SENATE — *Friday, June 19, 1981*

(Legislative day of Monday, June 1, 1981)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable CHARLES E. GRASSLEY, a Senator from the State of Iowa.

PRAYER

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

Let us bow together in prayer.

May we spend just a moment in silent prayer for Mr. Robert B. Dove, the Parliamentarian, and his family.

Father God, we have no secrets from Thee. Thou knowest our minds and hearts, our desires and aspirations and ambitions. Thou knowest those who are hurting today: the one who is discouraged; the one who feels like a failure and wants to quit; the one who is fearful and filled with self-doubt. Thou knowest the one with financial difficulty; the one who can find no relief from guilt; the one whose marriage is falling apart, whose children are on drugs or alcohol or alienated. Thou knowest those who are ill or whose loved ones are suffering.

Gracious Father, I pray that Thy Holy Spirit will minister to every hidden need in this large Senate family. Touch each life with love and healing and peace. In the name of the Great Physician. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 19, 1981.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate. I hereby appoint the Honorable CHARLES E. GRASSLEY, a Senator from the State of Iowa, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

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

RECOGNITION OF MAJORITY LEADER

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

THE JOURNAL

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

I ask unanimous consent that the Journal of the proceedings of the Senate be approved to date.

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

THE CALENDAR

Mr. BAKER. Mr. President, there are a number of items on the Legislative and Executive Calendars, and I invite the minority leader's attention to three items on the Calendar of General Orders. I am speaking of Calendar Order No. 172, Senate Resolution 152, a resolution regarding Bulgaria; Calendar Order No. 173, Senate Concurrent Resolution 18, a resolution relating to the Ukraine; and Calendar Order No. 175, Senate Concurrent Resolution 5, dealing with Dr. Brailovsky.

Mr. President, I would like to do these matters today if it is possible to do so, and I wonder if the minority leader can give me some view of the status of these items on his calendar.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the three items are cleared on this side of the aisle, and we are ready to proceed.

Mr. BAKER. Mr. President, I thank the minority leader.

I then ask the Chair to lay before the Senate the three calendar items in the order I have just identified them.

ANNIVERSARY OF BULGARIAN STATEHOOD

The Senate proceeded to consider the resolution (S. Res. 152) relating to the 1,300th anniversary of Bulgarian statehood, which was reported from the Committee on Foreign Relations, with an amendment:

On page 2, strike lines 7 through 10.

The amendment was agreed to.

The resolution, as amended, was agreed to.

The amendments to the preamble were agreed to.

The preamble, as amended, was agreed to.

The resolution, as amended, together with the preamble, as amended, is as follows:

Whereas Bulgaria this year celebrates its one thousand three hundredth year of statehood, making it the oldest surviving state in Europe to have kept its original name;

Where in 1943 the people of Bulgaria resisted pressure from Nazi Germany to deport the country's some fifty thousand Jews to concentration camps: and

Whereas, because of the protection afforded by their people, the Bulgarian Jews were the only Jewish community in the occupied territories to survive as a whole within their native country: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Bulgarian people be congratulated on their one thousand three hundredth year of statehood; and

(2) they be further commended for their heroic and compassionate defense of the human rights of their Jewish community during the Nazi holocaust.

FREE EXERCISE OF RELIGION IN UKRAINE

The Senate proceeded to consider the concurrent resolution (S. Con. Res. 18) relating to the restoration of the free exercise of religion in Ukraine, which had been reported from the Committee on Foreign Relations, with amendments, as follows:

On page 2, line 3, strike "take"; and

On page 2, line 4, after "rights", insert "take".

● Mr. GOLDWATER. Mr. President, I am delighted that the Senate is about to pass Senate Concurrent Resolution 18, introduced by myself and Senators DECONCINI, DOLE, HATFIELD, HEINZ, HUMPHREY, JEPSEN, LUGAR, METZENBAUM, MOYNIHAN, SARBINES, SYMMS, WILLIAMS, and ZORINSKY. Our resolution urges diplomatic and other actions to help restore the free exercise of religion in Ukraine, where there is still a tremendous and undiminished spirit of freedom and longing for independence among Ukrainian nationals.

The Soviet slave masters have ruthlessly suppressed free religion and attempted to enforce atheism. The Soviet policy of massive and deliberate persecution of religious groups in Ukraine is, in my opinion, no less than a policy of genocide. Religious believers are spied on in their homes and virtually all dissident church leaders have been arrested.

Unfortunately, religious persecution is on the increase behind the Iron Curtain, especially in Ukraine, and the world must be reminded so that the right to believe will be aided and strengthened.●

The amendments were agreed to.

The resolution, as amended, was agreed to.

The amendments to the preamble were agreed to.

The preamble, as amended, was agreed to.

The resolution, as amended, together with the preamble, as amended, is as follows:

Whereas the Charter of the United Nations, as well as its Declaration of Human Rights, sets forth the objective of international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . . "; and

Whereas in the so-called Brezhnev Constitution of the Union of Soviet Socialist Republics, article 52 unequivocally provides

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

that "Freedom of conscience, that is, the right to profess any religion and perform religious rites or not profess any religion . . . shall be recognized for all citizens of the Union of Soviet Socialist Republics. Incitement of hostility and hatred on religious grounds shall be prohibited"; and

Whereas not just religious or civil repression but the attempted genocide—the absolute physical extermination—of both the Ukrainian Orthodox and Catholic Churches, and all other truly independent religions, in a nation of forty-five million persons brutally violates the basic civilized rights enunciated above: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the President of the United States of America shall in the name of human rights take immediate and determined steps to—

(1) call upon the Government of the Union of Soviet Socialist Republics to permit the concrete resurrection of both the Ukrainian Orthodox and Catholic Churches and other independent religions in the largest non-Russian nation both within the Union of Soviet Socialist Republics and in Eastern Europe; and

(2) utilize formal and informal contacts with Union of Soviet Socialist Republics officials in an effort to secure the freedom of religious worship in places of both churches and all other independent religions as their own constitution provides for; and

(3) bring to the attention of all national and international religious councils the nature of this Stalinist crime and perpetuated violation of basic human rights, with an appropriate appeal to the commitment of their resources toward achieving the objective of this resolution.

IMPRISONMENT AND TREATMENT OF DR. VIKTOR BRAILOVSKY

The Senate proceeded to consider the concurrent resolution (S. Con. Res. 5) expressing the sense of the Congress with respect to the imprisonment and treatment by the Government of the Soviet Union of Dr. Viktor Brailovsky, and for other purposes, which had been reported from the Committee on Foreign Relations, with amendments to the preamble.

Mr. PERCY. Mr. President, I would just like to underscore the humanitarian importance of the step we are taking today in passing Senate Concurrent Resolution 5, introduced by my Foreign Relations Committee colleague, Senator LUGAR, urging the Soviet Government to provide Viktor Brailovsky with proper medical care, release him from prison, and allow him and his family to emigrate.

Viktor Brailovsky is a computer scientist who has led an exemplary life as scientist, husband, and father. His attempts and the attempts of many others to emigrate to Israel have been consistent with the pledges contained in several international agreements signed by the Soviet Government, including the Helsinki Final Act.

Even as we act, Soviet authorities have over the last 2 days tried Dr. Brailovsky, and sentenced him to 39 months of internal exile. His health will be cruelly tested in Siberia. Reports from his family who attended the trial indicate that the Soviet prosecutor presented a weak case for its charge of anti-Soviet statements and activity. Witnesses called by the prosecution were hard pressed to find anything to say against this man. We hope that the Soviet authorities will reconsider.

Mr. LUGAR. Mr. President, today the U.S. Senate acts on a particularly important and timely humanitarian matter, the case of Soviet computer scientist Viktor Brailovsky. Senate Concurrent Resolution 5 calls on the Soviet Government to grant Dr. Brailovsky proper medical attention for his serious chronic liver and kidney disease, to release him from custody, and to allow him and his family to emigrate to Israel.

Even as we act, the Soviets have tried Dr. Brailovsky and sentenced him to 5 years of internal exile. Government witnesses summoned against him found the anti-Soviet statements and activities he was charged with difficult to corroborate in court. Dr. Brailovsky has led an exemplary personal and professional life, and his attempts to emigrate have been fully within procedures pledged by the Soviet Government in various international agreements including the Helsinki Final Act.

Mr. President, the Senate Foreign Relations Committee passed Senate Concurrent Resolution 5 unanimously on Tuesday afternoon. I call upon all Members of the Senate to support this resolution and to send a strong message of support for Dr. Brailovsky in his struggle against Soviet repression.

The concurrent resolution was agreed to.

The amendments to the preamble were agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution, and the preamble, as amended, are as follows:

S. CON. RES. 5

Whereas the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee to all the right to freedom of thought, conscience, and religion, the right to hold opinions without interference, the right to freedom of expression, and the right to emigrate;

Whereas the Final Act of the Conference on Security and Cooperation in Europe commits the signatory countries to respect individual rights and fundamental freedoms, in particular to "deal in a positive and humanitarian spirit" with the applications of persons wishing to emigrate to rejoin relatives;

Whereas the Soviet Union signed the Final Act of the Conference on Security and Cooperation in Europe, is a party to the Universal Declaration of Human Rights, and has ratified the International Covenant on Civil and Political Rights;

Whereas Viktor Brailovsky was dismissed from his position as a doctor of computer science at the Institute of Electronic Control Machines in 1972 as a result of requesting permission to emigrate;

Whereas Viktor Brailovsky has been continually harassed by Soviet authorities for the past eight years;

Whereas Soviet officials have searched Viktor Brailovsky's home and confiscated invaluable scientific papers and Jewish cultural materials;

Whereas Viktor Brailovsky organized the Moscow Seminar for Jewish Scientists and published the unofficial Jewish journal, Jews in the U.S.S.R., for which he was arrested and kept under investigation in April of 1980;

Whereas Viktor Brailovsky bravely led a group of over two hundred and thirty other Soviet Jewish refusniks in an appeal to President Leonid Brezhnev for free emigration of Soviet Jews on the eve of the Madrid Conference in November 1980;

Whereas Viktor Brailovsky was arrested and imprisoned in connection with this activity and his other efforts to encourage free emigration;

Whereas Viktor Brailovsky was in ill health when arrested and has not been receiving proper medical treatment for a serious liver ailment while in prison;

Whereas Soviet authorities have commenced questioning and investigation of Viktor Brailovsky and have extended the period of investigation for two months due to his serious condition; and

Whereas Viktor Brailovsky is in need of immediate and adequate medical attention: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President, acting directly or through the Secretary of State, should—

(1) continue to express at every suitable opportunity and in the strongest terms the opposition of the United States Government to the imprisonment and treatment of Doctor Viktor Brailovsky;

(2) urge the Government of the Soviet Union to—

(A) release Doctor Brailovsky from prison and provide him with proper medical care, and

(B) permit Doctor Brailovsky and his family to emigrate to Israel to join his brother and his family, in accordance with the Final Act of the Conference on Security and Cooperation in Europe, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights; and

(3) inform the Government of the Soviet Union that the Government of the United States, in evaluating its relations with other countries, will take into account the extent to which such countries honor their commitments under international law, especially commitments with respect to the protection of human rights.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President with the request that he further transmit such copy to the Ambassador of the Union of Soviet Socialist Republics to the United States.

Amend the title so as to read: "Concurrent resolution expressing the sense of the Congress that the Soviet Union should provide proper medical care for Viktor Brailovsky and permit him and his family to emigrate to Israel, urging the President to protest the continued suppression of human rights in the Soviet Union and for other purposes.".

The title was amended so as to read:

"Concurrent resolution expressing the sense of the Congress that the Soviet Union should provide proper medical care for Viktor Brailovsky and permit him and his family to emigrate to Israel, urging the President to protest the continued suppression of human rights in the Soviet Union and for other purposes.".

THE EXECUTIVE CALENDAR

Mr. BAKER. Mr. President, we have just been handed the Executive Calendar on which there are a number of nominations. I wonder if the minority leader is in position to give us a clearance report on those names at this time.

Mr. ROBERT C. BYRD. Mr. President, if the majority leader will indulge me momentarily.

Mr. President, the nominations on the first page of the Executive Calendar and on the second page of the Executive Calendar are cleared throughout, the first and second pages.

Mr. President, the nominations under the Nuclear Regulatory Commission and the Tennessee Valley Authority are cleared.

Mr. BAKER. I thank the minority leader. In view of that statement, Mr. President, may I say before I make the request I am about to, that I have one or two exceptions to the clearances the minority leader has given me, and I think we will be able to clear them, but I do not believe today.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that we go into executive session for the purpose of considering the nominations on the Executive Calendar today beginning with Small Business Administration, Paul Robert Boucher, of Virginia, and continuing through page 2, with the exception of Calendar No. 243, Daniel J. Terra, and including two nominations on page 4, Nunzio J. Palladino, of Pennsylvania, to be a member of the Nuclear Regulatory Commission, and Charles H. Dean, Jr., of Tennessee, to be a member of the Board of Directors of the Tennessee Valley Authority.

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

SMALL BUSINESS ADMINISTRATION

The legislative clerk read the nomination of Paul Robert Boucher, of Virginia, to be Inspector General.

Mr. WEICKER. Mr. President, I rise today in support of the nomination of Paul Boucher to be reappointed Inspector General of the Small Business Administration. The Committee on Small Business, of which I am chairman, unanimously reported out this nomination on June 2, 1981.

Mr. Boucher was first named to the Inspector General's post on June 28, 1979. He served in that position until January 20 of this year, at which time President Reagan removed all of the Inspectors General from their posts. Since that time, Mr. Boucher has been renominated by the President and is now serving in the capacity of Inspector-General-designee.

In the years since Mr. Boucher came to the Small Business Administration, he has impressed the committee with his dedication and hard work in attempting to make the SBA a more effective and more tightly run agency. I might add that this is no easy task. For years, the SBA has been a much-maligned and troubled agency, plagued by poor management and a steadily growing list of programs and problems.

It is the hope and intent of the Small Business Committee that this perception of the agency will change. As the Inspector General, Mr. Boucher should play a key role in effecting that change.

Based on past experience, I am confident that Mr. Boucher has the qualities necessary to perform this difficult task. He has shown that he is prepared to take the steps that need to be taken to clear up a problem and that he can do his job with toughness, independence, and professionalism.

It is without hesitation that I endorse his reappointment to the post of Inspector General for the SBA.

DEPARTMENT OF THE TREASURY

The legislative clerk read the nominations of Ann Dore McLaughlin, of the District of Columbia, to be an Assistant Secretary; and Peter J. Wallison, of New York, to be General Counsel.

NOMINATION OF ANN DORE M'LAUGHLIN TO BE AN ASSISTANT SECRETARY

● Mr. DOLE. Mr. President, on June 11, 1981, the Committee on Finance held a hearing on the nomination of Ann Dore McLaughlin to be Assistant Secretary of the Department of the Treasury for Public Affairs. As chairman of the committee, it is a privilege and a pleasure to report the committee's decision by a unanimous vote to report favorably on Ann's nomination.

Mr. President, the Committee on Finance has reviewed Ann's financial position, the results of the investigation by the FBI and the report of the Office of Government Ethics. We are confident that there are no problems in any of these areas.

Ann's background and experience make her eminently qualified for this position. A graduate of Marymont College, she also attended the University of London in 1961 and 1962.

Upon graduation she became a supervisor of network commercial scheduling for the American Broadcasting Co., in New York City. From 1966 to 1969 she was the director of alumnae relations at her alma mater. In 1971–72, Ann served as director of Communications for the Presidential Election Committee. Later she served as assistant to the chairman and press secretary to the Presidential Inaugural Committee.

After serving as director of the Office of Public Affairs of the U.S. Environmental Protection Agency, Ann returned to the private sector with the Union Carbide Corp. From 1977 to the present she headed her own consulting firm, specializing in public affairs, communications, consulting, and media relations.

Mr. President, it will take a person with Ann's credentials to effectively carry out the functions of the position to which she has been nominated. The Office of Public Affairs will play a vital role in informing the public as such key issues as the tax cut legislation. I have personally worked with Ann over the years and can personally attest to her ability and personal integrity. I urge the Senate to approve her nomination.●

NOMINATION OF PETER J. WALLISON TO BE GENERAL COUNSEL

● Mr. DOLE. Mr. President, on June 11, 1981, the Committee on Finance held a hearing on the nomination of Peter J. Wallison to be General Counsel of the Department of the Treasury. As chairman of the committee, it is a privilege and a pleasure to report the committee's decision by a unanimous vote to report favorably on Peter's nomination.

Mr. President, the Committee on Finance has reviewed Peter's financial position, the results of the investigation by the FBI and the report of the Office of Government Ethics. We are confident that there are no problems in any of these areas.

Peter has been nominated to fill a vitally important position in the administration. The General Counsel is the principal legal officer in the Treasury Department. He will be responsible for providing legal advice to the Secretary and others in the administration and the Congress on tax legislation and other critical issues on the legislative agenda.

Mr. President, I have known Peter Wallison personally for a number of years and I am certain he will do an outstanding job as General Counsel. He is both an able lawyer and a person of high personal integrity.

He brings excellent credentials and an impressive background to this position. Peter is a graduate of Harvard University and the Harvard Law School. Since his graduation from law school he has held positions in both public service and the private practice of law.

From 1969 to 1970 he was the senior staff associate on the President's Advisory Council on Executive Organization. In 1972, 1973, and 1974 he was a special assistant to Governor Nelson A. Rockefeller and served on the Commission on Critical Choices for Americans. From 1974 to 1977 he served as counsel to the Vice President of the United States. During this period he also worked in the Presidential campaign of 1976 as a general policy adviser. It was during this period that I had the pleasure of meeting Peter and working with him.

Currently, Peter is a partner with the law firm of Rogers & Wells in New York City. He is a member of the New York and Washington, D.C., Bar Associations and the policy committee of the American Council on Capital Formation.

Mr. President, Peter Wallison is well qualified to serve in the position of Gen-

eral Counsel of the Treasury. I urge the Senate to approve his nomination.●

DEPARTMENT OF STATE

The legislative clerk read the nominations of Ernest Henry Preeg, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Haiti; Theodore E. Cummings, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Austria; Robert Sherwood Dillon, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lebanon; Charles H. Price II, of Missouri, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Belgium; and Maxwell M. Rabb, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Italy.

DEPARTMENT OF EDUCATION

The legislative clerk read the nominations of Vincent E. Reed, of the District of Columbia, to be Assistant Secretary for Elementary and Secondary Education; William C. Clohan, Jr., of West Virginia, to be Under Secretary of Education; Kent Lloyd, of California, to be Deputy Under Secretary for Management; and Robert Melvin Worthington, of Utah, to be Assistant Secretary for Vocational and Adult Education.

