heroin to an addict, an adult addict who can make a conscious determination of whether they will take that heroin or not? Is it any different, or is it in fact more deadly, than giving polluted, dangerous, unsanitary formula in a bottle ridden with germs, unsterilized, to a 2-month old infant who has no choice at all but respond with a biological urge to eat and in thousands and thousands of instances takes in a more deadly substance than that heroin addict in the back alley of our cities?

And yet every one of us, in or out of the Government, will rise on this floor and condemn the activities of those heroin pushers. But they do not sit in nice, gleaming corporate headquarters.

But you know there is one area I found in our hearings where there is one very near connection. None of those heroin pushers are willing to talk about the profits they make. They do not give out a balance sheet detailing these profits. I know from the hearings conducted by the distinguished Senator from Massachusetts (Mr. KENNEDY) and others, that we found that a lot of these multinationals are not too eager to tell about their profit figures either.

I know in the work that we did with the Hunger Commission we found that a lot of them said it was just a minor matter. A minor matter? The best information we are able to develop is that we are talking about a multibillion dollar market.

And is it not interesting, when the figures get up into the tens of millions, the hundreds of millions and eventually into the billions of dollars, that any question of morality goes right out the window in those plush corporate headquarters?

Mr. President, let us make sure that when we vote on this resolution it is so overwhelming that we send two messages, not only in this land but across the world: First, a message to our own Government that we will never vote this way again; and, second, to the world that the policy of the United States is not to condone but the policy of the United States is to condemn the activity of these multinationals, an activity that determines the death and guarantees the death of helpless infants through the world.

Mr. President, I realize that there are those who feel that we have taken a great deal of time on this issue on the Senate floor. Mr. President, I have seen far more time taken on housekeeping matters for the Senate. I have seen far more time taken on mischievous amendments to appropriations bills. Mr. President, I can think of few issues that are as important, not only to the people of this country but to the image of our country abroad and, more than image, to the substance of life abroad.

Mr. President, I note on the floor the presence of the distinguished Senator from Massachusetts (Mr. KENNEDY). I know that he wants to speak. He is the Senator who has had the public hearings on this matter and I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I wish to express my very deep sense of appreciation to the Senator from Vermont, my friend, Senator LEAHY, and also to Senator DURENBERGER for their initiative in developing the amendment which is before us today. If I had my "druthers," I would have drafted a resolution which would have deplored the action of the United States in what I consider to be a shameful vote in the World Health Organization on the infant formula code.

It seems to me, Mr. President, that the vote that was cast by the administration in behalf of the United States clearly did not reflect the medical opinion of those who have studied this issue closely over a period of years, whether it has been in the U.S. Senate or within the World Health Organization. I refer to very extensive hearings that our subcommittee in the Labor and Human Resources Committee, the Health and Scientific Research Subcommittee, held in 1978. The vote that we cast at the World Health Organization was not consistent with the medical testimony that was submitted to our subcommittee, a subcommittee that was acting in a bipartisan way with our present Secretary of HHS, Senator Schweiker, who was then the ranking minority member and an extremely active member on this issue, a man who spoke with both knowledge and understanding of the dangers of the dilution of infant formula in the Third World countries.

The vote that was cast in the World Health Organization was also not consistent with the studies that have been done within the World Health Organization, which has a wealth of information on the less developed countries of the world where this infant formula is used and abused.

So the action that was taken by the United States in that international forum is completely inconsistent with what I consider to be the overwhelming

medical testimony that has been gathered not only in the U.S. Senate but in the World Health Organization.

There should be no confusion, Mr. President, by the Senate on this fact.

Second, Mr. President, it is important that the American people, when they read this debate, recognize that there are those of us who are cosponsors of this resolution who believe, and believe very deeply, that if the vote was to be cast in the World Health Organization by the American people, the vote by the United States would have been overwhelmingly in the affirmative on what the World Health Organization had developed—because the American people understand the issue well because we are a compassionate and humane nation and citizenry.

The mothers of this country would have demanded that the United States and its representatives cast an affirmative vote, mothers who, I think, understand the needs of other mothers in the Third World countries, who see their infants die because of the failure of having adequate resources to buy and use infant formula, mothers who understand the agony and the pain of an infant who is on the verge of death because of malnutrition. Maybe mothers in our own society have not looked into the eyes of their own infants and seen them die of malnutrition, but they understand full well what that horror can mean to a parent, to a loved one, to a mother, and to the members of a family. That is what we are talking about here this morning.

International agencies have estimated there will be close to 1 million children who will die in this world of ours because of the misuse of infant formula. There are 15,800,000 children who die every year in this world. Fifteen million two hundred thousand of them die in the Third World from preventable diseases—diseases that could be prevented with immunization and with technology which are already available.

To do this would amount to maybe $200 to $300 million—a lot of money, granted, but which pales in comparison to the billions and billions of dollars that we spend in the budget of the United States, money we spend in terms of our own national security.

Sometimes we hear voices which say, "Well, we cannot really immunize those children in Third World countries because we cannot get out into the bush or into rural areas."

Listen to Dr. Davida Coady, who testified before our committee on the problems of nutritional deficiency, whether it be Biafra, Southeast Asia, or Africa. She talked about her visits to some of the most rural and distant parts of the world. And she says in those small villages the one item you can find is infant formula.

It is amazing how they are able to develop and deliver cans of infant formula into the most rural and remote places in the world and still we are unable to get medicines there or develop an immunization program to try and sustain life in many of those same countries.

Mr. President, I remember traveling to the World Health Organization in 1977 and speaking about the abuses of the infant formula. At that time I visited with Dr. Mahler, the head of the World Health Organization, urging his personal intervention in the development of a code. Also, I remember his inquiring of me whether there would be support by the United States for the fashioning, shaping, and development of an infant formula code.

I could not possibly conceive of the possibility that the United States would not be out front in trying to lead the world in an area which is of such great importance and significance for millions and millions of people throughout the world in the fashioning and the shaping of an infant formula code.

I recall returning from that World Health Organization and working with the then Senator Schweiker in the development of this very extensive set of hearings on the medical implications of failing to develop an infant formula code, and returning to the World Health Organization in 1979 and speaking with the delegates at that assembly about the progress that had been made in the development of an infant formula code.

Then I heard the first rumblings in the early part of this year that the United States was thinking of voting negative—not in the affirmative or abstaining with objections, other possible votes that the United States could take. Now we were considering casting our vote in the negative, being the only nation in the world to cast our vote in the negative on an issue that will not even affect the United States but will only affect the other countries of the world if they take the appropriate remedial action which will protect their people.

It is a voluntary code, to be accepted or rejected by the individual nations, but the U.S. position was, in effect, saying, "We are not even going to urge that Third World countries even consider this particular code."

How shameful our vote, Mr. President, and how shameful our action.

It seems to me, Mr. President, that this resolution does, in some measure, give an opportunity for the elected representatives of the American people to indicate what I stated earlier—that, if this issue had been decided by the American people rather than by this administration, there would have been a very clear, powerful voice that would have spoken and voted in the affirmative and placed the United States where the United States should be placed. That is in a leadership role for its concern for humanity and its concern for children, its concern for suffering, anguish, and pain, and its concern for our follow human beings who share this planet with us.

On the issue of whether it is the survival of infants or the profit margins of major international drug companies, who profit so dramatically from infant formulas, there would have been no equivocation, there would have been no hesitation. The voice of the United States and the vote of the United States would have been aye.

Mr. President, this resolution gives us some opportunity to speak on this issue and to indicate by our support for it that we reject the position of the administration on this question and that, on this resolution, we express the position of the American people and vote aye.

Again, Mr. President, I commend the Senator from Vermont and the Senator from Minnesota for their leadership in this issue.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter which I sent to Secretary Schweiker in April of this year on this issue, in which I was joined by Senator PELL and Senator HATFIELD.

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

U.S. SENATE, COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C., April 10, 1981.

Hon. RICHARD S. SCHWEIKER,
Secretary of Health and Human Services, Washington, D.C.

DEAR MR. SECRETARY: We are writing to express our hope that you will give your support to a consensus which has been developed by the World Health Organization on a voluntary code of marketing of breastmilk substitutes (infant formula). As you will remember, it was the work of the Senate Health Subcommittee in 1978 which highlighted the serious health consequences in the developing world associated with the use of infant formula. In May, 1980 the full Senate Committee on Foreign Relations in its report on the foreign aid legislation, endorsed the recommendations of the WHO/UNICEF special meeting, of October 1979, on Infant and Young Child Feeding. The Committee's report stated "The Committee wishes to go on record in support of WHO and UNICEF's efforts to formulate an internationally observed Code for the appropriate marketing and distribution of breastmilk substitutes."

In our view, the WHO Code deals with this issue in a sensible manner. Its voluntary nature also argues for our support. The WHO has been able to effect a compromise solution which apparently has the support of the developing world countries, virtually the entire health community, our European allies and at least the acquiescence of the European manufacturers involved who now constitute some 90 percent of the actual production of the infant formula.

We believe that it is in the American interest to join this consensus. If necessary, reservations could be made on those points in the Code that cause serious problems for the industry. We believe that a negative vote would be directly counter to our own interest and would place us in a position of opposing a major step toward reducing sickness and death among Third World infants. We have written to Secretary Haig on this matter as well.

We hope that you will take these views into consideration as you consider the U.S. position at the upcoming World Health Assembly.

Sincerely,

EDWARD M. KENNEDY.
CLAIBORNE PELL.
MARK O. HATFIELD.

Mr. LEAHY. Mr. President, I thank the Senator from Massachusetts for his statement, and I find myself in total agreement. I could not help but think during the hearings held by the Senator from Massachusetts that the case was made so persuasively by people who had no political ax to grind at all. They were people who were just involved in world health care, concerned people.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. LEAHY. Yes.

Mr. KENNEDY. I should like also to have printed, Mr. President, the witness list of individuals who appeared in a public forum that a number of Senators held on this issue last month. This just reinforces the point made by the Senator from Vermont. For we had on this panel Bishop Francis Murphy, who is the chairman of the Archdiocesan panel of Justice and Peace Commission of Baltimore, but also representing the Catholic bishops. We had Rabbi David Sapperstein, who is the director of the Religious Action Center of the Union of American Hebrew Congregations and the Central Conference of Rabbis and Mr. Louis Knowles, who is associate professor of public health of the University of California at Los Angeles.

Quite frankly, these were three representatives of the three different denominations of religion in the United States. But we could have had a panel, that would have continued to be testifying even today, of those who are concerned about the moral implications of the vote of the United States and our responsibilities in terms of the hungriest and neediest people of the world. There was no equivocation, no hesitation from that group.

On the third panel, there was Dr. Davida Coady, who has been appearing before our committee since the early 1970's. Formerly Davida Taylor, she is an outstanding nutritionist, who first worked in Biafra. She now works at UCLA as a nutritionist, teaches there for 6 months of the year and takes 6 months of the year to work in an underdeveloped country. Her final words to the Members of the Senate at the forum were that she does not mind the deprivation and she does not mind being separated from her loved ones and the members of her own family for 6 months at a time, doing that year after year; that while she was troubled by the extent of poverty that she saw in the Third World and the suffering that she saw, the one thing she pleaded for was for the United States not to be undermining what she and others had dedicated their lives to; that is, trying to provide at least some semblance of a nutritious diet for infants in the Third World.

She felt that if the Congress of the United States could do anything in this area, maybe we are not in a position to do all the positive things that we would like to do, but for God's sake, do not permit the kinds of abuses that we have seen with infant formula. Mr. President, this is a person who has years of professional experience in this area.

There was also Dr. Michael Latham, professor of international nutrition, Cornell University, who was on a study mission I sent to Africa. Also Douglas Johnson, who has been national chairperson of the Infant Formula Action Coalition. Then there were the extremely courageous Dr. Stephen Joseph, who was the Deputy Assistant Administrator of Human Resources Development, and Eugene Babb, Deputy Assistant Administrator for Food and Nutrition, AID.

I think it is probably appropriate at this point to note that these two individuals, men of conscience, preferred to resign their official positions rather than be a part of a decisionmaking process that ran so completely contrary to their consciences. They had careers of dedication to the interests of the United States in the service of their country and the foreign service of our Nation, but they finally came to a point where they said, on this issue, "Enough is enough," and they stood with the American people. I think at a time of a lot of cynicism and skepticism about bureaucrats and people who run Government agencies, these two individuals stand out as stars, individuals who wanted to come down on the side of the American people on this issue rather than with the administration's decision, which ran so completely contrary to their conscience. I think in this whole dialog and development of a Senate record, they ought to understand that their actions speak powerfully and their service to their country is respected and understood by many.

(Mrs. HAWKINS assumed the chair.)

Mr. LEAHY. Madam President, if the Senator will yield, I am remarkably proud of both those men. The irony of it is that they had to resign their positions because they had tried to defend the United States from taking an action that was sure to bring about worldwide condemnation—and it did.

The further irony of it is that what they were doing was taking a position that I am confident reflects the feeling and the will of people of both political parties, of all ideologies throughout the country. Had the United States taken their position, we could have increased our credibility within the Third World, we could have shown our dedication to humanity, and we could have shown our dedication to basic rights of life.

Yet, because they were not listened to, they had to resign; and the United States went into a position that brought about condemnation from around the world, raised serious questions about our responsiveness to the Third World, and was a position that was an enormous propaganda gift to those countries that are opposed to the United States.

Here, all the things that the United States does not want to do, the United States ended up doing. The two courageous people who tried to keep the United States from making a terrible mistake were forced to resign their positions. We cannot say enough good about them, and I am pleased by the recognition they have received in the other body for their activity.

Mr. KENNEDY. I thank the Senator for his comments.

Madam President, I ask unanimous consent to have the witness list printed in the RECORD.

There be'ng no objection, the witness list was ordered to be printed in the RECORD, as follows:

WITNESS LIST

PANEL I

Ms. Linda Kelsey, Actress, Los Angeles, Calif.

Rev. Daniel Driscoll, Maryknoll Order, Ossining, N.Y.

Sister Margaret Moran, Medical Mission Order, Philadelphia, Pa.

PANEL II

Bishop P. Francis Murphy, Auxilliary Bishop of Baltimore, Chairman of Archdiocesan, Justice and Peace Commission of Baltimore.

Rabbi David Sapperstein, Director of Religious Action Center of Union of American Hebrew Congregation and the Central Conference of American Rabbis.

Mr. Louis Knowles, Coordinator for Hunger Concerns, National Council of Churches in the U.S., New York, N.Y.

PANEL III

Davida Coady, M.D., Associate Professor of Public Health, University of California at Los Angeles.

Dr. Michael Latham, Professor of International Nutrition, Cornell University, Ithaca, N.Y.

Mr. Douglas Johnson, National Chairperson, Infant Formula Action Coalition, Minneapolis, Minnesota.

PANEL IV

Dr. Stephen Joseph, Deputy Assistant Administrator, Human Resources Development.

Mr. Eugene Babb, Deputy Assistant Administrator for Food and Nutrition, Agency for International Development.

Mr. LEAHY. Madam President, the witness list that has just been placed in the RECORD by the distinguished Senator from Massachusetts is interesting because, as he has said, the hearings could have gone on, with a continuing witness list, until now, and it could have continued beyond. We would have heard more and more of the same, more and more documentation. In fact, of the various hearings or meetings I have attended, I have been to very few where the documentation on a subject was so thorough, so complete, and so persuasive.

It is interesting to look at what might be said on the other side. About the strongest support I have heard given for the activity of the multinational sale of baby formula and the way they have done it was, "well, it really doesn't amount to very much business, and it really doesn't amount to very much activity on our part and, therefore, why the fuss?"

The obvious question we ask then is, "How much business does it amount to?"

"Well, we have differing kinds of accounting methods, et cetera, so we don't give the answer."

Madam President, as nearly as we can tell, the business amounts into the billions of dollars. That is why, as I said before, money wins out over morality in this question. That is why those in the corporate headquarters—well-fed, well-cared-for—can close their eyes to the suffering and the deaths of infants throughout the third world. It is a case in which one would think that any person with a spark of human conscience would condemn, not condone, the activity we are seeing.

Madam President, I know there have been times when some other justification has been tried to be given for this. The Baltimore Sun published an article last year on this matter in which Edwin T. Frantz, the vice president of Stouffer's tried to defend the activity of Nestles in this regard. I will read a response by Dr. Carl E. Taylor, who is professor and

chairman of the Department of International Health at Johns Hopkins University. His response appeared in the Baltimore Sun of September 13, 1980. Dr. Taylor said:

Editor: The Saturday, August 23, edition of *The Sun* carried an article by Edwin T. Frantz, vice-president of Stouffer's, a Nestle affiliate, that is full of self-serving distortions and inaccuracies. In setting the record straight it is important to realize that the current counter-offensive against the "Nestle Boycott" by representatives of affiliated subsidiaries such as the Rusty Scupper indicates that the boycott is being remarkedly effective.

(1) It is the worst kind of distortion by association to imply that because use of Nestle's infant formulas has increased in developing countries they can take credit for the decline in infant mortality which has occurred in spite of Nestle's activities.

It is outright fallacious to say, "Nestle has been the strongest supporter of breast-feeding of infants." The well documented truth, which I have seen myself in many countries where we have research projects, is that infant formula representatives use unscrupulous sales tactics.

For instance, women dressed like nurses have handed out free samples to lactating mothers, then when the breast milk dried up the poor mother had to buy formula—a process analogous to a drug pusher. Because of cost, the mother dilutes the formula so much that it only colors the water and is totally inadequate nutritionally.

(2) The argument downplaying the role of bottles in transmitting infections is also spurious. Even though infected water would be used with a spoon and cup, the dosage of infectious agents would be much less.

An inadequately sterilized bottle with milk residue is one of the bacterial world's most delicious culture media. It is almost impossible to clean a bottle and nipple except with sophisticated equipment, whereas a cup and spoon can be readily cleaned and sun dried. Use of bottles is actually and symbolically associated with formula feeding while gruels are, in most local cultures, automatically eaten with local utensils.

(3) It is scientifically untrue that supplementing breast-feeding with gruels of cereals and lentils leads to "serious infant nutrition problems." Breast-feeding, even by an undernourished mother, provides the protein needed so that even cassava or arrowroot supplements provide the added calories sufficient to sustain excellent growth.

(4) It is not true that formula use is limited to the urban middle class. I have a picture of a typical shop in a remote valley two weeks trek into Nepal with the shopkeeper breast-feeding her own infant while the shelves behind her are loaded with infant formula.

(5) Nestle and the other infant formula companies are not leading the current worldwide move to promote breast-feeding as is claimed but are being dragged along kicking and screaming to cooperate with the new "code" for ethical behavior of infant formula sales which is being drafted under the auspices of the World Health Organization and UNICEF.

This was written, as I have said, on September 13 of last year. The code he spoke of is the code that the United States, all by itself throughout the world, voted against.

I quote Dr. Taylor again:

The saddest indictment against their attitude is that when this code came up for vote at the last World Health Assembly, the United States stood almost alone in voting against it. The U.S. position was taken over the vehement objections of U.S. health professionals because of pressure on the State Department from the Department of Commerce.

Much of the international credibility generated by U.S. church groups and others who have led the boycott was neutralized by that one vote and a slow retrieval of our position is now going to be necessary. Obviously the boycott of all Nestle affiliates including the Rusty Scupper, is still needed to show that we care.—Carl E. Taylor, M.D.

Madam President, I do not stand here suggesting boycotts. I stand here suggesting the United States stand for world health, that the United States stand for decent nutrition, and that the United States stand for the war against malnourishment and hunger.

Madam President, I have said over and over again, and I will say it once more, that we have no difficulty in this country of condemning drug peddlers and drug pushers. I join in that condemnation. I join in condemning the criminal activity that they carry out but especially the human misery that is caused by those addicted to them.

But you know it is easy for us to condemn the drug pusher and the drug peddler. The drug pushers and drug peddlers are not among our friends and our associates. They are outside the pale. They are outside decent company and decent people. So we can condemn them.

But what happens when those who are as bad as any drug peddler or any drug pusher, when the corporate executive determines that we will addict the mothers and infants of the Third World into unsafe, unsanitary bottle feeding, we will subject them to disease, to malnourishment, to hunger, often to death? Do they not deserve the condemnation of us, of our people, of our Government, of our country as much as an international drug peddler and drug pusher? And could it be that that condemnation does not occur because they are just nice people, because they have nice homes, because they work in nice buildings and they go to nice clubs and they have nice political affiliations, and they have nice adherence to the tenets of the free enterprise system?

In my former career as a prosecutor I could point to a lot of heroin peddlers who belonged to nice clubs and had nice affiliations, political and otherwise, and it might appear as if they were nice people, who would stand up and say they were all in favor of the free enterprise system. In fact, one of the regulations they would like to get rid of is the law against heroin peddling and let the free market seek its own level.

That is what we are doing here. In the guise of free enterprise we end up condemning to death thousands, perhaps millions of infants.

Even there we blew it. Even on the strictly commercial sense we blew it, because as the Journal of Commerce stated, "If the United States abstains or votes no on the infant formula code we believe it will gain little or possibly lose much in its effort to restore U.S. credibility and influence with the developing world."

I refer, Madam President, back to the Vancouver, Wash., Colombian which said, "The ethics of a public policy that puts corporate profits before infant starvation are questionable, indeed."

I expect the RECORD will carry a number of pages pro and con on this issue, speeches delivered on the floor and speeches not delivered on the floor. I wonder if any of those speeches say it better than that.

The Oskaloosa, Iowa, Herald:

We say human beings and the preservation of health and life are more important goals.

The Hartford Courant, May 21, 1981:

The code, which the Reagan administration opposes for ideological reasons, is only a partial but necessary step toward protecting the health and welfare of mothers and children.

This is from the Conway, Ark., Log Cabin Democrat, May 21, 1981:

America, the world's leader in sharing its medical knowledge, equipment, and personnel with other nations, got a black eye with this vote.

The Minneapolis Tribune, May 21, 1981:

But potential health benefits from application of the code outweigh its bureaucratic drawbacks.

The San Francisco Examiner, May 22, 1981:

It is saddening that the Government has given, for no good reason, the adversaries of this country an emotional club with which to beat us over the head. Even if it happened to cost us something (which it wouldn't), we need to show a good deal more concern on this question and reverse our national position.

The Marshall, Minn., Independent, May 22, 1981:

Surely the Reagan administration is operating out of ignorance. Surely our President and other top Government officials do not want to cast our country in the role of a childkiller and, worse, one who does so for profit.

The Catholic Review, May 22, 1981:

Despite overwhelming evidence that such marketing practices by multinational corporations like Nestle and Bristol-Myers are detrimental to the health of young children, the U.S. took the risk of destroying its own credibility in world health and trade circles.

I commend very much my distinguished colleague from Minnesota in sponsoring with me and with the others this resolution.

Madam President, I am willing to yield to the Senator from Minnesota if he prefers. I will have further things to say before the vote.

Madam President, I suggest the absence of a quorum and ask unanimous consent that I may do so without losing my right to the floor.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DURENBERGER. Madam President, I clarify——

The PRESIDING OFFICER. Under the previous order the Senator from Vermont was to be recognized.

Mr. LEAHY. I yield to the Senator from Minnesota.

Mr. DURENBERGER. Madam Presi-

dent, I first clarify a one-word error that appears in the printed amendment No. 72, which is under consideration.

On page 3, line 17, the fourth word on that line should read "member" rather than "number" as in the original amendment introduced yesterday.

Madam President, I have appreciated the opportunity to listen to a variety of statements in support of this resolution yesterday and again this morning, and while others are anxious that this matter be brought to a vote and that the underlying bill be disposed of, I think it is important that those who do have something to say on this issue have the opportunity to say it.

A lot has been said today, in particular, about mothers and about children, and I will not try to add my own feelings on that score, although it is important and relatively easy to do it.

I noted in the RECORD during the consideration of a similar resolution before the House of Representatives on Tuesday that Congresswoman PAT SCHROEDER took the opportunity to say that she has been waiting for a long time for a "motherhood" issue to come along on which to speak. She felt this was such an issue.

But I would add another dimension that I think is very important to the consideration of this particular amendment. Earlier this morning there was a group of about 40 young Minnesotans, all Future Farmers of America, in the gallery. Prior to their coming over here I had the opportunity to speak with them and to answer some of their questions. The first question I was asked by these young people was on this particular issue, although when they asked the question they had no idea I was today involved with this amendment.

I asked them why this issue was of importance to them, and they said very simply:

> We and our families feel that our mission in life is to feed the hungry, and we have a deep concern for the people of the third world and for our opportunities to provide them with the necessities of life. We are kind of confused by the vote of our Government with regard to the infant formula issue.

That gave me the opportunity, Madam President, to speak to a part of America and a part of the world that I think has been neglected so far in this debate. The unique thing about Americans around this world is the fact that they bring the same kind of compassion and the same kind of commitment to their fellow men and women wherever they go in the world and wherever they find the need. They bring an experience, they bring an expertise, they bring money, they bring food, they bring whatever they can to share with other people.

For the many years that Americans have been leaving this country to go to developing countries around this world, we have found them coming back to this country saying:

> Can't we do more? Can't we do it better? Can't we better feed the hungry and clothe the naked and educate the young and develop job opportunities and whatever may be needed so that the people in other parts of the world can have the opportunity that we have in this country?

Americans, as several people have indicated here this morning, have been taking a part of their lives and sharing it with other people without any compensation other than knowing that they have fulfilled a part, and probably the most important part, of their mission here in life.

So I think it is important to say on behalf of every one of those Americans—whether they have had the opportunity to go abroad and to work in underdeveloped nations with people, or whether they have been here wishing they could—that the vote on May 21 has not changed America's role in providing for the needs of those less fortunate.

Now, part of the amendment that is before us speaks to our concern as Members of this Congress with the negative vote and our concern that the vote has subjected the U.S. policy in the health area to widespread misinterpretation. I think that is the key to the issue before us here today.

We heard all of the editorials recited from all over the United States of America indicating that America sent the wrong signal abroad. We heard the Senator from Vermont read a portion of Linda Kelsey's letter. I would want the Senator from Vermont and all my colleagues to know that Linda Kelsey's compassion and concern, and the sacrifices she has made, I think, from the fact that she was born, raised, and educated in St. Paul, Minn. She exemplifies people like Doug Johnson who, for several years, has been trying from a Minnesota base to bring the concerns of this issue before the American people.

So we have heard all of the misinterpretation in one way or another.

The other side of it is expressed by constitutional lawyers, principally Sam Ervin, for example, who said:

> Whether or not constitutional issues have been raised by World Health Organization action is crucial.
>
> The debate over the World Health Organization's proposed international code to regulate the marketing of infant food products has so far centered on whether it is healthier for mothers to breastfeed their babies or to use infant formula.
>
> The draft code is a totalitarian document. It would undermine the basic American values of free speech, free press and free competition in the marketplace.

At least one newspaper, the Chicago Tribune, as I recall, in a May 20, 1981 editorial said in part:

> The code, which is voluntary but which WHO wants all nations to incorporate into their laws and regulations, sharply curtails the way baby formula can be advertised and marketed.

It gives some examples. It goes on to say:

> The United States is right to vote against a code it would not incorporate into American law—and right to oppose this initial adventure into the regulation of international marketing of products.

So, Madam President, I would suggest that what we are doing here is not so much condemning a policy, because I do not think that that vote represented a policy. It would appear from a careful reading of the record leading up to the decision to cast a negative vote that the fault here is not with the policy of our new President, the fault is not with the policy of the new administration. The fault probably lies with the process of decisionmaking by which any new administration comes to decisions on issues like this.

I would recommend to my colleagues the statement of Congressman JIM LEACH of Iowa who, on Tuesday, in the House debate on a similar resolution addressed this particular problem. I will just quote one concluding comment from the Congressman's statement. This was in support of the House resolution, which passed overwhelmingly:

> All administrations take time to establish decisionmaking processes with which a new President can feel comfortable. I would hope that the infant formula issue would become a case study in decisionmaking, to ascertain whether refinements in the recently established process are in order.

I would suggest, Madam President, that there are times when it is important to stand alone on principle. But no one here has argued that the U.S. vote was wrong because it was the only "no" vote. It is of great concern to all of us, however, when our country stands alone and the bottom line of the issue involved is the most basic of health issues, the life of the newborn.

The amendment has been carefully crafted, with the help of the Senator from Vermont and the Senator from Kansas (Mr. DOLE), to make sure that that bottom line is American policy. The bottom line reaffirms the dedication of the United States to the protection of the lives of all the world's children and the support of the United States for efforts to improve world health; it endorses the work of AID and the World Health Organization and UNICEF; it encourages international health organizations and their member states to continue combating infant illness by improving sanitation and by improving water quality; and it urges the U.S. Government and the breast milk substitute industry to support the basic aim of the code and to cooperate with the governments of all countries in their efforts to develop health standards and programs designed to implement the objectives of the code.

So the Senator from Vermont is correct when he says a signal will be sent by this amendment, and that that signal will principally be our concern for the impression that that vote has left on the people of the world about American policy.

Those of us who proposed this amendment believe that that was not the vote that should have been cast. Senator DOLE yesterday expressed his concern when he said that the administration could have accomplished its objectives by other means, principally by abstaining on this issue and by indicating its reasons for doing so.

But in the end, Madam President, it is crucial whether we who represent the American people criticize a decision or criticize an underlying policy. In this

case, it is my opinion that the decision warrants criticism; the policy does not.

I have no concern that this President or that this administration has differed or varied or traveled any distance from the commitment that American individuals and the American Government have made for many years to improve the health of the children of this world. I hope they improve their decisionmaking process when it comes to these and related issues. And I, too, believe that this amendment will insure that a similar vote will not be cast in the future.

I yield back to the Senator from Vermont in the hopes that we may be able to, at the convenience of our colleagues, conclude this matter in perhaps the next 10 minutes or so.

Mr. LEAHY. Madam President, I will conclude for myself very soon. I probably just have 2 or 3 minutes. I am afraid if I talk much longer on the subject, I may do irreparable damage to the image that Vermont has taciturnity and I certainly would not want to do that.

I must state to my colleagues, in now starting my second term in the Senate, I have had very few issues that have concerned me as greatly as a person, as a parent, and as an American as this issue, because ultimately it is a very great moral issue.

The actions taken by our country reflect so much what kind of an image we will have throughout the world. I use that word "image" in the truest sense of the word, because I want an image of our Nation that reflects the goodness of our people, reflects the concern of our people, and especially reflects the great concern that Americans have always had for their children, a concern that we have over and over again expressed for the children of the world. I hate to think that an action we take as a country could wipe out that image almost overnight. So I hope there will be an overwhelming vote in the Senate today so that we do not do that.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I have been reading excerpts from certain newspapers around the country. I would like to refer to several of them at this point.

The South Bend Tribute, on May 23, 1981, stated:

> No amount of explanation will erase the stigma of our vote. We are giving up world leadership for business reasons.

The Fayetteville, N.C., Observer, on May 25, 1981, stated:

> Is the Reagan administration allowing the interests of big business to prevail over those of mothers and children? That is the smell of it.

The Kansas Times, on May 25, 1981, stated:

> In failing to support a humanitarian World Health Assembly resolution favoring mother's breast milk as infant food at the expense of commercial substitutes, the United States shamed itself. Not only did it decline to stand beside 117 other nations of the world declaring concern for the dangers to children in underdeveloped countries posed by infant formulas, this administration served unqualified notice that it is not interested in being a symbolic moral leader.

The Buffalo Evening News, on May 26, 1981, stated:

> It is unfortunate that the Reagan administration found it necessary to cast a vote that unduly stressed legalistic issues to the exclusion of the health concerns involved in the infant formula debate. The decision . . . contributed nothing to the image of either the present administration or the nation.

The Valley Advocate, Northampton, Mass., on May 27, 1981, stated:

> Shame seems often to be the underbelly of bravado. Yet, in the government's latest swagger before the world community there is a schism that is becoming familiar. Those who committed the indiscretion remain smug while the outcry of high-ranking, respected officials and our consciences reveal a depth of humiliation.

The Bucks County, Pa., Times, in May 1981, stated:

> It is painfully obvious that decisions like this one will not endear the administration to the leaders of the world's underdeveloped nations. In some cases, our legitimate interests make it impossible to accommodate them. But the controversy over infant formula appears to be a case of the administration going out of its way to be insensitive to their concerns.

The Philadelphia Inquirer, in May 1981, stated:

> The controversy is literally a motherhood issue, and the White House has put the United States on the wrong side of it.

Mr. President, in summation, we have heard the debate, and I think we have made a good record here. In this record, I think we have emphasized the fact that the American people not only disagree greatly with the vote that was cast earlier, but also disagreed very much with the fact that commercial interests are being allowed to run rampant over human interests; that money has been allowed to ease out morality.

I would emphasize once again to my colleagues that we cannot stand here and condemn drug peddlers and drug pushers and say how bad they are because of what they do to their victims and close our eyes to those who, in the guise of commercialism and the free enterprise system, condemn just as greatly the infants of the Third World. Infant formula manufacturers and dispensers have done precisely that.

It is a shame on world trade.

I rather suspect that this country, at least, in future votes, will emphasize that we do indeed feel it is a shame.

Mr. President, our country is a good country; it is an honest country. It is a country with a heart and a country with a great sense of morality.

I would hope that neither our own citizens nor the rest of the world judge our country on a vote that was, quite frankly, in my estimation, a bad, bad mistake. I would hope they would look at the action we are about to take here in the Senate and the action taken in the other body to reflect our true nature.

Mr. President, I am perfectly willing to yield back the remainder of my time should the Senator from Minnesota be willing, and go ahead with the vote.

Mr. DURENBERGER. Mr. President, the Senator from Vermont is correct. I think the world will judge us on this vote today, not on the May 21 vote. I think that is why this amendment and this vote are so important.

I want to conclude by expressing my appreciation to the Senator from Vermont for his longstanding efforts in this regard, for his particular understanding in putting together this amendment, and for his concerted efforts to bring a broader appreciation to the world of America's concern for the health of the young.

Mr. LEVIN. Mr. President, I am pleased to be a cosponsor of the amendment which has been offered by Senators LEAHY, DURENBERGER, and DOLE which expresses the Senate's concerns regarding the U.S. delegation's negative vote on the World Health Organization's international code of marketing of breast milk substitutes.

This amendment, if approved by the Senate, will send a clear message to those who have legitimately questioned the administration's decision to vote against the code that the Congress supports the goals established by the World Health Organization—that of protecting the health of infants and mothers in developing nations through proper marketing procedures.

Mr. President, we have known for some time that studies indicate that infants in the Third World have suffered from diseases and in some instances, death from the misuse of infant formula. Yesterday the Washington Post reported that a study recently completed by a San Francisco social advocacy law firm indicated that misuse of infant formula is not restricted to developing nations. According to the report published by the law firm, pediatricians in the Los Angeles metropolitan area who were questioned about the use of infant formula by the poor indicated that misuse has resulted in "diarrhea, gastroenteritis, vomiting, dehydration and malnourishment." If there was evidence that children are dying from improper use of breast milk substitutes in this country, I am confident that the administration would act promptly to control marketing procedures. I believe that we have some responsibility to assist in protecting the lives of children in Third World countries.

While the Reagan administration's objections to the code have centered upon concerns, the U.S. lone vote against the code was interpreted by countries all over the world as a vote against the goal of protecting the lives of mothers and infants. This amendment will reaffirm our support for the World Health Organization's work to protect the health of infants in developing countries and I am hopeful that it will also encourage the administration to make a stronger commitment to the goals established in the code.

Mr. CHAFEE. Mr. President, this amendment will serve to correct any unfortunate misimpression that the United

States is unconcerned about the health of the world's poorest children.

Infant mortality throughout the Third World has reached epidemic proportions. Today 21 young children die every minute throughout the developing countries from hunger related causes, primarily diarrhea and other infectious diseases. This amendment merely states what is the preponderant view of the medical profession and the scientific community—that breast feeding is a nutritional source of uncontaminated food which also provides necessary protection against potentially deadly diseases faced by young children in developing countries. By doing so, this amendment will hopefully clear up any misinterpretation that might lead to the conclusion that breast feeding is, in any way, an inferior food source.

There is also an undeniable danger that reliance upon infant formula in areas where safe and sterile formula preparation is not possible, can result in widespread infant diarrhea—the largest single cause of infant deaths in the poorest regions of the Third World. Under such circumstances, it is only prudent that governments consider ways to control excessive promotional practices. It is here as well that this amendment is designed to correct any misimpression by stating the intent of the Congress not to discourage other countries from adopting standards to protect the health of their citizens.

Finally, this amendment urges greater efforts to improve sanitation and water quality thereby bringing about healthier infant feeding practices where mothers can not or choose not to breast feed.

This country cares deeply about the world's poor and their children. I urge my colleagues to support this amendment which will send the message clearly and unambiguously that we are concerned.

● Mr. BAUCUS. Mr. President, I have for years been concerned, frustrated and frightened about the misuse of infant formula throughout the world. I carefully followed the infant formula hearings Senator KENNEDY held several years ago, and I am proud to be an original cosponsor of the Infant Formula Act of 1980 which this body adopted last year.

Personally, I was amazed and ashamed by the vote this country cast at the World Health Assembly of the World Health Organization on the International Code of Marketing of Breastmilk Substitutes.

The fact is, Mr. President, that the brilliant, sophisticated, and extremely successful marketing techniques of the world's multinational corporations and our own American corporations are in a large way contributing to the poisoning and death of thousands of infants throughout the world.

Successful marketing is not necessarily good marketing. Brilliant, sophisticated, and extremely successful marketing is not enough. Marketing must also be responsible. That's what the WHO voluntary code on infant formula was all about, responsible marketing.

No one should dispute that there is a need for breast milk substitutes. There is a place for infant formula when breast feeding is impossible and the understanding and resources for correct preparation are available.

There should be no place for breast milk substitutes in conditions of poverty, illiteracy, and disease, where babies are in desperate need of the unique antibodies found only in breast milk, when the mother is capable of breast feeding.

Infant formula manufacturers are in business to make money. They make money by selling baby formula. They see an ever-expanding market in developing countries whose population booms at unbelievable rates. They have fabulous marketing techniques. Poor, illiterate mothers are easy targets. Aggressive marketing stimulates increased consumption under hazardous conditions and consequently, thousands of babies fall ill and die. This has all been carefully documented.

One last point. Mr. President. I am not quite sure what the link is, but I find it worth noting that the nation with one of the highest rates of infant mortality in the industrialized world cast the only vote against the voluntary code on the marketing of infant formula.

Children everywhere deserve protection from malnutrition and disease. Passage of this amendment is a very small symbol of our commitment to this protection. I urge passage of this amendment.●

Mr. DURENBERGER. Mr. President, I have no further comments on this issue. I yield back the remainder of my time.

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

Mr. BAKER. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from California (Mr. HAYAKAWA), the Senator from New Hampshire (Mr. RUDMAN), the Senator from New Mexico (Mr. SCHMITT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Colorado (Mr. HART), the Senator from New York (Mr. MOYNIHAN), the Senator from Michigan (Mr. RIEGLE), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. RIEGLE) and the Senator from Tennessee (Mr. SASSER) would each vote "yea."

The PRESIDING OFFICER (Mr. SYMMS). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 89, nays 2, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—89

Abdnor	Boren	Cannon
Andrews	Boschwitz	Chafee
Armstrong	Bradley	Chiles
Baker	Burdick	Cochran
Baucus	Byrd, Harry F., Jr.	Cohen
Bentsen	Byrd, Robert C.	Cranston
Biden	Danforth	D'Amato
DeConcini	Huddleston	Nunn
Denton	Humphrey	Packwood
Dixon	Inouye	Pell
Dodd	Jackson	Percy
Dole	Jepsen	Pressler
Domenici	Johnston	Proxmire
Durenberger	Kassebaum	Pryor
Eagleton	Kasten	Quayle
Exon	Kennedy	Randolph
Ford	Laxalt	Roth
Garn	Leahy	Sarbanes
Glenn	Levin	Simpson
Goldwater	Long	Specter
Gorton	Lugar	Stafford
Grassley	Mathias	Stennis
Hatch	Matsunaga	Stevens
Hatfield	Mattingly	Thurmond
Hawkins	McClure	Tsongas
Heflin	Melcher	Wallop
Heinz	Metzenbaum	Warner
Helms	Mitchell	Weicker
Hollings	Murkowski	Williams
	Nickles	Zorinsky

NAYS—2

East	Symms

NOT VOTING—9

Bumpers	Moynihan	Sasser
Hart	Riegle	Schmitt
Hayakawa	Rudman	Tower

So Mr. DURENBERGER's amendment (No. 72) was agreed to.