A FORTUITOUS CHOICE

Mr. ROBERT C. BYRD. Mr. President, the education of children is one of society's most important responsibilities, and our schools are among the most vital institutions in our country. For those reasons, the calibre, wisdom, and abilities of those who create your educational policies is a crucial matter.

I am, therefore, particularly proud to support President Reagan's nomination of my fellow-West Virginian, William Collins Clohan, Jr., as Under Secretary of Education for the Department of Education. For the past 3 years, Mr. Clohan has served as Minority Education Counsel on the staff of the Committee on Education and Labor of the House of Representatives. In that role, he became intimately acquainted with Federal educational legislation and procedures. Moreover, he established valuable relationships with educators and educational administrators that will serve him well in his appointed role in the Department of Education.

But Mr. Clohan's talents and skills go beyond the educational field. After graduating from the Air Force Academy, he was for several years an officer in the U.S. Air Force. Continuing his education at the same time, he earned a law degree from the Georgetown University Law Center. Thus, Mr. Clohan will bring to his new duties a wide and accomplished background that will enhance his value as a Federal educational policymaker and administrator.

Mr. President, Mr. Clohan's father is the mayor of the City of Martinsburg, W. Va., and is my friend. The President has made a wise choice in appointing Mr. Clohan as Under Secretary, and I strongly urge his confirmation by our Senate colleagues.

NUCLEAR REGULATORY COMMISSION

The legislative clerk read the nomination of Nunzio J. Palladino, of Pennsylvania, to be a member of the Nuclear Regulatory Commission.

Mr. BAKER. Mr. President, I am encouraged and delighted that today the Senate has confirmed the nomination by the President of Dr. Nunzio (Joe) Palladino to be a member of the Nuclear Regulatory Commission. The President has indicated his intention to name Dr. Palladino as the new chairman of the Commission, a selection I enthusiastically support.

Dr. Palladino's impressive credentials have been cited by a number of my distinguished colleagues in the confirmation hearings which were completed on Wednesday in the Committee on Environment and Public Works, and I will not repeat again his distinguished record of service, both in the nuclear industry, in academia, and for the government. Currently Dean of the College of Engineering at Pennsylvania State University, Dr. Palladino is a career nuclear engineer.

He is a man who understands the design and function of nuclear powerplants, and as a former member of the Advisory Committee on Reactor Safeguards which reviews all nuclear plants proposed for construction and operation in the United States, he is intimately familiar with the high standards of safety which must be maintained in our nuclear power program.

With Dean Palladino's appointment to the Commission, I am confident that we will begin the urgently needed process of facilitating and expediting the licensing of new nuclear powerplants, and indeed of all the essential elements of this administration's vigorous program for the development of the nuclear component of our country's energy future.

Mr. President, I also wish to commend the distinguished chairman of the Committee on Environment and Public Works (Mr. STAFFORD), and our distinguished colleague, the ranking minority member of that committee (Mr. RANDOLPH), for the thorough and expeditious way in which they have cleared this important nomination, because it is essential that the Nuclear Regulatory Commission proceed in its important work without fail, and without delay. I feel certain that I can speak for my distinguished colleagues on the Nuclear Regulation Subcommittee, the chairman (Mr. SIMPSON), and the ranking minority member (Mr. HART) when I express our enthusiasm in looking forward to cooperating with Dr. Palladino and the entire Commission as they continue their work under Dr. Palladino's chairmanship.

Mr. President, I would close by noting that as Senator from the State of Tennessee, I take special interest in the safe development and nurturing of the nuclear power program in this country, because the Tennessee Valley Authority has in progress the largest nuclear power construction program in the country. I believe I am not being inaccurate when I say that TVA is considered one of the leaders in the safe and responsible design and operation of all phases of electrical generation from nuclear energy. The Sequoyah facility for the training of nuclear powerplant operators is the most advanced in the country if not the world. I am confident that the Commission which Dr. Palladino will chair will always be able to look to TVA as a model of what our country's nuclear power program should be.

Mr. President, I offer my sincere congratulations and best wishes to Dr. Palladino as he assumes the heavy responsibilities of the chairmanship of the NRC. It is a job that will often be thankless, will always be demanding, but which offers the opportunity and responsibility to render the highest service to the country. I am confident Dr. Palladino will meet that challenge with the distinction that has been characteristic of his career.

TENNESSEE VALLEY AUTHORITY

The legislative clerk read the nomination of Charles H. Dean, Jr., of Tennessee, to be a member of the Board of Directors.

Mr. BAKER. Mr. President, I am delighted to speak in support of Charles H. Dean, Jr., as the Senate moves to confirm him as a member of the TVA Board of Directors. I want to thank the Committee on Environment and Public Works for moving swiftly to send his nomination to the floor. An organization as vital as TVA needs continuous leadership and the Committee recognizes that fact.

I heartily endorse Charles Dean for this leadership role at TVA. I have known Charles Dean for years. Because of my knowledge of his character, his leadership qualities, and his wide range of experience throughout the Tennessee Valley Region, I offer my strong support for his confirmation.

Since the first Board of Directors of TVA was selected in 1933, care has been taken to provide a wide range of experience and expertise on the board. Charles Dean comes to this position with experience ranging from agriculture to industrial development to public utility management and operation. He is also from the valley, which gives him added insight into the operations of TVA and its overall mission. He joins two other very capable Directors.

In my view, the members of the TVA Board of Directors must have management/administrative ability and have a willingness to encourage the overall im-

provement and development of the Tennessee valley region. The board members must have a commitment to environmental protection and conservation.

At this point in the region's development, the board members must believe in the TVA projects underway and work to insure their completion to provide for the surge of economic growth I believe will occur in the Tennessee valley region in the coming years. I know Charles Dean will serve TVA very capably in this leadership position by creating new and innovative approaches to achieving its overall mission.

Management skills and leadership are critical for the effective operation of as large and diverse an organization as TVA. Charles Dean is a proven manager. His experience as general manager at Knoxville Utilities board demonstrates very aptly his leadership qualities and his creative approach to problem solving.

Charles Dean is a regional leader in the public utilities field. He comes to the board as the first power distributor to be represented on the board. His position at the Knoxville Utilities Board, his service with the Tennessee Valley Public Power Association, and his contacts with other distributors give him unique insight into the operation of public utilities. This will serve him extremely well at TVA.

TVA is rapidly approaching its 50th anniversary—the progress we have made is monumental. The national importance of TVA is well known. The regional interests served by TVA are exemplary. TVA is the largest public power operation in the world. It has become a national leader in power generation, transmission, and related programs by coupling known technologies with new ideas and innovations. TVA is truly a national asset.

I know that Charles Dean will maintain and nurture this exceptional organization while providing the Tennessee Valley with the power it needs to grow and prosper.

The ACTING PRESIDENT pro tempore. The nominations are considered and confirmed en bloc.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nominations were confirmed en bloc.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask that the President be immediately notified that the Senate has given its consent to these nominations.

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

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

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

Mr. BAKER. Mr. President, I have no further need for my time, if any remaining under the standing order. I am prepared to yield it back or to yield it, if any remains, to the distinguished minority leader.

Mr. President, I yield back my time.

RECOGNITION OF THE MINORITY LEADER

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

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I yield now to Mr. FORD for such time as he may require and then to Mr. PROXMIRE for such time as he may require.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

HIGH INTEREST RATES

Mr. FORD. Mr. President, I thank the distinguished minority leader for allowing me to have this time. I will take only a few moments to make a statement that I wish to place in the RECORD and one I have been giving a great deal of consideration to for a long time, one I think that has been on the minds of my colleagues for months now, and an observance that I have made of one of our distinguished colleagues, in particular, Senator BOREN from Oklahoma.

Mr. President, I have noticed that for the past several days my colleague from Oklahoma, Senator BOREN, has taken to the Senate floor to hammer away at the need for immediate action to address the problems nearly every sector of our economy is experiencing as a result of continued high interest rates.

I think that every Member of this body on both sides of the aisle would do well to note his comments because they certainly hit home with me. There is no subject of more concern or one causing more anguish to my constituents than the unlivable interest rates that have been allowed to linger with us for all these many months.

There is a preoccupation both in the administration and in the Congress to deal with the inflationary problems we now face on a long-term basis. A great deal of effort has been directed toward reducing Federal spending, balancing the budget and developing a tax cut that will cool, instead of fuel, inflation.

At the same time, comparatively little attention has been given to those industries and individuals whose security and existence are being threatened by the pressures of the soaring costs of credit.

This raises a basic, elementary question that seems to have gotten lost in the shuffle: If we do not attempt to minimize the damage now—today—what will there be left to salvage with these long-range solutions that everyone is rushing to try and put in place?

The tremendous fluctuation and unprecedented level of interest rates is having a devastating impact on our lives. Just look at the latest economic indicators of the past few days:

New housing starts plunged 14 percent in May from April, the lowest level in a year. The issuance of new building permits in May came to a virtual standstill.

The Nation's industrial production rose by just 0.3 percent in May, according to the Federal Reserve.

Personal income rose only a modest 0.6 percent in May, an increase that was surely wiped out by inflation.

Excessive interest rates are at the root of each of these depressed indicators and these rates are not just a problem for the business community. Excessive interest rates hold adverse repercussions for virtually every sector of our economy, every section of the country, every resident of every State, every phase of our lifestyle.

The common perception in my State is that these outlandish interest rates are part of the problem, not the solution, and I am hard pressed to argue otherwise.

The thought of a 20-percent prime rate can do nothing but send chills down the spine of any businessman. I do not see how the average small businessman or farmer is managing to hold on.

His livelihood hangs in the balance every time he goes to the bank to renew his note. He has to go more often because no institution will give long-term farm or business loans. The only way a farmer can make it week to week is by going deeper and deeper in debt, using his land as collateral.

We talk about balancing the budget around here, but sky-high-interest rates make that difficult to do. Every time a business goes under because of high-interest rates, that increases unemployment. When unemployment rises, Federal tax receipts decline and Federal transfer payments increase.

When this happens, we just run round and round in one big endless circle.

Think about the number of workers, the number of families whose existence is intertwined with the fluctation of credit. In housing alone, there are primary contractors, plumbers, carpenters, masons, and other subcontractors. There are the realtors who sell the homes and the factory workers who build the stoves and appliances. There is the lumber industry which provides the raw materials for construction. The list could go on and on: The phone company, the utility company, and the water company.

But the point we need to understand is that these troubles are not restricted to an industry alone—these are problems for individuals, for decent, hard-working individuals who are just trying to earn a living and provide for their families.

I am not worried about the statistics. I am worried about the people that those statistics represent.

I want my colleague from Oklahoma, Senator BOREN, to know that the people of my State are not any different from the people he so ably represents. I want him to know that I think he is on the right track with what he is saying, and I commend him for speaking out.

I also want him to know that I intend to join him as often as possible in speaking on this subject, because he has advised his Senate colleagues that he will

speak on this subject daily until something is done to reduce interest rates.

Perhaps, just perhaps, we will be able to inspire a consensus that will provide urgently needed relief. Since this is not a partisan issue, I hope that our colleagues on both sides of the aisle will see fit to do likewise. And as the days and weeks come, may the consensus grow. May other colleagues join Senator BOREN and, in the end, we can find a way that we can reduce the interest rates and begin to see our economy turn again.

I thank the Chair and I thank the distinguished minority leader for allowing me this time.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I yield to Mr. PROXMIRE.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Wisconsin.

S. 951, DEPARTMENT OF JUSTICE AUTHORIZATION BILL

Mr. PROXMIRE. Mr. President, I intend to vote against S. 951, the Department of Justice authorization bill for fiscal year 1982.

I commend the distinguished floor manager of this bill, Senator THURMOND, and the distinguished minority floor manager, Senator BIDEN, for their outstanding efforts in bringing this legislation to the Senate floor. They have done a superb job.

I will vote against the bill, however, because it calls for spending in excess of the sum requested by the Reagan administration.

The bill, as reported by the Judiciary Committee, authorizes a total of $2.458,-605,000 for the activities of the Department of Justice in fiscal year 1982.

But this figure is $109,691,000 more than the $2,348,914,000 requested by the administration.

I cannot support this legislation because it has failed to stay within the total amount requested by the Reagan administration.

I say this despite the fact that the committee has added funds for worthwhile purposes, including, for example: First, conducting foreign counterintelligence; second, patrolling U.S. borders; third, adjusting the immigration status of eligible aliens; fourth, improving juvenile justice; and fifth, assisting State and local drug enforcement efforts.

Regardless of these commendable ends, Mr. President, in my view the overriding consideration must be fiscal discipline. We should hold the line on spending and support the President's request regarding fiscal year 1982 funding for the Department of Justice.

CAMBODIA CONFERENCE REINFORCES CASE FOR TREATY

Mr. PROXMIRE. Mr. President, Secretary General Kurt Waldheim has announced that the U.N. will hold a long-delayed conference on the status of Cambodia on July 13. Once again, the international community will try to calm the troubled waters of a country wracked year after year by campaigns of forced relocation and mass murder of genocidal proportions. Some 65 nations are expected to attend, but two of the central actors in this drama—Vietnam and the Soviet Union—probably will boycott the talks.

The Genocide Convention could offer a focus for such international efforts. To date, 87 nations have ratified the Convention, testifying to its potential value as a diplomatic lever for pressuring reluctant nations toward negotiations over this and similar issues. Ratification by the United States would let American representatives use the Treaty as a platform for calling for fuller investigation of such tragedies. Moreover, our ratification might well spur other countries to ratify, maintaining international interest in possible violations of the Convention like the episodes in Cambodia.

On a domestic level, ratification of the Genocide Convention offers the opportunity to found our own foreign policy efforts on a cornerstone of moral consensus. Ratification is not a partisan issue: every President since Harry Truman—Democrat and Republican—has endorsed its passage. Within the last few years, the American Bar Association has added its respected voice to the many diverse groups, ranging from the AFL–CIO to the B'nai B'rith, who have already called for ratification. Even the Department of Defense has endorsed the agreement together with its various reservations and understandings, arguing that ratification could in no way damage our national security interests.

Secretary of State Alexander Haig, at his confirmation hearing, strongly endorsed this ratification.

Finally, survey after survey has shown that the great body of the American people believe that human rights considerations should play a significant role in the making of our foreign policy.

Admittedly, ratification of the Genocide Convention would be a symbol, but it would be a symbol with a power of its own. It would provide leverage in initiating negotiations. Only through such negotiation can we hope to resolve the complex problems confronting the Cambodian people. And so long as there is hope, we owe it to the Cambodian people, and to our own sense of morality, to make every effort that we can.

Trusting that my colleagues will share my faith, I respectfully recommend their early consideration of the Genocide Convention.

The ACTING PRESIDENT pro tempore. The time allotted to the Senator from West Virginia has expired.

RECOGNITION OF SENATOR ROBERT C. BYRD

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Wisconsin such time as he may require.

Mr. PROXMIRE. Mr. President, I will only take 2 or 3 minutes of the distinguished leader's time.

REDUCING HIGH INTEREST RATES

Mr. PROXMIRE. Mr. President, the Senator from Kentucky discussed high interest rates and performed a real service in doing so. The Senator from Oklahoma has come to the floor frequently to discuss them.

As the former chairman of the Senate Banking Committee for 6 years, and as one who has a deep interest in our credit policies, I would agree that high interest rates are a very, very serious problem for this country. They are the cruel cutting edge of this inflation.

But it is not simply enough to inveigh against high interest rates. We ought to have policies to deal with them.

What do we do about them?

There are at least two actions we can take that will play a real role in bringing interest rates down. One is to get the Federal Government out of the credit markets. We have almost a 1 trillion dollar national debt, with an average maturity of less than a year.

What does that mean? That means it has to be borrowed over and over again every year. Of course, that drives the interest rates right up through the roof.

So, on the one hand for Congress to talk about getting high interest rates down and on the other hand to protest holding down spending is very inconsistent.

The second action we have to take is to recognize that we have high interest rates because the supply of capital, the availability of savings, is so limited. We have the poorest record of savings in this country now that we have had, as a percentage of income, since we started keeping statistics.

Also, it is poorer than in any other developed country in the world.

Mr. President, if we are going to get high interest rates under control, we have to provide an incentive in the law, a tax incentive, for savings.

One proposal, a very thoughtful proposal, by a distinguished economist is to exempt that part of income that is saved from income taxation until it is spent. This would have a decisive, clear effect on encouraging savings, and it would, in the judgment of most economists, sharply bring down interest rates. It would do so in an equitable and fair way. It would seem to me that this is the kind of positive action that this Congress can take to help interest rates under control.

Mr. President, I again commend the distinguished Senators from Kentucky and Oklahoma. I intend to join them next week in a further exploration of this matter.

Mr. President, I thank the distinguished minority leader and I yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from West Virginia.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I yield back my time under the special order.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 5 minutes each.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MAKING STRIKE RELATED VIOLENCE A FEDERAL CRIME

Mr. GRASSLEY. Mr. President, Sunday, June 21, marks the 35th anniversary of the passage of the Hobbs Anti-Extortion Act, which was passed in response to the public's call for action against racketeering. This legislation makes acts of violence and extortion in interstate commerce a crime subject to Federal prosecution. The Hobbs Act has been used extensively to police misconduct by members and agents of labor unions.

Nevertheless, Mr. President, there is a situation to which the Hobbs Act does not apply: In the 1973 Supreme Court decision United States against Enmons, the basic issue was whether violence or the threat of violence occurring in the course of an otherwise legitimate strike would be a violation of the Hobbs Act. The court ruled that the act's definition of extortion as the "wrongful" use of actual or threatened violence does not take into account violence exerted in a strike for higher wages. The four dissenting judges in Enmons read the legislative history of the Hobbs Act quite differently from the majority, and believed that the use of violence to secure higher wages and other benefits is extortion and a violation of the act.

Mr. President, aside from the court's interpretation of the legislative history behind the Hobbs Act, I think I can safely say that the use of violence in obtaining any type of property is behavior that we want to extinguish. A change in this law is necessary, since local authorities do not have the resources to deal with serious instances of violence or extortion in connection with a labor dispute.

I was a member of the International Association of Machinists from 1962 until 1971, while I was a production worker at the Waterloo Register Co. in Cedar Falls, Iowa. I attended union meetings, once was on strike, and was elected to the safety committee for a short term. In all my dealings with my colleagues in the union, I never knew one who would approve of violence or who advocated violence to achieve any goal, and I fully believe that law and order should prevail.

Today, in commemoration of the anniversary of the Hobbs Act, S. 613, I am pleased to add my name to a bill which attempts to restore the act to its original intent. It is, indeed, time for the letter of the law to adhere to the spirit. We are long past due in honoring the words of Congressman Hobbs when he said:

Crime is crime no matter who commits it: and robbery is robbery and extortion extortion, whether or not the perpetrator has a union card.

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.)

MESSAGE FROM THE HOUSE

At 11:41 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3520) to amend the Clean Air Act to provide compliance date extensions for steelmaking facilities on a case-by-case basis to facilitate modernization; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and has appointed Mr. DINGELL, Mr. WAXMAN, Mr. SCHEUER, Mr. LUKEN, Mr. WALGREN, Mr. BROYHILL, Mr. MADIGAN, and Mr. BROWN of Ohio as managers of the conference on the part of the House.

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–1441. A communication from the Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting, pursuant to law, a report with respect to converting the school bus service function at Ellsworth Air Force Base, S. Dak., and the decision that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC–1442. A communication from the Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting, pursuant to law, a report on a study with respect to converting the grounds maintenance function at Vandenberg Air Force Base, Calif., and the decision that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC–1443. A communication from the Chairman of the Federal Deposit Insurance Corporation, transmitting, pursuant to law, the annual report of the Corporation for calendar year 1980; to the Committee on Banking Housing, and Urban Affairs.

EC–1444. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on contracts awarded under 10 U.S.C. 2304(a)(11) for the period October 1, 1980 through March 31, 1981; to the Committee on Commerce, Science, and Transportation.

EC–1445. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the 1980 status report of the General Services Administration covering public building projects authorized for construction, alteration, and lease; to the Committee on Environment and Public Works.

EC–1446. A communication from the Secretary of the Interior, transmitting pursuant to law, the annual report for calendar year 1980 under the Alaska Native Claims Settlement Act; to the Committee on Energy and Natural Resources.

EC–1447. A communication from the Deputy Assistant Secretary of Defense for Administration, transmitting, pursuant to law, a report on a new system of records under the Privacy Act; to the Committee on Governmental Affairs.

EC–1448. A communication from the Deputy Assistant Secretary of Defense for Administration, transmitting, pursuant to law, a report on a new system of records under the Privacy Act; to the Committee on Governmental Affairs.

EC–1449. A communication from the Under Secretary of the Interior, transmitting, pursuant to law, the Department's calendar year 1980 report on activities under the Freedom of Information Act; to the Committee on the Judiciary.

EC–1450. A communication from the Executive Director of the Pennsylvania Avenue Development Corporation, transmitting, pursuant to law, the Corporation's calendar year 1980 report under the Freedom of Information Act; to the Committee on the Judiciary.

EC–1451. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a followup report relative to recommendations made to the President by the National Advisory Council on the Education of Disadvantaged Children; to the Committee on Labor and Human Resources.

EC–1452. A communication from the Secretary of Education, transmitting, pursuant to law, a publication entitled "Research in Education of the Handicapped"; to the Committee on Labor and Human Resources.

EC–1453. A communication from the Special Assistant to the Secretary of Defense, transmitting, pursuant to law, a report on Department of Defense procurement from small and other business firms for October-November 1980; to the Committee on Small Business.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources, without amendment:

S. 1278. A bill entitled the "Saccharin Study and Labeling Act Amendments of 1981" (Rept. No. 97–140).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

John J. Knapp, of New York, to be General Counsel of the Department of Housing and Urban Development.

NOMINATION PLACED ON THE CALENDAR

Mr. BAKER. Mr. President, I ask unanimous consent that the nomination of Robert Brown to be Inspector General for the Department of State, presently in the Committee on Governmental Affairs, be immediately discharged and then placed on the Executive Calendar.

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

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. HELMS (for himself, Mr. HUDDLESTON, Mr. DOLE, Mr. ANDREWS, Mr. BOREN, and Mr. ZORINSKY):

S. 1395. A bill to extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1982, and to eliminate the requirement that the Secretary of Agriculture waive interest on loans made on 1980 and 1981 crops of wheat and feed grains placed in the farmer-held grain reserve; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOLE:

S. 1396. A bill for the relief of Julia Irene Moore; to the Committee on the Judiciary.

By Mr. BOREN:

S. 1397. A bill conferring jurisdiction on the Court of Claims to hear, determine, and render judgment on a claim of the Seminole Nation of Oklahoma; to the Committee on the Judiciary.

By Mr. DURENBERGER:

S. 1398. A bill to amend the Revenue Act of 1978 with respect to foreign tax credit adjustments for capital gains; to the Committee on Finance.

By Mr. DODD (for himself, Mr. DOLE, Mr. QUAYLE, and Mr. GRASSLEY):

S. 1399. A bill to encourage equitable contracts between sales representatives and their principals; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE:

S. 1400. A bill for the relief of Ms. Marlene Sabina Lajola; to the Committee on the Judiciary.

By Mr. RANDOLPH:

S. 1401. A bill for the relief of Emmanuel F. Hipolito, M.D.; to the Committee on the Judiciary.

By Mr. CANNON:

S. 1402. A bill to establish uniform National standards for the continued regulation, by the several States, of commercial motor vehicle width and length on interstate highways; to the Committee on Commerce, Science, and Transportation.

By Mr. MOYNIHAN:

S. 1403. A bill to amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges; to the Committee on the Judiciary.

S. 1404. A bill to require that all human subjects used in experiments conducted by or for the Department of Defense be informed of the nature of the experiments and that a research review board make a written certification that such subjects have freely given their informed consent to participate in the experiments, and for other purposes; to the Committee on Armed Services.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HELMS (for himself, Mr. HUDDLESTON, Mr. DOLE, Mr. BOREN, Mr. ANDREWS, and Mr. ZORINSKY):

S. 1395. A bill to extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1982, and to eliminate the requirement that the Secretary of Agriculture waive interest on loans made on 1980 and 1971 crops of wheat and feed grains placed in the farmer-held grain reserve; to the Committee on Agriculture, Nutrition, and Forestry.

REFERENDUM WITH RESPECT TO NATIONAL MARKETING QUOTA FOR WHEAT

Mr. HELMS. Mr. President, on behalf of myself and Senator HUDDLESTON, Senator DOLE, Senator BOREN, Senator ANDREWS, and Senator ZORINSKY, I am introducing a bill to extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1982, and to eliminate the requirement that the Secretary of Agriculture waive interest on loans made on 1980 and 1981 crops of wheat and feed grains placed in the farmer-held grain reserve.

Mr. President, the measure we are introducing today would resolve two matters now pending in the agricultural sector which are quite important and timely.

One is to extend the time period for conducting a national referendum on wheat marketing quotas. In effect, this action would avert the necessity of conducting a costly and unneeded referendum by USDA.

The second matter is to repeal the mandatory interest waiver on loans for 1980 and 1981 crops of grain placed in the farmer-owned reserve program. Such a step is necessary so that the farmer-owned reserve may be opened for the immediate entry of 1981 crop wheat, which is even now being harvested.

WHEAT REFERENDUM

Our bill will extend the deadline for conducting a referendum on wheat marketing quotas to October 15, 1981, or 30 days after Congress adjourns, whichever is sooner.

Permanent legislation, which requires that a referendum on annual wheat marketing quotas be conducted by August 1, has been suspended by successive farm bills since 1970. The current farm bill expires this year, and the 1981 act now pending before the Senate will again suspend the requirement for quotas and a referendum. However, if the 1981 act is not enacted before August 1, USDA will be required to proceed with the referendum even though the results will probably be rendered moot. The Department of Agriculture estimates that the total cost of preparing for and conducting the referendum would be about $4.8 million.

The legislation we are proposing today extends the August 1 deadline so that there is a reasonable time period for Congress to consider the farm bill, and so that a costly and unnecessary referendum could be avoided. This measure is similar to legislation passed June 17, 1977, which postponed the wheat referendum that was scheduled for August 1, 1977. The administration has recommended enactment of legislation similar to this provision of the bill.

The time and money which such a referendum would consume would be better invested in dealing directly with the problems facing wheat farmers.

MANDATORY INTEREST WAIVER

In addition, our bill will repeal the requirement in current law that interest be waived on loans for 1980 and 1981 crop grain placed in the farmer-owned reserve program.

This provision is similar to S. 947 which was recommended by the administration. It has already been approved by the Senate Committee on Agriculture, Nutrition, and Forestry as part of the budget reconciliation process. However, this action needs to be taken immediately, without waiting for the budget process to be completed.

Secretary of Agriculture John Block has assured us that, as soon as the mandatory interest waiver on reserve loans is repealed, farmers would be allowed to enter 1981 crop wheat directly into the farmer-owned reserve. I commend Secretary Block for his decision. Without immediate entry, farmers would be forced to keep their grain out of the reserve during the next several months. Between now and October 31, under existing law, if large free stocks of grain depress market prices below target price levels, significant Government outlays in the form of deficiency payments would result.

The Secretary's action on the reserve should provide stronger prices for farmers in the marketplace and avoid the prospect of costly deficiency payments. In order for the reserve to function in this way, however, the mandatory interest waiver must be repealed, and there is no time to lose. Wheat harvest is already well underway across the South Central United States.

Both provisions of this legislation are timely and of benefit to the farmer and the taxpayer. I encourage my colleagues to expedite action on this measure in the Senate.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

S. 1395

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 336 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1336) is amended by striking out the last sentence and inserting in lieu thereof a new sentence as follows: "Notwithstanding any other provision hereof, the referendum with respect to the national

marketing quota for wheat for the marketing year beginning June 1, 1982, may be conducted not later than the earlier of the following: (1) thirty days after adjournment sine die of the first session of the Ninety-seventh Congress, or October 15, 1981.".

SEC. 2. Section 110(b) of the Agricultural Act of 1949 (7 U.S.C. 1445e(b)) is amended by deleting in clause (3) of the second sentence the phrase ", and the Secretary shall waive such interest on loans made on the 1980 and 1981 crops of wheat and feed grains".

By Mr. BOREN:

S. 1397. A bill conferring jurisdiction on the Court of Claims to hear, determine, and render judgment on a claim of the Seminole Nation of Oklahoma; to the Committee on the Judiciary.

CLAIM OF THE SEMINOLE NATION OF OKLAHOMA

● Mr. BOREN. Mr. President, I am today reintroducing legislation to confer jurisdiction on the U.S. Court of Claims to adjudicate a longstanding claim of the Seminole Nation of Oklahoma.

The history of this claim has been well summarized in a brief prepared by Mr. Paul Niebell, counsel for the Seminole Nation. In order that my colleagues may become familiar with the basis of the claim, I ask unanimous consent the text of Mr. Niebell's brief, together with the text of the bill, be printed in the RECORD.

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

S. 1397

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding sections 2401 and 2501 of title 28, United States Code, and section 12 of the Act of August 13, 1946, as amended (50 Stat. 1049, 1052; 25 U.S.SC. 70k), or other provision of law, or decisions of any court, commission, or other agency of the United States, jurisdiction under the provisions of section 2, clause 5 of the Indian Claims Commission Act of August 13, 1946, as amended (60 Stat. 1049, 1050; 25 U.S.C. 70a), and under the other pertinent provisions of said Act, is hereby conferred upon the United States Court of Claims to hear, determine, and render final judgment on the claim of the Seminole Nation of Oklahoma for the amount, if any, due and owing to the said Seminole Nation of Oklahoma for the loss of its vested interests in one-half of all minerals underlying allotted Seminole lands in Oklahoma, and its vested interest in one-half of all royalties on all minerals produced from said Seminole lands, reserved to said Seminole Nation in the Seminole Agreement negotiated by the United States with said Seminole Nation of Oklahoma, dated December 16, 1897, and ratified by Congress by Act of July 1, 1898 (30 Stat. 567); and which vested interest was divested by the passage of section 11 of the Act of May 27, 1908 (35 Stat. 312), without the knowledge and consent of said Seminole Nation of Oklahoma.

MEMORANDUM RE: MINERAL RIGHTS CLAIM OF THE SEMINOLE NATION BY PAUL M. NIEBELL

The Seminole Nation was one of the Five Civilized Tribes that were forcibly removed by the United States from what were their ancestral homes east of the Mississippi River in the 1830s and settled in what was then Indian Territory, now a part of the State of Oklahoma. In their several treaties these tribes were granted the fee simple title to their lands in the West, the right of self-government, and solemnly guaranteed that their western lands would never be included in any State or Territory of the United States without their full and free consent (Art. 4, Treaty of Aug. 7, 1856, 11 Stat. 699).

However, the United States changed its policy towards these tribes in the early 1980s, and by Act of March 3, 1893 (27 Stat. 645), created the Dawes Commission to treat with these tribes for the division of their tribal estates among their members, with the ultimate purpose of creating a State of the Union which would embrace their lands. These tribes were reluctant to give up their own customs and way of life, and adopt the customs and laws of the white man, and for some years refused to treat with the United States.

Finally in 1897 (30 Stat. 567) an Agreement was made between the Seminole Nation and the United States by the terms of which the Seminoles agreed to give up their tribal fee simple title and allot the tribal lands to the individual members of the tribe. Certain provisions beneficial to the Indians were agreed to by the United States and were included in the Seminole Agreement. These provisions were:

"No lease of any coal, mineral, coal oil, or natural gas within said Nation shall be valid unless made with the tribal government, by and with the consent of the allottee and approved by the Secretary of the Interior.

"Should there be discovered on any allotment any coal, mineral, coal oil, or natural gas, and the same should be operated so as to produce royalty, one-half of such royalty shall be paid to such allottee and the remaining half into the tribal treasury until extinguishment of tribal government, and the latter shall be used for the purpose of equalizing the value of allotments; and if the same be insufficient therefor, any other funds belonging to the tribe, upon extinguishment of tribal government, may be used for such purpose, so that each allotment may be made equal in value as aforesaid."

The purpose of the above provisions was (1) to maintain tribal control over the mineral leases of said lands and thus afford protection to the individual allottees; and (2) to reserve to the tribe one-half of the royalty on minerals produced from the allotted lands for use in equalizing as nearly as possible the value each member of the tribe would receive from the tribal estate. Oil had been discovered in the Indian Territory before the Seminole Agreement was executed, and the Seminole delegates realized that some allottees may have oil under their allotments, and others would not. So one-half of the mineral royalties were to be placed into the tribal treasury so that the tribal officials could make adjustment in the value of the allotments of those members who were not fortunate enough to have oil deposits under their allotments.

By Section 28 of the Act of April 26, 1906, 34 Stat. 137, 148, the tribal existence of the Five Civilized Tribes and their tribal governments were continued in full force and effect for all purposes authorized by law, until otherwise provided by law.

In order to protect the Seminole allottee in the possession of his allotment, Section 8 of the Act of March 3, 1903, (32 Stat. 982, 1008), restricted the inalienability to the lifetime of the allottee, not exceeding 21 years from the date of the deed for the allotment.

In 1908 Congress had before it several bills to remove restrictions on the alienation of allotted lands of the Five Civilized Tribes in Oklahoma. H.R. 15641 was one of these bills. During hearings before the House Committee on Indian Affairs Indian representatives opposed this legislation. However, the House passed the bill without any reference to the Seminole mineral rights reserved to the Seminole Nation under the Seminole Agreement.

The Senate Committee on Indian Affairs held hearings on H.R. 15641, and recommended its passage with certain amendments. An amendment, adopted by the Senate, provided: "and all royalties hertofore accrued or hereafter arising from mineral leases by Seminole allottees heretofore or hereafter made shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative to whom such royalties shall hereafter belong; * * *"

The above amendment applied to the one-half interest in the mineral royalties reserved to the Seminole allottee, but did not apply to the one-half interest in such mineral royalties reserved to the Seminole Nation in the Seminole Agreement for equalization purposes.

Because of difference in the House and Senate versions the bill went to conference. The above Senate amendment was altered in conference to read as follows:

"That all royalties arising on and after July 1st, Nineteen Hundred and Eight, from mineral leases of allotted Seminole lands heretofore or hereafter made, which are subject to the supervision of the Secretary of the Interior, shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative, to whom such royalties shall thereafter belong; and no such lease shall be made after said date except with the allottee or owner of the land: *Provided:* That the interest of the Seminole Nation in leases or royalties arising thereunder on all allotted lands shall cease on June thirtieth, Nineteen Hundred and Eight."

The conference report of the House explained the change as follows:

"The main changes are as follows . . . Another provision provides for the disposal of the moneys arising from the rental of mineral lands in the Seminole Indian Reservation for the benefit of the Seminole Indians . . ."

The conference report tendered to the Senate was:

"Amendment No. 38 provides for the disposal of the moneys received as royalties under mineral leases of the lands in the Seminole Nation."

The Senate amendment, as altered in conference, became Section 11 of the Act of May 27, 1908, 35 Stat. 312, 316. This provision effectively destroyed the vested reserved right of the Seminole Nation to its one-half interest in the mineral royalties reserved to the Seminole Nation in the 1898 Seminole Agreement. This was done without the knowledge and consent of the Seminole Nation.

The Commissioner of Indian Affairs admitted in his 1908 report to the Secretary of the Interior that he initiated and secured this change in the provisions of the 1897 Seminole Agreement.

In a suit filed by the Seminole Nation before the Indian Claims Commission under the fair and honorable dealing jurisdiction of the Indian Claims Commission Act (Section 2, Clause 5, Act of August 13, 1946, 60 Stat. 1049), the Commission made findings of fact and entered a fully documented opinion on June 24, 1966 (17 Ind. Cl. Comm. 67-96), finding and holding that the United States was liable to the Seminole Nation for the wrongful action of the Commissioner of Indian Affairs, and the three Commissioners unanimously found (17 Ind. Cl. Comm. 67, 74-75):

"9. * * * Further, the Commissioner of Indian Affairs did not advance the entire Section 11 as whole before the Senate Committee on Indian Affairs, but offered the proviso separately and surreptitiously at a stage in the proceedings where no minutes were being maintained and where consequent debate was unlikely. And finally, the section

and proviso were apparently offered as a mere correction of a minor inconsistency and not as a major and far-reaching unilateral change in an existing agreement of treaty stature.

"10. This Commission concludes that the Commissioner of Indian Affairs must bear the onus for the sequence of events set out above and in the concurrent opinion this day issued, and that the defendant is ultimately responsible for the actions of its servant, the Commissioner of Indian Affairs. The acts of the Commissioner of Indian Affairs which underly the liability include the sequential offering of Section 11 and its proviso upon occasions when the Seminole Nation would be least able to counteract the offer; failure to afford the Seminole Nation any opportunity to be heard on the subject; and misrepresentation of the measure as a mere correction of a minor inconsistency. These acts were inconsistent with the concept of fair and honorable dealings contemplated by Clause 5 of Section 2 of the Indian Claims Commission Act of 1946."