Mr. PERCY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. PERCY. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors: Senators PRESSLER, HEINZ, and PERCY.

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

Mr. PERCY. Mr. President, I ask for the years 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. LEAHY addressed the Chair.

The PRESIDING OFFICER. There is no time for debate.

Mr. LEAHY. Mr. President, I ask unanimous consent that I may proceed for 1 minute.

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

Mr. LEAHY. Mr. President, I commend my colleagues for this overwhelming vote on this amendment. I think it expresses very clearly what should be the position of the United States and I hope that in future votes the administration and anyone involved with it will listen very carefully to the overwhelming vote by this body and the other body, that should have been the vote before the 34th World Health Assembly on the Code of Marketing of Breastmilk Substitutes.

The PRESIDING OFFICER (Mr. WARNER). The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and 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 assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from California (Mr. HAYAKAWA), the Senator from New Hampshire (Mr. RUDMAN), the Senator from New Mexico (Mr. SCHMITT), and the Senator from Texas (Mr. TOWER), are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER), would vote "yea."

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Colorado (Mr. HART), the Senator from New York (Mr. MOYNIHAN), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee (Mr. SASSER) would vote "yea."

The PRESIDING OFFICER. Have all Senators in the Chamber voted?

The result was announced—yeas 88, nays 4, as follows:

[Rollcall Vote No. 158 Leg.]

YEAS—88

Abdnor	East	McClure
Andrews	Exon	Melcher
Armstrong	Ford	Metzenbaum
Baker	Garn	Mitchell
Baucus	Glenn	Murkowski
Bentsen	Goldwater	Nickles
Biden	Gorton	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Percy
Burdick	Heinz	Pressler
Byrd, Harry F., Jr.	Helms	Pryor
	Hollings	Quayle
Byrd, Robert C.	Huddleston	Randolph
Cannon	Humphrey	Riegle
Chafee	Inouye	Roth
Chiles	Jackson	Sarbanes
Cochran	Jepsen	Simpson
Cohen	Johnston	Specter
Cranston	Kassebaum	Stafford
D'Amato	Kasten	Stennis
Danforth	Kennedy	Stevens
DeConcini	Laxalt	Symms
Denton	Leahy	Thurmond
Dixon	Levin	Tsongas
Dodd	Long	Wallop
Dole	Lugar	Warner
Domenici	Mathias	Weicker
Durenberger	Matsunaga	Williams
Eagleton	Mattingly	

NAYS—4

Grassley	Proxmire	Zorinsky
Heflin		

NOT VOTING—8

Bumpers	Moynihan	Schmitt
Hart	Rudman	Tower
Hayakawa	Sasser	

So the bill (S. 1193), as amended, was passed, as follows:

S. 1193

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—DEPARTMENT OF STATE

SHORT TITLE

SEC. 101. This title may be cited as the "Department of State Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 102. (a) There are authorized to be appropriated for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law, the following amounts:

(1) For "Administration of Foreign Affairs", $1,318,754,000 for the fiscal year 1982 and $1,248,059,000 for the fiscal year 1983.

(2) For "International Organizations and Conferences", $523,806,000 for the fiscal year 1982 and $514,436,000 for the fiscal year 1983.

(3) For "International Commissions", $22,508,000 for the fiscal year 1982 and $22,432,000 for the fiscal year 1983.

(4) For "Migration and Refugee Assistance", $560,850,000 for the fiscal year 1982 and $467,750,000 for the fiscal year 1983, of which not less than $18,750,000 shall be made available only for the resettlement of Soviet and Eastern European refugees in Israel.

(b) Of the amounts authorized to be appropriated by section 102(a)(1) of this Act for the fiscal years 1982 and 1983, $2,085,000 shall be available for each such fiscal year only for expenses to operate and maintain consular posts at Turin, Italy; Salzburg, Austria; Goteborg, Sweden; Bremen, Germany; Nice, France; Mandalay, Burma; and Brisbane, Australia.

(c) Of the amounts authorized to be appropriated by section 102(a)(2) of this Act $45,800,000 shall be available in fiscal year 1982 and $45,800,000 shall be available in fiscal year 1983 only for the Organization of American States for the payment of 1982 and 1983 assessed United States contributions and to reimburse the Organization of American States for payments under the tax equalization program to employees who are United States citizens.

(d) Of the amounts authorized to be appropriated by section 102(a)(4) of this Act, $1,500,000 shall be available in fiscal year 1982 and $1,500,000 shall be available in fiscal year 1983 only for the International Committee of the Red Cross to support the activities of the protection and assistance program for "political" detainees.

PALESTINIAN RIGHTS UNITS

SEC. 103. Funds appropriated under paragraph (2) of section 102 of this Act may not be used for payment by the United States, as its contribution toward the assessed budget of the United Nations for any year, of any amount which would cause the total amount paid by the United States as its assessed contribution for that year to exceed the amount assessed as the United States contribution for that year less—

(1) 25 percent of the amount budgeted for that year for the Committee on the Exercise for the Inalienable Rights of the Palestinian People (or any similar successor entity), and

(2) 25 percent of the amount budgeted for that year for the Special Unit on Palestinian Rights (or any similar successor entity).

RESTRICTION OF FUNDS TO UNITED NATIONS WHICH WOULD PROVIDE POLITICAL BENEFITS TO THE PALESTINE LIBERATION ORGANIZATION

SEC. 104. (a) None of the funds authorized to be appropriated under paragraph (2) of section 102 of this Act may be used for payment by the United States toward the assessed budget of the United Nations, or any of its specialized agencies, which would cause the total contribution of the United States to exceed its assessed contribution less 25 percent of the amount budgeted by such agency for projects of which the primary purpose is to provide political benefits to the Palestine Liberation Organization or entities associated with it.

(b) The President shall annually review the budget of the United Nations, and of its specialized agencies, to determine which programs have the primary purpose of providing political benefit to the Palestine Liberation Organization and shall report to Congress the programs and amounts for which the United States assessment is withheld.

(c) This section shall not be construed as limiting United States contributions to the United Nations, or its specialized agencies for programs for which the primary purpose is to provide humanitarian, educational, developmental and other nonpolitical benefits to the Palestinian people.

EX GRATIA PAYMENT

SEC. 105. Of the amount appropriated for the fiscal year 1982 under paragraph (1) of section 102 of this Act, $81,000 shall be available for payment ex gratia to the Government of Yugoslavia as an expression of concern by the United States Government for the injuries sustained by a Yugoslav national as a result of an attack on him in New York City.

BILATERAL SCIENCE AND TECHNOLOGY AGREEMENTS

SEC. 106. In addition to the amounts authorized to be appropriated by section 102 of this Act, there are authorized to be appropriated to the Secretary of State $3,700,000 for the fiscal year 1982 and $3,700,000 for the fiscal year 1983 for payment of the United States share of expenses of the science and technology agreements between the United States and Yugoslavia and between the United States and Poland.

PASSPORT FEES AND DURATION

SEC. 107. (a) The first sentence of section 1 under the headings "FEES FOR PASSPORTS AND VISAS" of the Act of June 4, 1920 (22 U.S.C. 214), is amended to read as follows: "There shall be collected and paid into the Treasury of the United States a fee, prescribed by the Secretary of State by regulation, for each passport issued and a fee, prescribed by the Secretary of State by regulation, for executing each application for a passport.".

(b)(1) Section 2 of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 217a), is amended to read as follows:

"SEC. 2. A passport shall be valid for a period of ten years from the date of issue, except that the Secretary of State may limit the validity of a passport to a period of less than ten years in an individual case or on a general basis pursuant to regulation.".

(2) The amendment made by this subsection applies with respect to passport issued after the date of enactment of this Act.

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW AND THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

SEC. 108. Section 2 of the joint resolution entitled "Joint Resolution to provide for participation by the Government of the United States in the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law, and authorizing appropriations therefor", approved December 30, 1963 (22 U.S.C. 269g–1), is amended by striking out ", except that" and all that follows through "that year".

PAN AMERICAN RAILWAY CONGRESS

SEC. 109. Section 2(a) of the joint resolution entitled "Joint Resolution providing for participation by the Government of the United States in the Pan American Railway Congress, and authorizing an appropriation therefor", approved June 28, 1948 (22 U.S.C. 280k), is amended by striking out "Not more than $15,000 annually" and inserting in lieu thereof "Such sums as may be necessary".

PAN AMERICAN INSTITUTE OF GEOGRAPHY AND HISTORY

SEC. 110. Paragraph (1) of the first section of Public Resolution 42, Seventy-fourth Congress, approved August 2, 1935 (22 U.S.C. 273), is amended by striking out ", not to exceed $200,000 annually,".

INTERNATIONAL ORGANIZATIONS IN VIENNA

SEC. 111. Amend section 2 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e) by adding at the end thereof the following new subsection:

"(h) The President, by and with the advice and consent of the Senate shall appoint a representative of the United States to the Vienna office of the United Nations

with appropriate rank and status who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. Such person shall, at the direction of the Secretary of State, represent the United States at the Vienna office of the United Nations, and perform such other functions there in connection with the participation of the United States in international organizations as the Secretary of State from time to time may direct.".

LIVING QUARTERS FOR THE STAFF OF THE UNITED STATES REPRESENTATIVE OF THE UNITED NATIONS

SEC. 112. Section 8 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e), is amended:

(1) by striking "the representative of the United States to the United Nations referred to in paragraph (a) of Section 2 hereof" and inserting in lieu thereof "the representatives provided for in Section 2 hereof and of their appropriate staffs", and

(2) by adding at the end thereof the following: "Any payments made by the United States Government personnel for occupancy by them of such leased or rented premises shall be credited to the appropriation, fund, or account utilized by the Secretary for such lease or rental, or to the appropriation, fund, or account currently available for such purposes.".

BUYING POWER MAINTENANCE FUND

SEC. 113. (a) Section 24(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696(b)), is amended to read as follows:

"(b)(1) In order to maintain the levels of program activity provided for each fiscal year by the annual authorizing legislation for the Department of State, $20,000,000 of the fund authorized by section 102 may be used to offset adverse fluctuations in foreign currency exchange rates, or overseas wage and price changes, which occur after November 30 of the calendar year preceding the enactment of the authorizing legislation for such fiscal year.

"(2) In order to eliminate substantial gains to the approved levels of overseas operations, the Secretary of State shall transfer to the appropriation account established under paragraph (1) of this subsection such amounts in other appropriation accounts under the heading "Administration of Foreign Affairs" as the Secretary determines are excessive to the needs of the approved level of operations because of fluctuations in foreign currency exchange rates or changes in overseas wages and prices.

"(3) Funds transferred from the appropriation account established under paragraph (1) shall be merged with and be available for the same purpose, and for the same time period, as the appropriation account to which transferred; and funds transferred to the appropriation account established under paragraph (1) shall be merged with and available for the purposes of that appropriation account until expended. Any restriction contained in an appropriation Act or other provision of law limiting the amounts available for the Department of State that may be obligated or expended shall be deemed to be adjusted to the extent necessary to offset the net effect of fluctuations in foreign currency exchange rates or overseas wage and price changes in order to maintain approved levels.".

(b) Section 704(c) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1477b(c)) is amended by striking out "preceding" and inserting in lieu thereof "calendar year preceding the enactment of the authorizing legislation for such".

(c) Section 8(a)(2) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2287(a)(2)) is amended by striking out "preceding" in the first sentence and inserting in lieu thereof "calendar year preceding the enactment of the amendments to paragraph (1) which provide the authorization for such".

(d) The amendments made by this section shall take effect on October 1, 1981.

ASIA FOUNDATION

SEC. 114. In addition to the amounts authorized by section 102, $4,500,000 is authorized to be appropriated in fiscal year 1982 for the Asia Foundation in furtherance of that organization's purposes as described in its charter. Such funds are to be made available to the Foundation by the Department of State in accordance with the terms and conditions of a grant agreement to be negotiated between the Department of State and the Asia Foundation. Funds appropriated under this section are authorized to remain available until expended.

INTER-AMERICAN FOUNDATION

SEC. 115. (a) Section 401(s)(2) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f(s)) is amended to read as follows:

"(2) There is authorized to be appropriated not to exceed $12,000,000 for the fiscal year 1982 to carry out the purposes of this section. Amounts appropriated under this paragraph are authorized to remain available until expended.".

(b) Section 401(h) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f(h)) is amended to read as follows:

"(h) Members of the Board shall serve without additional compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code, while engaged in their duties on behalf of the corporation.".

DEPENDENT TRAVEL

SEC. 116. (a)(1) The first sentence of section 5924(4)(B) of title 5, United States Code, is amended by striking out "American secondary or" and inserting in lieu thereof "American secondary education or, in the case of dependents of an employee other than an employee of the Department of State or the International Communication Agency, to obtain an American".

(2) Section 5924 of such title is amended—

(A) by inserting "(a)" immediately before the first sentence; and

(B) by adding at the end thereof the following:

"(b)(1) An employee of the Department of State or of the International Communication Agency in a foreign area is entitled to the payment of the travel expenses incurred by the employee in connection with the travel of a dependent of the employee to or from a school for the purpose of obtaining an undergraduate college education.

"(2) Paragraph (1) shall apply—

"(A) to two round trips each calendar year, and

"(B) to travel expenses which—

"(i) are extraordinary and necessary expenses incurred in providing adequate education for such dependent because of the employee's service in a foreign area or areas, and

"(ii) are not otherwise compensated for.".

(b) The amendments made by subsection (a) shall take effect on October 1, 1981.

DUTIES OF CHIEF OF MISSION

SEC. 117. (a) Each chief of diplomatic mission of the United States in a foreign country shall have as a principal duty the promotion of United States goods and services for export to such country.

(b) For purposes of subsection (a), the term "chief of diplomatic mission" has the same meaning as given to the term "chief of mission" in section 102(a)(3) of the Foreign Service Act of 1980.

INFANT NUTRITION

SEC. 118. (a) Congress finds there is overwhelming scientific evidence that breastfeeding has substantial advantages for infant health and growth, that it offers an uncontaminated food supply, an early transfer of antibodies protective against infectious diseases, and a naturally evolved and tested nutritional source, and that it is an important factor in bonding between mother and child.

(b) Congress is concerned that numerous studies, in a wide variety of developed and developing countries, over a long period of time, have shown that improper use of breastmilk substitutes is associated with higher rates of illness and death, and in poor communities, with lessened growth and nutrition. The problem of unrefrigerated breastmilk substitutes prepared with polluted water and placed in contaminated bottles is further complicated by insects and heat in tropical climates.

(c) It is estimated that one hundred million of the one hundred and twenty-five million children in the world below the age of one are born in developing countries. Congress is concerned that ten million of these one hundred million will probably not live until their first birthday and that diarrhea and other infectious diseases, when combined with the problems of malnutrition, account for more than half of these deaths.

(d) Congress is further concerned that the health of those infants whose mothers are unable to provide them adequate breastmilk—whether for physical, economic, or cultural reasons—also be protected.

(e) Congress is concerned with the negative vote cast by the United States on May 21, 1981, at the Twenty-Fourth World Health Assembly of the World Health Organization on the "International Code of Marketing of Breastmilk Substitutes", and is further concerned that the vote has subjected United States policy to widespread misinterpretation.

(f) Therefore, the Congress—

(1) reaffirms the dedication of the United States to the protection of the lives of all the world's children and the support of the United States for efforts to improve world health;

(2) endorses the work being done by the Agency for International Development (AID), the World Health Organization (WHO), and the United Nations Children's Fund (UNICEF) across the broad front of problems associated with infant and young child nutrition;

(3) encourages the international health organizations, and their member states, to continue combating infant illness by improving sanitation and water quality; and

(4) urges the United States Government and the breastmilk substitute industry to support the basic aim of the Code and to cooperate with the governments of all countries in their efforts to develop health standards and programs designed to implement the objectives of the Code.

TITLE II—INTERNATIONAL COMMUNICATION AGENCY

SHORT TITLE

SEC. 201. This title may be cited as the "International Communication Agency Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 202. There are authorized to be appropriated for the International Communication Agency $561,402,000 for the fiscal year 1982 and $482,340,000 for the fiscal year 1983 to carry out international communication, educational, cultural, and exchange programs under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, and Reorganization Plan Numbered 2 of 1977, and other purposes authorized by law.

CHANGES IN ADMINISTRATIVE AUTHORITIES

SEC. 203. (a)(1) Title III of the United States Information and Educational Ex-

change Act of 1948 (22 U.S.C. 1451–1453) is amended—

(A) in section 301 by striking out "citizen of the United States" and inserting in lieu thereof "person"; and

(B) in sections 302 and 303 by striking out "citizen of the United States" and inserting in lieu thereof "person in the employ or service of the Government of the United States".

(2) Such title is further amended—

(A) in section 301—

(i) by striking out "Secretary" the first place it appears and inserting in lieu thereof "Director of the International Communication Agency", and

(ii) by striking out "Secretary" the second place it appears and inserting in lieu thereof "Director"; and

(B) in section 303 by striking out "Secretary" and inserting in lieu thereof "Director of the International Communication Agency".

(3) Section 302 of such Act is amended—

(A) in the second sentence by striking out "section 901(3) of the Foreign Service Act of 1946 (60 Stat. 999)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980"; and

(B) in the last sentence by striking out "section 1765 of the Revised Statutes" and inserting in lieu thereof "section 5536 of title 5, United States Code".

(b) Section 802 of such Act (22 U.S.C. 1472) is amended—

(1) by inserting "(a)" immediately after "SEC. 802."; and

(2) by adding at the end thereof the following new subsections:

"(b)(1) Any contract authorized by subsection (a) and described in paragraph (3) of this subsection which is funded on the basis of animal appropriations may nevertheless be made for periods not in excess of five years when—

"(A) appropriations are available and adequate for payment for the first fiscal year; and

"(B) the Director of the International Communication Agency determines that—

"(i) the need of the Government for the property or service being acquired over the period of the contract is reasonably firm and continuing;

"(ii) such a contract will serve the best interests of the United States by encouraging effective competition or promoting economies in performance and operation; and

"(iii) such method of contracting will not inhibit small business participation.

"(2) In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be canceled and any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

"(3) This subsection applies to contracts for the procurement of property or services, or both, for the operation, maintenance, and support of programs, facilities, and installations for or related to radio transmission and reception newswire services, and the distribution of books and other publications in foreign countries.".

(c) Paragraph (16) of section 804 of such Act (22 U.S.C. 1474(16)) is amended by inserting "and security vehicles" immediately after "right-hand drive vehicles".

(d) Title VIII of such Act (22 U.S.C. 1471–1475b) is amended by adding at the end thereof the following new section:

"ACTING ASSOCIATE DIRECTORS

"SEC. 808. If an Associate Director of the International Communication Agency dies, resigns, or is sick or absent, the Associate Director's principal assistant shall perform the duties of the office until a successor is appointed or the absence or sickness stops.".

(e) Paragraphs (18) and (19) of section 804 of such Act (22 U.S.C. 1476 (18 and (19)) are amended—

(1) by striking out "and" at the end of paragraph (18); and

(2) by striking out the period at the end of paragraph (19) and inserting the following:

"; and

"(20) purchase motion picture, radio and television producers' liability insurance to cover errors and omissions or similar insurance coverage for the protection of interests in intellectual property.".

(f) Section 1011 of the United States Information and Educational Exchange Act of 1948, as amended, is amended by adding at the end thereof the following new subsection:

"(i) Foreign currencies which were derived from conversions made pursuant to the obligation of informational media guaranties and which have been determined to be unavailable for, or in excess of, the requirements of the United States and transferred to the Secretary of the Treasury, shall be held until disposed of, and any dollar proceeds realized from such disposition shall be deposited in miscellaneous receipts. As such currencies become available for such purposes of mutual interest as may be agreed to by the governments of the United States and the country from which the currencies derive, they may be sold for dollars to agencies of the United States Government.".

(g) Title VI I of the United States Information and Educational Exchange Act of 1948, as amended, is revised by the addition of the following section:

"SEC. 809. Cultural exchanges, international fairs and expositions, and other exhibits or demonstrations of United States economic accomplishments and cultural attainments provided for under this Act or the Mutual Educational and Cultural Exchange Act of 1961 shall not be considered "public work" as that term is defined in section 1 of the Defense Base Act, as amended (section 1651 (b) of title 42 of the United States Code).".

LIQUIDATION OF THE INFORMATIONAL MEDIA GUARANTY FUND

SEC. 204. Section 1011(h) of such Act (22 U.S.C. 1442(h)) is amended by adding at the end thereof the following new paragraph:

"(4) Section 701(a) of this Act shall not apply with respect to any amounts appropriated under this section for the purpose of liquidating the notes (and any accured interest thereon) which were assumed in the operation of the informational media guaranty program under this section and which were outstanding on the date of enactment of this paragraph.".

INTERNATIONAL EXCHANGES AND NATIONAL SECURITY

SEC. 205. (a) Congress finds that—

(1) United States Government sponsorship of international exchange-of-persons activities has, during the postwar era, contributed significantly to United States national security interests;

(2) during the 1970's, while United States programs declined dramatically, Soviet exchange-of-persons activities increased steadily in pace with the Soviet military buildup;

(3) as a consequence of these two trends, Soviet exchange-of-persons programs now far exceed those sponsored by the United States Government and thereby provide the Soviet Union an important means of extending its worldwide influence;

(4) the importance of competing effectively in this area is reflected in the efforts of major United States allies, whose programs also represent far greater emphasis on exchange-of-persons activities than is demonstrated by the current United States effort; and

(5) with the availability of increased resources the United States exchange-of-persons program could be greatly strengthened, both qualitatively and quantitatively.

(b) It is therefore the sense of Congress that—

(1) United States exchange-of-persons activities should be strengthened;

(2) the allocation of resources necessary to accomplish this improvement would constitute a highly cost-effective means of enhancing United States national security; and

(3) because of the integral and continuing national security role of exchange-of-persons programs, such activities should be accorded a dependable source of long-term finding.

(c) Beginning in fiscal year 1982, exchange-of-persons programs administered by the International Communication Agency shall, over a four-year period, be expanded to a level, in real terms, three times that in effect on the date of the enactment of this Act.

DISTRIBUTION WITHIN THE UNITED STATES OF THE FILM ENTITLED "IN THEIR OWN WORDS"

SEC. 206. (a) Notwithstanding the second sentence of section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461)—

(1) the Director of the International Communication Agency shall make available to the Administrator of General Services a master copy of the film entitled "In Their Own Words"; and

(2) the Administration shall reimburse the Director for any expenses of the Agency in making that master copy available, shall secure any licenses or other rights required for distribution of that film within the United States, shall deposit that film in the National Archives of the United States, and shall make copies of that film available for purchase and public viewing within the United States.

(b) Any reimbursement to the Director pursuant to this section shall be credited to the applicable appropriation of the International Communication Agency.

TITLE III—BOARD FOR INTERNATIONAL BROADCASTING

SHORT TITLE

SEC. 301. This title may be cited as the "Board for International Broadcasting Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 302. There are authorized to be appropriated for the Board for International Broadcasting $98,317,000 for fiscal year 1982 and $98,317,000 for fiscal year 1983.

ADDITIONAL FUNDING

SEC. 303. Notwithstanding the provisions of section 8b of Public Law 93–129, not to exceed $6,195,000 of the gain realized during fiscal year 1981 through upward fluctations in foreign currency exchange rates shall be made available to compensate for losses incurred as a result of the bomb explosion at RFE/RL, Inc., Munich headquarters on February 21, 1981, and for additional RFE/RL, Inc., operating expenses as might be deemed appropriate.

MEMBERSHIP OF THE RFE/RL BOARD AND THE BIB

SEC. 304. (a) The Board for International Broadcasting Act of 1973 is amended by adding at the end thereof the following new section:

"MERGER OF THE BOARD FOR INTERNATIONAL BROADCASTING AND THE RFE/RL BOARD

"SEC. 11. (a) Effective January 1, 1982, no grant may be made under this Act to RFE/RL, Incorporated, unless the certificate of incorporation of RFE/RL, Incorporated, has been amended to provide that—

"(1) the Board of Directors of RFE/RL,

Incorporated, shall consist of the members of the Board for International Broadcasting and of no other members; and

"(2) such Board of Directors shall make all major policy determinations governing the operation of RFE/RL, Incorporated, and shall appoint and fix the compensation of such managerial officers and employees of RFE/RL, Incorporated, as it deems necessary to carry out the purposes of this Act.

"(b) Compliance with the requirement of paragraph (1) of subsection (a) shall not be construed to make RFE/RL, Incorporated, a Federal agency or instrumentality.".

(b)(1) Section 3(b)(1) of such Act is amended to read as follows:

"(b)(1) COMPOSITION OF BOARD.—The Board shall consist of ten members, one of whom shall be an ex officio member. The President shall appoint, by and with the advice and consent of the Senate, nine voting members, one of whom he shall designate as chairman. Not more than five of the members of the Board appointed by the President shall be of the same political party. The chief operating executive of RFE/RL, Incorporated, shall be an ex officio member of the Board and shall participate in the activities of the Board, but shall not vote in the determinations of the Board.".

(2) Sections 3(b) (3) and (4) of such Act are amended to read as follows:

"(3) TERM OF OFFICE OF PRESIDENTIALLY APPOINTED MEMBERS.—The term of office of each member of the Board appointed by the President shall be three years, except that the terms of office of the individuals initially appointed as the four additional voting members of the Board who are provided for by the Board for International Broadcasting Authorization Act, fiscal years 1982 and 1983, shall be one, two, or three years (as designated by the President at the time of their appointment) so that the terms of one-third of the voting members of the Board expire each year. The President shall appoint, by and with the advice and consent of the Senate, members to fill vacancies occurring prior to the expiration of a term, in which case the members so appointed shall serve for the remainder of such term. Any member whose term has expired may serve until his successor has been appointed and qualified.

"(4) TERM OF OFFICE OF THE EX OFFICIO MEMBER.—The ex officio member of the Board shall serve on the Board during his or her term of service as chief operating executive of RFE/RL, Incorporated.".

RADIO FREE CUBA

SEC. 305. Any program of the United States Government involving radio broadcasts to Cuba for which funds are authorized to be appropriated under this Act or any other Act shall be designated as "Radio Free Cuba".

TITLE IV—ARMS CONTROL AND DISARMAMENT AGENCY

SHORT TITLE

SEC. 401. This title may be cited as the "Arms Control and Disarmament Agency Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 402. Section 49(a) of the Arms Control and Disarmament Act (22 U.S.C. 2589(a)) is amended to read as follows:

"SEC. 49. (a) To carry out the purposes of this Act, there are authorized to be appropriated—

"(1) for the fiscal year 1982, $18,268,000 and such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs, and to offset adverse fluctuations in foreign currency exchange rates, and

"(2) for the fiscal year 1983, such sums as may be necessary to carry out the purposes of this Act.

Amounts appropriated under this subsection are authorized to remain available until expended.".

SECURITY CLEARANCES

SEC. 403. Section 45(a) of the Arms Control and Disarmament Act (22 U.S.C. 2585(a)) is amended by inserting the following new sentence after the second sentence thereof: "In the case of persons detailed from other Government agencies, the Director may accept the results of full-field background security and loyalty investigations conducted by the Defense Investigative Service or the Department of State as the basis for the determination required under this subsection that the person is not a security risk or of doubtful loyalty."

ANTISATELLITE ACTIVITIES

SEC. 404. Section 31(b) of the Arms Control and Disarmament Act (22 U.S.C. 2571) is amended by striking the "," and inserting the following phrase: "and of all aspects of anti-satellite activities;".

TITLE V—MISCELLANEOUS PROVISIONS

REPEALS; TECHNICAL AMENDMENTS

SEC. 501. (a) The following provisions of law are repealed:

(1) Section 408 of the Act entitled "An Act to authorize appropriations for fiscal years 1980 and 1981 for the Department of State, the International Communication Agency, and the Board for International Broadcasting", approved August 15, 1979 (22 U.S.C. 287c note).

(2)(A) Section 121(b) (22 U.S.C. 1175 note),

(B) section 122(b) (22 U.S.C. 2280 note),

(C) section 203 (22 U.S.C. 1461–1 note),

(D) section 504(e) (22 U.S.C. 3656(e)),

(E) section 601(b) (92 Stat. 985),

(F) section 603(c) (22 U.S.C. 2656 note),

(G) section 608(c) (22 U.S.C. 2656d note),

(H) section 609(c) (92 Stat. 989),

(I) section 610(c) (22 U.S.C. 2151 note),

(J) section 611(b) (22 U.S.C. 1731 note),

(K) section 613(b) (22 U.S.C. 2370 note),

(L) section 705(a) (22 U.S.C. 2151 note),

(M) section 709 (22 U.S.C. 2161 note), and

(N) section 711 (22 U.S.C. 2220a note), of the Foreign Relations Authorization Act, Fiscal Year 1979.

(3)(A) Section 107(b) (91 Stat 846),

(B) section 109(a)(7) (22 U.S.C. 2384 note),

(C) section 414(b) (22 U.S.C. 1041 note),

(D) section 501 (91 Stat. 857),

(E) section 503(b) (91 Stat. 858),

(F) section 505 (22 U.S.C. 2151 note), and

(G) section 513 (19 Stat. 862), of the Foreign Relations Authorization Act, Fiscal Year 1978.

(4) Section 403 of the Foreign Relations Authorization Act, Fiscal Year 1977 (22 U.S.C. 2871 note).

(5) Sections 102(b) (89 Stat. 756) and 503(b) (89 Stat. 772) of the Foreign Relations Authorization Act Fiscal Year 1976.

(6) Section 15 of the State Department/USIA Authorization Act, Fiscal Year 1975 (22 U.S.C. 2151 note).

(b)(1) The Foreign Relations Authorization Act, Fiscal Year 1979, is amended—.

(A) in section 121, by striking out "(a)";

(B) in section 122, by striking out "(a)";

(C) in section 601, by striking out "(a);

(D) in section 611, by striking out "(a)";

(E) in section 613, by striking out "(a)"; and

(F) in section 705, by striking out "(a)".

(2) The Foreign Relations Authorization Act, Fiscal Year 1978, is amended—

(A) in section 107, by striking out "(a)";

(B) in section 414, by striking out "(a)";

(C) in section 503, by striking out "(a)"; and

(D) in section 505, by striking out "(a)".

(3) The Foreign Relations Authorization Act, Fiscal Year 1976, is amended—

(A) in section 102, by striking out "SEC. 102. (a) Except as provided in subsection (b), no" and inserting in lieu thereof "SEC. 102. No"; and

(B) in section 503, by striking out "(a)".

UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION

SEC. 502. (a) The Congress finds that—

(1) the First Amendment of the Constitution of the United States upholds the principle of freedom of the press;

(2) Article 19 of the Universal Declaration of Human Rights states that "everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers";

(3) the signatories to the Final Act of the Conference on Security and Cooperation in Europe concluded in 1975 in Helsinki, Finland, pledged themselves to foster "freer flow and wider dissemination of information of all kinds", and to support "the improvement of the circulation of, access to, and exchange of information";

(4) the Constitution of the United Nations Educational, Scientific, and Cultural Organization itself is committed to "promote the free flow of ideas by word and image"; and

(5) a free press is vital to the functioning of governments.

(b) The Congress hereby expresses its opposition to—

(1) efforts by the United Nations Educational, Scientific, and Cultural Organization to attempt to regulate news content and to formulate rules and regulations for the operation of the world press; and

(2) efforts by some countries further to control access to and dissemination of news.

PROMOTION OF FREE PRESS

SEC. 503. (a) It is the sense of the Congress that none of the funds authorized to be appropriated under paragraph (2) of section 102 of this Act may be used for payment by the United States toward the assessed budget of the United Nations Educational, Scientific and Cultural Organization if such payment would cause the total contribution of the United States to the United Nations Educational, Scientific and Cultural Organization to exceed its assessed contribution less 25 percent of the amount made available by the United Nations Educational, Scientific, and Cultural Organization for projects or organizational entities the effect of which is to license journalists or their publications, to censor or otherwise restrict the free flow of information within or between countries, or to impose mandatory codes of journalistic practice or ethics.

(b) The Secretary of State shall prepare and transmit annually to the Congress a report on the implementation of this section.

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

SEC. 504. (a) Section 6(4) of the Japan-United States Friendship Act is amended by striking out "and not to exceed 5 per centum annually of the principal of the Fund" and inserting in lieu thereof a comma and the following: "any amount of the contributions deposited in the Fund from nonappropriated sources pursuant to paragraphs (2) or (3) of this section, and not to exceed 5 per centum annually of the principal of the total amount appropriated to the Fund".

(b) Section 7(e) of such Act is amended by inserting after "amounts received" the following: "(including amounts earned as interest on, and proceeds from the sale or redemption of, obligations purchased with amounts received)".

REPORT

SEC. 505. (a) Not later than sixty days after the date of enactment of this section, the President shall prepare and transmit to the Congress a full and complete report on the total cost of Federal, State, and local efforts to assist refugees and Cuban and Haitian

entrants within the United States or abroad for each of the fiscal years 1981 and 1982. Such report shall include and set forth for each such fiscal year—

(1) the costs of assistance for resettlement of refugees and Cuban and Haitian entrants within the United States or abroad;

(2) the costs of United States contributions to foreign governments, international organizations, or other agencies which are attributable to assistance for refugees and Cuban and Haitian entrants;

(3) the costs of Federal, State, and local efforts other than described in paragraphs (1) and (2) to assist, and provide services for, refugees and Cuban and Haitian entrants; and

(4) administrative and operating expenses of Federal, State, and local governments which are attributable to programs of assistance or services described in paragraphs (1), (2), and (3); and

(5) administrative and operating expenses incurred by the United States because of the entry of such aliens into the United States.

(b) For purposes of this section—

(1) the term "refugees" is used within the meaning of paragraph (42) of section 101(a) of the Immigration and Nationality Act; and

(2) the phrase "Cuban and Haitian entrants" means Cubans and Haitians paroled into the United States, pursuant to section 212(d)(5) of the Immigration and Nationality Act, during 1980 who have not been given or denied refugee status under the Immigration and Nationality Act.

TITLE VI—PEACE CORPS AUTONOMY

SHORT TITLE

SEC. 601. This title may be cited as the "Peace Corps Autonomy Act".

ESTABLISHMENT AS AN INDEPENDENT AGENCY

SEC. 602. Effective on the date of enactment of this Act, the Peace Corps shall be an independent agency within the executive branch and shall not be an agency within the ACTION Agency or any other department or agency of the United States.

TRANSFER OF FUNCTIONS

SEC. 603. (a) There are transferred to the Director of the Peace Corps all functions relating to the Peace Corps which were vested in the Director of the ACTION Agency on the day before the date of enactment of this Act.

(b)(1) All personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds as are determined by the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, the Director of the Peace Corps, and the Director of the ACTION Agency, to be employed, held, or used primarily in connection with any function relating to the Peace Corps before the date of the enactment of this Act are transferred to the Peace Corps. The transfer of unexpended balances pursuant to the preceding sentence shall be subject to section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c).

(2)(A) The transfer pursuant to this section of full-time personnel (except special Government employees) and parttime personnel holding permanent positions shall not cause any employee to be separated or reduced in rank, class, grade, or compensation, or otherwise suffer a loss of employment benefits for one year after—

(i) the date on which the Director of the Office of Management and Budget submits the report required under section 606, or

(ii) the effective date of the transfer of such employee,

whichever occurs later.

(B) The personnel transferred pursuant to this section shall, to the maximum extent feasible, be assigned to such related functions and organizational units in the Peace Corps as such personnel were assigned to immediately before the date of enactment of this Act.

(C) Collective-bargaining agreements in effect on the date of enactment of this Act covering personnel transferred pursuant to this section or employed on such date by the Peace Corps shall continue to be recognized by the Peace Corps until the termination date of such agreements or until a mutual modification by the parties otherwise specifies.

(3) Under such regulations as the President may prescribe, each person who does not hold an appointment under section 7(a)(2) of the Peace Corps Act and who is determined under paragraph (1) to be employed primarily in connection with any function relating to the Peace Corps shall, effective on the date of enactment of this Act, be appointed a member of the Foreign Service under the authority of section 7(a)(2) of the Peace Corps Act, and be appointed or assigned to an appropriate class thereof, except that—

(A) no person who holds a career or career-conditional appointment immediately before such date shall, without the consent of such person, be so appointed until three years after such date, during which period such person not consenting to be so appointed may continue to hold such career or career-conditional appointment; and

(B) each person so appointed who, immediately before such date, held a career or career-conditional appointment at grade 8 or below of the General Schedule established by section 5332 of title 5, United States Code, shall be appointed a member of the Foreign Service for the duration of operations under the Peace Corps Act.

Each person appointed under this paragraph shall receive basic compensation at the rate of such person's class determined by the President to be appropriate, except that the rate of basic compensation received by such person immediately before the effective date of such person's appointment under this paragraph shall not be reduced as a result of the provisions of this paragraph.

DIRECTOR OF THE PEACE CORPS

SEC. 604. Section 4(b) of the Peace Corps Act (22 U.S.C. 2503(b)) is amended by striking out "such agency or officer of the United States Government as he shall direct. The head of any such agency or any such officer" and inserting in lieu thereof "the Director of the Peace Corps. The Director of the Peace Corps".

TECHNICAL AMENDMENTS

SEC. 605. (a) Section 3 of the Peace Corps Act (22 U.S.C. 2502) is amended by—

(1) repealing subsections (d), (e), and (f); and

(2) redesignating subsection (g) as subsection (d).

(b) The repeal of provisions of law made by subsection (a) of this section shall not affect (1) the validity of any action taken under the repealed provisions before the date of the enactment of this Act, or (2) the liability of any person for any payment described in such subsection (f).

REPORTS

SEC. 606. (a) Not later than the thirtieth day after the date of enactment of this Act, the Director of the Office of Management and Budget shall submit to the appropriate committees of the Congress and to the Comptroller General a report regarding the steps taken in implementation of the provisions of this Act, including descriptions of the manner in which various administrative matters are disposed of, such as matters relating to personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions or activities relating to the Peace Corps.

(b) Not later than the forty-fifth day after the date of the enactment of this Act, the Comptroller General shall submit to such committees a report stating whether, in the judgment of the Comptroller General, determinations made by the Director of the Office of Management and Budget under section 603(b)(1) were equitable.

REFERENCES IN LAW

SEC. 607. References in any law, reorganization plan, Executive order, regulation, or other official document or proceeding to the ACTION Agency or the Director of the ACTION Agency with respect to functions or activities relating to the Peace Corps shall be deemed to refer to the Peace Corps or the Director of the Peace Corps, respectively.

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 951, the Department of Justice authorization bill, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 951) to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 70 TO AMENDMENT NO. 69

Mr. WEICKER. Mr. President, pending before this body is the Weicker amendment in the second degree to the Helms amendment in the first degree to S. 951, the Department of Justice authorization bill for fiscal year 1982.

I would like to, at this juncture, try my best, in any event, to correct the perception given through the media as to what the issue is before this body. The issue is the Weicker amendment. That amendment says specifically:

Except that nothing in this act shall be interpreted to limit in any manner the Department of Justice in enforcing the Constitution of the United States, nor shall anything in this act be interpreted to modify or diminish the authority of the courts of the United States to enforce fully the Constitution of the United States.

Nowhere in the language of that amendment does "busing" appear. I keep on reading about an antibusing amendment and the entire debate framed in terms of busing. As I indicated, this is a civil rights debate. More particularly, as far as the amendment before this body, it relates to the constitutional powers of the executive branch under the judicial branch. It has absolutely nothing to do with busing.

The amendment assures that the Justice Department of the United States shall enforce fully the Constitution of the United States and that the courts of the United States shall enforce fully the Constitution of the United States. That is the issue before the Senate at this time.