In its interlocutory order the Commission directed "that the instant suit proceed on the single issue of proof of actual damages suffered by the Seminole Nation itself, as a direct consequence of the wrongful act of the defendant."

Under the Act of April 10, 1967, 81 Stat. 11, the tenure of office of the then three Commissioners of the Indian Claims Commission was terminated, and there was a complete change in the membership of the Commission, and the Commission was enlarged to five new members.

On March 10, 1969 evidence was presented to the new Commissioners of the actual damages suffered by the Seminole Nation as a result of the wrongful action of the defendant, as directed by the 1966 findings and opinion of the Commission. Instead of determining these damages, on May 31, 1972 (28 Ind. Cl. Comm. 117), a majority of the new Commissioners (three), rendered an opinion, omitting the detailed facts upon which the 1966 decision of the Commission upholding liability was based, and withdrawing the 1966 decision, and dismissing the petition in this case. The two dissenting Commissioners joined in a dissenting opinion written by Commissioner Blue, which stated in part as follows (28 Ind. Cl. Comm. 132, 135–136):

"The majority opinion is now vacating the 1966 interlocutory order and is dismissing the petition.

"In my opinion the findings of fact and opinion expressed by this Commission in 1966, in this case, are proper and justified, and should not be vacated or set aside."

* * * * *

"The majority relies to some extent on the two Court cases: *Fish* v. *Wise*, 52 F.2d 544 (10th Cir. 1931), *cert. denied*, 284 U.S. 688 (1932), and *Moore* v. *Carter Oil Co.*, 43 F.2d 322 (10th Cir. 1930), *cert. denied*, 282 U.S. 903 (1931).

"I don't think either of the above cases is applicable in the case before the Commission. Both cases were decided prior to the establishment of the Indian Claims Commission.

"The 1966 Commission's opinion followed an extensive inquiry; it was well reasoned and just. I do not think it should be vacated or set aside. We should proceed to consider the extent of the actual damages, if any, the Seminole Nation suffered."

An appeal to the Court of Claims failed, and the Supreme Court denied a petition for a writ of certiorari.

It is significant to notice that 5 out of 8 Indian Claims Commissioners who passed upon the facts in this case determined the issue of liability in favor of the Seminole Nation.

In their Memorial to Congress of January 6, 1930, the Seminoles reviewed the facts relative to their claim, and stated that "over 90 per cent of them have, by this action, been deprived of any participation in the value of the royalties arising to which they were entitled."

Honorable Joseph M. Dixon, First Assistant Secretary of the Interior, in a Memorandum, dated June 21, 1930, reviewed the facts relative to this claim of the Seminole Nation, and the above Seminole Memorial, and stated in part:

"I submit my differing 'memorandum' under the belief that a gross injustice was originally done the Seminole Indians by the allotment act of May 27, 1908.

"I have reread the proceedings in the House and Senate at the time the bill was passed, and also the conference committees' reports to the two Houses on that legislative item, so profoundly affecting the Seminole Indians, and have no hesitancy in saying that in the conference report on the Seminole bill, May, 1908, the conferees had no parliamentary or legal right to insert a new item in the bill which had not been agreed to or passed by either the Senate or the House, but evidently in the pressure of legislative business at the time, it was agreed to by both Houses without any real knowledge of what the ultimate intent or effect would be.

"I have no doubt that this legislation embodied in the conferees' report was enacted without the knowledge or consent of the Seminole Indians themselves, and that it in effect dispossessed the Seminole Indians of great mineral wealth, in which they had the undisputed legal title as owners of the land by purchase with their own moneys 40 years before.

"I have no doubt that Congress even under its plenary powers had no moral right to thus dispossess the Seminole Indians of this great mineral wealth."

* * * * *

"It has been suggested that Congress had the authority to enact the provisions of Section 11 of the Act of May 27, 1908, under the plenary power and authority of Congress over Indian tribal relations and property and various cases are cited. The cases cited confirm the administrative power of Congress, but nowhere does it appear that they confirm the power of Congress to divest the Indian of his property and give it to others without his consent and without adequate compensation, and this is the point of the present controversy upon which the Seminoles seek a decision of the Supreme Court of the United States."

The facts relative to the passage of Section 11 of the 1908 Act cannot be disputed, and are fully set forth in the original unanimous 1966 findings and opinion of the Indian Claims Commission, and are fully documented to the original sources where they are found.

The Seminole Nation respectfully requests that Congress take such action it seems necessary to settle finally this valid claim, and to compensate the Seminole Nation for the loss resulting to it and resulting from the wrongful action of the United States, its guardian, as set forth above.●

By Mr. DURENBERGER:

S. 1398. A bill to amend the Revenue Act of 1978 with respect to foreign tax credit adjustments for capital gains; to the Committee on Finance.

FOREIGN TAX CREDIT ADJUSTMENTS FOR CAPITAL GAINS

● Mr. DURENBERGER. Mr. President, I am introducing a bill in the nature of a technical correction relating to the determination of foreign source income, where one corporation realizes gain from the disposition of stock in a second corporation.

Mr. President, prior to the Tax Reform Act of 1976, it had been impossible for a domestic corporation to increase the limitation on allowable foreign tax credits by selling at a location outside the United States the stock of a second corporation. The capital gain on that sale was treated as foreign source income even though the corporation whose stock was disposed of derived all or substantially all its income from sources in the United States instead of from foreign sources.

In order to deal with this situation, the Tax Reform Act of 1976 amended code section 904 to provide that the gain from disposition of the stock of the second corporation would be U.S. source income unless, first, the stock was sold in the foreign country where the second corporation had derived more than 50 percent of its income for the immediately preceding 3 years, or second, the stock was sold in a foreign country that imposed at least a 10-percent tax on the gain from disposition of the stock, section 904 (b) (3) (C).

There is no apparent reason why gain from the disposition of stock of a corporation which derives most of its income from foreign sources should be treated as U.S. source income. Indeed, so long as the underlying earnings and earnings potential which give the stock its value are foreign source, it is only logical that gain on disposition of the stock should be treated as foreign source income also. This is true whether or not the corporation whose stock is sold may, by happenstance, have derived more than 50 percent of its income in one particular foreign country.

It is, for example, illogical to treat as foreign source income the gain from disposition of stock of a corporation which derived 51 percent of its income in foreign country A and 49 percent in the United States; and not to treat as foreign source income gain from the disposition of stock in a corporation which derived 100 percent of its income from sources outside the United States—one-third in each of foreign countries A, B, and C. Obviously, the gain should be foreign source in any case where the corporation whose stock is sold derived more than 50 percent of its income from sources outside the United States.

It is also obviously the case that there is no necessity to require that the country where the stock is sold impose at least a 10-percent tax on the gain. Capital gain taxes in foreign countries are usually less than in the United States and in some cases nonexistent. In those cases, a difference in the characterization of income based on the nominal distinction between a 10-percent and a 9-percent rate, or even a zero rate, is purely arbitrary.

In other cases, however, the capital gain tax rate in the country where the corporation derives most of its income may be higher than the U.S. rate. There is no rational reason for requiring a U.S. corporation to pay the highest possible foreign tax rate on the sale, or to make the sale in a country which imposes a tax of at least 10 percent. In both cases, the effect is merely to increase tax payments by U.S. taxpayers to foreign countries and to increase the amount of available foreign tax credit.

These defects in the Tax Reform Act of 1976 were recognized and partially

corrected by title VII of the Revenue Act of 1978, which dealt with technical corrections to the Tax Reform Act of 1976. Section 701(u)(2)(C) of the 1978 act added code section 904(b)(3)(D), which corrected the 1976 act insofar as concerns gain from the disposition of stock in a liquidation. Section 904(b)(3)(D) in effect provides that gain from the disposition of stock by means of liquidation of a foreign corporation will be treated as foreign source income if the liquidated corporation derived more than than 50 percent of its income from foreign sources for the immediately preceding 3 years.

This correction of the 1976 act eliminated the requirement that the corporation have derived more than 50 percent of its income in any one particular foreign country and eliminated the requirement that at least a 10-percent tax have been paid in the foreign country where the liquidation occurred. As previously discussed, section 904(b)(3)(D) represents the correct rule for determining the source of gain from the disposition by one corporation of stock of a foreign corporation outside the United States. Because the amendment made by the 1978 act was a technical correction of the 1976 act, it was made effective as of the effective date of the provision in the 1976 act which it corrected; that is, taxable years beginning after Deccember 31, 1975.

The 1978 act failed, however, to correct the 1976 act insofar as concerns gains from the disposition of stock in a foreign corporation when that disposition is in the form of a sale of stock instead of a liquidation. There is no apparent distinction between a liquidation of a corporation and a sale of at least 80 percent of the stock of the corporation. The same rule, the one provided by the technical correction in the 1978 act, should apply in both situations.

Mr. President, this bill amends section 701(u)(2)(C) of the 1978 act to provide that a sale of at least 80 percent of all classes of stock of a corporation would be treated the same as a liquidation.

Mr. President, I 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. 1398

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 701(u)(2)(C) (relating to foreign tax credit adjustments for capital gains) of the Revenue Act of 1978 is amended—

(i) by inserting "AND GAIN FROM SALE OF STOCK OF CERTAIN FOREIGN SUBSIDIARIES" after "GAIN FROM LIQUIDATION OF CERTAIN FOREIGN CORPORATIONS";

(ii) by inserting "either" after "shall not apply with respect to";

(iii) by inserting "or a sale of at least 80 percent of the total number of shares of all classes of stock of a foreign corporation," after "to which part II of subchapter C applies"; and

(iv) by inserting "or sale" after "during which the distribution".

(b) EFFECTIVE DATE.—The amendments made by section (a) shall apply to taxable years beginning after December 31, 1975.●

By Mr. DODD (for himself, Mr. DOLE, Mr. QUAYLE, and Mr. GRASSLEY):

S. 1399. A bill to encourage equitable contracts between sales representatives and their principals; to the Committee on Commerce, Science, and Transportation.

SALES REPRESENTATIVES PROTECTION ACT

● Mr. DODD. Mr. President, today I am pleased to introduce the Sales Representatives Protection Act in the U.S. Senate. Identical language was introduced in the House of Representatives on May 7, 1981 as H.R. 3496. At present, H.R. 3496 has 126 cosponsors.

Last year, similar legislation was introduced in the House as H.R. 5099 and gained 158 cosponsors.

The Sales Representatives Protection Act establishes criteria for provisions which must be included in written contracts between sales representatives and the manufacturers whom they represent. By making explicit the rights, duties, and obligations of the parties to the written contract, this act will protect sales representatives from unfair and sudden separation from accounts which they have spent considerable time and money developing.

Sales representatives operate at a number of disadvantages not faced by most workers. Usually, they are not covered by their firm's retirement plans. Workmen's and unemployment compensation is usually not available. They spend long hours on the highway, facing ever-increasing fuel costs and the risk of accidents. And they depend on commissions, which rise and fall with their business volume, rather than a predictable salary, in order to live.

This bill will provide a measure of protection for sales representatives who also live with the fear of arbitrary and capricious separation from the major sources of their livelihood.

It should be pointed out that, while the Sales Representatives Protection Act sets general standards for written contracts, it does not require that any specific terms be included. The terms of the contract are still left up to the parties to the contract. Nor does this bill even require that a written contract be entered into.

No new agency will be created, and no new costs will be imposed on the Federal Government, by passage of this act. As a matter of fact, it is entirely likely that, to the extent that compliance with this act clarifies any agreement between the parties to a contract, any litigation which may result from disputes between the parties will be carried out more quickly and efficiently.

For the information of all interested persons, I ask unanimous consent that the text of this legislation and a summary of its provisions which was prepared by the Bureau of Wholesale Sales Representatives, a major supporter of this legislation, be included in the RECORD.

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

S. 1399

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sales Representatives Protection Act".

STATEMENT OF FINDINGS

SEC. 2. The Congress hereby finds that—

(1) sales representatives invest their own time, resources, and skills in the development of their territories and markets for their principals;

(2) many sales representatives are compensated primarily by commission and do not generally have the benefits of collective bargaining, workmen's compensation, unemployment compensation, company-sponsored retirement, or pension plans;

(3) many sales representatives are subjected to wrongful termination from their accounts, reduction in the size of their sales territories, conversion of their accounts to house accounts serviced directly by their principals, and other abuses which deny them the full benefits of their labor;

(4) there are significant inconsistencies in the construction and application of the laws of the several States as they apply to relationships between principals and sales representatives and the termination of such relationships; and

(5) it is in the public interest to encourage the development of equitable contracts between sales representatives and their principals and for principals to provide reasonable compensation to sales representatives who are wrongfully terminated.

DEFINITIONS

SEC. 3. For purposes of this Act:

(1) The term "account" means a wholesaler, retailer, contractor, or other business establishment—

(A) which purchases any merchandise of a principal through a sales representative for resale; and

(B) to which the sales representative solicited orders on behalf of the principal for a period of not less than eighteen months immediately preceeding the termination of the sales representative by the principal.

(2) The term "commerce" means trade, traffic, transmission, communication, or transportation—

(A) between a place in a State and any place outside the State; or

(B) which affects trade, traffic, transmission, communication, or transportation described in subparagraph (A).

(3) The term "good cause" means—

(A) conduct on the part of a sales representative with respect to the principal of the sales representative which constitutes—

(i) dishonesty, fraud, or other illegal activity;

(ii) a material breach of the contract between the sales representative and the principal;

(iii) failure to put forth a good faith effort to obtain orders for the merchandise of the principal;

(iv) gross negligence in the performance of the duties of the sales representative; or

(B) a marketing area withdrawal.

(4) The term "marketing area withdrawal" means the withdrawal of merchandise, or a line of merchandise, directly or indirectly, by a principal from a particular marketing area during a continuous period of at least one year.

(5) The term "principal" means any person who—

(A) engages in the business of manufacturing, producing, assembling, or importing merchandise for sale in commerce to an account which purchases the merchandise for resale;

(B) utilizes sales representatives to solicit orders for the merchandise; and

(C) compensates the sales representatives, in whole or in part, by commission.

(6) The term "sales representative" means any person (other than an agent-driver or commission-driver) who engages in the business of soliciting, on behalf of a principal, orders for the purchase at wholesale of the merchandise of the principal.

(7) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

TITLE I—CONTRACTS BETWEEN SALES REPRESENTATIVES AND PRINCIPALS

CONTRACT TERMS

SEC. 101. (a) Any written contract conforming to this title between a sales representative and a principal under which the sales representative solicits orders for the merchandise of the principal shall—

(1) specify the rate of commission or any other form of compensation to be paid by the principal to the sales representative;

(2) specify the minimum term of the contract;

(3)(A) specify, in accordance with subsection (b)(1), the number of days of written notice the principal shall give the sales representative before terminating or failing to renew the contract without good cause; or

(B) specify, in accordance with subsection (b)(2), the amount of payment which shall be made in lieu of the written notice pursuant to subparagraph (A);

(4) specify the number of days of written notice, or the amount of payment which shall be made in lieu of written notice, the principal shall give the sales representative before the principal effects a marketing area withdrawal;

(5) include a description of the sales territory assigned to the sales representative and a statement of whether the territory will be an exclusive territory of the sales representative with respect to the merchandise, or line of merchandise, of the principal;

(6) include provisions relating to the ownership of any samples furnished by the principal to the sales representative for use in business;

(7) specify the number of days after an order for the merchandise of the principal is transmitted to the principal within which the principal shall notify the sales representative whether the order has been accepted or rejected;

(8) include terms under which the sales representative will receive copies of shipping documents which relate to merchandise shipped by the principal to an account of the sales representative; and

(9) include terms under which the sales representative will be allowed to solicit orders for the merchandise of other principals.

(b)(1) The notice specified in subsection (a)(3)(A) shall not be less than thirty days for each year the sales representative involved has solicited the account involved, except that the notice shall not exceed a maximum of not less than ninety days.

(2) The payment specified in subsection (a)(3)(B) shall be paid not later than thirty days following the date of the termination involved. Such payment shall not be less than one-twelfth of the average annual compensation of the sales representative for the period during which the sales representative solicited the account during the preceding five years, multiplied by the lesser of (A) the total number of years that the sales representative solicited the account; or (B) three years.

DUTIES OF PRINCIPAL

SEC. 102. Any principal who enters into a contract with a sales representative under which the sales representative shall solicit orders for the merchandise of the principal shall—

(1) inform the sales representative, within a reasonable time to be specified in the contract, of the receipt of each order by the principal from an account of the sales representative;

(2) furnish the sales representative, within a reasonable time to be specified in the contract, copies of all invoices and credit memorandums issued with respect to sales in any assigned geographic territory of the sales representative;

(3) furnish the sales representative monthly statements of commissions due the sales representative; and

(4) provide to the sales representative, upon the written request of the sales representative—

(A) an accounting showing each sale made by the principal in the preceding twelve months in any assigned geographic territory of the sales representative, except that such accounting may not be required more frequently than once during each twelve-month period;

(B) information with respect to any specific matter which is related to any claim by the sales representative against the principal for a commission; and

(C) access to the records of the principal for the purpose of verifying specific information supplied under subparagraphs (A) and (B).

TITLE II—INDEMNIFICATION

EXEMPTION FROM INDEMNIFICATION REQUIREMENTS

SEC. 201. No action for indemnification under this Act may be brought by a sales representative against a principal if the sales representative and the principal have entered into a written contract which conforms with the requirements established in title I.

INDEMNIFICATION REQUIREMENTS

SEC. 202. (a) Any principal who, without good cause, terminates a sales representative from an assignment to solicit orders on behalf of the principal shall indemnify the sales representative in accordance with section 203.

(b)(1) Any principal who—

(A) reduces, without good cause, the size of the geographical territory assigned to a sales representative; or

(B) reduces the rate of commission paid to a sales representative; or

(C) reduces the number of accounts assigned to a sales representative within a geographical territory;

shall be subject to the requirements established in paragraph (2).

(2) Any principal who carries out any reduction specified in subparagraph (A), (B), or (C) of paragraph (1) shall indemnify the sales representative involved in accordance with section 203 if—

(A) any such reduction (or any combination of such reductions) results in a decrease in the dollar amount of commissions paid by the principal to the sales representative for the twelve-month period following such reduction or combination of reductions; and

(B) such decrease is equal to or greater than twenty-five per centum of the dollar amount of commissions paid by the principal to the sales representative for the twelve-month period immediately preceding such reduction or combination of reductions.

(3) The calculation of any decrease in the dollar amount of commissions paid by a principal to a sales representative under paragraph (2) shall disregard any portion of such decrease which is directly attributable to nonperformance of the sales representative, an act of God, an act of war or insurrection, a strike, or an action by any agency of government.