The Helms amendment addresses itself, in part, to the issue of busing. That is not what the Weicker amendment does.

I think it important to straighten the record at this point so that not only do those that are within the Chamber know what it is that we are being asked to pass upon but also that the public at large understand the issues at debate on the floor of the U.S. Senate.

There are several arguments out here, several issues presented. The Senator from North Carolina in his amendment has presented the issue of the adequacy or inadequacy of busing as a remedy for those instances where segregation and discrimination is alleged. The Senator from North Carolina has raised the issue as to whether or not the legislative branch of Government can make an incursion on the constitutional powers of one of the other branches or both of the other branches, that is, the executive and the judicial branches.

The Senator from Connecticut in his amendment merely reaffirms the powers of the branches, specifically the executive and the judicial, reaffirms the powers as granted under the Constitution of the United States.

It would be my hope, I might add, that there would be acceptance of the Weicker amendment, both by the majority on this side and by the President of the United States.

I am out here carrying the baggage for the President on my amendment. It would be very possible for the President to say, "I agree with Senator HELMS—as indeed I have agreed in the past, I am against busing as a remedy—while at the same time I feel it incumbent upon me to protect the prerogatives, the separation of that branch of Government over which I am the head."

That best defines the two issues that are before this body. The President, if he accepts the Helms language without the Weicker language, freely admits, then, to the ability of the Congress to say what it is that his branch of Government and those agencies under his leadership can or cannot do. And I would suggest, respectfully, to the President of the United States that he understand the full ramifications of what it is that is being attempted out here on this floor.

This was the basis, the essence, of the veto by former President Carter of this legislation in the past. Indeed, the former President stated that his action was taken to preserve the powers of his Office, of his branch.

Let me read again from the letter of December 4, 1980, from then President Carter to then Chairman HOLLINGS of the Subcommittee on State, Justice:

DEAR MR. CHAIRMAN: I have decided that I will veto H.R. 7584, the State-Justice-Commerce Appropriations Act of 1980. A provision in this Act, the Helms-Collins amendment, would impose an unprecedented prohibition on the ability of the President of the United States and the Attorney General to use the Federal courts to ensure that our Constitution and laws are faithfully executed.

Throughout my administration, I have been committed to the enhancement and strong enforcement of our civil rights laws. Such laws are the backbone of our commitment to equal justice. I cannot allow a law to be enacted which so impairs the government's ability to enforce our Constitution and civil rights acts.

Here is where former President Carter gets into the substance, the nonconstitutional substance, of the busing issue.

I have often stated my belief that busing should only be used as a last resort in school desegregation cases.

But then he says:

But busing is not the real issue here. The real issue is whether it is proper for the Congress to prevent the President from carrying out his constitutional responsibility to enforce the Constitution and laws of the United States.

The precedent that would be established if this legislation became law is dangerous. It would effectively allow the Congress to tell a President that there are certain constitutional remedies that he cannot ask the courts to apply. If a President can be barred from going to the courts on this issue, a future Congress could by the same reasoning prevent a President from asking the courts to rule on the constitutionality of other matters upon which the President and the Congress disagree.

For any President to accept this precedent would permit a serious encroachment on the powers of this office. I have a responsibility to my successors and to the American people not to permit that encroachment to take place. I intend to discharged that responsibility to the best of my ability.

I ask unanimous consent that the letter be printed in the RECORD at this point.

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

DEAR MR. CHAIRMAN: I have decided that I will veto H.R. 7584, the State-Justice-Commerce Appropriations Act of 1980. A provision in this Act, the Helms-Collins amendment, would impose an unprecedented prohibition on the ability of the President of the United States and the Attorney General to use the Federal courts to ensure that our Constitution and laws are faithfully executed.

Throughout my administration, I have been committed to the enhancement and strong enforcement of our civil rights laws. Such laws are the backbone of our commitment to equal justice. I cannot allow a law to be enacted which so impairs the government's ability to enforce our Constitution and civil rights acts.

I have often stated by belief that busing should only be used as a last resort in school desegregation cases. But busing is not the real issue here. The real issue is whether it is proper for the Congress to prevent the President from carrying out his constitutional responsibility to enforce the Constitution and laws of the United States.

The precedent that would be established if this legislation became law is dangerous. It would effectively allow the Congress to tell a President that there are certain constitutional remedies that he cannot ask the courts to apply. If a President can be barred from going to the courts on this issue, a future Congress could by the same reasoning prevent a President from asking the courts to rule on the constitutionality of other matters upon which the President and the Congress disagree.

For any President to accept this precedent would permit a serious encroachment on the powers of this office. I have a responsibility to my successors and to the American people not to permit that encroachment to take place. I intend to discharge that responsibility to the best of my ability.

The purpose of this letter is to ensure that there is no doubt about my opposition to the objectionable provision in the State-Justice-Commerce Appropriation Act. My opposition also applies to the inclusion of such a provision in the Continuing Resolution.

I would of course prefer to avoid a veto of the Resolution. I recognize the difficulties such a veto could impose on critically important operations of the government and on the Congressional schedule. But I would be shirking my constitutional responsibilities if I allowed this unprecedented and unwarranted encroachment on Executive authority and responsibility to prevail.

Sincerely,

JIMMY CARTER.

(Mr. ANDREWS assumed the chair.)

Mr. WEICKER. Mr. President, the issue is no different here today than it was in December of last year.

Let me say this: My reservations, when I made the request to the majority leader and through him asked that the request be relayed to the White House that they support the Weicker part of this amendment, are that if the Weicker amendment is passed, it will perfect Helms, which, to me, is patently unconstitutional. In effect, it would make Helms constitutional and the Helms then very well might withstand a court test. But without this language, let me say that everything we do here today is going to be down the drain in a matter of time. It might be before it goes through the court process that it will be a year, maybe a year and a half or 2 years. But the Helms amendment is unconstitutional on its face. There is no doubt about it in my mind or, I think, in anybody else's mind.

I would again suggest to my colleagues that the first issue to be resolved is whether or not the legislative branch of Government can go ahead and dictate to either of the other branches what it is that they can hear or they can do in terms of the procedures allowed them by law and under the Constitution.

The Weicker amendment was rejected by the 96th Congress by a vote of 46 to 43. I suppose the question that has to be asked is, Why is affirming the enforcement, which is all this amendment says and which has nothing to do with busing—why is affirming the enforcement of the Constitution of the United States by the executive and by the judicial so controversial.

I woke up this morning and it was as though I had awakened from a nightmare, that you have to stand on the Senate floor and fight for the principle that the Constitution is going to be enforced. Maybe I should have thrown the Senate of the United States into the amendment also. That might have made it too tough. In this way, we are only imposing that obligation on our colleagues in the executive and the judicial branch.

The other matter which I very much object to is every article that I read starts off with an implied reference to "The liberal Senator from Connecticut, Senator WEICKER," and so forth.

When it comes to the Constitution and the enforcement thereof, I think we best see what it is that the various sides are advocating.

I believe that this, the Constitution of the United States. means what it says, period. I construe this document very, very strictly. As a matter of attitude toward the Constitution, I would suggest

that maybe the position of the Senator from Connecticut is the conservative, indeed the very conservative, position, and we do not blithely roam around these Halls jumping over the various separations of the branches, and we just do not blithely throw the civil rights of Americans out the window or up for grabs.

If there are laws to be changed and policies to be made, that is one thing, but to ignore the rights and the strictures that are contained in this document seems to me rather liberal if not cavalier handling of the document which is the origin of everything that proceeds forth from the Government of the United States.

I would repeat that I would hope that before this day is over we can all agree that we can sign onto the Weicker amendment without fear we have done any violence to our oaths of office, to our constituents, or to those matters of policy that we each might believe, differing as those beliefs might be.

Of course, the real difficulty is that the proponents of this legislation want to rewrite the Constitution of the United States in a manner that is outside the provisions of that document when it comes to amending it.

Article V of the Constitution states:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article, and that no State without its Consent, shall be deprived of its equal Suffrage in the Senate.

That tells you how to go ahead and amend the Constitution of the United States. What you do not do is to go ahead and put riders on appropriations bills, riders on authorization bills, use the funding process to say what it is the judicial system can or cannot do.

Do you know what the ultimate act will be in this scenario we are following? I sit as chairman of the Appropriations Subcommittee that handles the State Department, the Justice Department, the Commerce Department, and the Federal judiciary. So the ultimate act in this play as set forth on the scene by the distinguished Senator from North Carolina, from South Carolina, and their various colleagues is that we will use the appropriations process to say what it is the Federal judiciary can or cannot do. If we do not like a decision of the Supreme Court, then we will go ahead and cut off funding for the Supreme Court.

That is the ridiculous, not the logical, end to the path that was commenced by the Senator from North Carolina and many of his colleagues several years ago. There is no reason why it should not be done, according to the logic behind this type of legislation.

If the Supreme Court decides cases and the majority of this body does not like the decisions, then cut off their appropriations.

Mr. President, I have no desire to be on my feet in this matter. On the other hand, as a matter of principle, I really do not see what course of action is left open to me. I do not want the judicial branch of Government saying to me what we should or should not do. I do not want them to come back to me or come back to this body and say that we have made bad law.

Our difficulties in this whole area of civil rights is that we should make no law and leave it up to the courts or, as is the instance before us today, we make bad laws and have it thrown back at us.

The easiest course to take right now, for this Senator, would be to allow this matter to come to a vote, have it go through, and then for it be declared unconstitutional, which is what would happen.

I believe very, very strongly that, aside from the easy and the pleasurable decisions which are made a hundred times over on this floor, which benefit many of our citizens, there are those times when the very tough decisions have to be made. That is one of those times.

We—I say "we," not the individual Members of this body at this time, but a series of Congresses—we delayed too long the realistic implementation of the ideas and admonitions contained in the Constitution when it came to equality—so long, in fact, that any correction of past omissions was going to be expensive, was going to be disagreeable; and that is the process that is being objected to here today.

I suppose it has been since Brown against Board of Education, approximately 26 years; and with the impatience that is characteristic of our Nation—and that is a good thing—we say that certainly we should have been able, in 26 years, to do what needs to be done. That is enough. But, of course, that is not what the fact situation out there in the countryside tells us. The job is still incomplete. It has not been done, and it has not been done primarily for two reasons: The political leadership in this country, in too many instances, has wavered in its commitment to equality for all Americans; and as soon as the leadership wavers, it is only a matter of time before that indecisiveness, that weakness, catches hold among the rest of the citizens.

Second, we have not gone ahead and demanded the monetary resources of ourselves to make up the lost ground, lost over a period of 200 years. The problems have changed to a great degree. Much of the segregation now is in the North, not the South. The issue long ago lost its regional tinge.

What comparatively was improvement in the past—since you were starting from ground zero—is not so easily attained right now. Large strides could be proved statistically, initially, and be statistically encouraging, since we are starting from scratch. Now the going gets tougher.

Mr. President, what I should like to talk about initially this afternoon is the matter of restrictions imposed by the legislative branch on matters which the judicial branch can consider violative of the basic tenets of our constitutional, tripartite system of government.

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of Government is to afford that protection . . .
>
> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for a violation of a vested legal right.

That is one of the great landmark cases in this Government of laws, and it clearly spells out a philosophy and a principle in total contradiction to what is being offered by the Senator from North Carolina in conjunction with the distinguished chairman of the Committee on the Judiciary.

Issuance of remedial orders is an integral part of the judicial process, and if the courts are to act at all, they must be immunized from congressional control. By limiting what the Justice Department could present to the courts, Congress would be unconstitutionally interfering with the judicial process. As Chief Justice Marshall observed in Marbury against Madison.

> It is emphatically the province and duty of the judicial department to say what the law is. (5 U.S. at 177).

To allow Congress to control the matters which the judiciary may consider would give "to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits"; this would reduce "to nothing what we have deemed the greatest improvement on political institutions—a written constitution." (Marbury against Madison, 5 U.S. at 178).

It is well established that the courts may not arbitrarily order—I wish to emphasize that—may not arbitrarily order busing of students as a remedy for unconstitutional school segregation.

In the seminal busing decision, *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Supreme Court was careful to note that there were limits on busing remedies which courts could order:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process. (402 U.S. at 31.)

The Supreme Court, setting aside a desegregation order in *Milliken v. Bradley*, 418 U.S. 717, 744 (1974), reiterated that there were strict standards for fashioning a busing remedy:

> The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation.

Right there, we have one of the greatest arguments against what is being propounded by the proponents of the Helms amendment—that is, the Supreme Court and a judiciary gone wild.

The law has been very precise as to what can or cannot be done. It has to be tailored to the violation. That, of course, raises the first instance, lest anybody get all their sympathies aroused, on how unjust a particular court order is in terms of remedy. No remedy is ordered unless an illegality has been established.

So we are not dealing with some innocent party here. We are talking about somebody who has been convicted—as much convicted as a murderer, as much convicted as a burglar, as much convicted as a rapist. We are talking about somebody who has been convicted. We are talking about the establishment of an illegality that has taken place and has been determined to be an illegality. Not until that happens, do we even get into the business of remedy, one of which remedies may be busing.

I do not understand what all the sympathy is all of a sudden on the floor of the Senate for the criminal. We hear much about law and order. We are talking about a criminal. There is all this concern about a criminal.

This is not speculation. What, in effect, first happens is someone—jury, judge, a combination of the two—has made a determination the laws of the Nation have been violated, that is, that certain of our citizens are being discriminated against. This discrimination takes place in the area of race relations.

Other discriminations have taken place. We read where a court just recently upheld the rights of workers to safe conditions. That was a discrimination that had taken place against laboring people. And the employers were found to be in violation of the laws of this Nation.

Other discriminations have taken place against those who are retarded and disabled and the courts have come to their assistance as they have been discriminated against. There are other discriminations against women and discrimination as to the matter of sex. All of these, in other words, situations are violations of the law.

Why is this violation of the law any different from the person who bops someone on the head in an alley or in some dark corner of an American city? Why is this any different from someone who breaks into an individual's home to steal whatever is in there? Why is this different from the individual that takes money and embezzles money from a bank?

We have laws. When those laws are broken and it is established that the law has been broken, then it is up to the court to go ahead and render judgment. As to which judgment again is restricted by what is established in law.

Why is it that this great law and order group all of a sudden evinces all this sympathy for the criminal? The fact that the criminal is a large group does not make it any less criminal. The law has been broken. In effect, we, this Senator included, all of us, the American society broke the law for 200 years. This is the law, this Constitution of the United States, and that portion I will state:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without the due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

We broke the law. That was the determination that was made. Separate is not equal.

Now we have to stand up and take our medicine just like anyone else convicted under the judicial processes of this country. What we are saying is well, all right, we are guilty, but we are an exception, since it is society. We are an exception to what it is that can be imposed upon us in terms of a judgment.

What is it that makes us so privileged because we are society as a whole? What makes us different from that individual in the dock who has been adjudged as guilty? Why can he not stand before the judge and his peers, the jury, and say:

I am an exception. You cannot put me in jail for 5 to 10 years. You cannot fine me $50,000. Even though I am guilty, I am an exception.

What gives us, in other words, the basis for requesting an exception? Is it the fact that there are many of us rather than just a few or rather than one?

That is the essence of what we are doing here today. If this were one person, one person's vote would not count. That is why we request the exception. Too many of us are requesting it on behalf of our constituents because there are a lot of people involved in the disagreeable process of catching up with the principles of the Constitution of the United States.

So politically it becomes an advantageous thing to do. It has nothing to do with justice. This is politics. It is not justice.

We are seeing the classic example of a government of men rather than a government of laws. And it is governments of men whose days are numbered.

If the President feels as he does about busing, then at least let him manifest his philosophical and his partisan beliefs in a way that will not harm the continuing authority and power of the office that he holds, and he has that right. He has every right in the world to support the Helms amendment. But he has no right to give away what is not his to give, the authority of his office, the separateness of his office, in terms of power from the power of this body and the power of the judiciary.

Disagree as he might on any given issue, it is his duty to hand on to his successors in terms of structure and substance when it relates to the power of the Presidency as much as was left to him.

Has it occurred to Senators that that letter was written by former President Carter after he had been defeated and certainly no one is going to argue the philosophical differences between him and the man who was to succeed him? The easiest thing in the world for President Carter would have been to say, all right, we will let this one go through. Indeed, it might have formed some basis for him recapturing or starting on the come-back trail. I do not know.

But the fact was that his determination was made not on the matter of busing, not on the matter of segregation, and not on the matter of discrimination, although his views were well known and he alludes to them. I do not want in any way to minimize the commitment of the man to civil rights. But he wanted to assure Ronald Reagan that that office in terms of its power, its authority, its separateness from the legislative branch, was going to be intact, whole, undiluted. I think President Reagan owes as much. I think President Reagan owes as much to future Presidents. I think he owes as much to the people of this country to assure that in terms of constitutional structure the House of State is intact.

The policies and philosophies of his administration have nothing to do with the argument that I now present to my colleagues. That is a matter that we can go up and down on hundreds of votes that will take place during the course of the next several years. We will agree and we will disagree. He will be adjudged or his administration will be adjudged on that basis also. I am confident that when he writes that record that reelection will be assured him.

But as to the business of the Constitution and the structure of this Government, the checks and balances, the minute this becomes a partisan or a philosophical issue then the greatness of the Nation is neither assured nor will it be long lived.

The Supreme Court reiterated in *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 420, (1977) that the remedial powers of the Federal courts are called forth by violations and are limited by the scope of those violations:

Once a constitutional violation is found, a Federal court is required to tailor "the scope of the remedy" to fit "the nature and extent of the constitutional violation" . . . The remedy must be designed to redress that difference, and only if there has been a systemwide impact may there be a systemwide remedy.

Thus, the courts are limited to restoring the plaintiffs to the position they would have occupied had they not been subject to unconstitutional discrimination.

Limitation of the Justice Department's authority to litigate—in any manner—to remedy unconstitutional segregation would be unconstitutional.

In 1977, Congress passed an Eagleton-Biden amendment which would prevent HEW from administratively requiring school desegregation by transporting students beyond the closest school. However, it left intact the Justice Department's enforcement authority. A Federal district court upheld the constitutionality of the amendment on the grounds that Congress specifically left unaffected Justice Department's litigative authority:

But the fact remains that the amendment leave(s) untouched the litigation enforcement option that permits the Civil Rights Division of the Department of Justice, upon referral of a case from HEW, to pursue legal action and obtain the full measure of appropriate relief, including student transportation, if warranted, against the offending recipients. *Brown* v. *Califano*, 455 F. Supp. 837, 840 (D.D.C. 1978).

The district court emphasized that only the continued ability of the Justice Department to litigate effectively supported the constitutionality of the amendment:

> This conclusion (of constitutionality) however, embodies only a view concerning the facial constitutionality of the . . . disputed provisions . . . Should further proceedings in this case reveal that the litigation option left undisturbed by these provisions cannot, or will not, be made into a workable instrument for effecting equal educational opportunities, the Court will entertain a renewed challenge by plaintiffs on an as applied basis, (emphasis in original) *Brown* v. *Califano*, 455 F. Supp. at 843.

In upholding the constitutionality of the amendment, the Court of Appeals also relied on the unbridled ability of the Justice Department to litigate violations of Constitutional rights.

> To avoid constitutional doubts, we must proceed on the assumption that Congress intended the Department of Justice to act with the greatest dispatch. *Brown* v. *Califano*, No. 78–1864 (D.C. Cir., January 31. 1981), slip op. 25. As the amendments also leave in place the enforcement options at the Department of Justice, we cannot find that on their face they "restrict, abrogate, or dilute" the guarantee of equal protection.

(Mr. COHEN assumed the chair.)

Mr. WEICKER. This raises the issue, Mr. President, and I would like to refer to one word there, "unbridled," the unbridled ability of the Justice Department to litigate.

You know this argument and this problem was first raised—and I am talking now about this session of Congress—in the attempts to eliminate the Legal Services Corporation. The issue raised, in essence, is why lawyers should be provided for the poor and, indeed, if lawyers are provided the poor, should not then the matters which they can involve themselves in, which they can litigate, be limited?

The issue on the floor here today is: Should not the Justice Department's ability to litigate be limited? All right.

Now let me move, in other words, that principle, the limitation of our legal rights, to all of those of us who are citizens of this country.

Is there anyone here who would not be mightily offended if it were even suggested that his legal rights should in any way be limited by Congress, by the President, by his neighbors? I certainly would find that offensive. Why is it then that a poor person should not find it offensive to be poor monetarily? That is a station in life which is reality, which is something that we cannot do something about, but does that mean because a person is poor monetarily that we can use this book to say, in other words, if you are in the zero to $5,000 category of income then you get the first six pages of the Constitution? If it is $10,000 to $15,000 then you pick up a couple of more pages of the Constitution? I mean, how does that work? It does not. Every one of the pages here, every word in here, belongs to each one of us. It makes no difference what our income is. It belongs to each one of us, every last word, every sentence, every right.

How arrogant it is that anybody should suggest that because someone is poor that, No. 1, they do not deserve the services of a lawyer, but even if they get those services the services have to be limited.

I might add that the suggestion of the limitation of services is that that, of course, means they could bring lawsuits once again not only to enforce their rights but in some way stand up against the discrimination of their neighbors, and the neighbors of the majority, and the neighbors of the majority at the polling booths. How arrogant, how arrogant that anybody should suggest that the Justice Department of the United States should proceed in a certain way, how the Justice Department should proceed in assuring each American of his rights. How arrogant. Mind you, the next step—and we have seen those matters before us here previously, the same advocates of this legislation have actually indicated as to what they are going to do in the courts, in the remedies that the courts can apply. How arrogant. Is there anybody within the sound of my voice who would like to have the Senate of the United States determine his case, his grievance? Is there anybody who would like to have 100 politicians decide on his particular justice when that day comes? Do you want the courts of this country and the Justice Department listening to the voices and counting the house? Is that what you want? That is not justice; that is mob rule. That is politics disguised in the robes of justice.

We are all deserving better than that. That is what is at issue here today. Initially I set it out as to the independence of the legislative branch from that of the executive branch; the independence of the executive branch from the judiciary. But really in the final analysis it is the independence of the justice accorded to each one of us. You cannot in the United States of America separate the institution of government from the people because government is the people. Ben Franklin said "In this country the people rule." So whatever it is that the President gives up or the courts give up each one of us gives up.

Who is going to deny that decisions rendered by a court are not going to set some of our teeth on edge? Who has ever played in a football game, a baseball game, a basketball game, or a hockey game and has liked every decision rendered by the umpire, the referee, or the linesmen or whatever? Nobody, and nobody is going to like all the decisions handed down by the courts.

I did not like the decision, for example, on the Hyde amendment which upheld its constitutionality. I thought that was a rotten decision. But I am not roaming around the corridors of the Capitol trying to figure out how I can circumvent it. I accept that also as the law of the land just like Roe against Wade is the law of the land.

There is an ending to all of our processes. What is being advocated here is no better than a sophisticated form of anarchy, to say that there is no end. That is why I am back here today literally citing those cases which are the initial landmark cases of American jurisprudence. The very issues I am discussing here in the year 1981, some few years after our Bicentennial celebration, these were the very issues which formed the basis of case law history in this country.

So that those that regard this debate from afar and say, "Well, this is a fight between various Members of Congress in terms of their philosophy, in terms of their partisanship. It is a fight between the Congress and the President."

This is not a fight between various philosophies and the Congress and the President. This is a matter that involves 250 million Americans, every one of them. You just better pray—I know I am going to lose on this floor. I know exactly what all this time is going to end up to. It is going to end up to a loss.

But, regardless of how you feel on the issue of busing, on the principle that is involved here, that of independence of the justice system of this country, you better hope I win, because the next time around it is not going to be busing. It is going to be something that is near and dear to your heart and you are going to get political justice rather than untampered with, undiluted justice. That is the problem.

In upholding the constitutionality of the amendment, the court of appeals also relied on the unbridled ability of the Justice Department to litigate violations of constitutional rights. 'To avoid constitutional doubts, we must proceed on the assumption that Congress intended the Department of Justice to act with the greatest dispatch. As the amendments also leave in place the enforcement options at the Department of Justice, we cannot find that on their face they 'restrict, abrogate, or dilute' the guarantee of equal protection."

Thus, the Helms amendment—which would limit the Justice Department's enforcement powers—is unconstitutional. Furthermore, based on the court of appeal's decision of Brown versus Califano, the Helms amendment—if passed—would also render the Eagleton-Biden amendment unconstitutional.

Mr. President, I would like to read an article prepared by Prof. Paul Gewirtz of Yale Law School on "Why Proposed Legislation To Restrict the Federal Court Jurisdiction Is Unwise and Unconstitutional." This is dated March 27, 1981.

> The Congress is currently considering a number of bills which strip both the Supreme Court and the lower Federal courts of the power to hear cases involving school prayers, abortion and busing. The announced purpose of these bills is to try to change the results reached in specific Supreme Court decisions over the past 20 years. These bills are unwise as a matter of policy and unconstitutional as a matter of law. They should be opposed whether one is for or against school prayer, for or against abortion, for or against busing.

I might add, I have not read this until this minute. Obviously it is a similar chain of thought.

> What is at stake is something far more fundamental than any particular issue such as school prayer. What is at stake is a central feature of our democratic political system for two centuries: The essential role played by an independent Federal judiciary in our system of checks and balances and separation of powers.

At least since John Marshall's famous decision in *Marbury* v. *Madison*, it has been established that the Federal judicial power is supreme over Congress in resolving Federal constitutional questions and enforcing Federal constitutional guarantees. The Federal courts are the ultimate interpreters of the Constitution. In the much quoted words of Chief Justice Marshall, it is "the province and duty of the judicial department to say what the law is."

(Mr. ABDNOR assumed the chair.)

Mr. MATHIAS. Mr. President, will the Senator from Connecticut yield for a question?

Mr. WEICKER. Mr. President, I see my very good friend, the distinguished Senator from Maryland, on the floor, who certainly is one of the great legal minds of this body. I would be delighted to yield for a question, although I doubt that there is much that I can answer that the distinguished Senator does not already know.

Mr. MATHIAS. Well, the Senator from Connecticut is very generous in his praise today. I am grateful for it. I would say that I was too humble to accept such sentiment if it were not for recalling those words of Winston Churchill. When it was brought to Churchill's attention that Clement Attlee was a very humble man, he said. "Yes, but then Clem Attlee has so much to be humble about."

My question, Mr. President, directed to the Senator from Connecticut is this: Is is not true that if we prohibit the Department of Justice from taking action, effective action, litigating to guarantee the rights of citizens, that we then are in a situation where the most radical people on both sides of this issue of school desegregation will be the ones in court, those who are violently for it and those who are violently against it, and that the Department of Justice, which has not only an interest but a duty and a responsibility to consider the interest of all citizens, will be precluded from playing a role?

Mr. WEICKER. The Senator is correct when he says that under the provisions of this amendment those in court will be the private litigants.

Mr. MATHIAS. And the most radical private litigants.

Mr. WEICKER. And the most radical.

Mr. MATHIAS. On both sides.

Mr. WEICKER. On both sides. And that we will not have someone in there representing all Americans, all Americans, of views both pro and con. The Senator is absolutely correct in his observations.

But I also have to raise the question as to why matters of the Constitution, why matters of the Constitution, either adherence to or violation of, are or should be the responsibility of private citizens. What is the Government for if it cannot defend the very basis of its existence as a government?

We have been through this whole exercise in the abortion argument. "Abortion is legal. Abortion is legal. But we will so construct it that, practically speaking, it is only available to the wealthy."

What kind of a policy is that? I understand the law, but what kind of a policy is that? What kind of a policy is it that says we have a Constitution but it is only there for use by those who can afford to come into court to use it on their behalf or in defense of another person? What kind of a policy is that?

Believe me, these machinations on the floor that relate to abortion and relate to busing and probably school prayer and the rest, they are going to put us into a constitutional Gordian knot that nobody is going to be able to cut. There is no logic to what is being done. There is no basis in law to what is being done.

It is illogic that is being presented as being eligible to become the law of this country.

Mr. HELMS. Mr. President, will the Senator from Connecticut yield for a question with the understanding he would not lose his right to the floor?

Mr. WEICKER. I am glad to yield.

Mr. HELMS. Mr. President, will the Senator be willing to give an estimate as to when and if the Senate may be allowed to vote on this question? It matters not to the Senator from North Carolina.

Mr. WEICKER. If my distinguished colleague from North Carolina would support the amendment of the Senator from Connecticut, we could have a vote right this minute.

Mr. HELMS. If a bullfog had wings, Mr. President, he would not bump his rear end so much. But that is not the question.

When are we going to vote if I do not support the Senator's amendment?

Mr. WEICKER. If the Senator from North Carolina does not support the amendment of the Senator from Connecticut, then it would be very difficult to ascertain as to when a vote will take place on the Weicker amendment. It still is my hope, as I have indicated, that I can get the support of the Republican leadership and of the President of the United States on my amendment.

Very frankly, that is going to put me into a quandary at that stage of the game as to whether or not HELMS, as amended by WEICKER, is something that is going to receive my support. It probably would. I do not like the language that is contained therein. On the other hand, I also realize that good Government operates best when a compromise is made. I feel that at least those rights would be protected. The policy might change.

I am willing to take my lumps or my victories on matters of policy. It is the Constitution that bothers me.

I would hope that such support might be forthcoming, in which case we would vote this afternoon.

In the absence of any such support from the parties I have mentioned, either the Senator from North Carolina, the majority leader, or the President of the United States, I really would say that the vote would come at the same time that the physical stamina of the Senator from Connecticut gives out. Then we will have the matter for a vote. I cannot say when that will be.

I have been known to tire quickly on a tennis court in the matter of a half hour. I have been known to go for 6 hours on a tennis court. I just do not know what is going to happen. I also do not know what the schedule of the majority leader is, who is the one, of course, who determines all of our schedules.

Mr. HELMS. If the distinguished Senator will yield further, I thank him for the information he has just given me. I shall continue to listen to him very carefully.

(Mr. MATTINGLY assumed the chair.)

Mr. WEICKER. In continuing the remarks prepared by Professor Gerwitz:

While most of us can point to some decisions of the Supreme Court with which we disagree, we recognize that, overall, this power of judicial review, exercised by an independent federal judiciary, is a critically important element of our constitutional democracy. Overall, it has served us well—whether it has been to vindicate the rule of law when challenged by a corrupt President, or to protect ordinary citizens against an over-reaching government, or to open the way to greater racial equality, or to help mediate conflicts between nation and state or executive and legislature. The reason that the proposed jurisdictional limitations are so dangerous is that they would undercut, in a fundamental and unprecedented way, that essential function of interpreting and enforcing the constitution. Congress, in effect, would be assuming the power to change specific constitutional results by simple majority vote and without a constitutional amendment.

Consider, for example, the effect of the bill that strips jurisdiction from all federal Courts to hear cases involving school prayers. In the early 1960's, the Supreme Court ruled that the First Amendment of the U.S. Constitution, which prohibits the establishment of religion, prohibits the government from requiring the reading or recitation of prayers in public schools. If a public school introduces prayers and a parent sues to enforce those earlier Supreme Court decisions, the state courts might well fail to provide a remedy; but if that happens, under current law the parents could appeal to the United States Supreme Court, a federal court, to enforce their federal constitutional rights. The proposed jurisdictional legislation seeks to prevent the Supreme Court from hearing such a case. The State court decision allowing school prayers would stand. Thus, as its sponsor Senator Helms admits, the proposed legislation seeks to manipulate jurisdiction so as to restore prayer to the schools—in short to change a constitutional result.

Such legislation is nothing less than an assault on the independence of the federal judiciary. Perhaps the Framers of the First Amendment of our constitution were wrong in seeking to prevent the establishment of religion by the government. Perhaps the Supreme Court's decisions interpreting the meaning of the First Amendment should be changed. That is not the issue. The question is whether it is appropriate for Congress, by a simple majority, to try to achieve those ends by means of manipulating the jurisdiction of federal courts to hear cases. The answer is no. The constitution itself provides a method for changing the content of constitutional guarantees: amending the constitution through the procedures specified in Article V. It is a difficult process, requiring approval by a two-thirds vote in each House of Congress and ratification by three-fourths of the states. But it was designed to be difficult. The proposed jurisdictional provisions seek to end-run this constitutional amendment process by asserting Congress' power, by simple majority, to strip away from federal courts the jurisdiction to hear cases enforcing existing constitutional rights.

It is a power that, once unleashed, would be difficult to confine. It would work a funda-

mental reallocation of power between Congress and the Supreme Court. Recognizing that a constitutional democracy is a delicate thing, and that ours has been a uniquely successful experiment, it would be terribly unwise and terribly risky for Congress to act in a way that surely undercuts the role and function of an independent federal judiciary in our system of separation of powers. No short-runs gain justifies such a long-term risk.

This is not an issue that should divide conservatives and liberals, or Democrats and Republicans. It should not divide those who support or disagree with one or another constitutional decision of the Supreme Court. The issue at stake is one of our basic constitutional structure and institutional arrangements—whether we really want to tamper so fundamentally with the basic allocation of powers in our political system. When the proposed legislation is understood in these terms, the opposition to it should grow.

Significantly, constitutional scholars of all political stripes have concluded that jurisdictional limits of the sort involved here are unconstitutional. The late Alexander Bickel, perhaps the most respected constitutional scholar of his generation, was of this belief, in spite of his sharp criticism of Supreme Court decisions such bills sought to change. Said Professor Bickel: "I deplore as more destructive than the worst of busing the attempt to work such a reallocation of powers between Congress and the Supreme Court."[1] Professor Robert Bork of the Yale Law School, a conservative who served as Solicitor General of the United States under Presidents Nixon and Ford, opposes such congressional restrictions on jurisdiction as a "cure that may set a precedent more damaging than . . . wrong Supreme Court decisions."[2]

The only argument in favor of the constitutionality of Congress power to regulate the federal court's jurisdiction in this way relies upon Article III of the Constitution itself, the Article which discusses the judicial power. Article III provides that the "judicial Power of the United States, shall be vested in one Supreme Court"—thereby specifically mandating the existence of the Supreme Court—"and in such inferior Courts as the Congress may from time to time ordain and establish." Article III also provides that the judicial power of the United States shall extend to various categories of cases, including "all Cases . . . arising under this Constitution."

Article III provides that in some of these cases the Supreme Court shall have original jurisdiction, but it then goes on to state that in "all the other cases . . ., the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations, as Congress shall make." According to proponents of the legislation being discussed here, this "exceptions and regulations" clause gives Congress unfettered authority to prevent the Supreme Court from hearing on appeal whatever cases Congress sees fit to withhold from the Supreme Court. Moreover, Congress power to ordain and establish the lower federal courts allegedly gives Congress the plenary authority to withhold from those courts the power to hear such cases as an initial matter.

But neither Article III, nor the history of its interpretation, will sustain such a radical view of Congress powers. To be sure, Congress does have significant authority to regulate the jurisdiction of the federal courts. But given the status of the Supreme Court as a constitutionally mandated court, and given the distinctive role that the Framers of the Constitution understood the Supreme Court would play in the constitutional plan—to assure the supremacy and uniform application of the Constitution—the "exceptions and regulations" clause should most plausibly be seen as authorizing only neutral "housekeeping" measures (such as the congressional provision for discretionary certiorari jurisdiction), and not the selective exclusion of cases of the sort involved here, which interferes with the Court's central constitutional functions. In short, such legislation violates Article III itself and the requirements of separation of powers that pervade the entire Constitution.

At the very least, Congress may not exercise its powers under Article III in a way which violates other provisions of the constitution—just as Congress may not exercise its admittedly broad powers to regulate commerce or to tax in a way which violates other constitutional provisions. Thus, Congress obviously could not "except" from the Supreme Court's appellate jurisdiction cases in which the plaintiff was black. Such a law would deprive blacks of rights to equal protection of the laws guaranteed by provisions of the Constitution other than Article III itself.

More generally, if the purpose and effect of a Congressional restriction on federal court jurisdiction is to interfere with the vindication of substantive constitutional rights, such a restriction on federal jurisdiction is a violation of the substantive constitutional right involved. If Congress sought to restore school prayers to the public schools by means of a substantive statute, that would surely violate the First Amendment. So too does a jurisdictional statute which, its sponsors concede, is designed to have the same effect. Congress is simply trying to achieve indirectly what it could not achieve directly. The bill disadvantages a category of Constitutional rights because of Congress opposition to those rights. However broad Congress power to regulate federal court jurisdiction, it does not extend this far. (Obviously, Congress could not claim that its purpose in singling out school prayer cases or abortion cases is to regulate the Supreme Court's workload or to serve some other neutral housekeeping objective.)

It is no answer to assert that the state courts remain open and will fully enforce existing constitutional rights. The sponsors of the bills have obviously made the judgment themselves that many state courts will enforce existing rights with far less vigor and effectiveness than their federal court counterparts; that is the point of the proposed legislation. (Nor is this Congressional judgment without reasonable foundation. For a variety of reasons, the federal Supreme Court and federal lower courts have traditionally been more favorably disposed to claims of federal rights than state courts, and more effective in implementing those rights.) Congress' action will presumably have the effects that Congress desires.[3] This is particularly apparent with respect to the restrictions of the Supreme Court's appellate jurisdiction. Denying Supreme Court review is not outcome-neutral, but weighted against effectuation of that Court's settled law. For the Court to accept such restrictions on its jurisdiction would not only violate the principles of *Marbury* v. *Madison* but the substantive rights that Congress seeks to override.

In short, the proposed bills are not truly provisions aimed at regulating jurisdiction, but rather are aimed at achieving a desired result—indeed at changing settled constitutional rules. That such legislation would be unconstitutional is, in the end, the lesson of *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872). In Klein, Congress had passed legislation which prevented certain claimants who had received Presidential pardons from receiving claim awards and which deprived the Supreme Court of jurisdiction to review claims based upon Presidential pardons. While nothing that in general Congress had power to regulate the Court's jurisdiction, the Court concluded that the legislation here was unconstitutional since "the language of the proviso shows that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny pardons granted by the President the effect which this court had adjudged them to have." 80 U.S. (13 Wall.) at 145.

Finally, a word about the famous Reconstruction case, *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869). In McCardle, the Court upheld Congress' power to repeal the Supreme Court's appellate habeas corpus jurisdiction that had previously been authorized by an 1867 statute. This outcome, along with some language in the Court's opinion, is sometimes read to establish that Congress has very broad power to withhold Supreme Court jurisdiction under the power to make "exceptions." Plainly the case cannot support such a reading. The opinion explicitly and carefully states that the repeal did not affect other jurisdictional statutes giving the Supreme Court power to review habeas corpus decisions. Indeed, in the very same Term as McCardle the Supreme Court held that denial of habeas corpus could be reviewed under those other provisions. *Ex parte Yerger*, 75 U.S. (8 Wall.) 85 (1869). Far from establishing Congress' broad power to remove access to the Supreme Court's appellate jurisdiction, McCardle actually stands for the proposition that in constitutional cases Congress may withhold one jurisdictional basis for Supreme Court review only if another jurisdictional basis is available.[4] The recent round of legislative proposals restricting the Supreme Court's appellate jurisdiction contains none of McCardle's escape hatches, and for that reason they are patently unconstitutional.

Mr. President, I will now read from the testimony of Edward Cutler, on behalf of the American Bar Associations, before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the Committee on the Judiciary of the U.S. House of Representatives, concerning legislation to divest Federal courts of jurisdiction to consider particular types of cases.

Mr. Cutler starts off as follows:

Thank you, Mr. Chairman and members of the Committee, for this opportunity to ap-

[1] "What's Wrong With Nixon's Busing Bills", *The New Republic*, April 22, 1972.

[2] *New York Times*, March 16, 1981; p. A16. The literature on the subject is vast. The starting point is Hart, "The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic," 66 Harv. L. Rev. 1362 (1953). See also Theodore Eisenberg, "Congressional Authority to Restrict Lower Federal Court Jurisdiction," 83 Yale L. J. 483 (1974).

[3] In any event, actions "animated by such a purpose have no credentials whatsoever; for '[a]cts generally lawful may become unlawful when done to accomplish an unlawful end . . ., whatever [their] actual effect may have been or may be.'" *City of Richmond* v. *United States*, 422 U.S. 358 (1975).

[4] Professor Bickel thought *Ex Parte McCardle* "aberrational", presumably because of the extraordinary Reconstruction background. In light of current constitutional doctrine which makes legislative motives and purposes one measure of constitutionality, *e.g.*, *Washington* v. *Davis*, 426 U.S. 229 (1976), *Ex Parte McCardle* is also aberrational in its methodology, for it reflects the outdated view that "We are not at liberty to inquire into the motives of the legislative."

pear before you during your deliberations upon the many bills which would withdraw from the United States Supreme Court and the lower federal courts jurisdiction on selected issues. You, Mr. Chairman, are quoted as saying that these bills "pose a constitutional crisis." This makes it fitting and important that the views of the organized bar be expressed.

My name is Edward I. Cutler, a practicing attorney from Tampa, Florida. I am here today as a representative of the American Bar Association, whose members comprise the bulk of the legal profession in the United States and number one-third of all of the lawyers in the world. We are committed to the goal of assuring meaningful access to justice in this country.

The ABA's Special Committee on the Coordination of Federal Judicial Improvements, which I chair, has, since its creation in 1971 worked diligently toward improvement of such access to justice in the federal court system. As you know, our Committee has, within its area of responsibility, many of the subjects falling within the jurisdiction of your Subcommittee and has over the years enjoyed a close relationship with you. Today, consistent with your invitation, we limit our testimony to those portions of the jurisdiction legislation upon which our Association has, in accordance with its rules and procedures, articulated an official position.

The Association has, of course, always been devoted to upholding our constitutional system of government. Only a month ago, in his address on Law Day, U.S.A., William Reece Smith, Jr., president of the A.B.A., reminded us that "we are a free people because we live in a society governed by the rule of law rather than the whims of the powerful," that the "Constitution and the Bill of Rights are the heart of that body of law," that "the greatest genius of the Constitution and the Bill of Rights lies in the balance they strike between order and liberty," and "just as we have a responsibility to make representative government work, we have a responsibility to see that the personal liberties guaranteed in the Bill of Rights are protected."

The constantly growing number of proposals before you to strip the federal courts of jurisdiction on various federal constitutional issues stems from substantial dissatisfaction, expressed currently with judicial decisions relating to abortion, busing, prayer in public schools and other public buildings, male-only draft registration, and who knows what next!

This Association has long opposed effectuating change in constitutional jurisprudence through jurisdictional legislation. In 1958, when the Congress was considering legislation to withdraw Supreme Court jurisdiction in certain matters,[1] the A.B.A. adopted a resolution which stated that, "reserving our right to criticize decisions of any court in any case and without approving or disapproving any decisions of the Supreme Court of the United States, the American Bar Association opposes the enactment of Senate Bill 2646 which would limit the appellate jurisdiction of the Supreme Court of the United States."

The 1958 resolution was based on a motion by John C. Satterfield (A.B.A. president 1961–1962), and on a report by the Association's Special Committee on Individual Rights as Affected by National Security, whose distinguished members included Ross L. Malone (A.B.A. president 1958–1959, a former U.S. Deputy Attorney General) who chaired the committee, and Whitney North Seymour (A.B.A. president 1960–1961). Their reasoning is equally applicable today:

The integrity and uniformity of judicial review and the *independence of the judiciary* are vital to our system of government. If they are impaired, individual rights will be imperiled. Since maintenance of individual rights is the most notable distinction between our system and the Communist system, and the one on which we must rely to rally the hearts and minds of men to our cause, their impairment would also, in a broad sense, injure our national security.

The bill would leave lower courts to make final decisions in the fields withdrawn from Supreme Court jurisdiction. We do not believe it sound to prevent review in the highest Court of such important questions. The lower courts may differ among themselves so that there may be great confusion in decisions. Resolution of such conflict is a historic contribution of review in the Supreme Court. *It is difficult to conceive of an independent judiciary if it must decide cases with constant apprehension that if a decision is unpopular with a temporary majority in Congress, the Court's judicial review may be withdrawn.* (Emphasis added).

I should point out that many distinguished members of the Congress, the Department of Justice, noted legal scholars, leading legal practitioners, and officials of state and local bar associations traversing the country, from the Association of the Bar of the City of New York and of the District of Columbia in the east, to the State of Washington in the west, including Edward L. Wright (A.B.A. president 1970–1971), similarly expressed their opposition to such legislation.

The organized bar did not participate in the extensive hearings held before your Subcommittee last year in connection with the Helms Amendment to S. 450 of the 96th Congress. At that time the controversy was confined to the withdrawal of federal court jurisdiction over cases involving prayer in public schools and buildings. It was that bill, which died in the last Congress, that has spawned the many bills now at hand. Had we been before you at last year's hearings, we would have joined in the constitutional and policy objections which were so well presented to you at that time.[2]

We remain as committed as ever to the same policy and, in connection with the pending bills, reiterate our strong opposition to such legislative restrictions upon the jurisdiction of the Supreme Court,[3] while reserving our right to challenge any of its decisions on the same or any other subjects.

Putting aside constitutional questions for the moment, the current bills should, at least as far as Supreme Court jurisdiction is concerned, be rejected as a matter of public policy. Supreme Court decisions interpreting the Constitution establish binding precedents, subject to alteration by the people through the process of constitutional amendment. The Framers provided in Article V a means of changing the Constitution and made it difficult to achieve. The "leaden-footed process of constitutional amendment," as Justice Frankfurter called it, with the requirement of extraordinary majorities in Congress and among the States, was designed to make sure that transient majorities could not easily change our fundamental law. To by-pass this method through jurisdictional legislation seems to ignore the concerns of the Framers.

We do not doubt the integrity of trial level judges, both state and federal, or their fealty to their oaths to uphold and defend the Constitution. However, to give them an unreviewable power to decide basic constitutional issues will inevitably lead to diverse local interpretations and practices under the Constitution.

In the absence of Supreme Court review, the command of the Supremacy Clause that the Constitution be the "supreme law of the land" would become a nullity. Since the adoption of the Judiciary Act of 1978, a constant feature of the history of federal court jurisdiction in this country, upon which the nation continues to depend, has been the review by the United States Supreme Court of state court interpretations on questions of federal constitutional law. If, as Justice Holmes reminded us, a page of history is worth a volume of logic, that singular fact stands as a practically unanswerable argument against jurisdictional legislation of the kind that concerns us now.

With regard to the constitutional issue, the Association does not believe that the "exceptions and regulations" clause will bear the weight the proponents would put on it. That clause authorizes congressional structuring of federal jurisdiction, to be sure, but not without limit. To construe it the way the proponents would is to make it the only power conferred on the Congress that is beyond the constraints of other provisions of the Constitution. The First Amendment, the Fourth Amendment, the Fifth Amendment, and all other express prohibitions limit the power of Congress to legislate with respect to other constitutional provisions under granting powers which would appear on their face to be unlimited. Examples are the taxing and spending clause, the commerce clause and the postal clause. The power of Congress to make exceptions and regulations to the appellate jurisdiction of the Supreme Court must be similarly limited.

A number of the pending bills would similarly attempt to eliminate the jurisdiction of the lower federal courts. Although the Association has not previously studied the legality and desirability of such legislation, it is doing so now. We anticipate that there will be an appropriate resolution before our House of Delegates in August and would hope that your Committee and the Congress will defer action on such legislation until the Association has had an opportunity to complete its study and make its recommendations on behalf of the organized bar of this country.

Meanwhile, I go back to the school days when I learned forever the fundamental lessons of our representative democracy, the constitutional division of power among the three branches of government, the protections of the Bill of Rights, the relationship between the state and federal governments in our great country, and the teaching of *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803), that the Supreme Court of the United States must be our last bulwark in the exposition of the law of the Constitution.

Mr. President, Mr. Cutler's remarks, I think, particularly articulate the issues that are before the Senate. The real question is what value we place upon the

[1] S. 2646 of the 85th Congress dealt, among other things, with the following subjects, unrelated except that each arose from recent Supreme Court decisions involving alleged Communists: admission to the bar, proceedings before Congressional committees, executive security programs, state anti-subversive legislation, and teaching of Communism.

[2] As reported in the printed Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Sixth Congress, Second Session, on S. 450, Prayer in Public Schools and Buildings—Federal Court Jurisdiction, July 29, 30, August 19, 21, and September 9, 1980 (Serial No. 63).

[3] We do not oppose, in fact we have supported, as a "housekeeping measure" to be enacted by the Congress, reduction in the *obligatory* jurisdiction of the Court, which was the original objective of S. 450, prior to the Helms Amendment. In its unamended form S. 450 was supported not only by the American Bar Association but by members of the Supreme Court itself.

law in this country. A Senator's words are not law that have gone through the constitutional process. Indeed, even legislation passed here is not law. It has not gone its way through the constitutional process.

Can anyone conceive of a nation that had only a legislative branch and an executive branch? That is in effect what is being called for as a matter of spirit and principle in the amendment of the Senator from North Carolina.

Two events take place on May 1 of every year. One is Law Day; the other is May Day.

That day represents to one nation the celebration of that which gives each one of us as an individual, and not as a nation, a uniqueness, which protects us from the irresponsibilities of men. The other celebrates that type of government which cares not a whit about the individual, where the decisions are made for the individual and where there is no recourse and no redress available to that individual.

Certainly, there is not one, neither on the floor nor in the galleries, who does not abhor the totalitarianism represented by a Communist government. But totalitarianism is not restricted to communism.

It is any government or any form of government which dictates the beliefs and the conduct of its citizenry without redress, without appeal, without consideration of what it is that resides within that individual either in terms of problems or hopes.

It could well be that under this Constitution there are many individuals who are not benefiting from the great thoughts and the great admonitions, the great rights expressed within this document. But by virtue of our legal system it is always possible to see that such a wrong is righted.

Who is to determine whether there is such a wrong? Not Senator WEICKER, not Senator HELMS—at least not up to this point— but right here, these words, these thoughts. They do not change what is right or what is wrong.

I wish that somehow I could make people understand the issue on this floor because the issue indeed is the survival of this Government of free persons, and to retain that freedom means there will be those times when we heartily disagree and, indeed, are penalized by our Government for our transgressions.

I understand all of that. It is not a utopia. This country was never conceived as such. Indeed, the quieter we become, usually the more trouble is afoot. But there has to be an end to every process. In this case the judicial process in the United States is the end. There has to be an end. From the people of this country to the representatives, to the President, to the courts, and finally to the Supreme Court, that is the law, that is our form of civilization, the greatest that man has ever conceived.

What this legislation says, if we do not like the ending, having gone the entire constitutional process, then we throw the umpire out of the game.

The matter for debate on this floor does not relate to a few school districts, to a few blacks, to a few whites. It does not relate to busing and it does not relate to education. It relates to all of our civil rights, all of our legal rights. It relates to our status as individuals within the framework and standing before our Government. That is what is involved.

My friends of the press, believe me, this also involves them. It involves the first amendment. It involves their civil rights. It involves the rights of the handicapped and the disabled. It involves the rights of the working people. I see much, as I read my newspaper, about how there is a revolt in middle America among the blue collar workers, and so forth. How did they achieve their rights? They were a minority. The great labor movement, which is now the conscience of the United States of America, and which has been in the forefront of so much of our social legislation, had to win its rights through the courts of this country and, fortunately, I might add, for us the leadership of the labor unions still understand that.

Those who are elderly, our senior citizens, who had been put on a shelf to be viewed, no longer to be a part of our society, to be discriminated against; how do they come to be once again in our conscience as a nation? Because they used the courts, and they still do.

Unfortunately, it did not turn right out just as a matter of individual concerns. Before you are all through with it, whether it is what you do with your hands or what you do with your minds or the color of your skin or where you came from or what your religion is, there is not one of us who not only walks in freedom but thinks in freedom because we know we have the justice and the judicial system of this country in full operation, in free operation, and it stands alongside of us.

There are many times you wish maybe it would be gone because you do not like a particular decision. But this wheel is going to come full circle here in the Senate.

Is there anybody who does not think it will? You have seen the politics of your own country. We can go from conservative to liberal, from Republican to Democrat and back again. But what does not change is the law, the availability of the law to each one of us and the ability of each one of us to stand before the law and to seek its assistance. This is the issue.

No matter how high anybody feels he is riding today at sometime in each of our lives we will thank God for that which is the law and that which does not change.

I remember when I first came to the U.S. Senate—and this might be interesting, Mr. President, to my southern brethren here—and they had a vote on changing rule XXII, the filibuster rule, the cloture rule, and they wanted to bring it down from 66 to 60 to invoke cloture, guess who voted against changing the rule?

This Senator from Connecticut joined with my southern colleagues because I always wanted to make sure that the minority would be protected. At that time those from the Southern States and their views were in the minority, and their philosophy in the minority.

But I voted with them because I wanted to protect them. That is the greatness of this body here, which is the matter of unlimited debate, and the fact that minority views can be heard.

So there is no inconsistency in this Senator's standing before this body and pleading that the rules of the game do not change. I did not change them when I was in the majority in the sense that I describe.

There is no reason why policies cannot change. That is the business of politics and philosophy. Not the law, at least not by a handful of U.S. Senators using the funding process.

If they are such great advocates of the Constitution, why do they not go out there and get a constitutional amendment? Why does not my good friend from North Carolina seek out a constitutional amendment on abortion? Why not a constitutional amendment on busing? Why not a constitutional amendment? The Senator knows he could not get a constitutional amendment, not within his lifetime, not in his lifetime.

To show you how out of step the U.S. Senate is with the people of America, we, under the leadership of the distinguished Senator from North Carolina, 2 weeks ago sat here and told a woman who had been made pregnant by and through rape, who was having a child through incest that no Federal funds would be available for an abortion.

One week later ABC and the Washington Post took the poll in the United States of America, and 50 percent of those polled said abortion should be legal under such circumstances; 40 percent said it should be legal under all circumstances, and 10 percent of the people felt the same way as the Senate of the United States.

That is why there will be no constitutional amendment, because you cannot pull these rotten issues out into the broad light of day and expect them to swim or sail. They will not. They represent a narrow band of thinking that is not the thinking of this country.

Yes, we believe as a nation in the courts of this land and we want their protection, fully understanding as a people that sometimes decisions are going to go against us. But not all America is swaying to the political winds and wondering about reelections. We really are more interested in making sure that our institutions are sound and will remain sound.

Yes, all America is interested in the fact there is going to be equality among us. We understand that civil rights is not a black and white issue, but it relates to the state of our minds and our bodies, that is civil rights; and our age, that is civil rights; and our sex, that is civil rights; and our religion, that is civil rights.

What gall for those that call themselves conservatives and profess a belief in the Constitution of the United States that they bring their religion in on this floor and into the Government of this

country. Have you read the Constitution? Have they?

Amendment No. 1: "Congress shall make no law respecting the establishment of religion." That is what it says, "no law." And the reason why "no law" was that thousands came over here because somebody did try to make a law and put it on top of them and they did not like it and they founded a new country and now we have to go 200 years later through the same exercise. What gall.

Uphold the Constitution? They do not even know what it says and they care less.

But I think the people of this country understand. They understand that they do not want anybody telling them what they ought to believe in. They understand that what was prejudice against the Catholics only a few years ago could be a prejudice against their religion tomorrow. There will pass a day when Protestantism is the official religion of the land.

The only duty this U.S. Senate has is to make damn sure that whatever anybody believes in their heart they can continue to believe it and that nobody is going to impose on them their particular faith. And I am not going to see in any manner or shape or form—I am sure this issue will come up—the United States becoming a theocracy. It is not.

The only faith that I am committed to is the Constitution of the United States. That is the scripture, that is the law, that is the Bible, that is the Torah, that is whatever you want to call it. That is it. Period.

Who am I to know what God's will is? That is arrogance. And that is not the Constitution.

No, every great concept of this instrument is being thrown out on this floor for deliberation and potential passage by this body. This used to be the house of great ideas. Right now my duty is that of a garbage collector. What is being thrown out is trash and it is not worthy of even consideration.

I do not care what the votes are. We are talking about matters of the greatest principle. But the only thing I am not willing to do is to have somebody else make the decision.

"Oh, I tried my best, but, don't worry, the President will take care of it."

One day, the President is not going to take care of it. The President is going to be sitting there in the White House and say, "Well, let the Supreme Court take care of it." One day the Supreme Court is not going to take care of it and all of a sudden it is gone. That very process which you are trying now to interrupt or to distort, it will go, the whole process, because nobody cared and then it will become a law.

Do you realize why we are in this predicament even now? It is because nobody has cared in election after election. From 90 percent, to 80 percent, to 70 percent, to 60 percent. Nobody cares. There is no such thing as Washington. There is no such thing as those Senators, those Congressmen. It is a representative democracy. It is us.

And if nobody cares at the beginning of the chain, then, believe me, it is only a matter of time before nobody cares at the end; and it is all gone then. That is the reason why the fight here is not busing. Fine, if this administration does not want to use busing in a policy sense, that is their business. I can live without it. But what I cannot live without is the ability of the court to make its judgment as to how the illegality is going to be remedied.

What good is to to say if somebody is guilty if there is nothing you can do about it? What is the alternative being proposed out here on the floor? Have you heard any Senator saying, "I am against busing, but here is what we are going to do"? You do not hear that. You hear, "I am against busing." Period.

What do you do? What do you do? Unless somebody is also in the back of their minds saying there is no discrimination. Now you know that is not so. And the courts say that it is not so.

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

Mr. WEICKER. Yes, I yield for a question to my distinguished colleague from Rhode Island.

Mr. CHAFEE. As I understand the amendment that is on the floor, the Weicker amendment, it says:

> Except that nothing in this act shall be interpreted to limit in any manner the Department of Justice in enforcing the Constitution of the United States, nor shall anything in this act be interpreted to modify or diminish the authority of the courts of the United States to enforce fully the Constitution of the United States.

Am I correct in reading this?

Mr. WEICKER. The Senator is absolutely correct. That is all it states.

Mr. CHAFEE. My question then is, I cannot understand why this just is not accepted by a voice vote. Is there anybody around here who is suggesting that we want in any way to limit the Department of Justice in enforcing the Constitution of the United States or to diminish the authority of the courts to enforce fully the Constitution of the United States? It seems to me that is about the simplest matter we have had come before this Senate in quite awhile. I cannot see why there is any debate over it.

Do I further understand that the Helms amendment, which is the underriding amendment to which the Senator's amendment goes, do I understand that that would prohibit "the Justice Department from bringing any sort of action to require directly or indirectly the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education as a result of being mentally or physically handicapped"?

Now, as I read that language, the Department of Justice would thus, as I see it, be effectively barred from participating in any desegregation case where busing could be part of the remedy.

As I follow these cases over the years, busing is never the remedy, it is considered in connection with remedies to these desegregation difficulties.

Now am I correct in the Senator's interpretation? Does he see this as the virtual repeal of the 1964 Civil Rights Act declaring support for the Supreme Court's decision in Brown against the Board of Education? Is that the Senator's position?

Mr. WEICKER. Senator, my position is that is exactly what the legislation does. Let me try to answer the Senator's questions step by step.

First of all, the Senator says, "How is it that we are not having a voice vote on the Weicker amendment, which merely requires the Justice Department and the courts to enforce the Constitution"?

Now I do not want to lose my right to the floor, but I certainly would like to have Senator HELMS answer your question because I cannot conceive of how any Member of the U.S. Senate can vote against the Constitution being enforced by the Justice Department or the judiciary.

I do not know how anybody can go ahead and vote against that, unless they feel that, in the recesses of their hearts, they really just do not want a judicial system; they do not want any independence of decision.

I fail to see where any possible harm, ulterior motive, or deviousness could enter into the Justice Department and the courts in enforcing the Constitution of the United States. I do not. As far as I am concerned, I am willing to have it taken by a voice vote right now.

Mr. HELMS. Will the Senator yield?

Mr. WEICKER. I yield.

Mr. HELMS. The Senator is not familiar with the 1964 Civil Rights Act because it specifically excluded the busing. That answers the question.

Mr. WEICKER. Nothing specifically excludes busing. The Senator knows that as a matter of law.

Mr. HELMS. I beg the Senator's pardon.

Mr. WEICKER. What the Senator is trying to do at this juncture is to do an end-around the Constitution of the United States.

Mr. HELMS. No, he is not.

Mr. WEICKER. Fortunately, the Constitution will be here long after the Senator is gone. I might add, thank the Lord that those words, those concepts are going to be here and they will be in place, regardless of what either of our philosophies are, parties are, regions, whatever. They will be here and they will guarantee the rights, the impartial adjudication of rights, for all Americans. Not the Senator's adjudication.

On the second part of the question of the Senator from Rhode Island, what, effectively, it does, to the Justice Department, if we take a look at the Helms amendment where it says, "No part of any sum authorized to be appropriated by this act shall be used by the Department of Justice to bring or maintain any sort of action to require directly or indirectly the transportation of any student to a school," how is the Justice Department going to know where a matter ends up?

Here they are saying you cannot appear in court. That is what they are saying. You cannot appear in court because this might directly or indirectly end up in busing. How do they know? It re-

moves the Justice Department of the United States from effectively pursuing any matters of discrimination.

Mr. CHAFEE. I wonder if the Senator will yield for another question.

Mr. WEICKER. Of course.

Mr. CHAFEE. Am I correct in my view of this that what we are debating here is not probusing or antibusing? Am I correct in my view that really this has nothing to do with busing whatsoever?

Mr. WEICKER. That is correct.

Mr. CHAFEE. Am I also correct in viewing this as an issue in which busing is being dragged in, busing being looked upon as relatively unpopular, dragged in as a tool in order to remove the Justice Department from getting involved in any way in desegregation cases? Am I correct in my understanding of what the Senator was previously saying that when you prevent the Justice Department from being involved directly or indirectly in a desegregation case where busing might be a tool, what you are really saying is that the Justice Department cannot get in at all because, indirectly, busing might be involved?

Am I correct in that?

Mr. WEICKER. The Senator is absolutely correct. I might add, I will go one step further. In the amendment, the author of the amendment actually engages in discrimination in the amendment as he discriminates between students that I am sure he considers to be normal students and those who are mentally or physically handicapped. It is an exercise in discrimination both in its entirety and in its specificity.

Mr. CHAFEE. Let me ask the Senator a question. We went through this routine last year. I am not sure what the vote was, but I am sure, and am I not correct, that the President vetoed this legislation last year?

Mr. WEICKER. The Senator is correct. I lost on this matter 46 to 43, and the President subsequently vetoed for the reasons I have stated.

Mr. CHAFEE. I would ask the question, what happened thereafter? I cannot recall that the Senate took up the matter subsequently on the overriding provision. Was that late in the session and, therefore, it did not come, or was the veto sustained in the House?

Mr. WEICKER. Let me get my chronology in order. The President threatened to veto. I will get the precise response.

On December 4, 1980, President Carter indicates he will veto the State, Justice appropriations bills because of the Collins-Thurmond language, because it impairs the Government's ability to enforce our Constitution and the Civil Rights Act. On December 10, 1980, the Senate accepts a Weicker amendment that eliminates the Collins-Thurmond language from the State, Justice portion of the continuing appropriation bill. Because the State, Justice portion is effective for all of fiscal year 1981, it means, in effect, that it had no effect, or the language was removed. In conference on the continuing resolution, the Collins-Thurmond language was dropped from the final version of the bill.

In other words, it was under the threat of a Presidential veto that the Congress dropped the language.

Mr. CHAFEE. I see.

I suppose that the proponents of the underlying amendment, or others if not proponents, might well try and tar those of us, such as the Senator from Connecticut, and I am supportive of his position, who are protesting the Helms amendment, I suppose some might find it a convenient occasion to label the Senator and his allies in this effort as probusing.

I might say that I have reservations on busing, but I would also like to say that I think to remove busing completely as a tool in trying to achieve racial desegregation would be unfortunate.

I look on busing as a last resort measure. I think busing certainly should be considered, not as the sole measure nor as the primary measure, but as a possible tool to achieve desegregation.

However, under the Helms amendment, as I understand it, and reviewing what we went over a few minutes ago, that busing would not be permitted either directly or indirectly in any kind of a solution.

Am I correct in my judgment that this amendment is blatantly unconstitutional; that if it were approved, it would remove from the executive branch the only power the executive branch has to assure that Federal funds are spent in a constitutional manner; that it would require the executive branch to continue to fund school districts that it knows to be unconstitutionally segregated?

Here is a question: Am I correct in saying we have a law on the books? The Supreme Court, in interpreting the Constitution of the United States, says that certain actions have to be taken. If this legislation were passed. it would say that it is fine to have the law on the books, but that portion of the U.S. Government responsibility for enforcing the laws would not be permitted to act. Am I correct in that?

(Mrs. HAWKINS assumed the chair.)

Mr. WEICKER. The Senator is correct.

Mr. CHAFEE I find it inconceivable that this Congress could even give thought to such a proposition.

If we do not like the underlying law, am I not correct in suggesting let us change the underlying law? If they do not like busing, if they do not like that which the Supreme Court of the United States has so interpreted, that there has to be desegregation and that this is a tool to achieve it—if they do not like all that, I suppose there are other ways to change it.

Mr. WEICKER. That is right.

Mr. CHAFEE. We can change the Constitution, eliminate desegregation in the country, eliminate busing as any possible tool.

Mr. WEICKER. That is right.

Mr. CHAFEE. But to say that we are going to get around the Constitution by saying that the law enforcement agencies of the United States cannot proceed to enforce the Constitution is the most ridiculous and obviously unconstitutional act that could possibly be taken.

Let me ask the distinguished Senator a question: Has anything like this ever come before the Congress on a prior occasion that he knows of?

Mr. WEICKER. Well, it did, in the last session of the last Congress.

Mr. CHAFEE. I meant except in connection with this effort by those who oppose busing to achieve desegregation.

Mr. WEICKER. No.

Mr. CHAFEE. Has this Senate ever previously acted to get around the Supreme Court or the Constitution of the United States by taking an action such as this?

Mr. WEICKER. I think similar measures, insofar as utilizing the appropriations process, have occurred. I think we saw it in the abortion debate. But this is the second time that there is actual opposition to an amendment reaffirming the ability of the Justice Department and the courts to enforce the Constitution of the United States. That is unique.

Mr. CHAFEE. Let me ask the Senator this: If this amendment should be adopted, would that not open the appropriations process to a whole series of actions? For example, some people do not like the banning of school prayer.

Mr. WEICKER. That is right. That will be next. That will be next, I say to the Senator.

Mr. HELMS. That is right.

Mr. CHAFEE. That will be the next technique.

The Constitution says one thing, but those who do not like the Constitution and do not have the votes to change it will then come up here and then, with a 51-to-49 vote on the floor of the Senate, will say that the Justice Department cannot enforce the Constitution and the laws thereof of the United States.

Mr. WEICKER. That is right.

Mr. CHAFEE. This has unlimited opportunities, I suppose.

Mr. WEICKER. For example, we know that the education of the retarded and disabled children is enormously expensive, so I can foresee the time come when, with very limited funds out there, somebody is going to say, "Now, listen, that has gotten to be too expensive, and we have to take care of the majority of children out there first. So let's take care of them. So let's make sure that the Justice Department can't pursue the civil rights of the retarded and disabled."

Everybody can conceive that this argument has to do with black people and Hispanics. We are talking about a civil rights issue, I say to the Senator. It applies to each of us, and all of a sudden, maybe one of these days, it will be unpopular to be old; it will be unpopular to be disabled; it will be unpopular to be an American, and you no longer have the Constitution there to defend you.

Well, maybe one of these days, if the distinguished Senator from North Carolina keeps it up, it will be unpopular to be a U.S. Senator, and you will not have the Constitution to protect you, and we will just go ahead and make sure the Justice Department is going to keep hands off.

Mr. CHAFEE. Let me ask a question here. What arguments do the proponents of this measure give? Do they say the Constitution is just a little bit of unnecessary baggage we should not have around and it is unfortunate? It says

what it does, but we will take care of it through the appropriations process.

Does that seem to be the rationale? I have not heard the proponents of this measure. Has the Senator received any answer to their position?

Mr. WEICKER. Their position, very simply, is that they could not achieve a constitutional amendment through the constitutional process—they know that. Indeed, they could not go ahead and in regular legislative fashion—that is, regular hearing, committee hearings, and floor debate on the issue—they could not win that way. They are doing it end-around the Supreme Court of the United States and around the Congress of the United States.

I repeat—so that nobody has to worry, I might add, about being tarnished, about being probusing or antibusing—we are not even on a busing amendment. We are on a Weicker amendment that says the Justice Department and the courts will enforce the Constitution. That is bothersome. What in heaven's name is going on on the floor here, when men cannot stand up and vote? I will tell you why they cannot vote; I will tell you exactly.

Do you know when this antibusing legislation was passed the first time? Note the date—September 25, 1980. That was about a week or two before the election, I say to the Senator, and that was the threat hanging over the peoples' heads.

I am going to tell the Senator from Rhode Island and the Senator from North Carolina: I will be proud, proud to stand as I am now, on behalf of an undiluted Constitution; and if that means busing, I say to the Senator, then I run on that. But what I will not do is to save my backside and go around here saying that life in this country is all roses and it is all pleasant. There comes some pretty tough times, both individually and collectively as a society, when you have to stand up for this doctrine.

Mr. CHAFEE. Let me ask the Senator another question.

We have a constitutional amendment which has provided that the youths 18 years of age have the vote. We know the kind of dangerous crowd that group is. Sometimes they do not shave right. Their clothes are disreputable. Many of them smoke pot. They are kind of a rough crowd.

Suppose we thought that those 18-year-olds really are not sensible enough, despite what we have done to the Constitution, to vote. Would it not be possible to say that that scruffy crowd, these 18-year-olds who will be a rather dangerous threat—what is more, they do not get haircuts. Suppose we said that the Justice Department could not use any appropriated funds to enforce the protection of the rights of the 18-year-olds to have a vote. Is that a possibility, if we follow along the same theory that the Helms amendment does today?

Mr. WEICKER. It is absolutely correct, I say to the Senator.

Mr. CHAFEE. That is a very interesting approach. The Senator means an 18-year-old who goes to vote, you deny him the vote? Sure, he is 18, but he does not have the sense that those older people have, those old 21-year-olds have, so he is denied the right to vote. He proceeds under his constitutional rights. Where is he? He is left hanging there. The Justice Department cannot act on his behalf?

Mr. WEICKER. What the court can do is say, "Young man, your constitutional rights have been violated. Good day and good luck." Now that is it, no remedy. In other words, the adjudication——

Mr. CHAFEE. He has won the case, but he still does not have the right to vote.

Mr. WEICKER. That is right, absolutely right, I say to the Senator. There could not have been a better example of what is going to be effected here by the amendment of the Senator from North Carolina.

Mr. CHAFEE. It is somewhat similar to what Andrew Jackson said. Did not he say, "The court made the decision, now let them enforce it"? You strip away the enforcement powers, which are the only things that we have to enforce the law. It is all right to have laws. It is all right to have equal justice under laws. But what protection is there if the Justice Department is not there to enforce that individual's right? Am I correct in believing that it is an absolutely hollow victory?

Mr. WEICKER. The Senator is correct.

What is being proposed here, in effect, is that the realization of justice will then take place on the streets rather than become a matter of individual justice. In other words, the whole system of law disintegrates.

I find it ironic that those who stand up in the name of God, country, and whatever else they wave around in the air, are the ones who, in effect, advocate an anarchistic approach toward the justice system of this country.

The Senator is absolutely correct when he says that it does not do much good to go ahead and have a right or, indeed, have that right determined, if the right cannot be enforced or the remedy cannot be enforced.

That is not roughly what the amendment of the Senator from North Carolina says; that is what it says.

Mr. CHAFEE. I wonder whether I may ask the Senator another question. I wonder whether the Senator will agree with the following editorial which appeared in the Providence Journal, in Rhode Island, on November 19, entitled "Reopening the Nation's Wounds Over Court-Ordered Busing," as follows:

Etched into the memories of most adult Americans over the age of 40 is the landmark 1954 U.S. Supreme Court case, *Brown* v. *Board of Education*. It was the end of so-called "separate but equal" public schools for black and white students and the beginning of nationwide school desegregation.

Progress toward racial harmony in this country over the last quarter century has been enormous. Federal civil rights legislation of the 1960's went far in promoting equality of opportunity in employment, housing, education and the political selection process. Progress continues but there remain many more rivers to cross.

Mr. HELMS. Madam President, is the Senator asking a question?

Mr. CHAFEE. I am asking whether he agrees with this editorial.

Mr. WEICKER. I beg the Senator's pardon. I do not understand what the Senator from North Carolina said.

Mr. CHAFEE. He was asking if I was asking a question.

Mr. WEICKER. That is the way I understood the question that was posed.

Unless the Senator cares to impose his rules on the U.S. Senate, I think we will stick to the Senate rules.

Mr. CHAFEE. I continue to read:

On Monday, however, Congress regressed—in time and principle. The Senate, following earlier action by the House, approved an appropriation bill containing a provision that harks back at least 20 years to the period before busing for school desegregation purposes became a burning issue. If the bill becomes law, it will prohibit the U.S. Department of Justice from using federal funds in furtherance of legal action that could result in court-ordered busing.

Such a law would prevent the nation's top law enforcement agency from seeking a transportation remedy for unconstitutional school segregation. Put another way, it might well start a chain reaction that could undo a great deal of the goood that has been accomplished in the sensitive area of race relations.

As Sen. Lowell Weicker, R-Conn. said last week, the anti-busing amendment is "an abandonment of the Constitution of the U.S. and a retreat from assuring equal opportunities in education to all the children in this country. The issue is not busing.

I should like to repeat that the issue is not busing.

The issue is "whether or not the Justice Department will be able to enforce the Constitution."

School busing in the last few years has not been a highly controversial issue. More than two years ago Detroit became the largest school district in the nation to comply with court-ordered busing. The desegregation process got under way without a hitch. Boston, after its tumultuous beginning, has largely come around. Indeed, even at the start serious disorders occurred at only four Boston schools. As the United States Commission on Civil Rights noted in a 1975 report, "desegregation proceeded in a peaceful and orderly manner in and around 76 schools."

That is a reference to Boston which is always pointed out as the area where busing has wrecked havoc.

In Louisville, Ky. and Charlotte, N.C. busing is an accepted fact of life. Even Jackson, Miss., which fought desegregation for a decade in the courts, has largely accepted the inevitable. In March 1978 these newspapers noted that "five of the seven all-white private academies (formed to provide a segregated alternative for whites) have closed and white enrollment in the public schools is climbing back toward normal."

Busing is not the optimum solution to segregation.

And to that I say amen.

It ought to be used only as a last resort. But Congress in reopening the old wounds is calling into question all the monumental gains that have been made over the last 27 years. It is raising false hopes that the former sancity of the neighborhood school will be restored. It is saying to more than 20 million black Americans that the racially charged words "forced busing" are about to have their currency restored.

I might note parenthetically it is always "forced busing." That has a ring of evil to it.

This is not the way America in the 1980's is described to go, notwithstanding the ultaconservative rise of the Strom Thurmonds and Jesse Helms, Rhode Island's Sen. John H. Chafee noted on Monday that many senators who believed the anti-busing measure was unwise or unconstitutional voted for it because they were afraid that political opponents could use the vote to portray them as supporters of "forced school busing."

The constitutionality of this legislation is seriously in question. If it passes—both a Senate-House conference committee and presidential approval are pending—it is certain to be challenged in the federal courts. Prosecuting federal legal remedies for segregated schools because the busing of school children is unpopular would be hard to reconcile with the social injustices committed against blacks for 300 years.

U.S. Atty. Gen. Benjamin Civiletti has said he will recommend that President Carter veto the bill and that he understands the State Department will do the same. Under the circumstances there seems no alternative.

Now my question to the Senator is does that seem to be a fair summary not of the legislation a year ago or last November but of this legislation to which the Senator's amendment is appended? Am I correct in my appraisal of that?

Mr. WEICKER. The Senator is absolutely correct in his appraisal.

Madam President, I ask unanimous consent that the editorial be printed in the RECORD in its entirety at this point.

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

REOPENING THE NATION'S WOUNDS OVER COURT-ORDERED BUSING

Etched into the memories of most adult Americans over the age of 40 is the landmark 1954 U.S. Supreme Court case. Brown v. Board of Education. It was the end of so-called "separate but equal" public schools for black and white students and the beginning of nationwide school desegregation.

Progress toward racial harmony in this country over the last quarter century has been enormous. Federal civil rights legislation of the 1960's went far in promoting equality of opportunity in employment, housing, education and the political selection process. Progress continues but there remain many more rivers to cross.

On Monday, however, Congress regressed—in time and principle. The Senate, following earlier action by the House, approved an appropriation bill containing a provision that harks back at least 20 years to the period before busing for school desegregation purposes became a burning issue. If the bill becomes law, it will prohibit the U.S. Department of Justice from using federal funds in furtherance of legal action that could result in court-ordered busing.

Such a law would prevent the nation's top law enforcement agency from seeking a transportation remedy for unconstitutional school segregation. Put another way, it might well start a chain reaction that could undo a great deal of the good that has been accomplished in the sensitive area of race relations.

As Sen. Lowell Weicker, R-Conn. said last week, the anti-busing amendment is "an abandonment of the Constitution of the U.S. and a retreat from assuring equal opportunities in education to all the children in this country. The issue is not busing. The issue is whether or not the Justice Department will be able to enforce the Constitution."

School busing in the last few years has not been a highly controversial issue. More than two years ago Detroit became the largest school district in the nation to comply with court-ordered busing. The desegregation process got under way without a hitch. Boston, after its tumultuous beginning, has largely come around. Indeed, even at the start serious disorders occurred at only four Boston schools. As the United States Commission on Civil Rights noted in a 1975 report, "desegregation proceeded in a peaceful and orderly manner in and around 76 schools."

In Louisville, Ky. and Charlotte, N.C., busing is an accepted fact of life. Even Jackson, Miss., which fought desegregation for a decade in the courts, has largely accepted the inevitable. In March, 1978 these newspapers noted that "five of the seven all-white private academies (formed to provide a segregated alternative for whites) have closed and white enrollment in the public schools is climbing back toward normal."

Busing is not the optimum solution to segregation. It ought to be used only as a last resort. But Congress in reopening the old wounds is calling into question all the monumental gains that have been made over the last 27 years. It is raising false hopes that the former sanctity of the neighborhood school will be restored. It is saying to more than 20 million black Americans that the racially charged words "forced busing" are about to have their currency restored.

This is not the way America in the 1980's is destined to go, notwithstanding the ultraconservative rise of the Strom Thurmonds and Jesse Helms. Rhode Island's Sen. John H. Chafee noted on Monday that many senators who believed the anti-busing measure was unwise or unconstitutional voted for it because they were afraid that political opponents could use the vote to portray them as supporters of "forced school busing."

The constitutionality of this legislation is seriously in question. If it passes—both a Senate-House conference committee and presidential approval are pending—it is certain to be challenged in the federal courts. Proscribing federal legal remedies for segregated schools because the busing of school children is unpopular would be hard to reconcile with the social injustices committed against blacks for 300 years.

U.S. Atty. Gen. Benjamin Civiletti has said he will recommend that President Carter veto the bill and that he understands the State Department will do the same. Under the circumstances there seems no alternative.

Mr. WEICKER. Madam President, the Senator is correct. The comments contained in the editorial are correct.

The fact is that it is an easy task, indeed, for power to appeal to the baser emotions that exist in every one of us as human beings and thus translate those baser emotions into that which becomes hysterical.

The fact is that each citizen of this country should keep clearly in his or her mind the value of this Constitution and not allow any temporary hysteria to go ahead and obviate its value, its particular personal value to them.

This is their greatest protection, not Senator WEICKER, not Senator HELMS, not Senator CHAFEE, but that Constitution.

We became a Nation because a group of men fled from the rule inspired by the baser emotions of men. That is why we became a Nation. That is why men fled across the oceans to come here and the safeguards that they set up were not a matter of speculation. They were not something dreamed up out of thin air.

Why these safeguards? They were put there because they were born of bitter experience, experience where men's prejudice cost men's lives.