COMPUTATION OF INDEMNITY

SEC. 203. Any principal required under section 202 to indemnify a sales representative for the loss or reduction of commissions from any account shall be liable to the sales representative in an amount equal to one-sixth of the average annual compensation of the sales representative for the period during which the sales representative solicited any such account during the preceding five years, multiplied by the total number of years (not to exceed ten years) that the sales representative solicited any such account.

PAYMENT OF INDEMNITY RESULTING FROM SETTLEMENT

SEC. 204. (a) Following the making of a binding agreement to settle a claim by a sales representative against a principal for an indemnity under this title, and before any action is brought under section 301(a), the principal involved—

(1) shall pay the amount of the settlement to the sales representative not later than thirty days after the date of the agreement; or

(2) if the amount of the settlement is greater than $3,000, may elect to pay the amount in the manner specified in paragraph (1) or in the manner specified in subsection (b).

(b)(1) A principal electing under subsection (a)(2) to pay the amount of a settlement in excess of $3,000 under this subsection shall pay not less than 40 per centum of the amount to the sales representative not later than thirty days after the date of the agreement.

(2) The principal also shall, at the time of the payment specified in paragraph (1), give the sales representative two negotiable notes, each for one-half of the balance of the amount of the settlement. One such negotiable note shall (A) be due not later than twelve months after the date of the agreement; and (B) bear interest at the highest rate of interest paid by the United States on notes issued by it during any three-day period including such date.

(3) The second such negotiable note shall (A) be due not later than 24 months after the date of the agreement; and (B) bear interest at the highest rate of interest paid by the United States on notes issued by it during any three-day period including such date.

(c) Nothing in this section shall restrict or invalidate any right or remedy established in sections 301 and 303.

TITLE III—MISCELLANEOUS PROVISIONS

PROCEDURAL REQUIREMENTS

SEC. 301. (a) An action to enforce any rights or liabilities created by this Act may be brought in a district court of the United States without regard to the amount in controversy or in any other court of competent jurisdiction.

(b) In the case of an action arising under this Act which is brought in a district court of the United States, the action may be brought in the judicial district where all the plaintiffs reside in addition to any other judicial district provided by law.

(c) No action may be brought under this Act later than six years after the right to the action arises.

(d) In any action brought by any sales representative against any principal under this Act, the burden of proof on the issue of whether the principal acted without good cause shall rest on the principal.

(e) In any successful action brought by a sales representative under this Act, the court may award reasonable attorney fees and the cost of the action to the sales representative.

(f) Payment of indemnification under this Act shall be deemed to be a payment of wages and salary under section 507(a)(3) and (4) of title 11, United States Code.

(g) The right to indemnification arises on the date the principal has completed the actions specified in section 202 and does not terminate upon the death of the sales representative.

WAIVER PROHIBITED

SEC. 302. Any provision in any contract between any sales representative and any principal requiring the sales representative to waive any of the provisions of this Act shall be void.

EFFECT ON STATE LAW

SEC. 303. Nothing in this Act shall invalidate or restrict any right or remedy of any sales representative under the law of any State.

SUMMARY OF THE SALES REPRESENTATIVES PROTECTION ACT (SRPA)

The purpose of SRPA is to make available a federal remedy for sales representatives in interstate commerce who presently must endeavor to traverse a maze of inconsistent and conflicting state laws. SRPA requires no budgetary appropriation, no funding, and no involvement of any federal agency. Enactment would not increase the cost of government.

SRPA's remedy is a claim to an indemnity that may be adjudicated under limited conditions and only where the sales representative has represented the principal for at least 18 months. The remedy is not available where the parties have entered into a conforming written agreement. A conforming agreement must provide for a minimum of 30 days notice for each year of representation up to a maximum of 90 days notice where the relationship is terminated without good cause. Other items to be negotiated by the parties and addressed in a conforming contract are:

Commission rate
Term of the contract
Territory assigned
Ownership of samples
Time period to accept or reject an order
When shipping documents are to be furnished
Whether or not additional lines may be carried.

Under such a contract, the principal must inform the sales representative of receipt of orders, furnish copies of invoices, credit memos, and monthly statements of commissions due, and, upon request of the sales rep, provide an annual accounting and access to the records.

If a contract conforming to the first paragraph was not negotiated, any principal who

1. terminates a sales rep without good cause, or who
2. causes a decrease in the sales rep's earnings of 25% or more by
   a. reducing the sales rep's territory
   b. converting accounts serviced by the sales representative to house accounts, or
   c. reducing the commission rate

is subject to a claim for indemnity. To calculate the indemnity, determine the sales rep's average annual commissions earned by soliciting the lost accounts or commission for the principal for the past 5 years; divide by 6 and multiply by the number of years (not to exceed ten) that the sales rep solicited the accounts on behalf of the principal.

If a written contract conforms to the provisions noted in the first paragraph, an indemnity claim is not available to the sales representative.●

By Mr. CANNON:

S. 1402. A bill to establish uniform national standards for the continued regulation, by the several States, of commercial motor vehicle width and length on interstate highways; to the Committee on Commerce, Science, and Transportation.

UNIFORM MOTOR VEHICLE STANDARDS ACT OF 1981

● Mr. CANNON. Mr. President, today I am introducing a bill to provide for a more rational system of standards for commercial motor vehicle length and width limits throughout the country. This is an issue that has been before Congress for many years, and the time certainly seems ripe for a final resolution.

The problem that this proposed legislation is intended to address is the inconsistent and nonuniform standards for vehicle size imposed by the various States of the Union. The bill would result in a uniformity of motor vehicle size standards throughout the country.

I am not proposing this bill simply for the sake of uniformity, however. Rather it is because the existing system of conflicting State regulation is a very costly one that results in wasted fuel and places an unreasonable burden on interstate commerce. In February 1979, the Transportation Research Board of the National Academy of Sciences found that the nonuniformity of State laws relating to truck size cost the American public as much as $2.8 billion annually and wasted up to 875 million gallons of fuel annually. The reason is that unduly restrictive limits on truck size and weight result in the creation of inefficient operations. Moreover, in order to avoid States with stiff restrictions, truckers will drive hundreds of miles out of their way, wasting both fuel and money.

The economic effect of nonuniformity is really not in dispute. Rather, the issue has largely been focused upon issues of highway damage and safety. The issue of highway damage is not pertinent to this legislation because it does not affect truck weights in any way. The issue of truck safety is an issue, but one that I am convinced has been satisfactorily dealt with.

In the first place, the limits that would be set in this legislation are ones that meet the requirements of the overwhelming majority of States in the Union. There is absolutely no evidence that has been presented to Congress or anyone else that I am aware of that shows a poorer safety record in the States with the higher limits. Moreover, this issue has recently been exhaustively litigated extensively in the Federal courts, resulting in an opinion by the U.S. Supreme Court that goes into great detail in support of the view that larger truck sizes exactly similar to those set forth in this bill are just as safe as the smaller sizes.

Hence, this bill would greatly increase the efficiency of the motor carrier industry, without jeopardizing safety. It has three basic parts. First it would set a uniform limit for commercial motor vehicle widths at that which every State currently allows for motor buses, namely, 102 inches. This is only the standard, however, if the traffic lanes are sufficiently wide to allow safe operation of the vehicles. That width is 12 feet. The second part would set a uniform standard for the most common truck on the road—the single tractor-trailer combination. The limit would be 60 feet in overall length, no more than 45 feet of which could be the actual trailer itself. This provision then allows adequate size, but assures that the drivers will not get squeezed out by truck cabs that are too small. The final provision holds that States may no longer bar "doubles" from interstate highways. These are trucks where two units are connected to the tractor. The overall length for such combinations would be set at 65 feet. These are precisely the types of vehicles which the Supreme Court found to be just as safe as the traditional single tractor-trailer combination.

It seems to me that the Supreme Court's opinion on this issue should be required reading for anyone with concern about either the safety issue or the economic arguments involved.

The Senate Commerce Committee has held hearings on the issue in the last two Congresses and the record clearly supports this proposal. Perhaps the most controversial part is the limitation on trailer size. I suspect that drivers may think this provision does not go far enough and that truckers will think it goes too far. I want both sides of this issue to present all the evidence they can to support their views. We may have to make some exceptions for specialized transportation services, but I am committed to the concept of setting aside sufficient space for a reasonable separation between the trailer and the cab, as well as sufficient room for the cab itself.

Mr. President, I ask unanimous consent that the bill and Supreme Court decision be printed in the RECORD.

There being no objection, the bill and Supreme Court decision were ordered to be printed in the RECORD, as follows:

S. 1402

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Motor Vehicle Standards Act of 1981".

FINDINGS AND PURPOSE

SEC. 2. Congress finds and declares that—

(1) All communities in the United States depend directly or indirectly upon commercial motor vehicles for freight transportation services, and at least 39,000 of these communities receive freight service from no other mode of transportation.

(2) The width and length of equipment used in commercial motor vehicle freight transportation is subject to regulation by the several States, and such regulation is inconsistent and without uniformity between the several States.

(3) Nonuniformity of State regulation of commercial motor vehicle width and length has caused, and continues to cause, excessive and unnecessary fuel consumption, time consuming litigation, increased consumer costs, and lost productivity in freight transportation.

(4) The continued State regulation of commercial motor vehicle width and length, in the absence of National standards for such regulation, constitutes an undue burden on interstate commerce.

(5) The purpose of this Act is to establish uniform National standards for the continued regulation, by the several States of commercial motor vehicle width and length on interstate highways.

COMMERCIAL MOTOR VEHICLE WIDTH REGULATION

SEC. 3. No State shall establish, maintain, or enforce any regulation of commerce which imposes a limitation of less than 102 inches on the overall width of commercial motor vehicles operating on any segment of the National System of Interstate and Defense Highways, or any other qualifying Federal-aid highways as designated by the Secretary of Transportation, with traffic lanes designed to be a width of twelve feet or more.

COMMERCIAL MOTOR VEHICLE LENGTH REGULATION

SEC. 4. (a) No State shall establish, maintain, or enforce any regulation of commerce which imposes a limitation of less than 60 feet on the overall length of commercial motor vehicles operating in truck tractor-semitrailer combinations or a limitation of less than 65 feet on the overall length of commercial motor vehicles operating in any other combination of units on any segment of the National System of Interstate and Defense Highways or any other qualifying Federal-aid highways as designated by the Secretary of Transportation: *Provided*, that the total length of any single unit in such combinations not be greater than 45 feet, unless such unit was manufactured prior to the date of enactment of this Act.

(b) No State shall prohibit commercial motor vehicle combinations consisting of a truck tractor and two trailing units on any segment of the National System of Interstate and Defense Highways or any other qualifying Federal-aid highways as designated by the Secretary of Transportation. No State shall establish, maintain, or enforce any regulations of commerce which imposes a limitation of less than 65 feet for such motor vehicle combinations on such highways.

(c) For the purposes of subsections (a) and (b) the overall permissible lengths for commercial motor vehicles shall not include additional length required by energy conservation devices or designs.

ACCESS TO THE INTERSTATE SYSTEM

SEC. 5. No State may enact or enforce any law denying reasonable access to commercial motor vehicles subject to this Act to and from the interstate highway system and the Federal-aid primary system and terminals and facilities for food, fuel, repairs, and rest.

ENFORCEMENT

SEC. 6. The Secretary of Transportation, or, on the request of the Secretary, the Attorney General of the United States, is authorized and directed to institute any civil action for injunctive relief as may be appropriate to assure compliance with the provisions of this Act. Such action may be instituted in any district court of the United States in any State where such relief is required to assure compliance with the terms of this Act. In any action under this section, the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction. In any such action, the court may also issue a mandatory injunction commanding any State or person to comply with any applicable provision of this Act or any rule issued under authority of this Act.

[SUPREME COURT OF THE UNITED STATES, No. 79–1320]

RAYMOND KASSEL ET AL, APPELLANTS, *v.* CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE.

On Appeal from the United States Court of Appeals for the Eighth Circuit, March 24, 1981.

JUSTICE POWELL announced the judgment of the Court and delivered an opinion in which JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE STEVENS joined.

The question is whether an Iowa statute that prohibits the use of certain large trucks within the State unconstitutionally burdens interstate commerce.

I

Respondent Consolidated Freightways Corporation of Delaware (Consolidated) is one of the largest common carriers in the country. It offers service in 48 States under a certificate of public convenience and necessity issued by the Interstate Commerce Commission. Among other routes, Consolidated carries commodities through Iowa on Interstate 80, the principal east-west route linking New York, Chicago, and the West Coast, and on Interstate 35, a major north-south route.

Consolidated mainly uses two kinds of trucks. One consists of a three-axle tractor pulling a 40-foot two-axle trailer. This unit, commonly called a single, or "semi," is 55 feet in length overall. Such trucks have long been used on the Nation's highways. Consolidated also uses a two-axle tractor pulling a single-axle trailer which, in turn, pulls a single-axle dolly and a second single-axle trailer. This combination, known as a double, or twin, is 65 feet long overall.[1] Many trucking companies, including Consolidated, increasingly prefer to use doubles to ship certain kinds of commodities. Doubles have larger capacities, and the trailers can be detached and routed separately if necessary. Consolidated would like to use 65-foot doubles on many of its trips through Iowa.

The State of Iowa, however, by statute restricts the length of vehicles that may use its highways. Unlike all other States in the West and Midwest, App. 605, Iowa generally prohibits the use of 65-foot doubles within its borders. Instead, most truck combinations are restricted to 55 feet in length. Double,[2] mobile homes,[3] truck carrying vehicles such as tractors and other farm equipment,[4] and singles hauling livestock,[5] are permitted to be as long as 60 feet. Notwithstanding these restrictions, Iowa's statute permits cities abutting the state line by local ordinance to adopt the length limitations of the adjoining State. Iowa Code § 321.457(7). Where a city has exercised this option, otherwise-oversized trucks are permitted within the city limits and in nearby commercial zones. *Ibid.*[6]

Iowa also provides for two other relevant exemptions. An Iowa truck manufacturer may obtain a permit to ship trucks that are as large as 70 feet. Iowa Code § 321E.10. Permits also are available to move oversized mobile homes, provided that the unit is to be moved from a point within Iowa or delivered for an Iowa resident. *Id.*, § 321E.28 (5).[7]

Because of Iowa's statutory scheme, Consolidated cannot use its 65-foot doubles to move commodities through the State. Instead, the company must do one of four things: (i) use 55-foot singles; (ii) use 60-foot doubles; (iii) detach the trailers of a 65-foot double and shuttle each through the State separately; or (iv) divert 65-foot doubles around Iowa.

Dissatisfied with these options, Consolidated filed this suit in the District Court averring that Iowa's statutory scheme unconstitutionally burdens interstate commerce.[8] Iowa defended the law as a reasonable safety measure enacted pursuant to its police power. The State asserted that 65-foot doubles are more dangerous than 55-foot singles and, in any event, that the law promotes safety and reduces road wear within the State by diverting much truck traffic to other States.[9]

In a 14-day trial, both sides adduced evidence on safety, and on the burden on interstate commerce imposed by Iowa's law. On the question of safety, the District Court found that the "evidence clearly establishes that the twin is as safe as the semi." 475 F. Supp. 544, 549 (SD Iowa 1979). For that reason,

"There is no valid safety reason for barring twins from Iowa's highways because of their configuration.

"The evidence convincingly, if not overwhelmingly, establishes that the 65 foot twin is as safe as, if not safer than, the 60 foot twin and the 55 foot semi. . . .

"Twins and semis have different characteristics. Twins are more maneuverable, are less sensitive to wind, and create less splash and spray. However, they are more likely than semis to jackknife or upset. They can be backed only for a short distance. The negative characteristics are not such that they render the twin less safe than semis overall. Semis are more stable but are more likely to rear end another vehicle." *Id.*, at 548–549.

In light of these findings, the District Court applied the standard we enunciated in *Raymond Motor Transportation, Inc.* v. *Rice*, 434 U. S. 429 (1978), and concluded that the state law impermissibly burdened interstate commerce:

"[T]he balance here must be struck in favor of the federal interests. The *total effect* of the law as a safety measure in reducing accidents and casualties is so slight and problematical that it does not outweigh the national interest in keeping interstate commerce free from interferences that seriously impede it." 475 F. Supp., at 551 (emphasis in original).

The Court of Appeals for the Eighth Circuit affirmed. 612 F. 2d 1064 (1979). It accepted the District Court's finding that 65-foot doubles were as safe as 55-foot singles. *Id.*, at 1069. Thus, the only apparent safety benefit to Iowa was that resulting from forcing large trucks to detour around the State, thereby reducing overall truck traffic on Iowa's highways. The Court of Appeals noted that this was not a constitutionally permissible interest. *Id.*, at 1070. It also commented that the several statutory exemptions identified above, such as those applicable to border cities and the shipment of livestock, suggested that the law in effect benefited Iowa residents at the expense of interstate traffic. 612 F. 2d, at 1070–1071. The combination of these exemptions weakened the presumption of validity normally accorded a state safety regulation. For these reasons, the Court of Appeals agreed with the District Court that the Iowa statute unconstitutionally burdened interstate commerce.

Iowa appealed, and we noted probable jurisdiction. — U. S. — (1980). We now affirm.

II

It is unnecessary to review in detail the evolution of the principles of Commerce Clause adjudication. The Clause is both a "prolific sourc[e] of national power and an equally prolific source of conflict with legislation of the state[s]." *H. P. Hood & Sons, Inc.* v. *DuMond*, 336 U. S. 525, 534 (1949). The Clause permits Congress to legislate when it perceives that the national welfare is not furthered by the independent actions of the States. It is now well established, also, that the Clause itself is "a limitation upon state power even without congressional implementation." *Hunt* v. *Washington State Apple Advertising Commission*, 432 U. S. 333, 350 (1977). The Clause requires that some aspects of trade generally must remain free from interference by the States. When a state ventures excessively into the regulation of these aspects of commerce, it "trespasses upon national interests," *Great Atlantic & Pacific Tea Co.* v. *Cotrell*, 4244 U. S. 366, 373 (1976), and the courts will hold the state regulation invalid under the Clause alone.