And I say for my friends in the gallery that first amendment was born of the bitter experience where men and women could not write what was on their minds or in their hearts or if they did, yes, thrown in a corner and forgotten or even worse—death.

Now it becomes sort of a light thing to bandy about in libel suits and all the rest of it. But understand the origin of it. It dealt with life itself. Never mind the words that were written.

And no matter how unpopular for the moment the media might become, and it can become unpopular for the moment, that survives. That does not change. And it cannot change because some Senator gets on this floor and says in those suits involving first amendment cases the Justice Department shall or shall not prosecute, shall or shall not ask for a particular remedy. When this goes you go, if that principle is established.

So unlike all of us who have to speculate when we pass the law—yes; we think we are responsive to a particular need as expressed or a particular hope of our constituents, but still it is a matter of speculation—this is no speculation, not that Constitution. That is no speculation. That was born of pretty hard experience.

If you think you are smarter than that experience then indeed you do take your life and the life of the Nation in your own hands.

I wish to read and include in the RECORD at this time the entirety of the Leadership Conference on Civil Rights and the letter which has been sent to all Senators.

The composition, incidentally, of the Leadership Conference is:

Honorary Chairmen, A. Philip Randolph, Roy Wilkins; Chairman, Clarence M. Mitchell; Secretary, Arnold Aronson; Legislative Chairperson, Jane O'Grady; Counsel, Joseph L. Rauh, Jr. The Executive Committee consists of Bayard Rustin, Chairman, A. Philip Randolph Institute; Wiley Branton, NAACP Legal Defense and Education Fund, Incorporated; David Brody, Anti-Defamation League of B'nai B'rith; Senator Edward W. Brooke, National Low Income Housing Coalition; Jacob Clayman, National Council of Senior Citizens, Incorporated; Douglas A. Fraser, International Union of United Automobile Workers; Dorothy Height, National Council of Negro Women; Msgr. George Higgins, U.S. Catholic Conference—Division of Urban Affairs; Ruth J. Hinerfeld, League of Women Voters of the U.S.; Benjamin L. Hooks, National Association for the Advancement of Colored People; Ronald Ikejiri, Japanese American Citizens League; Vernon Jordan, National Urban League; Janice Kissner, Zeta Phi Beta Sorority; Iris Mitgang, National Women's Political Caucus; Gilbert Padilla, United Farm Workers of America; Reese Robrahn, American Coalition of Citizens with Disabilities; John Shattuck, American Civil Liberties Union; Eleanor Smeal, National Organization for Women; Rev. Leon Sullivan, Opportunities Industrialization Centers; J. C. Turner, International Union of Operating Engineers; and Kenneth Young, AFL–CIO.

WHY ALL SENATORS SHOULD VOTE AGAINST THE COLLINS AMENDMENT TO THE JUSTICE AUTHORIZATION BILL

The Collins amendment is the Helms language.

1. The Collins Amendment would prohibit the Justice Department from bringing "any sort of action to require directly or indirectly the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education as a result of being mentally or physically handicapped." The Department of Justice would thus be effectively barred from participation in any desegregation case where busing could be part of the remedy. This would work a virtual repeal of provisions of the 1964 Civil Rights Act declaring support for the Supreme Court's decision in *Brown* v. *Board of Education* and authorizing the Executive branch to aid in the enforcement of the constitutional right to nondiscrimination in public education.

2. The amendment is blatantly unconstitutional. The amendment would remove from the Executive branch the only power it has to assure that federal funds are spent in a constitutional manner. It would require the Executive branch to continue to fund school districts that it knows to be unconstitutionally segregated.

A federal court of appeals here has already indicated (in *Brown* v. *Califano*) that cutting off the Justice Department's right to go to court would raise "grave constitutional difficulties." And landmark cases such as *Cooper* v. *Aaron*, 358 U.S. 1 (1958) speak directly to the government's obligation not to support unconstitutional activities.

3. If the Senate passes the Justice Department Authorization Bill with this amendment included, it can be predicted with a fair amount of certainty that President Reagan will sign the bill into law. The Senate would be participating in a violation of the separation of powers—the placing by Congress of an unconstitutional restraint upon the powers of the Executive branch. The responsibility of every Senator to carry out the dictates of the Constitution mandates that the Senate not pass a bill that places such unconstitutional restraints on the Executive branch.

4. While the Senate could pass the bill and leave the matter to the courts to deal with after the President signs the bill, it would be an abdication of responsibility. The aim of this amendment is to put pressure on the courts by isolating them for Congress and the Executive as happened after the *Brown* case. If the Senate passes this bill, it is assisting the sponsors of the amendment in carrying out their aim.

5. No case has been made for the Collins Amendment. It has not been shown that the Justice Department has played a harmful role in desegregation litigation. The amendment does not deal with whether busing can be judicially required in a particular case. The courts, not the Department of Justice, determine the appropriate remedy in a school desegregation case. This amendment will not stop desegregation litigation or the use of judicially-ordered busing as a remedy for illegal segregation. It will keep the Department of Justice from insuring that federal funds are spent in a constitutional manner.

6. People who say that desegregation involving busing has been a failure are incorrect. Research and practical experience show that a great deal of progress has been made through school desegregation orders involving busing. Research on how desegregation affects achievement scores and the relationship between desegregation and white flight show that desegregation involving busing can be both beneficial and stable. The Collins Amendment is part of a campaign to get the courts out of desegregation cases and to stop desegregation progress dead in its tracks.

7. Whatever the views of individual senators may be about busing as a desegregation remedy, we cannot believe that they would want to act in callous disregard of the Constitution and in a way which threatens to destroy the progress in race relations that has been achieved through civil rights legislation over the past seventeen years. Yet those are precisely the destructive results that will flow from passage of this amendment to the Justice Authorization Bill.

Mr. President, I know the distinguished Senator from Ohio has several questions to ask, which I care to respond to, but for 1 minute I have to continue with my statement, and then I am most anxious to listen to him, to ask really what has happened in this Nation where 100 U.S. Senators are unable to stand up and reaffirm the right of the Justice Department and the courts to support or to enforce rather the Constitution of the United States? What kind of insanity is afoot in this Nation that makes Senators afraid to stand up and vote for that kind of amendment?

I think I know what it is. It is what I referred to earlier. The problem is the majority has left the field. There is no moral majority out there. It is a minority of nuts who want to go ahead and impose their views on everybody else. But the majority left the field because they are too lazy to participate.

Mr. HELMS. Madam President, the Senator has gone too far.

Mr. WEICKER. Now, Senator, I make no reference to anybody on this floor. My characterization of a group out there is my characterization. Maybe censorship is a part of the Senator's philosophy, it is not mine. If the Senator finds anything personal in that, if the shoe fits, wear it. Otherwise there was no reference made to the Senator.

So what is needed is for this Nation, not a Senator from Ohio or Connecticut, to stand up against this kind of business. The Nation has to stand up and say, "Yes, that Constitution means more to us than any particular discomfort; and, yes, we are going to involve ourselves in this process. We will be told what is in that Constitution and we are not going to be told any more than that. Otherwise we want to make sure that all we can do is to have full expression, to have whatever resides within each of us, given full expression and growth within the laws of this Nation."

The Senator from Ohio indicated he had a question.

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

Mr. WEICKER. I yield for a question.

Mr. METZENBAUM. It has come to the Senator from Ohio's attention that on June 16, 1981, the Washington Post editorialized as follows:

The anti-school busing rider that zipped through the House last Tuesday is either so broad it is a total reversal of federal policy or so narrow it is superfluous. Either way, it deserves to be killed by the Senate.

Mr. JOHNSTON. Madam President, point of order. A question should not be asked in the guise of reading a long document, and then, I suppose, he will ask whether the Senator agrees. So I move that that is not a question.

Mr. WEICKER. Now, you are going to tell how a question can be asked on the Senate floor?

Mr. JOHNSTON. The Senator from Connecticut can yield for a question only.

Mr. METZENBAUM. The Senator from Ohio was asking a question. I do not understand how I can do it other than to place the necessary foundation of the question before the Senate in order that the Senator from Connecticut can respond adequately. I know it has been done many times before, and I am certain the Senator from Ohio is in order.

Mr. JOHNSTON. Madam President, the point of order is that a Senator may not under the guise of asking a question read a lengthy document and then ask the Senator who has the floor if he agrees with it.

Mr. WEICKER. Madam President, I would point out to the Chair that the Senator from Ohio had been on his feet for 20 seconds when the Senator from Louisiana raised his point of order. I think whether by construction of law or by commonsense it must be clear that the Senator from Ohio has not even had an opportunity, thanks to the interruption, the rude interruption, by the distinguished Senator from Louisiana, to ask his question.

Maybe it is that we are all going to be told what it is we can do vis-a-vis the Constitution, but I do not think we need to be told how we can ask our questions on this floor. Maybe that is the style of politics in other parts of this country, but again it does not come under Senate rules, the Constitution or anything else.

I ask that the distinguished Senator from Ohio be granted the courtesy of asking his question.

The PRESIDING OFFICER. The Chair is going to allow Mr. METZENBAUM sufficient time to ask his question and notifies the Senator from Connecticut that the rules will be strictly construed.

Mr. WEICKER. I know the Chair and I know the Chair is both fair and will strictly enforce the rules. I have complete confidence in the Chair as the Chair and as an individual.

Mr. METZENBAUM. Madam President, may the Senator from Ohio proceed?

The PRESIDING OFFICER. The Senator from Connecticut has yielded to the Senator from Ohio for a question.

Mr. METZENBAUM. Of course.

Would the Senator from Connecticut agree with those two paragraphs that lead off the editorial which I just described, which read as follows:

The anti-school busing rider that zipped through the House last Tuesday is either so broad it is a total reversal of federal policy or so narrow it is superfluous. Either way, it deserves to be killed by the Senate.

The rider, attached as usual to an appropriation bill, forbids the Department of Justice to bring "any sort of action to require directly or indirectly the transportation of any student to a school other than the school which is nearest the student's

home" except in cases in which the student is mentally or physically handicapped.

Does the Senator from Connecticut agree with those two paragraphs?

Mr. WEICKER. I certainly do. I think the question raised by the Senator from Ohio and the editorial which appeared in the Washington Post is exactly the basis for the debate on this floor, the subject matter for debate on this floor.

Mr. METZENBAUM. I would ask the Senator from Connecticut whether he would agree with the next part of that editorial which reads:

Since any school desegregation case can result in a judicial order requiring busing, one interpretation of this rider is that it forbids the Department of Justice, and thus the federal government, to initiate any more school cases. If that is what it means, it is an effort to put the financial burden of school litigation back onto minority groups and put the Justice Department's civil rights division on the sidelines when school matters are discussed in court.

A second possible interpretation is that the rider permits the Justice Department to continue bringing or participating in school cases but prevents it from suggesting to the judges that busing might be an appropriate remedy. If this is what it means, it is probably unconstitutional as a limitation on the department's responsibility to enforce the law and, given recent statements by the attorney general, unnecessary.

Am I right in assuming that the Senator from Connecticut agrees with those two paragraphs?

Mr. WEICKER. Absolutely. What I object to—the Senator does agree with the question of the distinguished Senator from Ohio. I suppose what bothers me is it is one thing to put the Justice Department on the sidelines as a matter of policy; it is another thing putting them on the sidelines by virtue of taking an unconstitutional action.

Mr. METZENBAUM. Then I would ask the Senator from Connecticut what his thoughts are with respect to the next two paragraphs which read:

In a recent speech setting forth his views on civil rights, Attorney General Smith came close to forswearing busing and mandatory quotas as acceptable solutions to segregation problems. He said he was changing the department's policy in school cases from one that insists "the only and best remedy for unconstitutional segregation is pupil assignment through busing" to one that will propose whatever remedy has the "best chance of both improving the quality of education . . . and promoting desegregation."

Mr. Smith's description of past policy is somewhat exaggerated: almost nobody has ever asserted that busing is the "only and best" solution. But the attorney general's description of the policy he intends the department to follow while he is in charge should satisfy all but the most violent critics of school busing.

Does the Senator from Connecticut have a view with respect to those thoughts as expressed by the Attorney General?

Mr. WEICKER. The Attorney General and the President of the United States have made their views very clear on this point. And very strongly, I think, they have the right to implement those views, implement those views as a matter of policy. And, again, maybe that policy would include legislation passed here on the floor.

What they do not have a right to do is to give away the constitutional powers of the Presidency by this incursion on the part of the legislative branch of Government and what they do not have a right to do is to take away from the civil rights of all Americans by permitting the violation of the Constitution of the United States. That they do not have a right to do.

Mr. METZENBAUM. Then the editorial goes on to say:

Busing of school children, after all, is a peculiar thing. It is critical to the operation of almost every school district in the country—segregated, desegregated or otherwise. Even a county as urbanized as Arlington buses children all over the place, mostly to improve the qualty of the education available to them. There may be times when busing is an essential part of any desegregation plan, and there may be times when desegregation can be accomplished without it.

It seems exceptionally shortsighted for Congress to be considering legislation to tie the attorney general's hands on so important an issue just when he has promised to do something about it. Actually, if the broader interpretation of this anti-busing rider is accurate, it would bar the Justice Department from proposing to the courts those "better remedies" that Mr. Smith has promised.

Would the Senator from Connecticut agree that the editorial thrust in the concluding two paragraphs states the posture that it is probably more appropriate if the Attorney General wishes to proceed in that manner that he may do so, indeed do so within the constitutional limits, but proceeding in this manner with an amendment, a rider, on an appropriations bill is probably unconstitutional and certainly if not unconstitutional highly inappropriate as a matter of legislating?

Mr. WEICKER. Well, I agree. And I would say this, in response to the distinguished Senator from Ohio, that really the Attorney General of the United States ought to be out here on this floor arguing the position expressed by the Senator from Connecticut. It is his executive branch. It is not mine. I should cheer the fact that, "Well, let's go ahead and nibble away at the executive," because that is what we are doing. We are doing it apparently in the name of some popular cause, but that it what we are doing. He is not here to protect the executive branch. The President is not here to go ahead and protect the executive branch.

I expressed, I say to the Senator, my willingness to the administration this morning, through the distinguished majority leader, to accept both the Helms amendment, which to me is an abomination, and the Weicker amendment.

Now, at least in that way the policy, odoriferous as it is, can be adopted by the administration but the Constitution is protected.

So, indeed, if I have any difficulties with that kind of a compromise it is that I have made out of this lemon a constitutional lemon.

But nobody is interested in that. Apparently there is too much political capital to be made by saying, "Oh, we are all against busing." There is where the political capital is. Never mind the Constitution. Nobody knows about the Constitution. Nobody cares about the Constitution. But everybody knows about busing.

It does not make any difference at all as to whether or not the power of the Presidency has been eroded for future Presidents. It makes no difference at all. None. It does not make any difference if the civil rights of all Americans have been eroded just a little bit. Nobody cares about those things.

The fact is everybody will sleep tight and comfortably and secure in their beds tonight knowing that their President and Senator HELMS have eliminated busing from the American scene. That is a terrible price to pay, I say to the Senator. It is a terrible price to pay for one good night's sleep as a Nation.

Mr. METZENBAUM. Is it not a fact that the Senator from Connecticut is saying that he is prepared to accept the antibusing amendment provided that it conforms with the Constitution of the United States and that it comes within the limitations as prescribed in your amendment?

As I understand what the Senator is saying, he will accept the amendment but that nothing "shall be interpreted to limit the Department of Justice in enforcing the Constitution of the United States, nor shall anything in the act be interpreted to modify or diminish the authority of the courts of the United States to enforce fully the Constitution of the United States."

Now I have some difficulty in understanding why anybody would be unwilling to accept that constitutional recognition unless they are not prepared to accept the Constitution of the United States. Would the Senator from Connecticut be good enough to illuminate me as to what the objection is to accepting the Constitution?

Mr. WEICKER. Because the Senator is absolutely correct. What is being done here is being done with a complete, total knowledge that it is unconstitutional. It is not a matter of it is a close question. It is knowingly being done—knowingly in the sense of knowing that it is unconstitutional. Because, indeed, if it were a close question, then do it through article five. Amend the Constitution. Do it through authorization hearings of a bill, appropriations hearings; do it that way.

Oh, that brings it out into the full light of day. And you know what happens to a fish when you leave it out there for a long time. It starts to smell. It starts to smell. And believe me that is just like an old fish in the sunshine, that Helms amendment.

It is unbelievable to anybody, anybody outside this Chamber, that you cannot go ahead and pass an amendment saying that the Justice Department and the courts should support the Constitution.

I say to the Senator I think probably this is one of the sadder days or weeks or whatever it is we have been on this. But we will go at it just as long as we can.

It is my understanding, incidentally,

I say to the Senator, that there are others who will have other amendments to this matter.

It has been decided by a handful—incidentally, I find it absolutely amazing that, with all the numbers on their side and the President on their side and the Attorney General, the majority leader, all of that on their side, and they have to worry about the Senator from Ohio asking a question as to how many words he is going to be allowed, as to whether or not he is going to be able to read a little bit.

I will tell you, they want this thing off the stage just as fast as they can get it off the stage. And that is why it is not coming off the stage, not until my legs, my voice, my bladder, or whatever, gives out.

I think we just want everybody to know what it is that is going on. And that is just not so funny. It is pretty serious stuff. The impact of what is done here in terms of the legislation, both in the rejection of the Weicker amendment and the adoption of the Helms amendment, is obviously going to impact on future matters to come before this Senate.

Are you going to see the first amendment done in by this way? That is what is next up on the board. You know that little item here, the first amendment to the Constitution. "Congress shall make no law respecting an establishment of religion."

Is that a little bit important to a few people around here, important enough, in other words, so that you feel that it ought to go the constitutional amendment route? You are not going to get it on a constitutional amendment route.

You are going to get it in some quick ploy out here on the Senate floor. But if you think that everybody wants to stand up and fight for the fact that Congress is not going to establish a religion, is that what it is going to take to get the people excited, when all of a sudden a rabbi sitting there, a priest there, a minister there, and all of a sudden they are asking, "Am I going to be the official religion? Is it my religion that is going to be established? If not, what is going to happen to me?"

How are they going to come at you? Are you going to have the courts around? Are you going to have the courts and the Justice Department around to protect your religious freedom? I will tell you one thing: You better start thinking about it. You did not have to start thinking about it until now. Now you can start to think about it. And you better start to worrying.

We are not talking about any more busing now, are we? We are not talking about blacks or Hispanics or innercities, where all those matters that maybe we do not agree with or maybe we do not like exist.

We are talking about us. I assume that everybody believes in something. Well, you just might be believing in the wrong thing, according to the Senator from North Carolina. You just might be believing in the wrong thing. And then who is going to go ahead and stand in there for you? If you have the money, you are all right. Perhaps I can tell all of you, and I am a lawyer and I should know, that it is a pretty expensive process.

I think all of you have the right to have your Government represent you on the matter of the first amendment. If somebody is coming down on you, if somebody is doing a rain dance on you because of whatever you believe in, for your sake I hope that this Government will stand by you, no matter what it costs or how many lawyers they have to send in or whatever remedy they want, that they will be able to do it for you so that you can believe as you want to believe.

Do you think it is going to end here? Does any one of you really believe it is going to end here with "busing?" Did you believe it was going to end when the Hyde amendment started with all these exceptions, and one by one those exceptions got peeled off?

I remember in the last session of Congress everybody said under no circumstances would they ever prevent the funds from going to a woman who was raped. "My God, you cannot do that."

We cannot? We did, 1 week ago. There it went.

"Under no circumstances would a woman not get funded if she was pregnant by virtue of incest, under no circumstances. It cannot happen."

It did, 2 weeks ago.

It is not going to end. That is the proposition I lay before you. It is not going to end. It is going to go on and on.

I do not have the votes out here, I know that, but I have to make sure that it is going to be tough going every inch of the way, and sooner or later some people are going to wake up and understand that it no longer encompasses their pet hate or their pet discrimination, but, indeed, what is being articulated has finally come to overwhelm them.

I forgot, and I wish I had the exact quote in front of me, though somebody on my staff could get it for me, from the German theologian. I want to make sure I attribute it to the right person. I am speaking of the theologian who spoke of his experience prior to World War II.

First they came to get the labor unions, and nobody spoke up. Then they came to get the lawyers and nobody spoke up. And then the teachers and nobody spoke up. And then the Jews and nobody spoke up. Finally they came to get me, and there was no one left to speak.

This is not the problem of some black man or black woman. It is not the problem of some Hispanic. It is your problem and it is mine.

To say that the Justice Department of the United States cannot enforce the Constitution of the United States, to say that the courts of the United States cannot enforce the Constitution of the United States—think about it. That is the point where we are. Nothing that I can say here rings the bell louder than the opposition to the amendment.

I can even excuse the U.S. Senate voting against that amendment in the heat of an election. I can understand that happening. But, this is June of 1981. We are a year-and-a-half away from an election. The "pressure" is off. If we do not stand up now, when in God's name do we stand up? It is not going to become easier, either in terms of the substance or in terms of the timing, as we move closer to 1982. It is going to get tougher.

You know just as well as I do it is far harder to retake ground than not to give it up at all.

I would hope that somewhere along the line somebody will start to speak out loud and clear or outside the floor, in the media, among their constituency, what have you.

Incidentally, I brought with me today a copy of "A Connecticut Yankee in King Arthur's Court" by Mark Twain which I plan to read shortly. I know that some of you find it difficult to listen to me and I find it difficult to listen to me, but at least if we are going to do our thing, let us do it with some thoughts better than I can express them. Mark Twain can certainly do that on all the issues we have been talking about here, and more to boot.

It has now been 4 hours today. I understand from the Republican leadership that we are going to be made to go another 4 hours. That is fine. I do not exactly know what the pressure is. It would seem to me that we best sit down and think about these matters. But, apparently, the rush—whatever the rush is—is of such a nature that the majority leader is bound and determined to go ahead and force the issue in a physical if not a mental sense.

Well, we will try to handle that as best we can.

I would like to read from the testimony of Lawrence Tribe, professor of law at Harvard University, in his testimony before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice in the House Judiciary Committee.

Mr. Chairman and Members of the Subcommittee:

I am honored to appear at the Subcommittee's invitation to testify concerning the constitutional limits on Congress' authority to curtail the jurisdiction of federal courts to enforce constitutional rights. In this statement, I will set forth the general framework of principles governing the constitutionality of such measures, and will attempt to apply that framework to the sixteen bills which are pending before the Subcommittee and which illustrate quite well the range of issues presented.

INTRODUCTION

Grave misgivings are inevitably stirred when the opponents of specific constitutional rulings suggest that such rulings be changed not by constitutional amendment—with the participation of state legislatures, and subject to requirements of concurrence by extraordinary majorities—but by ordinary statutes limiting court jurisdiction and enacted by a mere majority of the House and Senate. Some of these misgivings come into focus only when we recall that the practice of elaborating and enforcing constitutional provisions through an independent judiciary—a practice inaugurated for the United States in *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803)—is one that few nations in the world follow. The 1961 Constitution of South Africa, * * *

That model government to a few of my colleagues, that model government—

* * * for example, expressly provides in Section 59(2) that, with only the most limited exceptions, "[n]o court of law shall be

competent to enquire into or to pronounce upon the validity of any Act passed by Parliament. * * *

A noted student of South African law and politics observes:

"As a result of the new Constitution's firm adherence to legislative supremacy, and the restriction of the courts' testing rights to [a few limited] matters. * * * Parliament has been able to ride roughshod over individual liberty without fear of judicial obstruction.", J. Dugard, "Human Rights and the South African Legal Order 35" (Princeton Press, 1978).

Now maybe we have the reason why South Africa is a model to some of my colleagues. It is not any model to me, nor to the world, nor to anybody who has any faith in themselves or any dignity to themselves, or wish to see themselves expressed as they wish to see themselves expressed:

Thus the technique of circumventing constitutional safeguards through carefully crafted jurisdictional withdrawals approved by mere legislative majorities has, to say the least, disturbing antecedents.

In this country, of course, the continuing availability of state courts as forums for the enforcement of federal constitutional rights, and the tradition of at least some voluntary compliance with the norms entailed by such rights, render jurisdictional withdrawals a good deal less threatening than they might otherwise be. Yet the transparent expectation of those who propose such withdrawals is precisely that state courts will in fact prove less receptive than their federal counterparts have been to assertions of those rights that the proposed statutes deliberately single out for removal from the protective reach of the federal bench. Moreover, if our history is one in which federal rights have at times been taken quite seriously indeed even without federal compulsion, it is also a history in which federal rights have at other times depended upon such compulsion for their very survival. For these among other reasons, the inquiry into what limits, if any, are imposed by the United States Constitution upon Congress' restriction of federal court jurisdiction assumes more than merely theoretical interest.

Despite wide differences of view as to just what limits the Constitution does in fact impose on Congress' power, virtually all students of the subject begin from a shared premise: any federal court in which a purported jurisdictional restriction is asserted at least has jurisdiction to decide whether or not the purported restriction is itself constitutional.[1] In the exercise of this threshold jurisdiction—this power, and indeed duty, to review the constitutional validity of any statutory creation of gaps or fissures in a federal court's subject-matter or remedial jurisdiction—a court will encounter both internal and external constitutional constraints, the first set stemming from the nature and sources of the affirmative authority Congress must invoke in legislating controls over federal courts; the second, deriving from independent limits and prohibitions imposed by the Constitution upon all federal legislation.

Within each of these two categories of constitutional constraints, the internal and the external, some of the most significant limits will, of course, be implicit rather than explicit in the constitutional text. This should come as no surprise, for "[t]he tacit postulates" of the constitutional plan "are as much engrained in the fabric of the document as its express provisions." *Nevada* v. *Hall*, 440 U.S. 410, 433 (1979) (Rehnquist, J., joined by Burger, C. J., dissenting). The remaining task is to describe the constraints themselves and to illustrate their operation by examining the bills now before the Subcommittee.

INTERNAL LIMITS

1. Congress' jurisdiction-defining powers with respect to the Supreme Court in particular are internally limited by the substantive role that the Constitution assigns to the Court. The reach of the Supreme Court's original jurisdiction ("all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party") is, of course, fixed by Article III (as limited in turn by the Eleventh Amendment), and can be neither expanded nor contracted by an Act of Congress. That was, indeed, the precise holding of *Marbury* v. *Madison*.

As to the Supreme Court's reviewing authority, there is general agreement that Congress' power under Article III to regulate, and make exceptions to, such appellate jurisdiction, while undoubtedly very broad, "must not be such as will destroy the essential role of the Supreme Court in the constitutional plan."[2] Whatever the reach of that necessarily vague principle, it is difficult to believe that the principle would not at least bar, for example, the abolition of Supreme Court jurisdiction to review any state court order that is, will be, or was, subject to review by the highest court of the state. Stripping the Supreme Court of its power under the Supremacy Clause to enforce constitutional rules directly against recalcitrant state courts—a power firmly established in *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816)—would generate a clash of sovereigns so irreconcilable as to imperil the Union,[3] by gutting the Supreme Court's capacity to preserve the unity and supremacy of federal law.[4]

Mr. MATHIAS. I am wondering if the distinguished Senator from Connecticut will allow me to make a unanimous-consent request—that on the condition he not lose his right to the floor, I might make a very brief statement of perhaps a minute or a minute and a half in length.

Mr. WEICKER. Certainly, I have no objection, insofar as I do not lose my right to the floor, but there are others on the floor who might object.

Mr. MATHIAS. I am propounding that request to the Chair.

Mr. HELMS. Reserving the right to object, Mr. President, if we may add that my good and dear friend from Connecticut stay within my sight, because I cannot bear the thought of his departing.

Mr. WEICKER. I do not know how far the Senator from North Carolina can see. I am talking about physically, not intellectually.

Mr. HELMS. I would ask that the Senator stay in the Chamber. If the Senator stays in the Chamber, we will accept that request.

Mr. WEICKER. I am more than willing to stay in the Chamber.

Mr. HELMS. The Senator does lose his right to the floor if he leaves the Chamber.

Mr. WEICKER. Why does it bother my good friend from North Carolina?

Mr. HELMS. I have been here for 4 hours. I just cannot bear the sight of——

Mr. WEICKER. I have been here for 4 hours. The Senator from North Carolina has been sort of jumping around all over, so do not worry.

Mr. HELMS. I am not worried.

The Senator from Connecticut is the one who seems to be worried.

Mr. WEICKER. I will not leave to avail myself of the creature comforts.

Mr. HELMS. That is fine. I have no objection under those conditions, I say to the Senator.

Mr. WEICKER. I would hope, then, that the distinguished Senator from Maryland could have his unanimous-consent request granted.

The PRESIDING OFFICER. The Senator from Connecticut has the floor. Does he yield to the Senator from Maryland?

Mr. WEICKER. So long as I do not lose my right to the floor and I may resume my speech from the point I interrupted.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. No.

The PRESIDING OFFICER. Without objection, the Senator from Maryland is recognized.

Mr. MATHIAS. Mr. President, I am very grateful to the Senator from Connecticut and extremely grateful to the Senator from North Carolina, who have made it possible for me to address the Senate very briefly.

Mr. HELMS. I am delighted to be helpful, I say to the Senator.

ANNOUNCEMENT OF JUSTICE POTTER STEWART'S INTENTION TO RETIRE

Mr. MATHIAS. Mr. President, I have just been advised that Justice Potter Stewart has today announced his intention to step down from the bench of the Supreme Court of the United States. Justice Stewart was nominated to be a member of the court by President Eisenhower and has served with consistent distinction since his appointment.

He has shown an admirable capacity for maintaining a moderate posture in the middle of the legal road, while at the same time being totally and objectively independent on issues that he felt demanded special consideration.

I should like to express, to the extent that one Senator can express it, the appreciation of the people of the United States to Justice Stewart for his dedication in one of the most demanding and difficult tasks in our society.

Mrs. Mathias joins me in wishing Justice and Mrs. Stewart a fulfilling and a happy life in such other vineyards as they choose for their future labors.

DEPARTMENT OF JUSTICE AUTHORIZATIONS 1982

The Senate continued with the consideration of S. 951.

The PRESIDING OFFICER. The Senator from Connecticut has the floor.

Mr. WEICKER. I thank the Chair.

Footnotes at end of article.

The seminal cases of *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1868), and *Ex parte Yerger*, 75 U.S. (8 Wall.) 85 (18 8), are certainly not to the contrary, since they together establish only that Congress may extinguish one avenue to the Supreme Court for appellate review of a constitutional claim when other avenues for bringing that claim to the Court for review remain open.

2. Congress' jurisdiction-defining powers with respect to all Article III courts are also internally limited by Article III's implicit concept of the "judicial power," and by basic principles governing the separation of powers among the three branches of the National Government.

The judicial power described by Article III, Chief Justice Marshall declared in *Marbury* v. *Madison*, is the power to "decide . . . [cases] conformably to the law, [including] the constitution. This is of the very essence of judicial duty." This duty is, in turn, inherently incompatible with congressional authority to direct an Article III court to arrive at the outcome desired by Congress whether or not regarded by such a court as consistent with the Constitution and laws of the United States; the Supreme Court so held in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), ruling that Congress may not dictate the rule of decision for a particular case, even in the guise of a jurisdictional regulation.

The nub of the matter is that courts sworn to uphold the Constitution in their discharge of adjudicative responsibility cannot be required, in deciding a case otherwise properly before them, to ignore any question they regard as crucial to a correct decision under law, and certainly cannot be forced to "close their eyes on the constitution, and see only [Congress'] law." *Marbury* v. *Madison*, 5. U.S. at 178.

Yet just such a requirement would be imposed, for example, by H.R. 2365 and H.R. 2791, both of which purport to strip the Supreme Court and the lower federal courts of jurisdiction over all questions going to the constitutional validity of statutes that treat males and females differently in military registration, induction, training, or service. Whenever an Article III court endowed with subject-matter jurisdiction over a controversy deems any such military-personnel statute relevant to the correct outcome, these proposals would in effect instruct that court automatically to proceed as though the statute's constitutional validity made no difference—to "close [its] eyes on the constitution, and see only the law." Such an instruction violates both Article III and Article VI.

That Congress may control the timing and the context for federal judicial review of its own statutes [5] does not imply that Congress may place its favorite laws behind a shield wholly impenetrable by federal judicial review. For Congress to do so would impermissibly condemn those federal judges before whom such enactment become relevant in pending cases to serve as instruments of constitutional disregard and defiance. Authorized to decide a case, an Article III court must decide it constitutionally—or not at all. *See United States* v. *Nixon*, 418 U.S. 683, 704–05 (1974).

Beyond this internal requirement of adjudication according to a court's best effort to address all questions necessary to decision, to do so in accord with law, and to regard the Constitution as the "supreme law of the land"—beyond this, both the Supreme Court and all inferior courts created pursuant to Article III are charged to resolve only actual cases or controversies, and are concomitantly barred from merely offering "opinions in the nature of [legal] advice." *Muskrat* v. *United States*, 219 U.S. 346, 362 (1911). See also Correspondence of the Justices, Letter from Chief Justice John Jay and the Associate Justices to President George Washington, August 8, 1793. To "constitute a proper 'controversy,'" an "asserti[on] [of] a right [must be] susceptible of judicial enforcement." *Maryland* v. *Louisiana*, 49 U.S.L. Week 4562, 4565 (U.S. Supreme Court, May 26, 1981).

It follows that Congress may not so truncate the jurisdiction of an Article III court as to empower it to "decide" a legal controversy while denying it any means to effectuate its decision—or even, as in the ordinary declaratory judgment, at least to alter the concrete situation of the parties or the range of options open to them. Congress' broad authority to regulate the panoply of available remedies, in other words, stops short of the power to reduce an Article III court to be a disarmed, disembodied oracle of the law lacking all capacity to give concrete meaning to its decision that one party won and the other lost.

This much, at least, is implicit even in Article III's bar to adjudication at the behest of a party lacking any concrete stake in the outcome of the proceedings.[6] For a party advancing a legal argument in a court that has been rendered impotent in any meaningful degree to remedy the wrong complained of lacks, by definition, any stake beyond a citizen's purely theoretical curiosity about how the case turns out.

Thus, for example, H.R. 73 and H.R. 900—both of which would unconditionally deprive inferior Article III tribunals of authority to "issue any restraining order" or "temporary or permanent injunction" (and, in the case of H.R. 900, of authority to issue any "declaratory judgment" as well) in any case arising out of a law restricting abortions—seem inconsistent with Article III. For an Article III tribunal thus defanged, but nonetheless seized of jurisdiction to "decide" a pregnant woman's anticipatory challenge to the validity of an abortion ban under which she is threatened with a criminal fine if she exercises her rights as defined by *Roe* v. *Wade*, 410 U.S. 113 (1973), is reduced to whistling in the wind: if it rules the ban invalid and the threat unconstitutional, as it should, it might as well send the woman its regrets. For the tribunal is forbidden to come to her aid in an anticipatory way—while there is still time—even without any showing that the state courts would, or even might, provide timely relief in proceedings of their own. On the contrary, the expectation quite clearly is that the states will not do so—even though the pending statutes, H.R. 73 and H.R. 900, would at least leave open the possibility of the Supreme Court's appellate review of such state court refusals. The point, it should be emphasized, is not that H.R. 900 and H.R. 73 guarantee that the pregant woman's rights will be rejected in every court to which she goes for preventive relief; the point is that these restrictions would leave Article III tribunals with no way to compel the timely vindication even of the rights such tribunals find to be unconstitutionally jeopardized; and they in no way link this power vacuum to grounds for supposing that state courts will vindicate the rights on their own or will be forced to do so by the Supreme Court before it is too late. A federal court placed in such a predicament has been emptied of the essential attributes of judicial power contemplated by Article III:

> [For] Congress . . . to confer the jurisdiction and at the same time nullify entirely the effects of its exercise are not matters heretofore through, when squarely faced, within its authority.[7]

Similarly, H.R. 869, H.R. 1079, and H.R. 1180 would purport to strip all Article III courts of jurisdiction to "require the attendance at a particular school of any student because of race, color, creed, or sex," and H.R. 761 would extend this ban to an ouster of jurisdiction "to make any decision, or issue any order, which would have the effect of requiring any individual to attend any particular school"—evidently for any reason. This latter provision, insofar as it tells federal courts what "decision[s]" they may and may not make regardless of their view of the applicable law and facts, plainly contravenes *United States* v. *Klein*, *supra*. And all four provisions, insofar as they purport to rule out various pupil-assignment remedies regardless of whether any other decree could give effect to the court's constitutional determination,[8] appear to violate the requirement that decisions made by Article III tribunals not be doomed to futility from the start.

The same may be said with respect to H.R. 114, which attempts to strip all inferior federal courts of jurisdiction, directly or indirectly, to "modify" the effect of any state court order so long as that order is or was reviewable by the state's highest judicial body. If a federal court concludes that such an order was entered in violation of the Constitution; that opportunities to challenge and modify it within the state's judicial system were and remain constitutionally inadequate; and that the individual whose rights the order violated, now a party properly before the federal court, will continue to be unconstitutionally prejudiced by the order unless it is promptly modified by that federal court, then following the mandate of H.R. 114 would render the court powerless to give its conclusion any effect whatever.

The view has at times been expressed that Congress is bound not only to equip whatever federal courts it creates with subject-matter and remedial jurisdiction sufficient to satisfy the implicit demands of Article III but also to create such lower federal courts in the first instance (how many? where?) and to vest them with all the jurisdiction that Article III allows, see *Martin* v. *Hunter's Lessee*, 14 U.S. at 330–31, at least to the degree that the effective protection of constitutional rights under modern conditions so requires.[9] The consistent rejection of this position—a position perhaps rendered more plausible by the Civil War Amendments than it was when Justice Story announced it in Hunter's Lessee—might be thought to preclude its adoption now. But such rejection of the Story view should not be permitted to obscure the underlying principle—one never rejected by any court—that no Article III tribunal that Congress elects to create, whether under constitutional compulsion or otherwise, may be crippled from birth with a defect of design fatal to the tribunal's capacity to fulfill a function indispensable to the "judicial power of the United States."

EXTERNAL LIMITS

3. That Congress' jurisdiction-defining powers—in common with all other powers entrusted by the Constitution to the National Legislature—are limited externally as well as internally may at times be forgotten, or obscured by sweeping dicta about plenary authority, but is undeniable all the same.

> "[T]he Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution." [10]

Thus, whatever its "power to give, withhold, and restrict the jurisdiction of [federal] courts. . ., [Congress] must not so exercise that power as to deprive any person of life, liberty or property without due process of law or to take private property without just compensation." *Battaglia* v. *General Motors Corp.*, 169 F.2d 254, 257 (2d Cir. 1948), *cert. den.*, 335 U.S. 887 (1948) (footnote omitted), or to contravene any other provision in the Bill of Rights, or in the Bill of Attainder Clause or the Ex Post Facto Clause of Article I, Section 9, or in any other independent limitation or constraint imposed by the Constitution or its amendments upon affirmatively authorized federal legislation. Were the law otherwise, Congress could freely deny access to federal courts to all but white Anglo-Saxon Protestants, or to all who voted in the latest election for a losing candidate.[11] If such consequences are to be pre-

Footnotes at end of article.

vented, it must be the case that Acts of Congress are accorded no special immunity from independent constitutional limits on national legislation simply because such Acts are cast in jurisdiction-defining terms; the power to define and control the jurisdiction of federal courts is no talisman, somehow dissolving otherwise fatal constitutional limits on what Congress has chosen to do.

As with the internal limits upon the power of Congress to control jurisdiction, these external limits may derive from the interstices and implications of the text, structure, and history of the Constitution as well as from its explicit terms. Ex parte Garland shows as much,[12] and nothing in the logic of the situation counsels a more restrictive canon of constitutional interpretation here than in the identification of internal limits.