The Commerce Clause does not, of course, invalidate all state restrictions on commerce. It has long been recognized that, in the absence of conflicting legislation by Congress, there is a residuum of power in the State to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it." *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 767 (1945). The extent of permissible state regulation is not always easy to measure. It may be said with confidence, however, that a State's power to regulate commerce is never greater than in matters traditionally of local concern. *Washington Apple Commission*, *supra*, at 350. For example, regulations that touch upon safety—especially highway safety—are those

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Footnotes at end of article.

that the Court has been most reluctant to invalidate." *Raymond, supra,* at 443; accord, *Railway Express Agency, Inc.* v. *New York,* 336 U.S. 106, 109 (1949); *South Carolina State Highway Department* v. *Barnwell Brothers, Inc.,* 303 U.S. 177, 187 (1938); *Sproles* v. *Binford,* 286 U.S. 374, 390 (1932); *Hendrick* v. *Maryland,* 235 U.S. 610, 622 (1915). Indeed, "if safety justifications are not illusory, the court will not second guess legislative judgment about their importance in comparison with related burdens on interstate commerce." *Raymond, supra,* at 449 (BLACKMUN, J., concurring). Those who would challenge such bona fide safety regulations must overcome a strong presumption of validity." *Bibb* v. *Navajo Freight Lines, Inc.,* 359 U. S. 520, 524 (1959).

But the incantation of a purpose to promote the public health or safety does not insulate a state law from Commerce Clause attack. Regulations designed for that salutary purpose nevertheless may further the purpose so marginally, and interfere with commerce so substantially, as to be invalid under the Commerce Clause. In the Court's recent unanimous decision in *Raymond,*[10] we decline to accept the State's contention that the inquiry under the Commerce Clause is ended without a weighing of the asserted safety purpose against the degree of interference with interstate commerce." 434 U.S., at 443. This "weighing" by a court requires—and indeed the constitutionality of the state regulation depends on—"a sensitive consideration of the weight and nature of the state regulatory concern in light of the extent of the burden imposed on the course of interstate commerce." *Id.,* at 441; accord, *Pike* v. *Bruce Church, Inc.,* 397 U.S. 137, 142 (1970); *Bibb, supra,* at 525–530; *Southern Pacific, supra,* at 770.

III

Applying these general principles, we conclude that the Iowa truck-length limitations unconstitutionally burden interstate commerce.

In *Raymond Motor Transportation, Inc.* v. *Rice,* 434 U.S. 429 (1978), the Court held that a Wisconsin statute that precluded the use of 65-foot doubles violated the Commerce Clause. This case is *Raymond* revisited. Here, as in *Raymond,* the State failed to present any persuasive evidence that 65-foot doubles are less safe than 55-foot singles. Moreover, Iowa's law is now out of step with the laws of all other midwestern and western States. Iowa thus substantially burdens the interstate flow of goods by truck. In the absence of congressional action to set uniform standards,[11] some burdens associated with state safety regulations must be tolerated. But where, as here, the State's safety interest has been found to be illusory, and its regulations impair significantly the federal interest in efficient and safe interstate transportation, the state law cannot be harmonized with the Commerce Clause.[12]

A

Iowa made a more serious effort to support the safety rationale of its law than did Wisconsin in *Raymond,* but its effort was no more persuasive. As noted above, the District Court found that the "evidence clearly establishes that the twin is as safe as the semi." The record supports this finding.

The trial focused on a comparison of the performance of the two kinds of trucks in various safety categories. The evidence showed, and the District Court found, that the 65-foot double was at least the equal of the 55-foot single in the ability to brake, turn, and maneuver. The double, because of its axle placement produces less splash and spray in wet weather.[13] And, because of its articulation in the middle, the double is less susceptible to dangerous "off-tracking,"[14] and to wind.

None of these findings is seriously disputed by Iowa. Indeed, the State points to only three ways in which the 55-foot single is even arguably superior: singles take less time to be passed and to clear intersections; they may back up for longer distances; and they are somewhat less likely to jackknife.

The first two of these characteristics are of limited relevance on modern interstate highways. As the District Court found, the negligible difference in the time required to pass, and to cross intersections, is insignificant on 4-lane divided highways because passing does not require crossing into oncoming traffic lanes, *Raymond, supra,* at 444, and interstates have few, if any, intersections. The concern over backing capability also is insignificant because it seldom is necessary to back up on an interstate.[15] In any event, no evidence suggested any difference in backing capacity between the 60-foot doubles that Iowa permits and the 65-foot doubles that it bans. Similarly, although doubles tend to jackknife somewhat more than singles, 65-foot doubles actually are less likely to jackknife than 60-foot doubles.

Statistical studies supported the view that 65-foot doubles are at least as safe overall as 55-foot singles and 60-foot doubles. One such study, which the District Court credited, reviewed Consolidated's comparative accident experience in 1978 with its own singles and doubles. Each kind of truck was driven 56 million miles on identical routes. The singles were involved in 100 accidents resulting in 27 injuries and one fatality. The 65-foot doubles were involved in 106 accidents resulting in 17 injuries and one fatality. Iowa's expert statistician admitted that this study provided "moderately strong evidence" that singles have a higher injury rate than doubles. App. 488. Another study prepared by the Iowa Department of Transportation at the request of the State legislature, concluded that "[s]ixty-five feet twin trailer combinations have *not* been shown by experiences in other states to be less safe than 60 foot twin trailer combinations *or* conventional tractor-semitrailers" (emphasis in original). *Id.,* at 584. Numerous insurance company executives, and transportation officials from the Federal Government and various States, testified that 65-foot doubles were at least as safe as 55-foot singles. Iowa concedes that it can produce no study that establishes a statistically significant difference in safety between the 65-foot double and the kinds of vehicles the State permits. Brief for Appellant at 28, 32. Nor, as the District Court noted, did Iowa present a single witness who testified that 65-foot doubles were more dangerous overall than the vehicles permitted under Iowa law. 475 F. Supp., at 549. In sum, although Iowa introduced more evidence on the question of safety than did Wisconsin in *Raymond,* the record as a whole was not more favorable to the State.[16]

B

Consolidated, meanwhile, demonstrated that Iowa's law substantially burdens interstate commerce. Trucking companies that wish to continue to use 65-foot doubles must route them around Iowa or detach the trailers of the doubles and ship them through separately. Alternatively, trucking companies must use the smaller 55-foot singles or 60-foot doubles permitted under Iowa law. Each of these options engenders inefficiency and added expense. The record shows that Iowa's law added about $12.6 million each year to the costs of trucking companies. Consolidated alone incurred about $2 million per year in increased costs.

In addition to increasing the costs of the trucking companies (and, indirectly, of the service to consumers), Iowa's law may aggravate, rather than ameliorate, the problem of highway accidents. Fifty-five foot singles carry less freight than 65-foot doubles. Either more small trucks must be used to carry the same quantity of goods through Iowa, or the same number of larger trucks must drive longer distances to bypass Iowa. In either case, as the District Court noted, the restriction requires more highway miles to be driven to transport the same quantity of goods. Other things being equal, accidents are proportional to distance traveled. See App. 604, 615.[17] Thus, if 65-foot doubles are as safe as 55-foot singles, Iowa's law tends to increase the number of accidents, and to shift the incidence of them from Iowa to other States.[18]

IV

Perhaps recognizing the weakness of the evidence supporting its safety argument, and the substantial burden on commerce that its regulations create, Iowa urges the Court simply to "defer" to the safety judgment of the State. It argues that the length of trucks is generally, although perhaps imprecisely, related to safety. The task of drawing a line is one that Iowa contends should be left to its legislature.

The Court normally does accord "special deference" to state highway safety regulations. *Raymond, supra,* at 444, n. 18. This traditional deference "derives in part from the assumption that where such regulations do not discriminate on their face against interstate commerce, their burden usually falls on local economic interests as well as other States' economic interests, thus insuring that a State's own political processes will serve as a check against unduly burdensome regulations." *Ibid.* Less deference to the legislative judgment is due, however, where the local regulation bears disproportionately on out-of-state residents and businesses. Such a disproportionate burden is apparent here. Iowa's scheme, although generally banning large doubles from the State, nevertheless has several exemptions that secure to Iowans many of the benefits of large trucks while shunting to neighboring States many of the costs associated with their use.[19]

At the time of trial there were two particularly significant exemptions. First, singles hauling livestock or farm vehicles were permitted to be as long as 60 feet. Iowa Code §§ 321.457(5), 321.457(3). As the Court of Appeals noted, this provision undoubtedly was helpful to local interest. Cf. *Raymond, supra,* at 434 (exemption in Wisconsin for milk shippers). Second, cities abutting other States were permitted to enact local ordinances adopting the larger length limitation of the neighboring State. Iowa Code § 321.457 (7). This exemption offered the benefits of longer trucks to individuals and businesses in important border cities[20] without burdening Iowa's highways with interstate through traffic.[21] Cf. *Raymond, supra,* 446–447, and n. 24 (exemption in Wisconsin for shipments from local plants).[22]

The origin of the "border cities exemption" also suggests that Iowa's statute may not have been designed to ban dangerous trucks, but rather to discourage interstate truck traffic. In 1974, the legislature passed a bill that would have permitted 65-foot doubles in the State. See n. 6, *supra.* Governor Ray vetoed the bill. He said:

"I find sympathy with those who are doing business in our state and whose enterprises could gain from increased cargo carrying ability by trucks. However, with this bill, the Legislature has pursued a course that would benefit only a few Iowa-based companies while providing a great advantage for out-of-state trucking firms and competitors at the expense of our Iowa citizens." App. 626.[23]

After the veto, the "border cities exemption" was immediately enacted and signed by the Governor.

It is thus far from clear that Iowa was motivated primarily by a judgment that 65-

Footnotes at end of article.

foot doubles are less safe than 55-foot singles. Rather, Iowa seems to have hoped to limit the use of its highways by deflecting some through traffic.[24] In the District Court and Court of Appeals, the State explicitly attempted to justify the law by its claimed interest in keeping trucks out of Iowa. See n. 9 and accompanying text, *supra*. The Court of Appeals correctly concluded that a State cannot constitutionally promote its own parochial interests by requiring safe vehicles to detour around it. 612 F. 2d. at 1070.

In sum, the statutory exemptions, their history, and the arguments Iowa has advanced in support of its law in this litigation, all suggest that the deference traditionally accorded a State's safety judgment is not warranted. See *Raymond, supra*, at 444, and n. 18, 446–447.[25] The controlling factors thus are the findings of the District Court, accepted by the Court of Appeals, with respect to the relative safety of the types of trucks at issue, and the substantiality of the burden on interstate commerce.

Because Iowa has imposed this burden without any significant countervailing safety interest,[26] its statute violates the Commerce Clause.[27] The judgment of the Court of Appeals is affirmed.[28]

FOOTNOTES

[1] For an illustration of the differences between singles and doubles, see *Raymond Motor Transp., Inc.* v. *Rice*, 417 F. Supp. 1352, 1363 (WD Wis. 1976) (three-judge court), rev'd, 434 U.S. 429 (1978).

[2] Iowa Code § 321.457 (6). The 60-foot double is not commonly used anywhere except in Iowa. It consists of a tractor pulling a large trailer, which in turn pulls a dolly attached to a small trailer. The odd-sized trailer used in the 60-foot double is not compatible for interchangeable use in other trailer combinations. See App. 23, 276–277, 353, 354.

[3] Iowa Code § 321.457 (4).

[4] *Id.*, § 321.457 (5).

[5] *Id.*, at 321.457 (3). After trial, and after the Court of Appeals' decision in this case, Iowa amended its law to permit all singles to be as large as 60 feet. 1980 Iowa Legis. Serv. 80–87 (West).

[6] The Iowa Legislature in 1974 passed House Bill 671, which would have permitted 65-foot doubles. But Iowa Gov. Ray vetoed the bill, noting that it "would benefit only a few Iowa-based companies while providing a great advantage for out-of-state trucking firms and competitors at the expense of our Iowa citizens." Governor's Veto Message of March 2, 1974, reprinted in App. 626. The "border-cities exemption" was passed by the General Assembly and signed by the Governor shortly thereafter.

The Iowa Transportation Commission, pursuant to authority conferred in Iowa Code § 307.10 (5), subsequently adopted regulations that would have legalized 65-foot doubles, provided that the legislature enacted a ban on studded snow tires. The Iowa Supreme Court declared these regulations void because their promulgation was impermissibly tied to legislative action. *Motor Club of Iowa* v. *Department of Transportation*, 251 N. W. 2d 510 (1977).

[7] The parochial restrictions in the mobile home provision were enacted after Governor Ray vetoed a bill that would have permitted the interstate shipment of all mobile homes through Iowa. Governor Ray commented, in his veto message:

"This bill . . . would make Iowa a bridge state as these oversized units are moved into Iowa after being manufactured in another state and sold in a third. None of this activity would be of particular economic benefit to Iowa." Governor's Veto Message of March 16, 1972, reprinted in App. 641.

[8] Defendants, appellants in this Court, are Raymond Kassel, Director of the Iowa Department of Transportation, Iowa Governor Robert D. Ray, and state transportation officials Robert Rigler, L. Stanley Schoelerman, Donald Gardner, Jules Busker, Allan Thoms, Barbara Dunn, William McGrath, Jon McCoy, Charles W. Larson, Edward Dickinson, and Richard C. Turner.

[9] See *Consolidated Freightways Corp.* v. *Kassel*, 475 F. Supp. 544, 551 (SD Iowa 1979); *id.*, 612 F. 2d 1964, 1068, 1069–70 (CA8 1979). In this Court, Iowa places little or no emphasis on the constitutional validity of this second argument.

[10] JUSTICE STEVENS took no part in the consideration or decision of *Raymond*.

[11] The Senate last year passed a bill that would have pre-empted the field of truck lengths by setting a national limit of 65 feet. See S. 1390, reprinted in 126 Cong. Res. 3309–3314, 96th Cong., 2d Sess. (Feb. 20, 1980). The House took no action before adjournment.

[12] It is highly relevant that here, as in *Raymond*, the state statute contains exemptions that weaken the deference traditionally accorded to a state safety regulation. See § IV, *infra*.

[13] Twin trailers have single axles; semis, by contrast, have tandem axles. The axle configuration of the semi aggravates splash and spray. The forward tire creates upward wind currents in the same place that the rear tire creates downward wind currents. The confluence of these currents occurs at a point just above and between the tandem axles. The resulting turbulence then is blasted outward, carrying spray with it. App. 95–93.

[14] "Off-tracking" refers to the extent to which the rear wheels of a truck deviate from the path of the front wheels while turning.

[15] Evidence at trial did show that doubles could back up far enough to move around an accident. App. 103.

[16] In suggesting that Iowa's law actually promotes safety, the dissenting opinion ignores the findings of the courts below and relies on largely discredited statistical evidence. The dissent implies that a statistical study identified doubles as more dangerous than singles. *Post*, at 9. At trial, however, the author of that study—Iowa's own statistician—conceded that his calculations were statistically biased, and therefore "not very meaningful." Tr. 1678; see App. 669–670, Tr. 1742–1747.

The dissenting opinion also suggests that its conclusions are boistered by the fact that the American Association of State Highway and Transportation Officials (AASHTO) recommends that States limit truck lengths. *Post*, at 7, 13. The dissent fails to point out, however, that AASHTO specifically recommends that States permit 65-foot doubles. App. 602–603.

[17] Moreover, trucks diverted from interstates often must travel over more dangerous roads. For example, east-west traffic diverted from Interstate 80 is rerouted through Missouri on U.S. Highway 36, which is predominantly a two-lane road.

[18] The District Court, in denying a stay pending appeal, noted that Iowa's law causes "more accidents, more injuries, more fatalities and more fuel consumption." App. 579. Appellant Kassel conceded as much at trial. *Id.*, at 281. Kassel explained, however, that most of these additional accidents occur in States other than Iowa because truck traffic is deflected around the State. He noted, "Our primary concern is the citizens of Iowa and our own highway system we operate in this state." *Ibid.*

[19] As the District Court noted, diversion of traffic benefits Iowa by holding down (i) accidents in the State, (ii) auto insurance premiums, (iii) police staffing needs, and (iv) road wear. 475 F. Supp., at 550.

[20] Five of Iowa's 10 largest cities—Davenport, Sioux City, Dubuque, Council Bluffs, and Clinton—are by their location entitled to use the "border cities exemption." See 1970 Census of Population: United States Summary, at 1–136, 1–137.

[21] The vast majority of the 65-foot doubles seeking access to Iowa's interstate highways carry goods in interstate traffic through Iowa. See App. 175–176, 560.

[22] As noted above, exemptions also are available to benefit Iowa truck makers, Iowa Code § 321E.10, and Iowa mobile home manufacturers or purchasers, *id.*, § 321F.28(5). Although these exemptions are not directly relevant to the controversy over the safety of 65-foot doubles, they do contribute to the pattern of parochialism apparent in Iowa's statute.

[23] Governor Ray further commented that "if we have thousands more trucks crossing our state, there will be millions of additional miles driven in Iowa and that does create a genuine concern for safety." App. 628.

[24] The dissenting opinion insists that we defer to Iowa's truck-length limitations because they represent the collective judgment of the Iowa legislature. See *post*, at 5, 10, 13, 14. This position is curious because, as noted above, the Iowa legislature approved a bill legalizing 65-foot doubles. The bill was vetoed by the Governor, primarily for parochial rather than legitimate safety reasons. The dissenting opinion is at a loss to explain the Governor's interest in deflecting interstate truck traffic around Iowa.

[25] *Brotherhood of Locomotive Firemen* v. *Chicago, R. I. & P. R. Co.*, 393 U.S. 129 (1968), in its result, although perhaps not in all of its language, is consistent with the conclusion we reach today. There, the Arkansas 'full-crew' laws were upheld against constitutional challenge because the Court easily perceived that they made nonillusory contributions to safety. See *id*, at 136–138. Here, as in *Raymond*, there was no such evidence. This case and *Raymond* recognize, as the Court did in *Brotherhood*, that States constitutionally may enact laws that demonstrably promote safety, even when those laws also burden the flow of commerce.

[26] As noted above, the District Court and the Court of Appeals held that the Iowa statutory scheme unconstitutionally burdened interstate commerce. The District Court, however, found that the statute did not discriminate against such commerce. 475 F. Supp., at 553. Because the record fully supports the decision below with respect to the burden on interstate commerce, we need not consider whether the statute also operated to discriminate against that commerce. See *Raymond, supra*, at 446–447, n. 24. The latter theory was neither briefed nor argued in this Court.

[27] JUSTICE REHNQUIST in dissent states that, as he reads the various opinions in Iowa's law on the basis of the analysis in *Raymond*." *Post*, at 14, n. 10. It should be emphasized that *Raymond*, the analysis of which was derived from the Court's opinion in *Pike* v. *Bruce Church, supra*, was joined by each of the eight Justices who participated. Today, JUSTICE BRENNAN finds it unnecessary to reach the *Raymond* analysis because he finds the Iowa statute to be flawed for a threshold reason.