4. Among the external constraints the Constitution imposes upon all federal legislation, including legislation that regulates judicial authority, is the principle that no law may unjustifiably deter or disadvantage the exercise of a constitutional right. The Supreme Court recognized decades ago that constitutional rights could be jeopardized and ultimately destroyed not only by laws directly forbidding or penalizing their exercise but also by laws making their exercise the occasion for withholding or withdrawing benefits or privileges that would otherwise be available.[13] "It is inconceivable that guaranties embedded in the Constitution of the United States may . . . be manipulated out of existence," [14] by using the invocation of such guarantees as a trigger for suspending access to a valued service that government would otherwise have extended. The fact that the service is one government could have chosen to abolish altogether is immaterial; it is the choice to withdraw something selectively when particular constitutional rights are exercised that marks a law as an indirect burden upon such exercise. And whenever a law has this character, it automatically becomes constitutionally suspect. Such a law is per se void to the extent it is intended to prevent or penalize the exercise of a constitutional right.[15] And, to the extent the law's tendency to deter or disadvantage such a right is but an unintended and incidental consequence of the measure, the law is valid only if demonstrably necessary to the attainment of a compelling governmental purpose—a purpose with respect to which the law is neither underinclusive nor overinclusive.[16]

5. One particularly pernicious device through which a law might deter or disadvantage the exercise of a right is the technique of making the right's exercise ineligible for a generally available form of governmental protection.

The kind and degree of protection to provide—the combination of executive and judicial enforcement authority to confer—is left, in the first instance, to the judgment of the legislature. But so fundamental is "the right of every individual to claim the protection of the laws, whenever he receives an injury," [17] that that protection cannot be suspended or reduced so as to abandon the enjoyment of selected rights to a jeopardy from which others are shielded. Government even bears responsibility for the citizens that it invites, whether directly [18] or indirectly [19]—including the abuse that it encourages by suspending or withholding ordinarily available devices of law enforcement.[20] Even more plainly, the Federal Government is accountable for the public harassment or persecution of citizens that predictably results when it declares open season on them by placing the rights they seek to exercise in a "free-fire" zone, one that is expressly ineligible for the usual panoply of executive and judicial mechanisms for enforcing such rights through making state and local officials civilly and criminally liable for their abridgment. At least when surrounding rights are fully protected through such mechanisms, "denying the equal protection of the laws includes the omission to protect, as well as the omission to pass laws for protection." *United States* v. *Hall*, 26 Fed. Cas. 79 (C.C.S.D.Ala. 1871).

Congress' sweeping authority to define federal torts and crimes, for example,[21] would confront an insuperable constitutional obstacle were that authority to be deployed in such a way as to protect from hostile state and local governmental activity only such constitutional rights as might meet political favor with the electorate at any given time.

Thus, U.S.C. § 1983 currently subjects to civil liability in federal court all who, under color of state law, deprive individuals of their constitutional rights; and 18 U.S.C. § 241 now makes criminal the willful deprivation of such rights by state and local officers, among others, who "threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution . . . , or because of his having exercised the same."

Such harassment is not immunized from federal prosecution by the theoretical existence of state remedies against it.[22] Nor is such harassment immunized by the fact that it takes the form of arrests, searches, seizures, or interrogations under a patently void statute—one that could not possibly lead to a valid conviction; indeed, precisely such harassment is currently subject to preventive relief by federal injunction. *See Younger* v. *Harris*, 401 U.S. 37, 47–49 (1971).

Now imagine what would happen if Congress were to amend 18 U.S.C. § 241 to make it inapplicable, or to limit its punishment to nominal fines, whenever the "right or privilege" that had been subjected to threat or intimidation was the right to an abortion, or the right not to have even "voluntary" prayers conducted in one's public school, or any other of a short list of rights of which a majority in Congress happened to disapprove. It is unthinkable that such a law would, and unimaginable that it should, be upheld—not because Congress' reach in enacting it would have exceeded its grasp (Congress' power to define federal crimes and to regulate their punishment is at least as "plenary" as many of its other powers and is, if anything, broader than its power to control federal judicial jurisdiction) but because in its reach Congress would have collided with the rights that it had selectively sought to disadvantage.[23]

The same would follow if Congress were to withdraw from the reach of 42 U.S.C. §1983 the right to bring up one's children without undue public intrusion, or the right to end a pregnancy, or indeed any other specific right, thus subjecting to federal civil remedies at law and equity all actions under color of state law depriving citizens of their constitutional rights—except for the rights thereby left by Congress to fend for themselves. The fact that Congress' exclusion of selected rights might involve a limit on the judicial branch rather than, or in addition to, the executive branch, obviously makes no constitutional difference so far as the external constraints on Congress' powers are concerned.

The deployment of Congress' affirmative authority so as to expose disfavored rights to an increased risk of state suppression is equally invalid regardless of whether Congress bases such affirmative authority on its power to enforce the Fourteenth Amendment under Section 5, on its Necessary and Proper Clause power to set substantive and procedural limits on the Executive Branch, or on its Article I and III powers to determine the subject-matter and remedial reach of federal judicial authority within the sphere made potentially available by Article III itself.[23]

Exactly the same analysis would apply if the federal protection out of which Congress sought to carve a set of disfavored rights involved not a mechanism for imposing civil or criminal liability in federal court upon those state officials who willfully interfere with the exercise of rights, but a mechanism for enjoining in federal court all state interference with such rights. Congress' focused deletion of a right such as abortion from the list of rights eligible to receive protection through this federal injunctive mechanism—especially if coupled with the inclusion of abortion funding, and perhaps of police inaction against abortions, as targets against which the injunctive mechanism would expressly be made available [24]—would be exactly as infirm, constitutionally, as would a congressional enactment specifying that police and others who arrest or threaten women seeking abortions are to be immune from the federal criminal punishment to which other rights violators (including, if H.R. 900 were to become law and be upheld, those who run public abortion clinics) are subject under 18 U.S.C. §241.

Thus H.R. 73 and H.R. 900, which would forbid federal district courts to issue injunctions or restraining orders in cases arising out of bans on abortion or on abortion funding, are both in hopeless conflict with the Constitution's external limits on Congress' powers—a conflict that is, of course, exacerbated by the fact that these laws would permit (and perhaps require) federal courts to award injunctions against state officials in exactly the same lawsuits, involving the same courts and parties and issues, if sought on behalf of the unborn to halt state aid to abortions or to end a state policy of allowing abortions to go unprosecuted.

Superficially distinguishable—but, on closer inspection, not genuinely so—are the proposed statutes that would prevent federal judicial action restrictive of "voluntary" prayer in public schools. These statutes purport to eliminate federal court jurisdiction to hear or to review any case arising out of any state law or rule "which relates to voluntary prayer in any public school or public building." Read literally, this language appears to deny federal judicial access equally whether the prayer-related state rule in the case forbids voluntary prayer, makes it optional, requires schools to provide for it, or "relates" to it in some other way. Yet the impetus behind these denials of federal court access in school prayer cases has come exclusively from proponents of voluntary prayer (who feel aggrieved by federal court decisions rejecting their position) and not at all from opponents of such prayer who are concerned that federal courts have been too willing to permit (or even to require) that opportunities for such voluntary prayer be provided in public schools. Indeed, five of the bills (H.R. 72, H.R. 326, H.R. 989, H.R. 1335, and H.R. 2347) contain preambles that expressly describe their purpose as that of preventing federal courts from ruling voluntary prayer unconstitutional and enjoining it as such. Although the remaining two bills (H.R. 408, H.R. 865) contain no such language, their silence on the point cannot obscure the one-sided aim and effect of these measures. That observation leads to a broader point, one developed in the following section.

6. "Jurisdictional gerrymandering"—the practice of excising disfavored rights from generally available forms of federal protection—cannot be saved by a mere appearance of neutrality. In *Hunter* v. *Erickson*, 393 U.S. 385 (1969), a city charter amendment prevented the city council from "implementing any ordinance dealing with racial, religious, or ancestral discrimination in housing without the approval of the majority of the (city's) voters." *Id.* at 386.

The amendment drew no distinctions

Footnotes at end of article.

among racial and religious groups, subjecting "Negroes and whites, Jews and Catholics . . . to the same requirements if there is housing discrimination against them which they wish to end." *Id.* at 390.

Despite this appearance of neutrality, in which "the law on its face treats Negro and white, Jew and gentile in an identical manner," *Id.* at 391, the Court had no hesitation in recognizing "the reality . . . that the law's impact falls on the minority." *Id.*

Although subsequent decisions might be understood to require a showing of discriminatory intent before such racially differential impact, even in access to a governmental forum, triggers strict judicial scrutiny,[23] there is no doubt that even wholly inadvertent and incidental burdens on the exercise of an independently secured constitutional right continue to require compelling justification. (*See* Section 4, *supra.*) Thus, the patently illusory neutrality of the school prayer statutes, for example, would not spare them from evaluation under a requirement of precise fit and compelling necessity—a requirement that they could not, in all likelihood, meet.

Similarly, the arguable neutrality, as a facial matter, of the pending bills that purport to withdraw federal judicial power to assign students to particular schools—either with reference to race, creed, color, or sex (see H.R. 869, H.R. 1079, H.R. 1180) or on any basis whatever (see H.R. 761)—would be unlikely to obscure their discriminatory impact and structure.

7. To whatever extent courts might be reluctant to rely on judicial findings of forbidden congressional motive to invalidate jurisdictional restrictions that are neutral on their face and that are too ambiguous in their effects to be struck down on that basis alone,[24] the most that might follow is that some of the restrictions at issue might squeak by in the courts—not that they are constitutional.

Congress duty to comply with the Constitution's mandates derives not from the risk that courts may otherwise strike down Congress enactments but from the oath binding every Member of Congress "to support this Constitution." See Article VI. Whatever courts might say as to some of the measures analyzed in this statement, the Members of Congress surely can have no doubt that all of the jurisdictional restrictions now pending before them are designed, obviously and transparently, to circumvent constitutional rulings of the Supreme Court by a method less onerous than the amendment procedure set forth in Article V. Doubtless aware of this forbidden aim, Congress should, I believe, regard itself as duty-bound to reject the pending measures—whatever its predictions as to how courts might rule on each of them.

8. Conversely, any congressional decision to enact jurisdictional limitations believed to be unconstitutional, in the expectation that the Supreme Court or another federal court will promptly strike the limitations down, would be completely irresponsible.

Such a decision by Congress might be motivated by a wish to curry favor with some constituents while passing the buck for constitutional enforcement to the federal judiciary—which can then be dramatically criticized, in feigned surprise and with calculated political effect, for imperialism and hyperactivity. Or such a congressional decision might instead be motivated by a hope that federal judges frightened by Congress assault upon their jurisdiction and fearful of even worse attacks to follow, would either be cowed into (erroneously) upholding unconstitutional limits on their own jurisdiction or pressured into (hypocritically) reversing those decisions—on such issues as abortion, busing, prayer, gender-neutral military registration, and the like—that provoked the public's dissatisfaction and its spasms of legislative rebuke to the courts.

Whatever Congress motive for enacting legislation that it knows (or ought to know) is unconstitutional, and whatever the eventual reaction of the federal courts, the cost of such cynical manipulation of the Constitution as our most fundamental and unifying body of law—the cost in reduced credibility for already wounded institutions and in diminished power for already weakened sources of normative guidance—is bound to be far too high to make the gambit worthwhile.

9. Even when entirely constitutional and well intended, the restructuring of federal court jurisdiction to achieve substantive ends should be undertaken only with the greatest caution and after the clearest possible showing of need and efficacy.

Even on the most optimistic of assumptions, state courts, recognizing themselves as still bound by the Constitution and as constrained to follow the Supreme Court's still authoritative decisions construing it, would either replicate the very rulings that had inspired jurisdictional restructuring, thereby freezing the law unwisely but otherwise rendering the shift from federal to state courts too inconsequential to have been worth the effort; or would move in dozens of different directions in their understanding and elaboration of the governing constitutional norms, thereby destroying a vital uniformity on matters governed not by fifty distinct bodies of state law but by one constitutional rule. Unless such diversity is secretly desired as a way of overturning a constitutional ruling that one dislikes when one cannot muster enough support to amend the Constitution itself, its virtue is difficult to fathom in dealing with the one document that, above all others, binds the Nation into a legal whole.

Thus, the Supreme Court has found it intolerable even for federal constitutional restraints on matters as localized as police interrogation to vary from state to state.[27] It is still less tolerable, surely, for a person's ability to vindicate a right under the First Amendment's Religion Clauses, or under the Fifth Amendment's Due Process Clause, to vary with the geographical terrain. If there is any question as to which ours must be not fifty laboratories but "one nation, indivisible," that question is the fundamental meaning of these genuinely constitutive features of our policy—the provisions that make ours an open society aspiring to equal justice under law.

Although it is not beyond imagination that such state-by-state fragmentation—even at a level where national unity means so much—might be worth risking for some transcendent benefit, the circumstances in which such a benefit could be reliably achieved through jurisdictional abacadabra seem most unlikely to obtain. Thus the presumption against the enactment even of constitutionality valid gerrymanders of federal court jurisdiction ought to be extremely heavy—especially when one adds the caveat that such jurisdictional measures, in their motivation as well as in their structure and impact, must invariably raise the gravest of constitutional questions.

FOOTNOTES

[1] *See, e.g.,* Hart, "The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic," 66 Harv. L. Rev. 1362, 1387 (1953).

[2] Hart, 66 H.L. Rev. at 1365.

[3] *See* O. Holmes, *Collected Legal Papers* 295 (1920).

[4] *See* A. Hamilton. *The Federalist* Nos. 22, 81; J. Madison, *The Federalist* No. 39; *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 416–18 (1821); Ratner, "Congressional Power Over the Appellate Jurisdiction of the Supreme Court," 169 U. Pa. L. Rev. 157, 160–167 (1960).

[5] *See, e.g., Yakus* v. *United States*, 321 U.S. 414 (1944); *Lockerty* v. *Phillips*, 319 U.S. 182 (1943).

[6] *See Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

[7] *Schneiderman* v. *United States*, 320 U.S. 118, 168–69 (1943) (Rutledge, J., concurring). Cf. *Sterling* v. *Constantin*, 287 U.S. 378, 403 (1932) (Hughes, C. J.).

[8] Cf. *North Carolina* v. *Swann*, 402 U.S. 43 (1971) (invalidating state statute that rules out busing remedy even where needed to correct *de jure* segregation).

[9] *See* Eisenberg, "Congressional Authority to Restrict Lower Federal Court Jurisdiction," 83 Yale L.J. 498 (1973).

[10] *Williams* v. *Rhodes*, 393 U.S. 23, 29 (1968) (emphasis added).

[11] *But see Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867) (former Confederate sympathizers cannot be denied access as advocates in cases before federal courts).

[12] *Id.*

[13] *See, e.g., Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. 581, 593–94 (1926).

[14] *Id.*, quoted with approval in *Western and Southern Life Insurance Company* v. *State Board of Equalization of California*, 49 U.S.L. Week 4542, 4546 (U.S. Supreme Court, May 26, 1981).

[15] *See United States* v. *Jackson*, 390 U.S. 570, 581 (1968); *Shapiro* v. *Thompson*, 394 U.S. 618, 631 (1968); *Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. at 593–94.

[16] *See Shapiro* v. *Thompson*, 394 U.S. at 634; *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250, 258 (1974); *Sherbert* v. *Verner*, 374 U.S. 393, 404–07 (1963). *See also Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 101 S.Ct. 1425, 1431 (1981).

[17] *Boddie* v. *Connecticut*, 401 U.S. 371, 374 (1971); *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

[18] *See Lombard* v. *Louisiana*, 373 U.S. 267 (1963) (property owners invited to invoke facially neutral trespass laws against blacks during sit-ins at restaurants).

[19] *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958) (compelled disclosure of membership lists made government responsible for predictable private abuse that would result).

[20] *See Gregory* v. *Chicago*, 394 U.S. 111 (1969); *Feiner* v. *New York*, 340 U.S. 315, 326–27 (1951) (Black, J., dissenting); Z. Chafee, *Free Speech in the United States* 245 (1948).

[21] *See, e.g., United States* v. *Hudson & Goodwin*, 11 U.S. (7 Cranch) 32 (1812) (federal courts have no authority to punish conduct without congressional enactment specifically defining conduct as criminal).

[22] *See Screws* v. *United States*, 325 U.S. 91 (1945) (state police who beat black suspect to death may be federally prosecuted under 18 U.S.C. § 242 for willful deprivation of suspect's constitutional rights under color of law notwithstanding possible state prosecution for murder).

[23] Whatever such a law's other aims, it would fit too poorly (to pass muster under strict scrutiny) any objective other than the forbidden one of deterring or penalizing the rights excluded.

[24] A contrary illusion might be fostered by the fact that Congress' control over the Supreme Court's appellate jurisdiction, at least, rests on Article III's express reference to congressionally created "exceptions." But this circumstance has no bearing on the external limits on the power in question, nor is there even any reason to suppose that the Necessary and Proper Clause, say, confers less affirmative authority over its range

of subject matters than the Exceptions Clause does over it.

[24] *See, e.g.*, H.R. 900, Section 1, which would achieve this result (unless struck down) by declaring fetuses to be among the "persons" to whom the state's duties of equal protection extend.

[25] *See, e.g., Washington* v. *Davis*, 426 U.S. 229 (1976).

[26] *Cf. Uniter States* v. *O'Brien*, 391 U.S. 367 (1968).

[27] *See Oregon* v. *Hass*, 420 U.S. 714, 719 (1975).

Mr. WEICKER. Mr. President, I now wish to read the statement of Telford Taylor on behalf of the American Civil Liberties Union before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary of the House of Representatives.

My name is Telford Taylor. I am a lawyer, admitted to practice in the District of Columbia, New York State, and various federal courts including the Supreme Court of the United States. I have been at the bar for 47 years, first as a federal government attorney (1933–42), and since 1952 as a private practitioner. In recent years I have been principally occupied with law school instruction, and have conducted classes and seminars at the Yale, Columbia, Harvard, University of Colorado, and Benjamin Cardozo Law Schools. I am presently Nash Professor Emeritus at the Columbia Law School and Kaiser Professor of Constitutional Law at the Cardozo Law School.

Throughout these years I have been primarily concerned with federal, including federal constitutional law, and I have conducted classes in constitutional law at all of the above-named institutions, and in every year since 1963.

I am appearing here on behalf of the American Civil Liberties Union, in order to discuss the extent of congressional power over federal court jurisdiction. I am aware that there are a number of pending bills, in both the House of Representatives and the Senate, which withdraw federal court jurisdiction in a variety of ways. I share with the ACLU the view that most of these bills, if enacted into law, would be unconstitutional. But I am not a member of or bound by the views of the ACLU, and the particular contents of this statement do not necessarily reflect their opinions.

1. CONGRESS AND THE INFERIOR FEDERAL COURTS

My opposition to the jurisdictional provisions of these bills is not based upon a narrow view of Congressional power in this field. The Supreme Court has explicitly recognized that Congress has "plenary control over the jurisdiction of the federal courts." *Bro. of R. Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U.S. 50, 63–64 (1944) This is in accord with the history and language of Article III of the Constitution, Section 1 of which vests the judicial power in the Supreme Court "and in such inferior Courts as the Congress may from time to time ordain and establish" It is generally understood that this wording embodied a compromise between those among the framers who favored and those who opposed establishment of a federal court system. Thus the decision between the two alternatives was not mandated by the Constitution itself, and it was left up to Congress to handle by statute.

It thus appears that it would have been entirely constitutional for Congress to establish no "inferior" federal courts at all. And although the First Congress did in fact establish the district and circuit courts, the First Judiciary Act gave them a range of jurisdiction which, by today's standards, was very narrow.

Accordingly, if we were to look to the intentions of the framers, Congress could constitutionally conclude and legislate extensive curtailment, or even abolition, of inferior federal court jurisdiction. Of course, from a practical standpoint, a decision not to make inferior federal courts in 1789 would have been quite different from a decision to abolish them in 1981, after we have had federal courts for nearly two centuries, and after more than a century during which they have become a major part of the nation's judicial machinery. These practical considerations have led one commentator to conclude that: "Abolition of the lower federal courts is no longer constitutionally permissible . . . the jurisdiction of these courts is not a matter solely within the discretion of Congress." Eisenberg, Congressional Authority to Restrict Lower Federal Court Jurisdiction, 83 Yale L.J. 498 (1974).

While I think all would agree that today the abolition of the lower federal courts, or deep inroads into their jurisdiction, would be extremely unwise, and indeed destructively revolutionary, of course these bills effect, quantitatively, a very limited withdrawal. My opposition to them, and my conclusion that they are unconstitutional, does not rest upon the proposition that there are quantitative constitutional limits on Congressional power over inferior federal court jurisdiction. That power is, as stated by the Supreme Court, "plenary," like, for example, Congressional power to regulate interstate commerce.

2. CONGRESS AND THE SUPREME COURT

Unlike the lower federal courts, whose existence is dependent on Congressional creation, the Supreme Court is the creature of the Constitution itself. The Constitution (Article III, Section 2, second paragraph) also specifies the Supreme Court's original jurisdiction, which Congress is powerless to alter, and endows the Court with appellate jurisdiction "both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make."

Because of the striking, and plainly intentional, differences in wording between the provisions dealing with the lower federal courts and those dealing with the Supreme Court, I do not think that Congressional power over the Supreme Court's appellate jurisdistion can properly be described as "plenary" in the sense that the power over lower federal court jurisdiction is "plenary." The power to "regulate" assumes that there is a corpus of appellate jurisdiction to be regulated; the power to make exceptions assumes that there is such a corpus from which there can be subtraction.

Furthermore, there is a structural interlocking between Sections 1 and 2 of Article III. If Congress should choose under Section 1 to create no lower federal courts, all federal issues, constitutional and statutory, would be resolved in the state courts; a failure to provide for review of their decisions in the Supreme Court would leave that Court with nothing but very limited original jurisdiction and confront the nation with the probability of disparate federal law among the several states. And in fact the First Judiciary Act (1789) gave the lower federal courts no general jurisdiction over federal questions and therefore provided for Supreme Court review of state court decisions on federal questions.

In short, while the framers of the Constitution contemplated the possibility that there would be no lower federal courts whatever, I do not think it conceivable that they contemplated the possibility of no Supreme Court appellate jurisdiction whatever. Were Congress to enact a law totally abolishing the Supreme Court's appellate jurisdiction, I believe it would be unconstitutional.

The difficulty, of course, is that the Constitution does not specify any standard limiting the so-called "exceptions and regulations" clause. The problem is not unique to that clause. Since the First Judiciary Act, Congress has specified the dates of Supreme Court terms, then fixed at two per year, in February and August.

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

Mr. WEICKER. Yes, I certainly do yield to the distinguished Senator from Maryland.

Mr. MATHIAS. The Senator has referred to legislation which would deprive the courts of jurisdiction in specific areas of cases. I am wondering whether the Senator will agree that this kind of legislation, as he and I have already discussed, bears some relationship to the matter pending before the Senate?

Mr. WEICKER. Yes, it certainly does.

Mr. MATHIAS. Does the Senator agree the proponents of these bills appear to believe that if the Supreme Court and the lower Federal courts are deprived of jurisdiction that State courts could decide such cases without fear of Supreme Court review and thus ignore the precedents that are set by the Supreme Court of the United States, the highest constitutional authority?

Mr. WEICKER. Senator, absolutely, absolutely. But, Senator, it should come as no surprise, this total disrespect of the authors of the amendment before this body to the judicial system and to the courts of this country.

Mr. MATHIAS. Well, I am not drawing any such conclusion. But I do have some concern about either the deprivation of jurisdiction which could prevent the enforcement of the guarantee of rights and liberties of the American people or the deprivation of enforcement powers on the part of the executive branch which could have an equally devastating effect.

I have a further question of the Senator from Connecticut. Does the Senator believe if State courts are given such explicit jurisdiction and then proceed to exercise it in a manner which is inconsistent with existing precedents that the State would be acting in a manner which would be totally inconsistent with the supremacy clause of the Constitution?

Mr. WEICKER. The Senator from Connecticut responds in the affirmative to the Senator from Maryland.

Mr. MATHIAS. Let me just pursue that with another question. Is there any reason why these court jurisdiction restrictions could not be expanded into the future to cover all constitutional rights, freedom of speech, freedom of religion, freedom from reasonable search and seizure?

If we were to deprive the Federal courts of jurisdiction in a whole series of issues, would it not be possible in fact to vitiate the entire Bill of Rights as a practical matter?

Mr. WEICKER. Senator, that is what is being done right out here, and that is what is being contemplated by the authors of this amendment. It is not a question that this is speculative. The Senator is absolutely right.

Mr. HELMS. Mr. President, the Senator has gone too far.

Mr. WEICKER. Senator, you have gone too far, and that is the reason why somebody is saying "no" to you. The Senator is stating his opinion of the legislation.

Mr. HELMS. No, you are stating your opinion of me.

Mr. WEICKER. And, quite frankly, as long as that legislation sits out there I am going to characterize the legislation in every way that I possibly can as being unconstitutional, as being that which deprives people of their rights under the Bill of Rights. If the Senator does not like the characterization of the legislation there is nothing I can do about that.

Mr. HELMS. Mr. President, he is not characterizing the legislation. He was characterizing a Senator, and there is a difference.

Mr. WEICKER. Mr. President, will the reporter please read the record so that we have it before us as to how the Senator was characterized.

The PRESIDING OFFICER. The Official Reporter will read the statement of the Senator from Connecticut to which the Senator from North Carolina has referred.

The Official Reporter of Debates (Mr. Benjamin H. Firshein) read as follows:

Mr. WEICKER. Senator, that is what is being done right out here, and that is what is being contemplated by the authors of this amendment. It is not a question that this is speculative. The Senator is absolutely right.

Mr. WEICKER. That was in response to the Senator from Maryland. That is correct.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. Will the Senator suspend, please?

Is the Senator from North Carolina calling the Senator from Connecticut to order at this time?

Mr. HELMS. Mr. President, in response to your question, I simply think that the Chair wants to keep the Senator from Connecticut within bounds, within the rules of this Senate.

The PRESIDING OFFICER. Is the Senator calling the Senator from Connecticut to order? Otherwise, he has nothing to say.

Mr. HELMS. I will not press the point, because it is not worth the time. But I want to say that I have been attacked personally time and time again by my friend from Connecticut and I think that he ought to stop that. His disagreement with the amendment is fine, but his attacks on other Senators are not fine.

Mr. WEICKER. I would address myself to the Chair by saying that I have nothing but the greatest affection for the Senator from North Carolina. Quite frankly, he and I have been through too many battles, so I want the record to be clear as to how I look upon him as a person.

Mr. HELMS. I thank the Senator.

Mr. WEICKER. There is just no question about that.

On the other hand, I express my rather strong feeling as to the legislation that he has on the floor, but not to the Senator.

Mr. HELMS. If the Senator will yield and not lose his right to the floor, the problem with the Senator is he knows too many things that are not so. If I ever get a chance, I am going to refute the arguments that he has made and I am going to do it in detail. I am going to quote constitutional sources and scholars that will absolutely rebut 98 percent of what the Senator said. I say further that he has no more devotion to the Constitution than the authors of this amendment that he objects to. I hope we can keep it on a high level.

The Senator can disagree all he wishes, but do not attack STROM THURMOND and JIM MCCLURE and JOHN EAST and JESSE HELMS, because you do not love this country any more than I do.

Mr. WEICKER. Senator, I did not even realize that Senator EAST and Senator MCCLURE and others were involved in this effort.

Mr. HELMS. There are a lot of things you do not realize, Senator, but we will get to that later.

The PRESIDING OFFICER. If the Senators will suspend, the Chair would like to rule and read rule XIX, paragraph 2, which is applicable if the Senator from North Carolina cares to invoke it.

No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy of becoming a Senator.

Does the Senator from North Carolina desire to use that rule?

Mr. HELMS. No, I do not.

The PRESIDING OFFICER. All right, I recognize the Senator from Connecticut. He may continue.

Mr. WEICKER. I thank the Chair. Again, I just have to repeat my personal affection and respect for my good friend from North Carolina.

Mr. HELMS. Which is reciprocated.

Mr. WEICKER. And I have to repeat what I consider the legislation on the floor to be. It is that fish in the sun, Senator, and that has nothing to do with you.

Mr. HELMS. Leave it to the legislation.

Mr. WEICKER. That is what I am talking about.

Mr. HELMS. You have not been talking about the legislation. You have been talking about the sponsors of the amendment.

The PRESIDING OFFICER. The Chair will remind the Senator from Connecticut that he can lose the floor if he yields to a Senator for other than a question and he has not yielded for a question but he is getting a statement.

Mr. WEICKER. Well, the Chair is absolutely correct. I do not want to lose the floor, I just want to express my affection for the Senator from North Caroline, that is all.

In any event, in response to my good friend from Maryland—my good friend, the Senator from Maryland is the one who got me into all of this trouble—I am glad to go ahead and say to him that I think there are serious constitutional defects to what it is that is being proposed here. Indeed, these defects could strip each one of us of our rights under the Constitution.

The answer is, yes, in any given set of circumstances we could lose our rights as to freedom of speech, freedom of religion, privacy, or what have you, and there would be no recourse for us in the sense that either the courts were stripped of their jurisdiction or the Justice Department of its abilities to pursue the action against the act complained of.

Mr. HATFIELD. Will the Senator from Connecticut yield for a question?

Mr. WEICKER. I am delighted to yield to the Senator from Oregon for a question and respond as best as I am able to.

Mr. HATFIELD. I want to ask the Senator from Connecticut a question relating to perhaps other civil rights issues that might be affected by the precedent that this particular amendment, if adopted, might set.

I ask the question as a nonlawyer, but my question is raised because I am concerned about whether or not the Senator feels that this would limit the Supreme Court's authority to hear cases or the Justice Department's ability to fulfill its constitutional obligations. How does the Senator feel that these issues would be affected and what would be the impact upon not only civil rights but on other issues that might face the Justice Department in the future?

I ask this question in perhaps a series of questions—I would like to get it all out—or I can ask them one at a time, whichever the case may be.

But does the Senator see this as different from, say, a congressional action that would cause a reduction of appropriations to carry out an action or as contrasted to a Supreme Court ruling in which an agency is carrying out an action, or as contrasted to a legislative amendment that would change the responsibility of an agency?

Well, that really raises a series of questions, but I raise this because I recall at the time that we were offering the McGovern-Hatfield amendment to cut off funds for the Vietnam war, that question was raised in the debate of whether or not we were encumbering the President from carrying out a constitutional duty. If the Senator recalls—this question is in this context—the President's duty or his warmaking powers were later redefined because of confusion in that case.

Does the Senator from Connecticut think that there is any similar confusion here or is it a pretty clear case of an encumbrance that would be placed upon the Justice Department from actually carrying out an action mandated by the Supreme Court and differentiating that from, say, a redefining of a responsibility vis-a-vis an appropriation action or an amendment to it?

Mr. WEICKER. In response to the question of the Senator from Oregon, the fact is the passage of this type of legislation removes—removes the judicial branch of Government from the constitutional process. This type of legislation binds, inhibits the executive branch of Government from its full participation in the constitutional process.

Mr. HATFIELD. If the Senator will yield for a question, is the Senator saying it, in effect, impacts upon two of the three branches of Government?

Mr. WEICKER. Absolutely correct. It inhibits one—how can a court hear something that cannot be brought before it? That is why they can be removed. If, indeed, the Justice Department cannot seek the remedy, then a court cannot make an adjudication of something that is not before them.

I have never seen, as long as I have been in the House of Representatives, 2 years, and the U.S. Senate, 11 years, anything so unconstitutional as this amendment, except when it was previously raised by the Senator from North Carolina last year. It is unconstitutional. And if that falls harshly upon anyone's ears here, the fact is that that is the case.

Mr. HATFIELD. If the Senator will yield for a further question on that point, are there any other areas or subject fields that the courts today are restricted from hearing or are in a similar category that this amendment would place this subject?

Mr. WEICKER. Well, the method used, the legislative method used, in other words, of trying to achieve a judicial or policy end by reducing the appropriations process obviously has been used in other instances.

Mr. HATFIELD. If the Senator will yield for a further question, are there any subject categories that are specifically excluded from the Court's review as I understand this would do?

Mr. WEICKER. No. The Senator is correct. My answer would be no. I know of none. I know of none.

Mr. HATFIELD. If the Senator would yield for a further question, as I understand it, the Senator from Connecticut is saying that this would be the first time for a precedent-setting action that would specifically exclude an area of subject in the law from the Supreme Court's consideration or jurisdiction?

Mr. WEICKER. If you pass this amendment—I am not talking about the Weicker amendment, I am talking about the restrictive one—then the fox is in the chickenhouse. This is the first time, this is the first time. But the principle will have been established. And once the principle is established—I wonder if I might ask the Chair for order. I cannot respond to the Senator while another Senator is talking to him.

The PRESIDING OFFICER. The Senate will be in order.

Mr. WEICKER. Once the principle is established on a matter of those cases that relate, as this does, to discrimination by race or school desegregation cases, once it is established by virture of this principle, then you can apply any other fact situation and the principle remains.

So, indeed, you could put more funds into retarded cases, elderly cases, and so on. You can go right down the list, once the principle is established.

Mr. HATFIELD. If the Senator will yield for a further question, let us assume as the scenario for my question that this amendment is adopted and becomes part of the law. Would this action be subject to review by the Supreme Court, such legislative action, and would it be in a position to strike it down as unconstitutional?

Mr. WEICKER. The answer to the Senator from Oregon is in the affirmative.

This raises an interesting question. First of all, there is no doubt in my mind it is going to be struck down as being unconstitutional. There is no doubt. And then we can all sit down here and say, "Oh, oh, we made a mistake."

There is only one thing wrong and the Senator knows what that is: It is probably going to be several years before that determination is going to be made and the lives of how many children would have been cut to ribbons in the meantime? Believe me, when you take that education away for whatever it is, 5, 6, 7, or 8 years, you set the course for years to come. So this tinkering around with the Constitution of the United States by whomever it is who proposes this type of legislation is not without consequence.

So we can all run around and say, "We won our election." We won our election at a cost of how many children?

Point No. 2: Who is to say to the Senator who sits as chairman of the Appropriations Committee that if the Supreme Court says this is unconstitutional, that at whatever time they say that we will then have a rider on the appropriations bill? I am the chairman of the Subcommittee on State, Justice, Commerce, and the Federal Judiciary. We will have a rider on the appropriations bill cutting off the funding of the Supreme Court that said this was unconstitutional.

There is the problem on both of its counts, both as to how it affects those who will have no action on their behalf for years and also once we establish this principle to go after the Court itself by cutting off its money.

Mr. HATFIELD. The Senators responded obviously to the generic subject that this raises. But what would be the ramifications of saying to any other agency of Government, besides the Justice Department, if this matter became law and the precedent was set? Would it have such ramifications in other agencies besides Justice as far as carrying out programs and policies?

Mr. WEICKER. Yes, it would. Obviously, with every one of your Federal agencies that has any sort of a quasi-judicial function, if you do not like what they are doing, you just move in on them. But I do not think we will have any trouble on that. If we have no trouble moving against the judicial system of this country, I can assure you there will be no problem in moving against that which is quasi-judicial. The answer is that the various agencies, whether FTC or any other, which have to make quasi-judicial decisions, can have us interjected into the system if we do not like what they are doing, by going ahead and withholding funding and saying that there are certain things they can or cannot do.

Mr. HATFIELD. Let me put the question this way: Let us assume for a moment that the objective or the policy that this amendment would create or change is a desirable one. Are there other remedies. are there other methods that the Senator would suggest we could approach that matter with, in order to achieve the same objective?

Mr. WEICKER. This is on the amendment of the Senator from North Carolina?

Mr. HATFIELD. Yes.

Mr. WEICKER. The answer is it is very easy to achieve, without damage to the constitutional process, what it is that the Senator from North Carolina is trying to do. Indeed, as I read the great Republican platform and I hear the admonition from the President and his Attorney General, I have no doubt what he seeks to do in this particular piece of legislation is going to happen anyway. It is right out there. There is a big difference between people saying these things and turning the constitutional process upside down to achieve these things.

Let us say in answer to the question that we could defeat the amendment of the Senator from North Carolina, and we are not going to, and the practical effect would be exactly the same as what it is he is trying to achieve. The difficulty comes not with his amendment but with openly rejecting the amendment of the Senator from Connecticut which says the Justice Department shall enforce the Constitution of the United States and the Court shall enforce the Constitution of the United States.

We have people running around here who do not like the courts. They do not like what the courts have done.

Well, that is a little bit different.

My answer to the Senator is that, yes, there are many ways by virtue of what has already been stated as administration policy, by virtue of an affirmative act, I might add. which was passed by constitutional amendment, article V of the Constitution of the United States. You can go ahead and do it through a bill, run it through the authorizing and appropriation process, signed by the President and approved by the President. Every way.

This is unconstitutional, totally out of the stream of the legislative process, and, indeed, telling the President of the United States what the policy is to be.

I repeat for my more conservative colleagues who believe and quote the Constitution of the United States. I wonder how thrilled the President is that from now on the Congress is going to be able to tell his branch of Government what to do.

This is where the President ought to be, on the floor right now defending that aspect of the proposition.

Sure, approve the Helms amendment, that is no problem, but there is the congressional incursion into the constitutional authority of the President.

Mr. HATFIELD. If the Senator will yield for a further question, the Supreme Court is a coequal branch with the other two branches of Government, and if there is something the Supreme Court has ruled upon which they disagree with, which they feel is in error, the Senator from Connecticut, I understand, is saying that we have other remedies to correct that disagreement other than this particular procedure we are forming now, such as by taking that issue head on, by other legislation or a constitutional amendment. We can change the impact or the effect of that ruling in a more or-

derly, constitutional procedure than what is being selected here. Do I understand that correctly?

Mr. WEICKER. The Senator from Oregon is correct. For example, we could propose an amendment as a substitute for the Helms amendment because we do not like busing; we do not like what the courts are doing to achieve equality of educational opportunities. We can pass an amendment right here saying that Congress will appropriate $50 billion, in lieu of the Helms amendment, in lieu of busing, that the Congress will appropriate $50 billion and go ahead and raise the necessary taxes to pay for it in order to achieve equality of educational opportunities.

There is a way to do it. I do not think, quite frankly, it would have many supporters.

I just do not see how you can have your prejudices and your wallets intact. I really do not. That is where the strain is coming here. Someone is trying to find an answer to this problem without any pain whatsoever, either in terms of lifestyle or in terms of dollars. But I want to repeat, because this is terribly important in this debate: This is not a busing debate. I imagine there are a lot of people who have spoken here on my behalf, on the constitutional issue, who do not like busing.

That is what everybody is to be tarred with, to be tarred with the busing question so that they will quiver and go ahead and respond politically.

"I do not want my constituents to know that I am for busing. That would be terrible." They run as fast as they can.

The fact is that the debate here has to do with the Constitution. The debate has to do with civil rights, everybody's civil rights, with the constitutional process, the role that we play, and the executive and the judiciary. These are the arguments here on the floor. I only wish somehow I could unshackle my colleagues from the fear that is engendered with the buzzwords that come forth in this issue. I feel that if they had no political fear they would do the right thing, constitutionally.

Mr. HATFIELD. Will the Senator yield for a further question?

Mr. WEICKER. I certainly will.

Mr. HATFIELD. Do I understand the Senator to say that whether he is for or against busing as a public policy, as expressed by the Court, he rejects that as the issue and says the issue is more how we go about the process of changing the impact of that Supreme Court ruling, and, therefore, that the busing issue still should be resolved by other methods as a public policy, maintaining the integrity of the Court's role in ruling on such legislation and the judiciary department's responsibility. Is that correct?

Mr. WEICKER. That is absolutely correct. I think my colleagues know me well enough to think sometimes they might object to style.

Let us say that I was 100 percent against busing. I would take the exact same position on this floor as I am taking right now, the exact same position. Again, I have no repeat, when I first came to the U.S. Senate, we were changing rule XXII. That is when we were dropping it from 66 to 60. I voted against that change as a New England Senator. I did not want to choke off the voice of the then minority.

Regardless of what I am supposed to be—liberal, or whatever it is, or coming from New England—no New England Senators favor cloture. That was neither here nor there. There was an important principle, so far as I was concerned. At that time, it favored my Southern colleagues.

The important principle was that here, if nowhere else in the United States, a person could be heard, no matter whether it was only one person or two persons. I voted against that change, and I say the same thing here—that on this issue, where I am 100 percent against busing, I would still vote against the Helms amendment and I would vote for the Weicker amendment.