[28] Consolidated's complaint sought only a declaration that the Iowa statute was unconstitutional insofar as it precluded the use of 65-foot doubles on major interstate highways and nearby access roads. App. 10–11. We are not asked to consider whether Iowa validly may ban 65-foot doubles from smaller roads on which they might be demonstrably unsafe.●

By Mr. MOYNIHAN:

S. 1403. A bill to amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges; to the Committee on the Judiciary.

JUDICIAL SURVIVORS ANNUITIES REFORM ACT OF 1981

● Mr. MOYNIHAN. Mr. President, I am introducing today the Judicial Survivors' Annuities Reform Act of 1981. This bill which is identical to one introduced by Representative SAWYER of Michigan would provide for increased payments by Federal judges into the annuity fund and increased benefits to their surviving spouses and minor children. The bill would raise the contribution rate of judges from 4½ to 5½ percent of annual salary and the annual "computation factor" [1] to 1½ percent instead of the present 1¼ presently used in setting annuity amounts. In addition the bill would authorize a maximum annuity amount equivalent to 55 percent of salary instead of the current 40 percent and set a floor of 30 percent of salary as a minimum benefit.

[1] Currently a surviving spouse's annuity is determined by multiplying 1¼ of the "average annual salary" by the total number of years of "allowable service."

Benefits for surviving children under the age of 22 would be raised to a maximum of approximately $5,500 from the current $1,548. At present there are twelve children eligible for such benefits.

Mr. President, at a time when Federal judges are resigning at a record rate, I believe this amendment can provide an important incentive to attract and keep superior legal talent on the bench.

I ask unanimous consent that a comparison of the current plan and that contained in this bill be printed in the RECORD.

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

FEDERAL JUDICIAL SURVIVORS' ANNUITY SYSTEM

	CURRENT PLAN	PROPOSED PLAN
1. Participation	Any judge of the United States, including its territories and possessions, the Director of the Administrative Office of the U.S. Courts, the Director of the Federal Judicial Center, and the Administrative Assistant to the Chief Justice of the Supreme Court is eligible to participate. Election to do so must be made within six months of appointment to office, and such election is irrevocable.	
2. Benefits:		
(a) Spouse annuity:		
(i) Eligibility	The surviving spouse of a judicial official who dies after serving at least 18 months and who was married at least 1 year prior to death will receive a benefit payable for life or until remarriage.	
(ii) Annual amount	1½ percent of average compensation for each year of creditable service, excluding service in the executive branch which exceeds 15 years, plus ¾ percent of average compensation for service in the executive branch which exceeds 15 years.	1½ percent of average compensation for each year of creditable service.
	Maximum benefit equals 40 percent of average compensation and is reduced by 10 percent of any portion of the deposit for prior service (see item 4) unpaid as of the judge's death.	Minimum benefit equals 30 percent of average compensation. Maximum benefit equals 55 percent of average compensation.
(b) Dependent children annuity:		
(i) Eligibility	Any surviving children of a judicial official who dies after serving at least 18 months, who have not attained age 18 (or 22 if in school) or who are incapable of self-support, will receive a benefit payable until attainment of such age or termination of the condition rendering them incapable of self-support.	
(ii) annual amount	If the widow(er) is still alive, each child receives an annual annuity equal to the lesser of: (a) $1,548; or (b) $4,644 divided by the number of children.	If the widow(er) is still alive, 10 percent of average compensation for each dependent to a maximum of 20 percent.
	If the widow(er) is deceased, each child receives an annual annuity equal to the least of: (a) The annuity which the widow(er) would have received if still alive, divided by the number of children; (b) $1,860; or (c) $5,580 divided by the number of children.	If the widow(er) is deceased, 20 percent of average compensation for each dependent to a maximum of 40 percent.
3. Cost of living adjustment	For each full increase of 5 percent in the salaries of U.S. judges, survivor annuities are increased by 3 percent.	
4. Contributions:		
(a) Employee	A participant contributes 4½ percent of salary, if in active status, or of retirement income, if on age or disability retirement. For judicial service rendered prior to inception of the plan, and for certain periods of p ior nonjudicial government service, a participant may also deposit 4½ percent of salary earned during those periods, together with interest at the rate of 3 percent year after Dec. 31, 1947, and 4 percent per year prior thereto. No deposits are required for military service. Under the proposed plan the contribution rate would be raised to 5 percent; however, for judges already in the present system, the contribution rate would not be made retroactive.	
4. CONTRIBUTIONS (Cont'd.):		
(b) Employer	The U.S. Government makes matching contributions of 4½ percent of total participant compensation each pay period.	To be determined actuarially.
5. Return of contributions	(i) If a participant resigns from office or (ii) if at death there is no eligible surviving spouse or surviving child, the sum of the participant's contributions, together with interest at the rate of 3 percent per year after Dec. 31, 1947, and 4 percent per year prior thereto, shall be (i) returned to the participant or (ii) payable to the participant's estate.	
6. Definitions:		
Creditable service	Service creditable for purposes of determining the survivor benefit includes all judicial and congressional service, military service not exceeding 5 years, and certain other service with the executive branch of the Federal Government.	
Average compensation	Average compensation is the highest 3-year average of judicial compensation prior to death. ●	

By Mr. MOYNIHAN:

S. 1404. A bill to require that all human subjects used in experiments conducted by or for the Department of Defense be informed of the nature of the experiments and that a research review board make a written certification that such subjects have freely given their informed consent to participate in the experiments, and for other purposes; to the Committee on Armed Services.

GI MEDICAL RESEARCH PROTECTION ACT OF 1981

● Mr. MOYNIHAN. Mr. President, I am today introducing for the consideration of my colleagues the GI Medical Research Protection Act of 1981. It is a simple and straightforward legislative proposal to insure that the rights and health of our country's military personnel are safeguarded with respect to medical tests and similar experiments performed on human subjects.

If the Congress means to maintain the All-Volunteer Armed Forces, as I believe it does, it is vital that we provide assurances to military personnel—and potential recruits—that their basic rights and health will not be endangered unnecessarily. Of course there can be no guarantees that life in the military service will be risk free. Soldiers, sailors, airmen, and marines know full well that they may be asked at any time to give their lives in defense of America. They have accepted this necessary risk as a condition of service. The United States does, however, have an obligation to these men and women not to be careless with their health and safety—an obligation, Mr. President, that has not always been fulfilled.

My colleagues are no doubt familiar with the most outrageous instances of abuse of servicemen by the institutions of our military in the name of scientific research: Those Army men who were during the late 1950's and 1960's, given doses of LSD when all its effects were undocumented. Those soldiers who during the 1940's were intentionally exposed to the effects of early above-ground tests of nuclear weapons to see what effect it would have on them. In both these cases, many of the individuals involved have suffered permanent physical and psychological disability and even early death. And the tragedy has all-too-frequently been compounded by the shameful reluctance of the institutions and agencies responsible to acknowledge their responsibility to compensate the individuals.

I would like to emphasize at the outset that it is not my intention to curtail responsible research activities by the Department of Defense, or any other agency of the Federal Government. The

advancement of knowledge depends upon free inquiry and requires a minimum of constraints on the research enterprise. Yet the overriding considerations remain that people must whenever possible be protected from harm by research in which they may be subjects, and that when real risk of harm remains a part of research, people should only participate who understand and consent to accept that risk.

The need for legislation explicitly to provide such protection to military personnel has been made manifestly clear by a series of reports which appeared during December and January in the Buffalo Evening News. Written by Modesto Argenio and Anthony Cardinale, these articles reveal yet another instance of gross abuse of the rights and health of unwitting servicemen. During the early 1940's, according to the News, the U.S. Navy conducted large-scale experiments at several locations to measure the effect on sailors of previously untested sulfa drugs. Now, more than 35 years later, many of the 600,000 Navy men involved have learned that the sulfa drugs may be responsible for a variety of medical problems which plague them. The tragedy in this is that they were for the most part healthy men who were not aware at the time that they had agreed to participate in a potentially unsafe sulfa drug test program.

In fact, Mr. President, there is some question about whether they ever consented at all, whether or not they were fully informed or not. There is no documentation, there are no records, and after 35 years, well, memories differ. House and Senate investigations of this particular situation must certainly be conducted in order to determine what compensation may be due these men. This Nation surely owes them at least that much. The Navy and the Department of Defense will, one hopes, cooperate fully with congressional investigations into the sulfa drug testing program.

More important at this point, however, is that such a thing should not be allowed to happen again. Especially at a time when it is imperative that we attract the highest calibre of men and women into our Armed Forces, and when the evidence is mounting that we have not been successful, we must at least be able to assure them that they will have this basic protection. The people upon whom the rest of us depend for our very survival should not be compelled to participate in experimental medical test programs without being reasonably informed of the potential risks.

The legislation I am proposing today would prevent a recurrence of such an abuse of Armed Forces personnel by insuring that only those men and women who had freely given their informed consent to participate could be included in any medical research experiments conducted under the auspices of the Department of Defense. Before a researcher could use any money appropriated to the Defense Department for any research endeavor using human subjects, he or she would be required to document, to the satisfaction of an independent three-person review board that would be established, that informed consent to participate had been obtained from all human subjects.

My bill borrows heavily from the discussion of informed consent in the report by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research to the Secretary of Health and Human Services last year. Members of the Senate may recall that Congress established this Commission in title II of the National Research Act of 1974 (P.L. 93-348) and instructed it to "conduct a comprehensive investigation and study to identify the basic ethical principles which should underlie the conduct of biomedical and behavioral research involving human subjects," and then to "develop guidelines which should be followed in such research to assure that it is conducted in accordance with such principles."

The Commission concluded its investigation a year ago. HHS has recently published in the Federal Register the final product of this exhaustive review of science, ethics, and American law and government: Agency regulations that will henceforth govern research funded by HHS. The usual process in matters of this sort has been completed: Draft regulations were published, criticism by interested members of the public was solicited and reviewed, the regulations were modified, and then finalized in the Federal Register of January 26, 1981.

One failure of this process, unfortunately has been that the very reasonable guidelines drawn up by the National Commission were made to apply only to research funded by HHS. Although the Commission had suggested that their recommendations be made to apply to all U.S. Government-sponsored or -financed research, there is currently no obligation for other agencies, including the Department of Defense, to abide by these guidelines. My proposal, which reflects the substance of these HHS regulations, would extend the greater protection of these guidelines to persons who may be involved in experiments conducted by DOD researchers—principally American military personnel. This bill would also give these guidelines the force of law, and human subjects the greater certainty of protection that comes from an act of Congress.

Anyone desiring to use DOD money to conduct research using human subjects would first have to obtain written certification from a three-person Department of Defense Research Review Board that all human subjects had been properly informed of the risks involved and that they had consented, in writing, to participate. This is a simple, not at all onerous requirement, which I do not think will pose any difficulty for those undertaking research activities. It will insure that only genuine volunteers will participate as subjects, and it will provide for the necessary documentation to substantiate or refute any later complaints or lawsuits that may arise.

The bill I am today introducing is offered as a working draft. I expect that it will be revised and improved upon by my colleagues as they consider this important matter, and I welcome all constructive suggestions that may be forthcoming.

Mr. President, I ask unanimous consent that the newspaper articles from the Buffalo Evening News which prompted this proposal be printed in the RECORD at this point.

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

600,000 "GUINEA PIGS" TOOK SULFA DRUGS

(By Modesto Argenio and Anthony Cardinale)

The U.S. Navy ordered more than 600,000 healthy sailors and Marines to take sulfa drugs during a World War II experimental program, and today many of these aging veterans may be suffering sulfa-induced kidney disease and other ailments, an exhaustive investigation by The Buffalo Evening News disclosed.

In a mandatory program carried out at naval training bases across the United States, the Navy attempted to stem the spread of respiratory diseases in crowded barracks by requiring trainees to swallow sulfa pills every day.

The program may have backfired, leaving the unwitting subjects to reap a sad harvest decades later.

Most of the men were not told what they were taking. No choice was given. Some men who resisted were punished. Some who suffered immediate bad reactions were forced to undergo further sulfa testing.

Most importantly, the Navy ignored the advice available in medical journals at the time about the dangers of sulfa drugs and did not even take precautions that might have minimized the damage. Nor did it note in the men's medical records their participation in the program, unless they immediately suffered a skin rash or other side effect.

As a result, there are thousands of Navy and Marine veterans now in their late 50s and early 60s living in probably every city in the country unaware of the possible cause of their medical problems. And there are those who have died.

During the winter of 1943-44, more than 600 of the 600,000 men suffered immediate reactions, and at least 10 died, according to Navy documents obtained by the Buffalo Evening News during its lengthy investigation.

The mandatory program was repeated at the same training bases during the winter of 1944-45, but no figure is available on how many more men were given drugs. The two-year program may have affected a million men.

Discovery of the official Navy documents, when studied alongside the many military and civilian medical journals that warned at the time of the dangers of sulfa drugs, may be as significant as the Agent Orange controversy of the Vietnam War in questioning the adequacy of veterans' benefits.

The Navy has steadfastly denied the existence of the program. But late in The News investigation, a Navy official, confronted with a key document, admitted that the document was declared obsolete in 1954, and "all copies were subsequently ordered disposed of."

Out of the scores of Navy and Marine veterans contacted over a two-month period, The News found at least a dozen men who served at those bases and either remember taking the "big white pills" daily or suffered subsequent kidney-related problems, or both.

One of them is William J. Carrig of the Town of Tonawanda. A Marine Corps veteran who served at a Navy base in Norman, Okla., during the 1943-44 sulfa program, he remembered suffering almost immediate internal problems and is convinced sulfa drugs were responsible for the loss of a kidney in 1954.

The Navy disagrees, and has repeatedly denied in writing, that Mr. Carrig ever took part in any sulfa program. The Navy flatly told him there had been no such program—

until it was confronted with its very own document, the one it had "ordered disposed of."

The document contains reports of the sulfa program's results during 1943–44 at naval bases at Sampson, N.Y.; Bainbridge, Md.; Davisville, R.I.; Chicago; Norman, Okla.; Memphis, Tenn.; and Farragut, Idaho.

Unfortunately, the reports give no clue to the identity of the men involved, and the Navy has responded to requests under the Freedom of Information Act for master lists by stating that they are not available.

The "obsolete" sulfa reports, published by the Navy in 1944, detail the first year of an unprecedented mandatory military program designed to control the outbreak of contagious streptococcus infections among wartime trainees.

The United States produced 10 million pounds of sulfa in 1943—enough drugs to have treated every man, woman and child in the nation. Sulfa was considered the "miracle drug" and would hold the medical world enthralled until the mass development of penicillin.

As the drug industry churned out this staggering surplus of sulfa drugs, it looked forward to the results of testing by the armed forces, which, in effect, had a captive audience of cooperative subjects—young enlisted men training for history's greatest war.

But as early as the first year of the program, when Navy officers began lining up enlisted men each day at drinking fountains and ordering them to swallow sulfa pills, stark warnings were appearing in medical journals about sulfa's dangers.

Listings of titles of articles about sulfa drugs covered several pages of 1940s medical indices, and just the titles dealing with sulfa's toxic qualities filled three columns of small type as the Navy's sulfa program hit top speed in mid–1944.

The articles warned about skin reactions, allergic complications, ulcers, liver problems, and particularly urinary tract and kidney disfunctions in patients who were being treated with sulfa drugs.

Yet the Navy went ahead, set up special units and administered sulfa on a daily basis to hundreds of thousands of enlisted men who had nothing wrong with them. It also continued to use large doses of sulfa as therapy for those who became sick during training.

A typical trainee in the sulfa program would swallow a gram of sulfadiazine daily for three months or more for a total of more than 3 ounces.

Yet one medical journal in June 1944 warned that the kidneys' tiny tubes could be blocked by sulfa crystals "after even a day's administration of customarily 3 grams" to sick patients.

On the plus side, it must be acknowledged that the sulfa program apparently did what it set out to accomplish. The Navy heralded it as 85 percent successful in ridding the barracks of such debilitating infections as scarlet fever, tonsillitis, rheumatic fever and respiratory complaints.

It stemmed a frightening epidemic during the war and saved the Navy hundreds of thousands of lost man hours. Doubtlessly, it also saved many lives; certainly more than the 10 that the Navy documents admit were lost during the experiment.

But there was a price to pay.

Something peculiar began to emerge on the medical charts as the sulfa program went into its second winter. Not only was sulfa ineffective against pneumonia, but its widespread use was accompanied by the appearance of strains of infections that were resistant to sulfa.

The prospect of diseases that, in essence, would grow stronger after sulfa treatment was a bit frightening.

After the war, in another Navy document obtained by The News, it was revealed that some of the naval training units in the tests actually experienced an *increase* in streptococcal infections during the sulfa program—and then had a *decrease* when the sulfa was stopped.

The authors of these later Navy reports then began to express guarded alarm that some of the men who received sulfa as a disease preventive might have developed a sensitivity to the drug. If so, they might suffer dangerous allergic reaction from sulfa if it was used late overseas, when they really needed it for an illness or a battle wound.

The Japanese surrender in August 1945 did not end the problems arising from the two-year sulfa program. It merely ended the Navy's participation in the potentially tragic drama it had set in motion.

From what The News has been able to learn, the Navy did not conduct any follow-up survey to track the whereabouts and medical condition of the hundreds of thousands of men returning to civilian life.

The men were not officially told that they had been subjects in a sulfa program.

They were not warned of precautions they still might have been able to take to minimize future health complications.

And of course, there was no thought given to veterans' benefits in years to come.

The men were eager to be discharged with a minimum of fuss and paperwork. Even Marine Corporal Carrig, who had suffered a nightmare of abdominal pains during most of his enlistment, routinely signed the papers declaring his health sound.

Not until 1951, when the Town of Tonawanda veteran checked into a veterans hospital and talked to a urologist about his kidneys, did he hear about the dangers of sulfa crystals to the kidney. And when the Veterans Administration removed a kidney in 1954, it gave him no explanation of how his ailment had come about.

In 1977, after Mr. Carrig's health had worsened and his larynx was removed, he wrote to Washington about the wartime sulfa program. The Navy wrote back and said it had conducted no such program.

PERSISTENT REPORTERS WON "WAR" WITH NAVY

Last July reporter Modesto Argenio fielded a phone call from a reader with whom he never had had any contact. The man asked to speak to Argenio only because he was familiar with his byline.

Today The News starts publication on Page One of the results of that phone call—an important six-part series, entitled "The Bitter Pill."

The articles, sparked by the call from a Town of Tonawanda World War II Marine Corps veteran, William J. Carrig, were most difficult ones to research and write. It was a costly endeavor for The News in terms of manpower, time and talent, but we pursued the story because we felt it had to be told.