To me, it is a constitutional matter. At least, I try to feel these things—at least in my own mind—in a pragmatic way.

To achieve this end and leave the Constitution behind in shambles, to leave the concept of separation of powers in shambles, to leave Marbury against Madison—Chief Justice Marshall's decision—in shambles, what is it we have done in achieving some sort of political philosophy?

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

Mr. WEICKER. I yield.

Mr. HATFIELD. Will the Senator agree that one can have a dual goal, that one can seek dual goals without abandoning one for the other, that one could have in this case the goal of changing the busing policy of this Nation but at the same time maintain the goal of the constitutional question of separation of powers, much as in the case when the first Republican President, Mr. Lincoln, was seeking the goal of emancipation of the slaves but at the same time the goal of preserving the Union—and he was not going to sacrifice one for the other—could you maintain the duality of goals?

For example, if I were opposed, say, to busing policy, which I am not, I still could be opposed to busing and maintain that goal as well as the goal of preserving the separation of powers, as I understand the interpretation by the Senator from Connecticut.

Mr. WEICKER. Certainly.

Mr. HATFIELD. It is not either/or?

Mr. WEICKER. It is not.

The Senator raises the very interesting point that this issue is raised by members of the party of Abraham Lincoln. If ever there were a contradiction, I would say that is it.

I should like to read to the Senator, in response to his question, the quotation that I believe is on target as to the issue he raises. This is quoting Chief Justice Marshall in Marbury against Madison:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he received an injury. One of the first duties of government is to afford that protection. . . .
>
> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for a violation of a vested legal right.

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

Mr. WEICKER. I yield to my distinguished colleague for the purpose of a question.

Mr. HATFIELD. I often have found myself in a situation—I wonder whether the Senator finds himself here today in a similar situation—in which the goal or objective is a sound or legitimate one, and one pursues that objective with diligence and with tenacity, but one also has a responsibility to communicate that goal and objective clearly not only to the colleagues but also, more especially, to the public. But as well as pursuing that goal, what responsibility do we have to attend to the methodology—I am not suggesting that one is engaged here today, or any colleague—with saying the ends justify the means?

Does the Senator from Connecticut not agree that due care has to be given to the methodology one uses to achieve a goal or seek a goal and that one cannot really separate the one from the other—that is, the goals from the methodology?

Mr. WEICKER. Let me give a personal example out here on the floor which illustrates the earlier point made by the Senator from Oregon, and I will carry it into the question he just asked.

It has to do with the abortion debate. The Senator will correct me if I am wrong. His legislative position consistently has been along with that of the Senator from North Carolina on the issue.

Mr. HATFIELD. That is correct.

Mr. WEICKER. The Senator from Oregon is the chairman of the Appropriations Committee. He felt very strongly, having lived through 2 or 3 years of it, that the time had come to put an end to this business of legislation on an appropriations bill; that it had totally bogged down the whole process, and it has. So he differentiated between his position legislatively as a Senator from Oregon and his position as chairman of the Appropriations Committee as to the procedures on the last vote we had, and he voted against the Helms language, even though substantively he believed in it, feeling that there was a proper way to bring that to a vote out here and that he would be voting for it.

The Senator from Oregon illustrates his own point as to a proper way and a wrong way to do things and how sometimes we are divided as to the matter of procedure and as to the matter of law, as to the matter of substance in our opinions.

I also say to the Senator—and it may be a comment on the temper of the times, with respect to those of you in the leadership, for the reason I have stated, as a matter of procedure, of voting against the Senator from North Carolina—that I also recall the threat that:

People will be watching, and there will be no excuse as to whether or not you think you are voting on a matter of procedure. They will be watching.

That is the temper of these times.

I want to make the record clear, here and now. I know exactly how the Senator voted and why he voted—to try, as the new chairman of that committee, to bring sense, to bring order to our new procedures on the Senate floor and not have them the shambles they have been in the past several years, as both of us know, as members of the Appropriations Committee.

It took a great act of courage on the part of the Senator from Oregon to temporarily set aside his convictions on the substance, to achieve the proper constitutional procedures.

The only thing I am sorry for was to hear anyone stand on this floor and say, "They will be watching; they will be watching; they will be watching."

Well, I hope they are watching now. I cannot make it any clearer than I have made it in the past 5 hours.

In any event, there are proper ways through our process to achieve particular legislative ends.

I would have no difficulty at all if the antibusing amendment were proposed as a constitutional amendment. Does the Senator know why it is not proposed as a constitutional amendment? It is very clear. It is tough, very tough. I refer to article V:

Whenever two-thirds—

Now we are not talking about a majority.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, * * *.

That is a tough road. That is not a simple majority on a rider on an authorization bill. That is tough.

Now let us take another way to go. The constitutional way is too tough, and it is a bad idea to sit in the sunlight too long. It taints even those who propose it. So let us take the other road. Let us take the road that you have a piece of legislation and I have a piece of legislation. Regardless of what it is, what do we do? First, we have our staffs sit down and draw a bill.

We bring the bill to the well, and it is assigned to a committee. We have to wait while that matter is referred to a committee and we get agreement to have a hearing on the bill. A hearing is held. The committee is going to meet on it.

Everything we do here has to be duplicated in the other House, and finally maybe it will come here or there, and maybe we will get a conference, and maybe it will go to the President and then it will be subject to the courts.

That takes time. We cannot afford to have time on this matter. We need it for political purposes now, Senators.

So the fastest way we can do that, to obviate that process, is to put it as a rider on an authorization bill.

The Senator knows as well as I know the bad things that happen in the dead of night, that happen in the dark alleys and the corners.

Frankly, the light and the breadth and the magnificence of the constitutional process is just too much for this legislation, and that is why it is not being used.

Mr. HATFIELD. I thank the Senator for his answers to the questions.

Mr. WEICKER. I thank my distinguished colleague from Oregon for his questions and his commitment to these and all other matters. I do not believe there is anyone who treasures human life more than he does, is more understanding of the views of others, is firm in his own belief, never trying to impose himself on others. To me, he stands as the highest example of a man dedicated to the Constitution and to life and the magnificence of life and the potentials of life in all its forms. He is a credit to everything that is good.

Mr. HATFIELD. I thank the Senator.

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

Mr. WEICKER. I yield to the distinguished Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I wish to just address the question to the Senator from Connecticut. I indicate as a preface to the question that I support the amendment offered by Senator WEICKER and oppose the amendment offered by Senator HELMS which would restrict civil rights litigation by the Justice Department.

As the Senator from Connecticut has forcefully pointed out to this Chamber last fall, the issue transcends a Member's particular policy view on student transportation. The question simply put is whether we will handcuff the Department of Justice and prevent it from trying to enforce the Constitution. The constitutional rights secured by the 14th and 15th amendments will become hollow promises. I believe that if Senator WEICKER's amendment is not adopted, when the ability of those who enforce our constitutional rights to seek essential remedies for constitutional violations is denied, we have, in effect, denied the right.

I know this is a point that the Senator from Connecticut has spoken about during this debate and discussion. Our sworn duty is to protect the Constitution.

So does the Senator agree with me that we have an obligation not to deny the constitutional rights by denying their remedies for violation? I think that the answer will be affirmative, but I am interested if the Senator could perhaps just for my own edification and again for the record speak to that briefly.

Mr. WEICKER. I thank the distinguished Senator from Massachusetts. He is absolutely correct in his view of the situation.

What good does it do to establish the illegality if after it has been established and after it has been adjudicated you say good day and goodby. I mean, that is what we are talking about. There can be no remedy. If there can be no remedy asked for, first, the court cannot hear what is not being asked for. That takes the courts out of the picture and then insofar as the remedy or lack thereof, what happens to the poor plaintiff? It renders meaningless whatever law is on the books whether it be congressionally passed or whether it be the Constitution without a remedy.

Mr. KENNEDY. So this is basically the constitutional issue which I know has been the thrust of the Senator's argument during this period of time and it is basically not a new question but it is one which it seems to me that we end up with debating with reasonable frequency over the period of years and that is if we deny the remedy essentially we are denying the right.

Mr. WEICKER. That is correct.

Mr. KENNEDY. And what the Senator is pointing out at this time is that effectively we are denying at least one possible remedy to the plaintiffs and by doing that we are affecting what has been established by various court decisions as being one possible remedy in order to achieve the constitutional right.

I inquire further whether it is not correct that the courts have made clear that the U.S. Government may not provide Federal funds to aid school systems or agencies which are unconstitutionally segregated. As I remember the debates over a period of some 19 years there has been a very clear statement of policy and quite appropriately so that we should not be voting taxpayers' moneys to perpetuate discrimination in our society. That has been a tenet which has had broad bipartisan support and one which I think the American people would feel strongly about.

Am I correct in my understanding of the Senator's argument that that is the state of the law?

That certainly has been an issue which has been debated over the period of years that we have debated the various civil rights legislation, whether it has been in housing or in transportation or whether it has been in other areas, school segregation cases, that we do not want to see the situation where the Federal taxpayers' or American taxpayers' moneys are going to be used to develop or continue the situation where there is basic discrimination. I believe that has not only been the findings of the legislative branch but I think there have been important court decisions on the issue.

Mr. WEICKER. The Senator's question is properly made and emphasized and he is absolutely correct. I yield further for purposes of a question from the Senator from Massachusetts.

Mr. KENNEDY. Is it not true, further, that the courts have indicated that the Federal funds may continue to be provided to State or local agencies which are segregated provided that the Federal Government is in the process of seeking an effective program to end segregation? And I think the importance of this question is underlined by stressing the effective aspects to end such segregation. If we find the situation where the school

districts are in the process of attempting to move to eliminate segregation, as I understand, the holdings have been that there still can be some continuation of the funding.

In many instances it is a very considerable period of time to eliminate the patterns of discrimination which have been built up over the years, and there have been supportive pieces of legislation to actually help and assist those communities that have shown a desire to do so that are under Federal court order.

Those funds are actually being reduced and cut back, I think unwisely. If a local community is attempting to try and respond to the problems of segregation in a thoughtful and meaningful and in a constitutional way, to deny them the help and assistance to do so is I think extremely both shortsighted and cruel and puts a very special burden on local community taxpayers which they do not deserve.

But my question is, Is it not the state of the law at the present time that if the community itself is moving toward trying to remedy the problems of discrimination in a particular jurisdiction, it has been upheld that there can be a continuation of funding for those particular school districts as long as there is an effective program? And I think what is at point here is if we deny the remedy to a particular district, we make it even all the more difficult for a local community to bring itself into conformity with the Constitution. I understand that then it is a self-defeating situation where the school district then would be denied the resources at the Federal level even if the local school district is attempting to comply with the constitutional mandates.

Mr. WEICKER. The Senator is absolutely correct, and he raises in the question the fact that everyone likes to ignore where they paint with a broad brush the evils of busing, et cetera, which is that no court can order any more of a remedy in the situation than the illegality demands. It is not a question of just throwing busing orders out willy-nilly. The law, the same Supreme Court that passed Brown against Board of Education and Charlotte against Mecklenburg, et cetera, said the remedy has to be specifically tailored to the illegality.

The answer is whether in terms of permitting the school district to receive Federal funds if indeed they are doing their best or in terms of how the remedy is tailored. The fact is that whatever it has done under the law is also done with commonsense.

What you cannot have is the leadership of the United States of America saying that we are clearing out. It is every man for himself. If you have the dough, sure, you can go ahead and bring the case. But the Justice Department is what represents all of us as a nation and as a society. They are no longer in the ball game. Is that not great? Is that not just great? We are clearing out, every man for himself.

Let me tell you I fear as much for what would happen in my State of Connecticut as I do anywhere else in the country so I am not sitting here pointing a finger. The answer is I want the Justice Department there to go ahead and stand up for every American's civil rights and that may not necessarily be a racial matter, and yet as a matter of principle if you remove them here you can get them out anywhere else.

Mr. KENNEDY. I think the Senator has made an important point which is not only an opinion but is also the current status of the law.

I was wondering whether the Senator was familiar with the recent announcements of the Attorney General, William French Smith, in a recent public speech that he concluded student transportation was not an appropriate remedy in most segregation cases and that the Department of Justice under his stewardship will sharply curtail the use of such proposals.

In light of the Attorney General's position, does it not seem to the Senator from Connecticut an unwise and an unnecessary step even to those Senators who oppose the use of student transportation to pass a statute of doubtful constitutionality where the Department itself has indicated that it will rarely call for such transportation?

Mr. WEICKER. The Senator is absolutely correct. The administration has already made the views clear. I have no doubt there has been any lessening of fervor in support of civil rights cases. That is their business. They quite frankly can do this without the legislative branch of Government making a massive incursion on the rights of the executive branch. That, as the Senator will recall, was the basis of President Carter's threatened veto and he said, "I want to pass this office on," and this was after, I might add, he was defeated. He said "I want to pass this office on with the same powers as the office that I received."

Now, what President Reagan will do here if this gets into law is to have something a little bit less of an executive branch than was given to him.

Mr. KENNEDY. I have listened over the period of the last couple of days to the Senator's arguments, and they have been based upon, as I understand it, both the constitutional issues and the particular court holdings.

I just want to say that I feel the Senator has performed an important service to the Senate and, most importantly, to the preservation of the constitutional rights of the citizens of this country. I appreciate the response of the Senator.

Mr. WEICKER. I appreciate the distinguished Senator from Massachusetts' questions. I know as this session of the Senate progresses there will be the Senator's times on the floor protecting the constitutional rights in many other forms, and believe me this is going to be one dandy session for those of us who stand there on the side of the Constitution. There are going to be more runs against it than we would like to see.

Mr. KENNEDY. I thank the Senator.

Mr. WEICKER. Now, Mr. President, I think we had better get back to the matter at hand, that being the statement of Telford Taylor in testimony before the House of Representatives:

During the constitutional crisis during President Jefferson's first year in office, Congress eliminated the August term. Doubts were expressed about the constitutionality of that change, but the issue was not litigated. Suppose, however, that Congress should provide for only one term every 10 years. Like a total abolition of appellate jurisdiction, I believe such a measure would be unconstitutional, but, once again, how are we to draw a line?

Learned commentators have suggested such formulations as that Congress must not exercise its powers under Article III in such a way "as will destroy the essential role of the Supreme Court in the constitutional plan." That is a commendable principle, but fortunately, the Supreme Court has never had occasion to articulate it or anything like it, since Congress has, over the years, acted with due restraint.

Well, I will tell you, Mr. Taylor—and I guess his testimony was on June 3, 1981—we can forget the days when Congress acted with due restraint. Congress is in the process of going ape, hog wild, any other term you want to go ahead with and apply—hardly due restraint or hardly with regard to the Constitution of the United States:

Equally fortunately, we do not need to wrestle with this particular dilemma in appraising the constitutionality of the several bills which are presently the focus of discussion. In quantitative terms, none of them accomplishes a significant impairment of federal jurisdiction, in either the Supreme Court or the lower courts. It is indeed the very particularity of these bills which accounts for what I believe to be the constitutional flaw that afflicts all of them, whether they relate to the jurisdiction of the lower federal courts, or the Supreme Court, or of both.

3. CONSTITUTIONAL LIMITATIONS ON CONGRESSIONAL POWER OVER FEDERAL COURT JURISDICTION

To say that Congressional power over federal court jurisdiction is "plenary" does not mean that it is immune from the general limitations on Congressional power found elsewhere in the Constitution, including the several amendments. Congress specifies the jurisdiction by enacting statutes, and those statutes are no more immune from constitutional scrutiny than any others.

The Congressional power over interstate commerce is so ample that, despite the enormous proliferation of federal legislation, not since 1936 has a federal regulation of commerce been held unconstitutional. Yet nothing is better settled than that this power is subject to constitutional limitations such as the First Amendment and the due process clause of the Fifth Amendment. Were Congress to enact statutes forbidding interstate carriers to transport literature reflecting a particular political persuasion, or goods owned by members of a particular race or adherents of a religion, these statutes would undeniably be regulations of interstate commerce, but they would be constitutionally invalid under the First or Fifth Amendments.

The same principle applies to the exercise of Congressional power under Article III. A statute withdrawing from the federal courts jurisdiction to issue injunctions at the suit of individuals identified with particular political, racial, or religious groups would be manifestly unconstitutional under those same amendments.

These conclusions, I believe, follow inevitably from the language and structure of the Constitution. See *Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555, 589 (1935):

"The bankruptcy power, like the other great substantive powers, is subject to the Fifth Amendment." That there are few precedents in the jurisdictional field is, therefore, hardly surprising. But sufficient precedent is not lacking, for the foregoing conclusions are amply and explicitly supported by the decision and opinion in *United States* v. *Klein*, 13 Wall. 128 (1872). In that case, the Court of Claims had been given jurisdiction to determine, subject to Supreme Court review, claims to recover property taken by military action during the War Between the States. Some such claimants had been adherents of the Confederacy, but had subsequently taken amnesty oaths pursuant to President Lincoln's pardon proclamation. With the purpose of barring such claimants from recovery, Congress in 1870 passed a statute which provided that, if in any such case the claimant relied upon a presidential pardon as proof of eligibility, the Court of Claims or the Supreme Court (as the case might be) should have no further jurisdiction, and should dismiss the claim for want of jurisdiction.

In the Klein case, involving such a claim, the Supreme Court held the 1870 statute unconstitutional, saying that it was not "an exercise of the acknowledged power of Congress" over the Supreme Court's appellate jurisdiction. Two reasons were given of which one, directly relevant here, was that the statute impaired the effect of a pardon, and thus infringed the President's constitutional power under Article II, Section 2 to "grant Reprieves and Pardons for Offenses against the United States." The fact that the 1870 statute was phrased in jurisdictional terms made no difference, since its effect was beyond the power of Congress and violated Section 2 of Article II.

Accordingly, the requirement that statutes enacted by Congress under its Article III powers conform to general constitutional limitations is clearly established, both under the language and structure of the Constitution, and as a matter of decisional precedent. The immediate question is whether the several bills with which we are presently concerned can survive constitutional scrutiny under those principles. For the reasons given hereinafter, I believe that question must be answered in the negative.

Mr. FORD. Mr. President, will the Senator from Connecticut yield for a question?

Mr. WEICKER. Well now, to my esteemed colleague from Kentucky I would be delighted to yield, with the understanding that I do not lose my right to the floor and upon the condition that resumption of my speech continues to be considered my first speech on this matter on this day. Under those circumstances I would be glad to go ahead and do it. I ask unanimous consent that I might yield to the Senator from Kentucky under those circumstances.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Mr. President, reserving the right to object, just so the Senator will lose his right to the floor only if he takes his seat or leaves the Chamber.

The PRESIDING OFFICER. Or he loses his right to the floor if he yielded for other than a question.

Mr. HELMS. Excepting in this case he has yielded for another purpose.

The PRESIDING OFFICER. He can yield for any purpose by unanimous consent.

Mr. HELMS. Yes.

Mr. FORD. Mr. President, I ask unanimous consent that I might take 15 seconds without the distinguished Senator from Connecticut losing his right to the floor and all other rights he stated in his original statement.

Mr. WEICKER. I say to my good friend from Kentucky I think the Senator from North Carolina wants to make sure the Senator from Connecticut cannot necessarily leave the Chamber briefly or sit down. I think we will survive that. As far as I am concerned, you go right ahead as long as I do not lose my right to the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. FORD. I thank my two distinguished colleagues for letting me do this.

(Mr. FORD's statement is printed earlier in the RECORD in connection with the statement by Mr. WARNER on the introduction of his bill relating to commercial ports.)

Mr. WEICKER:

Fourth, the purpose of H.R. 900 and comparable bills is constitutionally impermissible.

The currently pending bills withdrawing federal court jurisdiction vary widely in subject matter and in the breadth of the withdrawal. Some withdraw jurisdiction only from the lower federal courts, some withdraw jurisdiction from the Supreme Court as well. Some withdraw all cases relating in any way to a particular constitutional right, others withdraw the power to utilize injunctions or declaratory judgments in such cases.

All the bills, as far as I know, share in common the feature that they single out particular constitutional rights, and confine their application to cases dealing with that right. Thus, some of the bills deal with rights guaranteed by the establishment clause of the First Amendment relating to school prayers, some with busing or other remedies pertaining to school desegregation, others with equal protection rights affected by the male-only draft registration, and still others with women's abortion choice rights under the due process clause, as recognized by the Supreme Court in *Roe* v. *Wade*.

A good example of the general tenor of these bills is H.R. 900, Section 2 of which would withdraw from the lower federal courts jurisdiction to issue injunctions or declaratory judgments in any case invloving a state statute which limits women's abortion rights. Like the statute of 1870 involved in the *Klein* case, Section 2 of H.R. 900 is a limitation on federal court jurisdiction. But just as the purpose and effect of the 1870 statute was substantive—i.e., to nullify the effect of a presidential pardon on war property claims—so the purpose and effect of Section 2 of H.R. 900 is substantive—i.e., to make it more difficult than theretofore for individuals to secure their constitutional rights recognized in *Roe* v. *Wade*. In neither case is the purpose constitutionally permissible.

Mr. SPECTER. Will the Senator from Connecticut yield for a question?

Mr. WEICKER. I yield to the distinguished Senator from Pennsylvania for a question without losing my right to the floor.

Mr. SPECTER. Mr. President, I ask the Senator from Connecticut, would there not be any effect, in his judgment, on the actions of busing as a remedy to discourage potential settlements and agreements among the parties in fashioning a remedy?

I ask this question because the possibility that a court might impose the remedy of busing has been viewed as a serious threat or drastic remedy by those who oppose it which, in some cases, has been said to have been a reconciling factor in leading those in opposition to busing to engage in imaginative thinking to structure a remedy which they would propose and which might not be acceptable fully to the plaintiffs' position but has provided middle ground for an accommodation.

One of the concerns which has been suggested by some, and even those who oppose busing as being undesirable and unworkable have expressed a concern that it be eliminated as a possible remedy which is a sword of Damocles, so to speak, hanging over the heads of one of the parties who would not want it. So it removes that kind of a threat and might, in effect, discourage the settlement process which has worked heretofore to save the time of the court and the parties that lead to an amicable resolution of the controversy, which obviously is the best way possible to resolve litigation disputes. I would like the Senator's judgment on that, please.

Mr. WEICKER. The Senator raises a very good question. I might add we are now on a new matter in the course of this debate.

The answer is, yes, obviously it has been an encouragement for parties getting together to settle their disputes to use moderate means to try to effect a compromise with the law. I think this is an aspect of the situation heretofore not raised.

The Senator makes a very good point in the course of this question. And clearly the availability of this remedy has probably played a very large role in achieving successful mediation rather than having the court impose its own version of a remedy:

Now, of course, I am aware of the many cases in which the Supreme Court has declared and applied the rule that the constitutionality of a statute must be determined on its face, and without inquiry into motives or purposes that underlie the enactment. See, e.g., *McCray* v. *United States*, 195 U.S. 27, 56 (1904); *Arizona* v. *California*, 283 U.S. 423, 455 (1931); *United States* v. *Darby*, 312 U.S. 100, 113–14 (1941); *Flemming* v. *Nestor*, 363 U.S. 603, 617 (1960); *United States* v. *O'Brien*, 391 U.S. 362, 382–86 (1968). For example, a law prohibiting anyone other than a lawyer from engaging in debt-adjusting will be upheld if a rational and legitimate purpose can be conceived, without going behind the face of the statute to determine whether or not the actual motive was to confer financial benefits on lawyers—a motive by which legislators, many of whom are lawyers, might be governed. *Ferguson* v. *Skrupa*, 372 U.S. 726 (1963).

But there are well-recognized exceptions to that principle. *United States* v. *O'Brien*, *supra* at 383 note 30; Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205 (1970). Perhaps the most important one involves the equal protection clause of the Fourteenth Amendment. For many years the Supreme Court has declared the rule that the unequal impact of a statute is not enough to establish a violation of the equal protection clause; there must be a governmental purpose to discriminate. *Snowden* v. *Hughes*, 321 U.S. 1 (1944); *Keyes* v. *School District*, 413 U.S. 189 (1973); *Washington* v. *Davis*, 426 U.S. 229 (1976); *Arlington Heights* v. *Metropolitan Housing Corp.*, 429 U.S. 252 (1977); *Mobile* v.

Bolden, 446 U.S. 55 (1980). And it is equally well settled that, in equal protection cases, the courts are not limited to an examination of the statute on its face. *Loving* v. *Virginia*, 388 U.S. 1 (1967); *Green* v. *County School Board*, 398 U.S. 430 (1968); *Columbus Board of Education* v. *Penick*, 443 U.S. 229 (1979). Indeed, the inequality of impact may be so great that a purpose to discriminate may be inferred from that circumstance alone. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886); *Washington* v. *Davis*, *supra* at 253–54 (Justice Stevens, concurring).

Finally, and perhaps most important for present purposes, the Court has held that a statute which does not on its face articulate an unlawful purpose, may, because of its language and the context in which it is enacted, disclose on its face an unlawful purpose and an inevitable unlawful effect. *Grosjean* v. *American Press Co.*, 297 U.S. 233 (1936); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

The *Gomillion* case involved an Alabama statute enacted in 1957 which changed the boundaries of the City of Tuskegee from a square to what the Supreme Court described as "a strangely irregular twenty-eight-sided figure" (364 U.S. at 341). The complainants, black citizens resident within the square boundaries, sought in the federal courts a declaratory judgment that the statute was unconstitutional, alleging that its "essential inevitable effect" would be "to remove from the city all save only four or five of its 400 Negro voters while not removing a single white voter or resident."

The reason I smile, as a former member of a State legislature, Mr. President, is that I find this is not just a matter of race. I have seen many of the 28-sided configurations in legislative reapportionment cases. I imagine we are going to see more than a few by the time the next sessions of these legislatures are through reapportioning on the basis of the latest census:

The lower federal courts dismissed the action on the ground that they had no power to review the Alabama legislature's action. The Supreme Court unanimously reversed the judgment below, holding that, upon the facts alleged, the statute violated the Fifteenth Amendment, since upon those facts ". . . the conclusion would be irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is solely concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote."

I believe that the relevance of the *Gomillion* case to the issue at hand here is obvious. The power of the Alabama legislature over municipal districting was recognized by the Supreme Court as having "breadth and importance" (364 U.S. at 342), just as Congressional power under Section 1 of Article III should be so recognized. The Alabama statute did not explicitly disfavor black residents of Tuskegee, but the boundaries drawn made clear its unconstitutional purpose and effect. Section 2 of H.R. 900 does not explicitly avow an unconstitutional purpose, but such a purpose is nonetheless manifest, from both its text and its context.

To be sure, the constitutional rights involved are not the same. The *Gomillion* case involved the voting rights protected by the Fifteenth Amendment or, as Justice Whittaker thought (356 U.S. at 349), the equal protection clause of the Fourteenth Amendment. That clause is not irrelevant to the scrutiny of H.R. 900, but the constitutional rights recognized in *Roe* v. *Wade* are, under the Court's opinion, based on the concept of personal liberty embodied in the due process clause. These rights the Court declared to be "fundamental," and "broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (410 U.S. at 153). Certainly they are constitutionally entitled to as much protection as those involved in the *Gomillion* and *Grosjean* cases.

Plainly H.R. 900, including Section 2, is intended to prevent if possible, and at least to obstruct, fulfillment of the rights recognized in *Roe* v. *Wade*. Indeed, the sponsors of these bills have been commendably frank in acknowledging that purpose, and have made no effort to mask it.

But it is quite unnecessary to rely on such statements by the bills' sponsors, and my conclusion that Section 2 is unconstitutional is based squarely on the text of the bill itself. For it is impossible to conceive of any jurisdictional considerations to which the bill is relevant. There are, to be sure, a number of litigations involving the performance of abortions pending in the federal courts, but they constitute but an infinitesimal part of the total volume of federal court litigation. Thus the bill cannot reasonably be regarded as intended to reduce the burdens on the federal courts.

Cases involving the federal constitutionality of state laws, are, to be sure, very numerous in both state and federal courts. A view could be advanced that since state laws are involved, their validity should be first passed upon in the state courts. Of course, that would throw on the Supreme Court the entire burden of ensuring uniformity among the states of the standards of constitutional validity, and I do not think such a course would commend itself as a matter of policy. But recognizing that such a decision is within

* * * * *

It cannot reasonably be contended that so singular a change is reasonably related to a general jurisdictional purpose. Nor do abortion litigations present any features that explain singling them out from other rights similarly derived from the Fifth or Fourteenth Amendments, for exclusion from the federal courts.

The conclusion is inescapable, on the face of the bill, that its only purpose and its inevitable effect are to obstruct the judicial protection of the constitutional rights recognized in *Roe* v. *Wade*. Such purpose and effect, in the absence of a compelling state interest, are unconstitutional: "It is well settled that, quite apart from the guarantee of equal protection, if a law 'impinges upon a fundamental right secured by the Constitution [it] is presumptively unconstitutional.'" *Harris* v. *McRae*, 480 U.S. —, 65 L.Ed. 2d 784, 801 (1980); *Mobile* v. *Bolden*, 446 U.S. 55, 76 (1980); *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 17, 31 (1973); *Shapiro* v. *Thompson* 394 U.S. 618, 634 (1969).

I should add, though it may be unnecessary, that Section 2 of H.R. 900 also violates the principle of equal protection of the laws, which has been held to be embodied in the due process clause of the Fifth Amendment, and is therefore binding on the federal government as well as the states. *Bolling* v. *Sharpe*, 347 U.S. 492 (1954). For the jurisdictional withdrawal in Section 2 singles out pregnant women, whose rights are protected by *Roe* v. *Wade*, * * *

Sound familiar, We are now singling out children being discriminated against as shown in Brown versus the Board of Education. All of a sudden the picture becomes clear as decision after decision is picked out. Therefore, we will do the end-around by the constitutional route or the appropriation process. Who is to know what decision tomorrow the United States Senate is not going to like or the House of Representatives is not going to like? Who is to say what decision the citizenry as a whole does or does not like? Now we have a Government not of laws but a Government of what we like and what we do not like. Indeed, I do not find that much different from an anarchy, total anarchy, legislative anarchy, judicial anarchy, executive anarchy. Government by what we like and what we do not like.

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

Mr. WEICKER. I yield for a question.

Mr. MATHIAS. My question relates to the line of thought of the Senator from Connecticut. I would say that to avoid the kind of difficulty that we got into when I raised a question earlier, I will specify that my question does not raise any issue whatever with respect to the sponsors of the legislation.

Mr. WEICKER. I intend to be absolutely mild in my response.

Mr. MATHIAS. This question of legislation which prevents the enforcement of constitutional rights, whether by a private court jurisdiction or by prohibiting the executive branch from the enforcement of the law does raise, I think, a disturbing issue. I am wondering if the Senator from Connecticut would agree that when you prohibit the Department of Justice from taking legal action from enforcing the law, you are, in effect, circumventing the amendment process that is set forth in article V of the Constitution of the United States. I suppose what I am further asking the Senator from Connecticut is whether he believes that the amendatory process, so long debated in the constitutional convention and so carefully drafted by the Founders of the Republic, was intended by its authors to be so circumvented by a simple statutory process passed by a Congress and thereby actually frustrating the fundamental organic law on which the Republic is founded.

Mr. WEICKER. Clearly, the legislation is intended to circumvent the constitutional process, whether it be the constitutional amending process or whether it be the constitutional legislative process.

Mr. MATHIAS. Does it go too if you cannot get a constitutional amendment adopted, if you cannot get it within the time frame, you accomplish the same thing by simply saying that the Federal Government will not carry out the steps which the Constitution otherwise requires?

Mr. WEICKER. The Senator is correct. But that is the reason for this whole exercise. The Senator is absolutely correct.

There is no intent to comply either procedurally or substantively with the Constitution of the United States. There is no attempt to comply either procedurally or substantively with the Constitution of the United States.

This amendment by the distinguished Senator from North Carolina does many things and he can tell it is doing many things. But, if agreed to, it will have set back the cause of civil rights 50 years

and it will have destroyed a portion of the Constitution.

It might do a lot of other things which would please me. That is fair enough. I just want to also understand what it is that is going to be done. The cost-benefit analysis which seems to have overcome this town might say, "Well, that is a good tradeoff. A little bit of the Constitution, a little less civil rights, but we get rid of busing." That is kind of a cost-benefit study. I am not getting into that. I am saying very simply that I am not going to give up one word of the Constitution of the United States no matter what is achieved. I am certainly willing to see policy changed. I will take my lumps on the floor. I know things are going to be different as a matter of policy around here. That does not bother me.

I voted against the budget and got soundly beaten. I have no complaints coming. I voted against the confirmation of Alexander Haig and I got beaten. I have no complaints about that. On that, no proposal made was unconstitutional. I might disagree with the individual, I might disagree with the numbers in the budget, but certainly I would not stand up here and give this kind of an argument to support my votes there.

But this is different. This is an entirely different horse that is being trotted out here. This goes way beyond any busing issue. I do not think in the course of my presentation during the past several days I have once gotten into any sort of a statistical review or substantive review of busing. It is not necessary.

I might add in saying that, I do not in any way back off. If that is what the court orders, that is what I am for. I am not saying here that I am for everything, but, do not worry anybody, I am against busing.

Busing is not something that all of a sudden dropped down from on high. It is something the Court instructed as the best response to the illegality, and if we have a better response here on the Senate floor, why not go ahead and enact it?

Has anybody asked what is the response of the U.S. Senate to discrimination in the schools? What has been our response?

You would have a hard time finding it. That is the reason why the Court had to act. I am sure the Court would have preferred not to have gotten into this at all. The final refuge, then, for those who were the victims of this particular type of discrimination were the courts. That is the point I tried to make. You want the courts, every one of us wants them, as our final refuge, in our moment of crisis, in our moment of difficulty.

That is what is important.

I cannot say that I think the issue of busing is going to be gone because I can tell you in the absence of any sort of initiative, it is not going to be gone. As soon as we come up with a plan, as soon as we do something on this end, then it will disappear from the scene. But we cannot all go running around the United States saying, Yes, there is discrimination, and throw up our hands. There has to be an answer; imperfect as the Court's answer happens to be, it happens to be the only answer out there because we are not acting here.

Then along comes the leadership of the Senate and the White House and uses the same buzz words, inflames the same passions.

In community after community—I say this to my colleagues—where the political leadership has stood firm behind the Constitution and behind the law, there has been adherence to the law. But when the Governor or the city council or the mayor or the Senators or the Congressmen started to thumb their noses at the law, then, believe me, everybody else gets into the act. Would you expect anything else to happen?

I hope, as I stand before this body tonight, that the people in my State understand what is at issue here. Connecticut can be very proud of the fact that it goes by the title of the "Constitution State." It was the 1st of the 50 States to have a written constitution, the fundamental orders.

It is great to have those words on the license plate, but they should mean something or they do not. It also is not the New England State of the old New Englander that most people understand. My State is 25 percent of Italian origin, just short of that in both Irish and Polish. In terms of quality of life, it has one of the highest per capita incomes in the country, one of the highest standards, as No. 2 or No. 3, in terms of quality of life.

How does everybody in my State feel they got to where they are?

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

Mr. WEICKER. Again, I want to be careful that I do not lose my right to the floor. I will be delighted to yield for a question, so long as I do not lose my right to the floor and it is agreed to by the distinguished Senator from North Carolina.

Mr. JOHNSTON. This is only one question or a series of two or three questions.

The PRESIDING OFFICER. The Senator yields for a question only.

Mr. JOHNSTON. Prior to the Civil Rights Act of, I believe, 1964, did the Justice Department have the right to intervene in school desegregation cases, whether it be for the purpose of busing or otherwise, to desegregate schools?

Mr. WEICKER. I assume, quite frankly, that the Justice Department has had the right to enforce the laws of this country at any time in its existence.

Mr. JOHNSTON. Would the Senator be surprised if I told him that that right is one not inherent in the Constitution but, rather, one created by Congress in the Civil Rights Act of 1964, which act specifically gives that right to intervene, and but for that, they would not have the right to intervene?

Mr. WEICKER. No, I would not agree with the Senator on that point. Frankly, I again turn to the Constitution and read the portion which says that the President of the United States shall see to it that the laws be faithfully executed. I am sure I could win my case, as it goes through the courts, on the basis of that Presidential power.

Mr. JOHNSTON. I invite the Senator to look at the cases and the law. That was the whole reason for the passage of that provision, which sets up a basis whereby, under the present act, the Justice Department may intervene only where requested to do so on the complaint to the Justice Department by a citizen who alleges that he has been the victim of discrimination.

Mr. WEICKER. I am glad the Senator raises the question. It is an interesting question. Why do we not change the law?

Mr. JOHNSTON. Congress, in passing the act, perceived that the right was not inherent in the Constitution.

Mr. WEICKER. I understand, but why do we not change that law, then? I am taking the Senator at face value now. Let us change that law.

Mr. JOHNSTON. That is precisely what the Helms amendment would do, in part.

Mr. WEICKER. That law is not before this body right now, and the Senator from Louisiana knows that as well as I do.

Mr. JOHNSTON. The Helms amendment?

Mr. WEICKER. No, the 1964 act. That is not before us. We are trying to change policy through a rider on an authorization bill.

Mr. JOHNSTON. That law is not laid down; but the Helms amendment, whether it is specifically stated or not, is, in effect, an amendment to the Civil Rights Act, because it changes the Civil Rights Act of 1964.

Mr. WEICKER. I have to respond to that, because that is the very issue we have raised on the floor.

The fact is that the act has not been brought up before a committee; the fact is that the act has no had hearings; it is not before a committee; it is not on the floor; it is not before the House; it is not before the Senate. That is the whole point we made.

We said there are two ways you can change the law: Either change the law through the constitutional, legislative process, or change it through the constitutional process of getting an amendment to the Constitution of the United States. However, what is being done here, as I understand it—see if I am correct. Maybe it is the wrong bill. This is an authorization bill upon which we are trying to affix appropriations language. Am I correct?

Mr. JOHNSTON. The Senator is correct that this is an authorization bill, but the Helms amendment is entirely consistent with the Senate rules. If it were not, I am sure the Senator would have made a point of order, and it would have been stricken.

As to the question of whether that is constitutional, in my view, that which Congress created in the Civil Rights Act of 1964, Congress can alter, and that is precisely what the amendment of the Senator from North Carolina would do.

I have another question, if I may ask it.

The amendment of the Senator from North Carolina states, in effect, that the Justice Department may not directly bring an action to transport or to bus

schoolchildren. Does that amendment, on its face, or in its implication, prohibit the Justice Department from bringing a suit to declare the unconstitutionality of the operation of a school system—that is, could they bring an action saying that the schools of Chicago are discriminatory and violative of the due process or equal protection clauses of the 14th amendment and ask the Court for appropriate relief? Would this amendment prohibit that, in the judgment of the Senator from Connecticut?

Mr. WEICKER. This amendment, the way it is drafted, would prohibit the Justice Department from being involved in any discrimination case whatsoever, never mind schools. The answer is yes; and I will tell the Senator why.

Listen to the language:

No part of any sum is authorized to be appropriated by this Act shall be used by the Department of Justice to bring or maintain any sort of action to require directly or indirectly the transportation of any student to a school . . .

I do not know who the grammarian is—"any sort of." That is not exactly the precision I think one requires from lawmakers.

When the Justice Department brings the action how do they know what is going to happen? Obviously, they could bring the action and, obviously, all of a sudden the Court could make a determination that the transportation shall be required, and all of a sudden they are out of luck. They do not know what is going to happen.

This is very broad. As soon as you put the word indirectly in there they run the risk, and they are out of luck. That is the way I interpret it. With the lack of any further precise language, believe me, that is the way I interpret this. I do not want to take a chance on it.

My answer to the Senator is that I do not think the Justice Department, under this, can effectively have them sitting still. I believe it would be declared unconstitutional.

I have tried to answer the question the best I can.

Mr. JOHNSTON. What would be the penalty if the Justice Department brought an action to desegregate a school system declaring it is unconstitutional, not asking for any particular remedy other than for appropriate relief? If the Senator believes that that violates the Constitution, what is the penalty? What happens?

Mr. WEICKER. Nothing happens. that is the whole problem. What good does it do to say something is unconstitutional and illegal if there cannot be any remedy?

Mr. JOHNSTON. I am asking the Senator this: If the Justice Department brings that suit, the court is not deprived of jurisdiction, is it?

Mr. WEICKER. Yes, it is, because it could potentially end up in a transportation order, and it is not allowed to do that. No funds may be used so long as there is a possibility that result could be produced.

Mr. JOHNSTON. No funds could be used for what—for bringing the action? If the action is brought, anyway, it does not have anything to do with the jurisdiction or powers of courts or remedies that courts may grant.

Mr. WEICKER. I can see the scenario. The Justice Department goes to court, presents its case, and they are all sitting there for the court to respond. The court responds, "We are going to have a transportation order," at which point all the Justice Department lawyers close up their briefcases and walk out of the courtroom.

That is what it says to me. All of a sudden, you have triggered it, albeit indirectly. Maybe they go in there asking for it. Maybe they ask for appropriate relief, but all of a sudden they are confronted with an order that says transportation or busing. They cannot sit in the courtroom, and who is going to enforce, to see that it is done?

Mr. JOHNSTON. In terms of enforcement, the court enforces, not the Justice Department. It is the court which makes the order. The court can order, and frequently does order, either the private plaintiffs or the school board or employees, outside experts, to come in.

Mr. WEICKER. Let us carry the question a little further. So the court renders its opinion, and the defendants appeal. Who handles the appeal? The Justice Department is now going to withdraw from the case.

Mr. JOHNSTON. The private plaintiffs could do so.

Mr. WEICKER. We have been all through that. This is what we call the trickle down private sector theory, that what is not done by Government is going to be handled by the private sector.

The people involved in this do not have money for attorneys, for heaven's sake. I do not understand that.

The Senator from Louisiana and I certainly can be in defense of our rights under the Constitution. We have both the power and resources to do it. But that is not the criteria as to the ability to avail ourselves of the Constitution.

The Justice Department of the United States is the one that is supposed to stand in for all of us as a society on these matters.

By God, it is one thing when you were going to gut Legal Services because you do not think poor people should have the same kind of lawyers we have. Now you are saying that our society, in the broadest sense, cannot have the Justice Department. If there is no Justice Department, no legal services, what good, in God's name, does it do to have a Constitution, unless you are a U.S. Senator or someone who, as I say, either in terms of power or resources, can avail himself of the lawyers necessary to do the job?

Mr. JOHNSTON. I tried to establish in the first instance that what the Senator is dealing with here is not with constitutional rights but rather with rights created by the Civil Rights Act of 1964 but for which the Justice Department would have no power to maintain any class action at all.

Mr. WEICKER. I am saying to the Senator that the President and the Justice Department as part of the executive branch has the obligation to see that the laws are faithfully executed, and I have no doubt in my mind that means the power to enforce the 5th and 14th amendments of the Constitution.

To me what holds this Nation together is our system of justice, the belief that no matter how badly things go for us either in our private lives or in terms of what the Congress does or does not do or the President does or does not do, still in the ultimate the courts and justice system of this country will stand beside us regardless of who we are.

I do not think there is one of us who would not categorize the last several decades as tumultuous, as turbulent. If indeed in the world as a whole there is a Third World emerging, so it is also true that within our own Nation there are those emerging who in the past had been left off in the dark corners of our society either in terms of opportunity or in terms of economics or in terms of physical or mental condition.

Let me describe a recent experience as to the importance of the litigious process, and remove it from the area of race. Is there anyone here who doubts for 1 second that it was through the justice process, through our courts, that those minority elements of our society that were either mentally retarded or physically disabled achieved their rights? We did not give it to them. They had to fight for it. They are still fighting for it. The Senator knows as well as I do that Congress as a whole in Public Law 94–142 only recently enacted legislation. Architectural barriers are included in recently enacted legislation. These things had to be fought for principally through the courts.

Now we all pat ourselves on the back and say how proud we are to extend our hands to those of our brethren who had that particular deficiency. But we did not do it gratuitously; we did not do it spontaneously. We had to get a quick kick in the tail because the justice system operated.

No one is sitting here and pointing a finger and saying they know that discrimination and segregation of our school system was a matter for the South. It was a matter for the whole country. We know that. Maybe the most blatant examples of discrimination now exist in Northern States. That very well might be true. That is not the issue here. The issue is, and the Senator knows as well as I do, that unless our legal systems and the personnel associated with it are available to those elements of society, we are all going to rest on our oars. It is easier not to do anything and say in your own mind that the things will naturally sort themselves out.

I am 50 years old, and it has been in the last 40 years, well within this short lifetime, that the circumstance of education in this country has changed so it is not a question of any great long history. We can count on fingers on one hand the blacks who went to college, never mind the ones who got a decent public school education.

(Mr. QUAYLE assumed the chair.)

Mr. JOHNSTON. Mr. President, will the Senator yield for another question?

Mr. WEICKER. No. For now I will speak.

Mr. JOHNSTON. All right.

Mr. WEICKER. The fact is that for all the stumblings, for all the times we skinned our knees in this process of trying to achieve an answer to a quality of educational opportunity, just look at this world out there today. Just look at what it consists of. No one is going to say that busing is not the answer or it is 100-percent successful. I am sure, at times, maybe it should not have been used. The fact is, it was the justice system of this country that kept us going forward.

Many, many times it would have been a lot easier to sit down and say the job is finished. It is almost like our old colleague Senator Aiken who would say: "Let us get out of Vietnam; we won the war." It is much easier to say, I think we all agree, that the battle is won. It is now up to the individual. Society has done everything it can for its minorities, for those who are deprived, for those who do not have the opportunity. But that is not so. That is not reality.

All the other problems begin with that matter of education. The Senator knows that and I know that.

So, it is not just a matter of some nice-to-have situation that we wish we might be relieving ourselves. This is it. This is life, what very well might turn out not to be much of a life at all. It might take 2 years of waiting to see whether I am right or JESSE HELMS is right. That is not the point. That means nothing. What counts are the 2 years taken out of some human being's life.

That is why this cannot just go through. That is why we have to act now.

I do not know a single thing that has been achieved in this Nation that somehow the judicial process and the legal process also have not been mightily involved.

We are all going to go ahead and disagree while that process unties the knots of our society.

But we have to believe in ourselves and we have to believe in that legal system. How many times do you think we here on the floor of the U.S. Senate have committed a gaff or done the wrong thing by the people we are supposed to represent? Probably many times. But who has a hair shirt on about the U.S. Senate? I do not. Or the House of Representatives, or the various Presidents? I think the record speaks for itself as to how this society has continually moved upward.

Is there some reason why, because of whatever mistakes we have, we should go ahead and eliminate the powers of the Senate or reduce them? I do not think so.

Any process that is a human process is going to make mistakes and that means from the beginning right through the last scene of the last act which in our case is the judicial system, the Supreme Court.

I suppose what was being spoken for here today is a system of government without parallel anywhere in the world today, or throughout the history of the world.

I just suggest that maybe it is that we go a little slow regardless of our passions before we change that system.

The Constitution of the United States has served us all well. We have all done well by it. There is no one who can say, despite what is stated today in this sort of macho society of ours about survival of the fittest, "I made it on my own." None of us did. Not one of us. In some way the concepts and the principles that were put down on paper over 200 years ago have impacted on each one of our lives. Some more than others. But it has impacted upon all of us.

The Senator from North Carolina earlier indicated that I might have implied that I am closer to or advocate with greater fervor the Constitution. That is not so. But legislatively I suppose where we differ is that I want him to achieve his successes within the rules as written. And I think he can easily do that, the votes being what they are here on the floor of the Senate.

And even if he is wrong no great harm will have been done this Republic or the future.

I wish him nothing but the best and that he be right, but even if wrong no other generation has to suffer for our mistakes.

The difficulty with changing the Constitution is that then if an error has been made the Nation will be a long time recovering from it. More importantly, once it is understood that that document is vulnerable it becomes worthless. It will become a receptacle for every hot potato that is put into this Chamber. It will become a trash basket instead of a goal. It will be the way out instead of a dream. That is why you cannot change that, albeit you can change the laws to your heart's content.

Is there anybody with the slightest knowledge of current affairs on the status of American politics who does not feel this legislation or this concept is going to come into being by the normal legislative process, by the normal administrative process, without coming at the Constitution?

Do you really want instead of "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances," something in there that addresses itself to abortion?

Really, from magnificence for all generations in all ages to our particular problem on this day in this year?

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," the great right of privacy, do you really want busing in there instead of that great language? Is that what this is for?

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offenses to be twice put in jeopardy of life or limb; or shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation," do you want a prayer-in-school amendment rather than those words? Is that what this is?

Every generation is going to have its problems. We have ours, no more, no less. But the rules—that is important—they cannot give way. It is ironic that a U.S. Senator should be here arguing for the preservation of the powers of the executive branch of Government. The judiciary does not have that capacity in any event to be out on this floor or to be in the White House. But certainly the executive branch is very much involved in what it is that is now going on.

There are going to be those times when we are not so enlightened and the executive is or vice versa, and the question is how those matters turn out along with the two of us, and we have the umpire who takes into consideration not only whatever powers we have but whatever rights the American people have.

I repeat, Mr. President, that we have come to this pass and really we are a reflection of the American people. We are not something separate and apart. So it is unfair to say that any one of us cares more or cares less for the Constitution of the United States or for the principles I have espoused. We do not care any more or less here than do the people of this country, and it really has been a long time since they very much cared about the Constitution.

Most of them, many of them, probably have not even read a copy in their lifetimes, and they do not understand, if they have not, what the origins of our greatness are. It is not the hardware we buy to keep ourselves secure; it is not the gross national product; it is those concepts, those principles. It is the state of our spirit that is going to determine the state of our Union much more than the state of our pocketbook or the state of our weaponry.

We are too small a people, just as a matter of population we are too small, to be No. 1 in the world. In natural resources there are several continents that have much more of an abundance than the United States of America.

I can go down the whole checklist, in other words, of normal criteria. It is like people saying to you when they take a look at a football team or a baseball team that they cannot understand how that team is in first place. On paper they do not look that good.

Believe me, we do not look that good on paper. But those principles have driven us to achieve more so than any other nation in the history of the world, more so than any other nation today.

That is what is in there, that is what people die for, and that is why it has got to stay just as it is. That is the reason for all this silly business of a Senator

being here doing this thing for whatever amount of time I have been here doing it. Believe me, when I woke up this morning I said to myself, "Why not sort of let the thing go? No. 1, if it becomes law, and if you are certain of what you are saying, it will be declared unconstitutional."

The last time I went through it I said that you always have the President there and you hope he is going to veto it. That, of course, is gone this time.

I know what the votes are going to be. I might get a few more tonight if we voted because more of those, at least on my side, are absent than those on the distinguished Senator from North Carolina's side. But I probably will lose tonight as I will lose by a greater margin tomorrow. So it is not a matter of votes which are going to change.

Maybe this is the beginning where suddenly things do become a little bit more important than the politics of the moment. Maybe it is something where somebody is going to get involved who is not involved now.

Maybe it is that somebody will go ahead and read that Constitution and really try to understand it for the first time and understand what it is that up to this point has been disagreeable for them, but in light of reading that Constitution takes on new meaning.

Nobody should feel bitter as to the price we paid to eliminate discrimination in our schools during the past years because, believe me, the result has been magnificent, people walking out there with a dignity and an opportunity and a goal they never had before, and even if there was only one person who was in that category, each one of us as a society should be elated.

But you know and I know, there are more than one, there are millions. But the one thing you cannot do is say that the concept called America is finished, that we have done our work, that we are just terrific and we are fine. We are not.

I expect we will probably get to a vote on this thing tomorrow. Certainly it will be impossible for me to do a solo again, even if I eliminate my morning tennis match. But what is needed is as we perceive the highest way of achieving our duty, as we perceive that, to pursue it.

Mr. President, at this time, I would like to read an op-ed piece from the New York Times dated June 13, 1981. This article is by Alfred Kazin, professor of English at the Graduate Center, the City University of New York, and at Hunter College. He was visiting professor of English at Notre Dame in 1978 and 1979. This article is adapted from his recent commencement address at the Center. The title is "Going Backward."

I was astonished on May 18 to discover that the President of the United States, speaking at the Notre Dame University commencement, heralded such private universities as the only independent universities. "If ever the great independent colleges and universities like Notre Dame give way to and are replaced by tax-supported institutions, the struggle to preserve academic freedom will have been lost." The President paid the tribute customary on such occasions to our Founding Fathers: "A group so unique we've never seen their like since they rose to such selfless heights. They gave us more than a nation."

One of these Founding Fathers was Thomas Jefferson, who was prouder of having founded the tax-supported University of Virginia than of anything else except having written the Declaration of Independence and the Virginia Statute of Religious Freedom.

In the midst of a terrible Civil War, July 2, 1862, the Congress of the United States provided that the Federal Government give portions of the land it owned within the states to the states themselves for state universities. The Morrill Act is virtually the most important piece of legislation on behalf of American education ever passed. Thirteen million acres of the public domain were given to the states.

To imagine America today without the benefits of the great universities of California, Michigan, Minnesota, Indiana, Iowa, Missouri, etc., etc., is impossible.

To think that any private university, especially one founded by a clerical order, is more "independent" than a great state university, with its healthy pluralism of religious and nonreligious inspirations, its concern for the public weal, its basis in the constitutional separation of church and state, is to recognize, among other signs, that the American mind in high places is going backward these days.

The Senate in its wisdom voted the other day to prohibit the victim of rape from being assisted by public funds in obtaining an abortion. A Republican senator, Lowell Weicker, remonstrated with the leader of the move to prohibit assistance, Jesse Helms, by pointing out that his harshness was not only unconscionable but had no sanction in our moral tradition. Such a prohibition, said Senator Weicker, can hardly be said to come down to us from Mount Sinai. On the contrary, replied Senator Helms, it does come down from Mount Sinai; and if this smacks of Cotton Mather, so be it.

The chairman of Moral Majority in Illinois, the Rev. George A. Zarris, encourages his members to monitor libraries. "I would think," he said, "moral-minded people might object to books that are philosophically alien to what they believe. If they have the books and feel like burning them, fine." In Abingdon, Va., the Rev. Tom Williams, objecting to novels by Harold Robbins, Philip Roth, Sidney Sheldon, insisted that on his say-so books be removed from the local library. He threatened to file charges against the librarian if minors were allowed to check out the books. The librarian pointed out that under Virginia law the library did not have to show Mr. Williams a list of people who had checked out the books. What a victory is that for democracy.

The other day, Secretary of State Alexander M. Haig, Jr., justified our present indulgence toward the Government of Argentina, despite the terror it practices against many of its citizens, on the ground that Argentina and the United States are philosophically akin: Both nations "believe in God."

An official of a scholarly think-tank, the Hudson Institute, claims to have figured out that in the event of a nuclear war only 20 million Americans will be killed, which, happily, leaves 204 million survivors.

This is a time when everyone now in power professes a great distaste for the Big State, for Federal controls. The National Endowment for the Arts and the National Endowment for the Humanities are being slashed on the grounds that their concerns are better taken care of by the states. Student loans are cut and in many cases eliminated. Every hard-won modern provision for the general welfare is contemptuously discarded from the budget. Every day sees an attempt to indoctrinate the American people from Washington about matters essentially private, whether it is birth control or the freedom to believe or not believe.

Where is the American mind these days to point out that all these pressures and even threats from Washington enjoining us to uphold individualism and free enterprise are just the opposite of American freedom and individualism?

I read now a New York Times editorial entitled "America Can't be Colorblind Yet."

AMERICA CAN'T BE COLORBLIND YET

In signaling the Reagan Administration's retreat on affirmative action and school busing, Attorney General Smith says he yearns for the day when the Constitution can be applied in colorblind ways. Who doesn't? But in working toward that day, a humane society simply cannot forget its obligations to the victims of that earlier form of color-consciousness, segregation.

Blacks have made notable gains in a generation—gains that coincide with a Federal commitment to civil rights and affirmative action, school desegregation and, yes, preferential consideration in higher education and elsewhere. As David Rosenbaum recently reported in The Times, the proportion of high school graduates going to college is now roughly the same for blacks and whites, and the average income of young black couples equals that of whites.

But progress cannot be a reason for complacency. Every index of misery continues to show that the devastating effects of racism linger on in America. Blacks make up a disproportionate number of the citizens dependent on public assistance. The unemployment rates among black males and teen-agers remain at least twice as high as among whites. The proportion of blacks dropping out of the labor force altogether has doubled over the last two decades.

Simply proclaiming equality of opportunity is not enough. And if the Reagan Administration prefers its remedies to appear colorblind, there are in fact ways to help overcome the deprivations of the neediest blacks without practicing "discrimination in reverse." But they all require a greater commitment than any yet shown by the new team to helping poor people—of every color.

Poverty is more and more concentrated in the cities and most heavily among blacks. Any Federal effort to elevate the poor, therefore, would necessarily aid the victims of segregation among them.

If the Reagan team isn't comfortable with preferential admissions to universities, for example, then let it condition Government subsidies on the inclusion of more poor undergraduates. It could require Federal contractors to earmark more jobs for the chronically unemployed, or for welfare recipients. It could expand the aid to elementary education that it in fact proposes to cut, and extend it to high schools. It could make welfare benefits and housing subsidies portable, so that poor people would be freed to seek out work.

Preferential treatment has indeed roiled the political waters. But millions of blacks, long denied training and education, remain unable to take advantage of opportunities. This is not yet the time for wholly neutral Government, as if "equal" were in fact fair to all. The legacies of segregation remain all around. Fair-sounding rhetoric will not remove them.

And I think, again, we get back to what the reality of life in this country is and what the reality of dealing with life is. This amendment is about as far removed from reality as anything possibly could be.

In any event, the amendment before us now is the Weicker amendment.

I believe earlier I paused for a question or somebody wanted to put something in the RECORD when I was addressing myself to the people of my own State of

Connecticut, with its great mix of persons, great ethnic mix, a larger percentage of majorities, a State that enjoys a very high per capita income, one that has consistently ranked highest on the list as to the quality of life. Most particularly, I was addressing what it is that their Senator is doing on this floor in this crazy exercise.

I suppose the words that I hope to get through to this, the Constitution State, the one that had the first written Constitution, much of it similar to that which I have read on many occasions to this body this afternoon, is that each one of us as citizens of the State of Connecticut have done well because of these constitutional principles, have done well because we have been able to utilize the judicial systems of our Nation.

The working people of Connecticut, the blue collar working people of Connecticut, one of the largest per capita manufacturing States in the Nation, understand what the courts mean.

When Republican theoreticians sit around and muse about OSHA and what is the purpose of an occupational health and safety agency, they know. They know, the workers who sit there and have suffered from asbestos poisoning from working in the various plants and the submarine works, they know what it means; the loss of an eye as they work over their lathes in cities like Bridgeport. They know in a thousand different ways as they have lost a limb. They know OSHA in the factories that dot the land. They understand. Nothing was given to them in the sense of care, but it had to be fought for legislatively and through the judicial system. Now they have it.

Is the loss of a limb any more important than the loss of a mind? I think in the final analysis that blue collar worker will understand why it is that that child, that black child, has to be protected in terms of educational opportunity; has to be given that opportunity; has to be assured of that opportunity.

No, that State of Connecticut is not Greenwich, Darien, New Canaan. It is Hartford, New London, Toynton. It is working people, families who are in their second generation. They see their children in a school which they never had.

I wish my friend Senator KENNEDY were here. He had a classmate, Billy Frate, who attended Harvard with him. Billy's father was a man by the name of Gennaro Frate. He ran a news store in Darien, Conn. His family came over from Italy. He had none of what Bill had, TEDDY'S classmate. Gennaro Frate ran the news store. He would be in there at 7:30 in the morning and then he would pack up and go up to the legislature. He was the man who guided me into politics. He was my advisor.

I can remember when the Republicans controlled that State legislature and he was the chairman of the roads and bridges committee, certainly a position which gave a man enormous power with the prospect of enormous patronage and all sorts of goodies coming to him. Not Gennaro Frate, not one nickel. Not one nickel ever crossed that man's hand because of his love for this Nation and seeing what it had given to him in the way of his own business and to his son in terms of an education.

The story of Gennaro Frate is repeated a hundred times over in the State of Connecticut.

Do you honestly feel that the Italians who came to the State of Connecticut, without this system of courts, without this system of justice, without the commitment of leadership to the weakest in our society—do you honestly believe they would be, in one short generation, where they are today?

It would not happen.

The fact is it was never meant to be a numbers game in this country. If we only move after we count the House, we are not going to move.

This document here, who wrote it? Who wrote it? Do you think some black wrote it? Do you think some retarded child wrote it? Do you think some elderly person wrote it? Do you think some woman wrote it? Do you think somebody without an education wrote it?

No, it was written by the most prosperous, the wealthiest, the most advantaged, the most powerful men in our society, and what was contained in here was directly contradictory to their own interests. That is who wrote it. It was directly contradictory to their interests. But they made sure that those principles were set down on paper, and because they did, and because they did not think of themselves, they did not count the house.

Each one of us is much the better for it, as is an entire nation.

(Mr. HUMPHREY assumed the chair.)

Mr. WEICKER. That is what I find so appalling about what happens here. I do not care if there is one person out there who does not have that educational opportunity, if there is one person being discriminated against in any form whatsoever. We, as a nation, should make that our concern. What do we do when somebody falls down a well? The whole Nation stands in anticipation that everything will be done to get that one person out of the well. Or that one person trapped in a building.

That is the spirit of this country. You know it as well as I do. If there has ever been a nation that has been for the underdog, it is the United States of America. Are you sure that is still the way we look at it? I wonder.

We got banged around a little bit in Vietnam; we got banged around a little in Watergate. So we have all licked our wounds now and have gone home when we ought to be out looking for trouble, and there is so much of it out there. We are so well-equipped constitutionally and spiritually to handle it.

I have no apologies for what we have done, and I have no fears as to what it is we are capable of.

This is an amendment of fear—an amendment of fear—political fear, fear of competition. The whole thing just is riddled with the thought of fear.

There is not one person in this Chamber, not one, who can vote for the Weicker amendment who could not hold their head high, and even turn around and vote for the next amendment, if they want to, to protect their backside. But at least you can stand up and vote for the first one. What, someone is going to accuse you during your campaign of being for the Constitution of the United States?

"He voted for the Weicker amendment." I want to see your opponent stand up and say, "That man voted for an amendment that said the Justice Department can enforce the provisions of the Constitution of the United States."

Do you think you could be beaten on that?

"This man voted to enforce the Constitution of the United States." Do you think you will be beaten?

Amendment No. 2—vote for it. Do you honestly think that in the course of a political career, because you stand up there for the independence of the judiciary and those who need some special assistance, that because you voted for that, you are going to be beaten? Do you think this Nation wants to be inspired? Do you think this is inspirational?

It is my understanding that in a few minutes, things are going to be wrapped up, the evening is going to close. Everything has been set out on the floor.

If I may have the attention of the Senator from North Carolina, for whatever transgressions, real or imagined, against my distinguished colleague from North Carolina, I apologize.

There is no reason why, if I am going to be here fighting for what I consider the rules, I should not abide by them myself.

You have the advantage. Sometimes I think it is better to have the votes than the rules, and I am not so sure you do not have them. In any event, I think you know the depth of my feeling as to the substance of the matter before us, and it certainly should not spill over in my respect for somebody who has always been a gentleman to me.

Mr. HELMS. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. WEICKER. I yield.

Mr. HELMS. I hope and believe that the Senator knows that the affection and respect he has just expressed is certainly reciprocated. He and I have opposed each other a number of times, and I have never failed to enjoy it. We have agreed to disagree agreeably. I say to the Senator that he is a gentleman, that he is a friend and I hope he will continue to be.

He knows the rules well. There were just one or two points when I thought he became a little enthusiastic, but I hold no feeling whatsoever. I admire and respect him.

Mr. WEICKER. I thank my distinguished colleague very much. My statement stands, with great feeling and great respect for him.

Mr. President, I hope serious consideration will be given by my colleagues now as to the issues before us. It has to be clear, as I said, that we are not going to be going through another day of this. Certainly, I do not expect anybody to do what I have not done in the U.S. Senate—to read the CONGRESSIONAL RECORD; but, somewhere along the line, maybe somebody heard a yell or two over the squawk box that registered.

In any event, I believe the issue to be as I have defined it. I believe the importance of the issue to be as I have attested. I also believe that the courage demanded now of the Senate is as was always required the minute each of us took our oath of office. This is not an issue for today. It is an issue that is for many years to come.

It is all right to say that other matters, obviously in the same vein, will be raised during the 97th Congress. But we have postponed long enough, not just as a Senate but also as a country, coming to grips with these problems.

I never fear when we have the greatest possible number, whether it is on the floor or among the electorate as a whole, but the decisions cannot be made by a few. They have to be made by the many. That is where it all started, and this is no more than the last act. I hope this Nation understands its responsibility in the whole matter.

Before I start to read further, I ask this of the majority leader: I am prepared to continue to read from this, if he wants me to. I know that in a few minutes he intends to do something.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator may yield to me briefly, without losing his right to the floor.

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

Mr. WEICKER. I yield briefly to the distinguished majority leader.

Mr. BAKER. I thank the Senator from Connecticut.

Mr. President, it is always an awesome sight to see one of our colleagues put himself on the line as the Senator from Connecticut has done and as the Senator from North Carolina has done. While they both have been on the floor about an equal length of time, the burden has fallen principally on the Senator from Connecticut. He has gone on now for about 6½ hours, and the Senator from North Carolina has been on the floor about that length of time.

It has been one of those things the Senate does so well and is such a mark of commitment and conviction of Members on the opposite sides of an important issue.

Mr. President, I do not think there is any good purpose to be served by continuing the debate far into the night. I am prepared at this time, or in just a moment, if the Senator yields the floor, to do these things. I will not do them until the minority leader has had an opportunity to hear them.

I will ask unanimous consent—which I do not do now—that the Senate stand in recess until 10 a.m. tomorrow.

Mr. President, let me begin over. I observe that the minority leader is in the Chamber now. Let me put a unanimous-consent request, if I may.

UNANIMOUS-CONSENT REQUEST

Mr. President, I ask unanimous consent that when the Senate completes its business tonight, it stand in recess until 10 a.m. tomorrow; that at that time, the Chair, under the standing order, recognize the two leaders; that after the discharge of those orders or the yielding back of all time, there be a period for the transaction of routine morning business, to extend not more than 30 minutes, in which Senators may speak for not more than 5 minutes each; that at the conclusion of morning business, the Senate return, without intervening action, to the Department of Justice authorization bill, the measure now pending.

Mr. President, that is the request.

Mr. WEICKER. Mr. President, reserving the right to object, as I indicated, I think it a larger possibility that I am not going to be standing on this floor for this length of time. I do not want to second-guess my recuperative powers. As I turn the 50-year mark, they diminish a little.

Mr. BAKER. It gets better.

Mr. WEICKER. I suspect, without making a commitment, that the Weicker amendment is going to be voted on. But I should like to at least have the guarantee that when we do resume, the Senator from Connecticut will be recognized.

Mr. BAKER. Mr. President, I must tell the Senator what I am sure he already knows—that is, when we recess tonight, notwithstanding that we will resume consideration of this measure tomorrow, as well as his amendment, he would not automatically be recognized, absent unanimous consent.

I see the distinguished Senator from North Carolina in the Chamber, and I inquire of him whether or not he would object if such a request were put.

Mr. HELMS. I would have to object, Mr. President.

Mr. BAKER. Let me suggest an alternative, if I may.

I wonder if we can arrange a time certain to vote, either on the amendment in the second degree, the Weicker amendment, or on a tabling motion, if such is ordered. Would the Senator from Connecticut consider that?

Mr. WEICKER. Are we going to have some sort of horserace out here to see who is recognized? Somehow, I cannot see myself sort of leaping over JESSE'S back to get the attention of the Chair, or the other way around, for that matter. There must be some civilized way to settle this, and I suggest that we really should do that.

I do not contemplate—and I mean what I say; it is not a ruse in any way—I do not contemplate that I am going to take very much more time on my amendment. I have put in 7½ hours here, and I feel that, under the circumstances, I at least should have the right to take it up tomorrow morning.

Mr. BIDEN. Mr. President, if the Senator will yield, somebody suggests that by spending 7½ hours, you have forfeited any reasonable rights you might have. [Laughter.]

Somebody suggests—not I.

Mr. WEICKER. I understand that that opinion probably will be shown tomorrow as to who votes against the Weicker amendment. So I will receive my just desserts on that.

Mr. BAKER. There are no just desserts. The Senator from Connecticut and the Senator from North Carolina have shown themselves in the very best traditions of the Senate. It has been a good debate on an important issue.

I renew the request as to whether we might be able to set a time certain to vote tomorrow either on the Weicker amendment or on a tabling motion.

Mr. WEICKER. First, I think my decision would be made on whether or not we are going to have an up-and-down vote on my amendment.

Mr. BAKER. I yield to the Senator from North Carolina.

Mr. HELMS. I thank the distinguished majority leader.

Mr. President, I have spent no more than 15 minutes, perhaps closer to 10, in defense of the very good amendment which was drafted with the help of a very good constitutional lawyer who used to serve in this body—the name is Sam J. Ervin, Jr.—and in consultation with other constitutional lawyers.

Mr. President, I feel that I must have some time to balance the record on some of the assertions made in good faith.

Mr. WEICKER. I agree.

Mr. HELMS. I have been accused of ripping up the Constitution and at one time I was shredding up little schoolchildren, and that sort of thing, and not a syllable was I able to say in my own defense.

I would be perfectly amenable, as a matter of fact, I will say that I am eager, to enter into some sort of time agreement where time is allotted to those of us who support the proposal to put an end to the worst folly ever imposed upon the people of this country, forced busing, so that we can have our say.

I wish to read into the RECORD some of the statements by Sam Ervin. I wish to defend the constitutionality of a very constitutional proposal. If some time can be allotted for that, I will go along with the majority leader on any unanimous-consent agreement he propounds.

Mr. BAKER. Mr. President, let me formulate the request then.

First of all, is there a request pending?

The PRESIDING OFFICER. There is a request pending that the Senate convene tomorrow at 10 a.m. and the leaders be recognized under the standing order.

Does the Senator wish it all?

Mr. BAKER. I do not, but I wish others to have it if the Chair does not mind.

The PRESIDING OFFICER. That there are 30 minutes for morning business, that we return without intervening action to the Department of Justice authorization bill.

Mr. BAKER. All right.

Mr. President, let me restate the request. I will do part of it now.

UNANIMOUS-CONSENT AGREEMENT

ORDER TO CONVENE AT 10 A.M.

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. tomorrow, that after recognition of the two leaders under the standing order there be a period for the transaction of routine morning business of not to exceed 30 minutes in length and Senators may speak for not more than 5 minutes each.

Mr. ROBERT C. BYRD. Mr. President,

reserving the right to object, will the Senator include in his order 15 minutes for the junior Senator from West Virginia?

Mr. BAKER. Yes. I include that in the request.

The PRESIDING OFFICER. Is there objection?

Mr. WEICKER. I am sorry. As I understand so far the request has not included our matter. Is that correct?

Mr. HELMS. That is correct.

Mr. BAKER. It has not.

I say in all fairness to the Senator if this order is granted and we do indeed recess tonight no one will have an automatic right to recognition in the morning.

Mr. WEICKER. Why do we not get the remainder of the request then to see where this goes before we leave?

Mr. BAKER. Mr. President, I will sort of put that on hold then.

Let me explore the suggestion made by the Senator from North Carolina. Let me shop for an agreement here.

CONSIDERATION OF DEPARTMENT OF JUSTICE AUTHORIZATIONS

Mr. President, I also ask unanimous consent that after the close of morning business on tomorrow the Senate immediately return to the consideration of the pending measure; that the Senator from Connecticut be recognized for not to exceed 15 minutes; that following after that the Senator from North Carolina be recognized for not to exceed 30 minutes; that at the conclusion of that time there be a vote up and down on the Weicker amendment.

Mr. HELMS. No.

Mr. WEICKER. First of all we have an agreement that gives to the distinguished Senator from North Carolina more time. That does not bother me at all. He can have the time in the morning. On the other hand, I think 15 minutes is probably a little bit close insofar as the windup and any other Senators who might want to speak on this issue from my side of it.

Mr. BAKER. What does the Senator suggest?

Mr. WEICKER. I suggest probably at least insofar as my side of this, and we can work out the other aspect with the distinguished Senator from North Carolina, I say no more than an hour.

Mr. BAKER. All right.

Mr. President, I amend my request so that the Senator from Connecticut would have 1 hour of debate and 1 hour for the Senator from North Carolina and that at the conclusion of that time there be a vote up and down on the Weicker amendment.

Mr. HELMS. No. I cannot consent to the up-and-down vote. We may very well go that route. I leave that option open.

Mr. BAKER. I amend the request then, so that a vote occur in relation to the Weicker amendment into that time.

Mr. WEICKER. What would be the objection to an up-and-down vote? And I might add I am perfectly willing to adjust the time. If time is of concern to the Senator from North Carolina, I will be glad to go ahead and adjust that anyway.

I do not intend to table his amendment. I would certainly be glad to go ahead. As best I can guarantee I am not going to table his amendment. He deserves an up-and-down vote on that. Why would it not be fair that I deserve an up-and-down vote on mine?

Mr. HELMS. The answer to that is that I have discussed this with every Senator who is interested and I have informed them that it is my intent to move to table. I do not want the confusion on the floor for the same reason many of my amendments have been tabled in the past. A tabling motion is the clearest thing to understand.

Mr. WEICKER. There are many things. It is not the clearest vote to understand. Up or down is the clearest.

Mr. HELMS. I am talking about when Senators come in here to vote.

Mr. WEICKER. I respect that. I do not think it is the clearest. The clearest vote is an up-and-down vote on the issue. If anything, the tabling motion, and the Senator and I both know, is a matter of parliamentary procedure that the tabling motion is meant to obfuscate at least to some extent the constituency on the issue.

Mr. HELMS. I will say, if the Senator will yield, neither he nor I have the floor, I imagine the majority leader will let me continue for 1 additional minute.

I understand the argument he is making because I made it myself on the 100 times that my amendments or legislation have been tabled by good friends of mine, including the distinguished majority leader at that time.

But I feel obliged to object to consenting to eliminate the possibility of a tabling motion.

I say to the majority leader and to my friend from Connecticut that I will examine tomorrow morning when I have a chance to talk to Senators and I will just as soon have an up-or-down vote on it. But I feel obliged to stick with what I have talked to them about.

Mr. BAKER. Let me suggest we are terribly close to a time agreement on a matter that has consumed this entire day. I urge both my friends, the Senator from Connecticut and the Senator from North Carolina, to permit this order and with the hope, then, that the Senator from North Carolina and the Senator from Connecticut could discuss the matter either tonight or in the morning or maybe they can arrive at an agreement on whether there will be an up-or-down vote or not, but get the time agreed that I just suggested which will give us time certain to proceed to dispose of this matter, guarantee the Senator from Connecticut be recognized first thing in the morning, to leave open only the question of whether the vote is on tabling or up and down.

That is a long way from where we were just 15 minutes ago. I hope my friend will agree with that.

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

Mr. BAKER. I yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I hope that the Senator from North Carolina will be willing for an up-and-down vote. As he knows, this is a very, very important vote, and in my humble opinion, tabling, if he will pardon the expression, is the chicken maneuver. It give many Senators the opportunity to get off the hook. If we are going to settle this thing eventually I think the best time to start is by an up-and-down vote as to how we all feel about this matter. We can vote for tabling and no one knows what the devil is going on.

I urge that we have an up-and-down vote and forget about tabling.

Mr. HELMS. I say to the Senator I agree with him, but I am not locked into concrete about the tabling motion and the Senator from Connecticut and I have been down this road before and we have always cooperated with each other in good faith, and I think we will on this occasion. It will be my intent, unless there is some unusual set of circumstances as I do not anticipate, to have an up-and-down vote. Frankly, I agree with the Senator from Arizona. I do not like tabling motions particularly when a time agreement is in effect. A tabling motion serves no purpose, as the Senator knows, except to put an end to debate.

So I think there will be no problem about that.

I assure the Senator from Connecticut that in all probability we will go on an up-and-down basis.

ALLOCATION OF TIME

Mr. BAKER. Mr. President, let me renew my request. It is that in the morning after the conclusion of morning business the Senator from Connecticut be recognized and that there be a time agreement on his amendment of 2 hours, to be equally divided and at the end of that time or if that time is yielded back that a vote on the amendment or in relation to the amendment occur.

Mr. President, let me amend the request in two further respects. The minority leader points out that we are dealing within the Republican family on this time agreement.

Mr. HELMS. That is right.

Mr. BAKER. Mr. President, I ask unanimous consent also that the distinguished Senator from West Virginia, the minority leader, have under his control 1 hour. It would be a total of 3 hours for debate.

NO VOTES BEFORE NOON TOMORROW

The second part of my additional request is that no vote occur in respect to this matter before the hour of 12 o'clock noon tomorrow.

Mr. President, the request is that.

Mr. WEICKER. And as I understand it that I have the good intention expressed by the distinguished Senator from North Carolina that he is going to do his best to talk to Senators on his side and see that we can get an up-and-down vote without locking themselves in.

Mr. BAKER. I think that is a fair restatement.

Mr. President, I now put that request.

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

Mr. BAKER. I thank the Chair, and I thank all Senators.

Mr. President, it is the intention, of course, of the Senate to be in tomorrow.

I will not expect that we will be in very late tomorrow but business will be transacted. There will be at least one vote, perhaps other votes. The Senate will not be in session on Saturday.

RECESS UNTIL 10 A.M. TOMORROW

Mr. BAKER. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 10 a.m. on tomorrow.

The motion was agreed to; and, at 7:34 p.m., the Senate recessed until tomorrow, June 19, 1981, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 18, 1981:

NATIONAL CONSUMER COOPERATIVE BANK

Carol E. Dinkins, an Assistant Attorney General, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for the remainder of the term expiring September 23, 1982, vice William A. Clement, Jr.

William Gene Lesher, an Assistant Secretary of Agriculture, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for the remainder of the term expiring September 23, 1982, vice Carol Tucker Foreman.

Roger William Mehle, Jr., an Assistant Secretary of the Treasury, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for the remainder of the term expiring September 23, 1982, vice Roger C. Altman.

Darrell M. Trent, Deputy Secretary of Transportation, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for the remainder of the term expiring September 23, 1982, vice Graciela (Grace) Olivarez.

Philip D. Winn, an Assistant Secretary of Housing and Urban Development, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for the remainder of the term expiring September 23, 1982, vice Geno Charles Baroni.

Joseph Robert Wright, Jr., Deputy Secretary of Commerce, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for the remainder of the term expiring September 23, 1982, vice Sam W. Brown, Jr.

Albert Angrisani, an Assistant Secretary of Labor, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for the remainder of the term expiring June 10, 1983, vice Alexis Herman.

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United State Code, section 3962:

To be general

Gen. Volney Frank Warner [redacted], (age 54), Army of the United States (major general, U.S. Army).

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Pat William Crizer [redacted], (Age 56), Army of the United States (major general, U.S. Army).

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Ernest Graves, Jr [redacted], (Age 56), Army of the United States (major general, U.S. Army).

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Thomas Howard Tackaberry, [redacted] (Age 57), Army of the United States (major general, U.S. Army).

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Raphael Dean Tice [redacted], U.S. Army.

IN THE NAVY

The following-named officer, having been designated for command and other duties of great importance and responsibility in the grade of vice admiral within the contemplation of title 10, United States Code, section 5231, for appointment while so serving as follows:

To be Vice Admiral

Rear Adm. Thomas J. Kilcline, U.S. Navy.

The following nomination, having been favorably reported by the Committee on Energy and Natural Resources on June 18, 1981, pursuant to previous order of the Senate, that the nomination be referred to the Committee on Government Affairs for not to exceed 20 days:

Richard Mulberry, of Texas, to be Inspector General, Department of the Interior, vice June Gibbs Brown.

79-059 O - 85 - 32 Part 10