That the series ever came to fruition is a tribute to Argenio's reportorial instincts, which didn't allow him to dismiss the initial phone call, and to the persistent determination of Argenio and reporter Anthony Cardinale. They cut through government red tape, read thousands of pages of documents, wrote dozens of letters, made innumerable calls, suffered countless frustrations.

Even more important was the refusal of Argenio and Cardinale to accept at face value denials by the Navy nor to cease their difficult quest for facts obscured by the passage of almost four decades since the story actually started.

Carrig, in his original call to Argenio, said he was convinced he and thousands of other servicemen had been used as unknowing guinea pigs during World War II sulfa drug experiments. Those experiments, he was certain, had led to his later poor health, including the loss of a kidney.

Argenio started meeting with Carrig, reviewing the voluminous records the veteran had accumulated on his own case. The material seemed overwhelming and his thesis was staggering—more than 600,000 men had been involved in the 1943–44 sulfa program. The News reporters later learned that hundreds of thousands more were involved in 1944–45.

Before taking the facts to his editors, Argenio asked Cardinale for his reaction. The two reporters had been close friends since entering St. Bonaventure in the fall of 1960. The two had worked together on many stories, including a 10-month investigation in 1975 of the nursing homes scandal, which produced 50 stories and won a major state reporting prize.

Together they interviewed Carrig extensively, read more of his documents, and came away convinced he was reliable. With confidence in Carrig reinforced, the two reporters outlined the situation to Ed Cuddihy, News assistant managing editor and city editor.

In early October, Argenio and Cardinale were given the green light to proceed full tilt on the story and were relieved of most of their normal duties.

Freedom of Information requests were filed with the Navy. To date, no meaningful responses have been received. In order to find others who possibly were involved in the Navy experiment, notices were published in The News Reporter's Notebook. These brought forth a flood of calls, but none was too productive. Most of the men had at best hazy recollections of events more than 35 years ago in Navy training camps.

But pieces were starting to fall in place. One vet who had served at the right place and time had lost a kidney a decade later, as Carrig had. A Lakeview reader offered a list of 145 names of former members of his outfit, most of whom had trained at one of the eight bases The News reporters had learned were involved in the sulfa experiment. More than 50 of these ultimately were contacted.

The going was slow and discouraging. Records of the men had been scattered. The men themselves had moved so many times it was difficult to trace them. The reporters uncovered the names of two doctors involved in the Navy sulfa program. One finally was located in Michigan, but the doctor, now in his 80s, was evasive and obtuse.

The Navy itself did not cooperate. It steadfastly denied ever having conducted a sulfa experiment program. Despite written denials by the Navy of any knowledge of the program, the reporters had in hand two 1940 Navy documents that told in graphic detail how the men were coerced to take sulfa daily, punished if they refused, and retested again and again if they suffered a bad reaction. Some 620 bad reactions and 10 deaths were acknowledge in these documents.

The team set out to determine if scientific knowledge existed in the early 1940s about the possible detrimental effects of sulfa. The State University of Buffalo Health Sciences Library computer produced the needed leads to the material. The reporters found column after column of fine print, listing titles of articles about the toxic nature of sulfa—titles published in medical journals in 1943–45.

The files of Argenio and Cardinale kept growing. And what they described as "bureaucratic fatigue" kept mounting. Each time they neared the point of total exasperation they would meet again with Bill Carrig, whom they describe as a courageous, determined man who wouldn't give up, wouldn't take "no comment" from officialdom as a final answer.

By late November it became clear what material they had gathered would be suitable for publication. From Nov. 21 to Dec. 5,

the two reporters assembled their material in story draft form. Then they spent a week reworking it and seeking reactions from "experts" to certain parts of it.

Editor Cuddihy read and reread the package and on Dec. 16 ordered a major rewrite of the majority of the material. The reporters had gotten too close to the story they had followed for so long.

The result, started today, is not an open-and-shut series. Rather, The News sees it as a beginning, opening the way for actions by:

1—The Navy, to reform its procedures for future actions.

2—The Veterans Administration, to release yet more medical records it has denied Carrig about his kidney removal.

3—The medical profession, to come up with more useful advice on just what all this means to the hundreds of thousands of veterans who took part.

Like the Agent Orange situation, perhaps the sulfa program calls for government exploration of what should be done for those who can prove they were involved and had had negative health ramifications as a result.

And there are questions that need answers:

1—If the Navy had to use sulfa as a respiratory disease preventative in the training bases, why didn't it tell the men involved they were being given sulfa?

2—Why did not records of the men indicate they had been involved in the program?

3—Why was a followup survey of the men not made after they were discharged?

4—Why does the Navy continue to deny the sulfa program existed. Is it a coverup or the case of the left hand not knowing what the right hand was doing?

We'd suggest a thorough reading of "The Bitter Pill," starting today and ending Sunday. It may not be a glamour topic. It may have little sex appeal. But the subject matter is important, and the questions it raises are significant.

WAR BROUGHT SULFA, SUFFERNG TO MARINE

(By Modesto Argenio and Anthony Cardinale)

The scene is etched into William Carrig's memory. He lives it and relives it, a nightmarish recollection that has him convinced he was an unsuspecting guinea pig in Navy sulfa drug tests more than three decades ago.

One of the bases in the drug experiment was at Norman, Okla., where the Navy in late 1943 had commissioned a new Air Technical and Training Center to train sailors and Marines headed for the war in the Pacific.

Navy pharmacist mates and officers had herded about 75 enlisted men to a huge swimming pool there one morning for what they said was routine training.

The session turned out to be far from routine.

There was a huge diving tower along the side of the pool, and in the water was an obstacle course. Submerged barrels, hoops, and wooden contraptions formed a maze used to test the aquatic stamina of the recruits.

But this time, the rules for the test were strikingly different. The recruits were ordered to swim until they were exhausted, and even then, many weren't allowed to leave the pool. Many became ill in the water.

Mr. Carrig, a Marine Corps veteran, recalled:

"It wasn't our regular day to swim, I remember that. But when you're 18, you don't ask questions. You follow orders.

"There were Marines and Navy guys in there, which was unusual. We used to swim with our own guys, but they said we were going to have some competition. You know—Marines against Navy.

"We jumped in off the tower, but after awhile they wouldn't let us out."

The "they" were pharmacist mates and officers in uniform who were patrolling the sides of the pool.

Bill Carrig spoke haltingly, ingesting air through the opening that was once his larynx to make sounds, to form words:

"There were guys throwing up and getting sick in the water, but they'd let the guys out only when they were totally exhausted. If you came to the side, they'd push your hands off the edge and say, 'Keep swimming.'

"Guys were swallowing dirty water. It was a mess. To be honest it didn't make any sense to me then . . ." His voice, now hoarse, trailed off.

He recollected, faintly that the filter in the pool had been shut off, and that both Marines and sailors were given blue swimming trunks to wear, thus making competition an unlikely motive. The whole episode took about an hour.

Years later, when more by chance than choice he felt he had confirmed his suspicion that he had been used in the sulfa experiments, he broke down.

"I was at my mother's house when I read the report," he recalled. "I started to cry."

The report, tucked away in U.S. Navy files for nearly four decades since the end of World War II, hit him like to thunderbolt. It told of at least 600,000 sailors and Marines being administered daily doses of sulfa drugs while at U.S. training bases in 1943 and 1944.

The words jumped from the pages of the document, Navmed 284: "The Prevention of Respiratory Tract Bacterial Infections by Sulfadiazine Prophylaxis in the U.S. Navy." They told of the drugs, the complications, the swimming pool, and the recruits—who were sitting ducks for infections.

Suddenly Bill Carrig wondered whether the ordeal in the pool was a deliberate attempt to lower the men's resistance and expose them to each other's germs—and to see if the sulfa really worked.

While the Navy Bureau of Medicine and Surgery was quick to label the tests a success, there were hints—even in the 1940s—that the servicemen were suffering unexpected side effects.

Today, nearly 40 years later, Bill Carrig and many other veterans who saw combat duty are looking at those drug tests as one answer to why they have been plagued with strange, unaccountable diseases and loss of organs.

For Mr. Carrig, a former VFW commander who worked his way up to a supervisory position at the Chevrolet Town of Tonawanda plant, the toll has been staggering: Thirteen operations. The loss of a kidney. The removal of two ribs. Asthma. Emphysema. And, in 1977, removal of his cancerous larynx.

His diary of health problems begins almost immediately after he was discharged, supposedly fit and trim, from the Marine Corps.

But not until he discovered Navmed 284 did Mr. Carrig begin to thread together answers to the litany of "whys?" that tormented him.

He is convinced he was one of those guinea pigs who fell prey to the unanticipated bad side effects of sulfadiazine, side effects that have wracked his body.

He had been assigned to Norman, Okla., to learn metalsmithing.

While he was at Norman for nearly 6½ months, he came down with an ear infection. Twice a week, for about seven or eight weeks, he reported to the medical facility, where he was given white pills, which he contends were sulfa.

He also was given similar-looking pills along with other members of his metalsmithing class. The procedure was strange:

"Each afternoon when we came back from class, as we entered the barracks to dress for the evening meal, the first sergeant and a couple of Navy medical personnel handed each man two pills, checked his dog tags and ordered us to take the pills.

"We lined up by the water cooler. They would then look into our mouths using a flashlight to make certain the pills were swallowed."

Those pills too, he says, were sulfa.

By his own account, by the time Mr. Carrig left Norman for Camp Miramar, Calif., where the Navy and Marines had a staging area for overseas replacements headed for the Pacific theater, he had taken 295 grams of sulfa, or 10.3 ounces. His research, he says, has shown that as little as .08 grams can cause serious injury.

That was 1944, but it was only the beginning of Bill Carrig's painful medical trek.

He was 17 in August 1943 when he left the little Pennsylvania town in which he was born, enlisted in the Marines and was sent to boot camp at Parris Island, S.C. He was—as were most Marines—in top physical shape. His military medical records confirmed that.

About 18 months later, as he headed for the South Pacific, he suffered some physical setbacks. The illness at Norman was first. Then at Camp Miramar he was hospitalized three times for severe abdominal pains.

At first medics attributed it to passing a kidney stone. But the pains continued. He had them on board ship, the USS Extria.

"The doctor said it was appendicitis and wanted to operate on the officers' ward room table. I said 'no way.' If I didn't have appendicitis in Miramar, I told him, I didn't have it then."

The pains continued.

The ship convoy continued westward: Pearl Harbor, the Johnson Islands and finally the Marshall Islands. Pvt. Carrig was dropped off with other replacements at Roi-Namur, two tiny islands in the Marshall chain.

The pains—the doubling over—intensified. But the cause remained a mystery to medical authorities. During the next six months, Mr. Carrig made five visits to sick bay.

"I was beginning to tell that the medics thought I was a screw-off trying to get out of the service and they didn't want to help me. I didn't want to be called a malingerer so I stopped going to sick bay," he recalled.

Bill Carrig, Marine Corps service number 551234, fought the good fight. His service records attest to it. He was assigned to Marine fighter squadrons and went through the invasion of Okinawa:

But all that time there was a secret war going on within him. The pains were unbearable, he said. "I knew only God or a hand grenade would relieve my pain," he said.

He turned to liquor, wine and "torpedo juice," the 190-proof alcohol from Navy torpedo gyros.

A warrant officer suggested an easy out: take a punch at an officer and get court-martialed.

"There was no way I could live with that stigma," he says.

And the pain grew worse.

"We were in the troop ship, USS Afoundria, for the Okinawa invasion. I had no booze or anything else, so I went to sick bay. Same old story. No help. So I just lay around suffering. I was learning to control pain by laying in certain positions and by forcing it out of my mind. This worked at times."

On Okinawa, a burly staff sergeant suggested another pain relief: "He told me using morphine serettes from our first aid kits would help. They did. And I took to stealing morphine from any first aid kit I could find."

His war records list stops at Yontan airfield and Chumu Bay on Okinawa, before Omura, northeast of Nagasaki, Japan.

Cpl. Carrig was honorably discharged from active duty at Cherry Point Marine Station in North Carolina on March 14, 1946. According to medical records, he was in good health and had no claim against the government.

Few men—thankful to be alive and eager to go home—were willing to waste even min-

utes that might hold up their service discharges in 1945.

UNEXPLAINED ILLNESS RESULTED IN HUNT FOR TEST RECORDS

(By Modesto Argenio and Anthony Cardinale)

William Carrig's search for proof that Navy sulfa testing was done and that he was an unwitting guinea pig in the tests has left a trail of documents and years in its wake.

The Navy insists it has no records of the tests, but both Mr. Carrig and The Buffalo Evening News have documented that the tests did take place and that more than 600,000 men were involuntarily given doses of sulfa.

For Bill Carrig, the phantom began to take shape in 1951.

He was suffering pains—mysterious and medically unexplained then—that were so bad he began regular visits to the Altoona, Pa., Veterans Hospital.

Finally, there was a diagnosis: His left kidney had been almost totally incapacitated. There was no evidence why, at least not until a urologist, Dr. Albert D. Kapcar, began asking him about those white pills he took at Norman, Okla.

It was Dr. Kapcar, Mr. Carrig says, who first told him about the sulfa drug tests. Today, in response to a News inquiry, Dr. Kapcar could not recall the incident or Mr. Carrig.

"I am sorry, but I have no recollection," wrote the physician. "This was about 30 years ago and I have no records to go by; (I) do not remember the case at all."

Bill Carrig remembers, however. It was Dr. Kapcar, he says, who showed him medical articles on the development of sulfa drugs. In those journals, one of the side effects of sulfa hit home; the drug has a tendency to crystallize in the kidneys unless steps are taken to keep it dissolved.

And, Mr. Carrig states unequivocally in an affidavit, it was Dr. Kapcar who laid it on the line:

"He said to me, "You were used in sulfa drug experiments. You were badly misused after those experiments." ".

In 1964, at Aspinwall, Pa., Veterans Hospital, he had his kidney removed. During surgery, his lung collapsed.

Bill Carrig received a 30 percent medical disability from the Veterans Administration, and he worked hard at Chevy. He and his wife Zelda, raised five children.

They lived in the Town of Tonawanda for two decades, and Mr. Carrig, working his way up to the position of general supervisor of material and production control at Chevrolet's metal castings plant, chalked up 27 years with GM.

He is a past commander of Post 2472 of the Veterans of Foreign Wars.

In 1977, however, his past came home to haunt him—probably for the rest of his life. A one-time heavy smoker, he developed cancer of the larynx.

His larynx was surgically removed and, after what doctors said was an amazingly short time, Mr. Carrig learned the esophageal method of speech: inhaling air through a hole in the esophagus to form words. He was vice president of the New Voice Club of the Niagara Frontier.

Despite receding gray hair, Mr. Carrig looks trim and fit today. At 55, he has bulldog features, a square jaw, broad shoulders, and a ramrod bearing for a man about 5 feet 9 inches tall.

He had no proof, he says, that he was used in the sulfa drug testing until 1977. Beginning that spring, as he lay in bed thinking, he finally decided to act.

"It was then that I started asking myself why I was like this. Why all the operations? Why the problems?"

He began to keep a journal, a log, a personal history. He remembered Dr. Kapcar's comments. And he began visiting medical libraries—the State University of Buffalo, VA hospitals, the National Institute of Health in Washington.

Using the Freedom of Information Act, he also went to the Navy and its Bureau of Medicine and Surgery for information.

"Until the Freedom of Information Act, I wasn't allowed to see my own medical records," he said.

The road to information wasn't smooth.

There were the expected runarounds and delays. Some infuriated him. Like the 129 days the VA claims it took for a letter to reach his Town of Tonawanda home from downtown Buffalo.

The Navy's denials of the drug testing, carefully worded but emphatic, made him hot under the collar.

But he wasn't deterred.

His own x-rays and medical records, he estimated, weighed between 25 and 30 pounds. They included what he estimates were 360 x-rays. The VA, in disputing some of Mr. Carrig's disability claims, puts the number of x-rays at closer to 200.

The Navy at first disputed Bill's claim that information on sulfa drug tests was omitted from the men's medical records. But at the same time, it admitted that sick-call logs from the Norman training center for January to March 1944 "cannot be located in files."

It went even further—and denied that the sulfa program ever was.

Capt. C. E. Brodine, the Navy's special assistant for medical research and development, wrote from Washington on July 1, 1977:

"A review of the research files of this Bureau fails to reveal evidence of an approved research study involving the use of sulfa drugs conducted at the Naval Air Technical Training Center, Norman, Okla., at any time during your active military service."

Bill Carrig's military service record, obtained from the Marine Corps, has this entry:

Noman ATTC: December 20, 1943 to June 29, 1944.

And a Naval report, Navmed Report 284, says in part that "mass prophylaxsis" involving sulfadiazine took place at Norman between Feb. 17 and May 30, 1944.

The Sulfa program, aimed at preventing respiratory diseases, was conducted at eight major Navy-Marine training bases: Norman; Sampson, N.Y.; Farragut, Idaho; Great Lakes Naval Training Center, Chicago; Bainbridge, Md.; Davisville, R.I., Memphis, Tenn., and Navy Pier, Chicago.

It was done over a six-month stretch. Then it was repeated the following winter.

Capt. T. J. Carter, head of the Navy's Division of Preventive Medicine, extolled the undertaking in 1944:

"This project, it is believed, is the largest controlled investigative study ever undertaken and is marked by productive results and guideposts which will surely find their way into the history of preventive medicine."

Four decades later, as Bill Carrig and other veterans have tried to piece together shattered lives brought on by shattered bodies, the Navy was pleading ignorance.

On Jan. 30, 1978, yet another of the top brass was denying the tests ever occurred. Lt. Cmdr. Robert E. Broach, a lawyer and special assistant to the surgeon general of the Navy for medico-legal affairs in the Bureau of Medicine and Surgery, wrote:

"A detailed review has been conducted of all research projects sponsored by the Bureau during the period 1944–46.

"Also identified in this review were naval activities involved in authorized research studies relating to sulfa drugs.

"No such study sponsored by the Bureau was conducted at the Naval Air Technical Training Center, Norman, Okla., during that time."

Why the denial?

Back in 1944, Capt. Carter, in an apparent afterthought to the glowing introduction to Navmed 284, wrote in part: "Inevitably, development was troubled by errors, although little time was lost in their correction."

In its own investigation. The News found that even as the Navy was dispensing sulfa drugs like candy to more than 660,000 recruits, other branches of the service were shying away from using sulfa drugs as a preventative.

There were signs of bad side effects, of drug resistances and even deaths.

There were other woeful consequences, a bitter harvest that Bill Carrig feels he and many other World War II vets are silently reaping today.

NAVY IGNORED WARNINGS ON THE DANGERS OF SULFA

(By Modesto Argenio and Anthony Cardinale)

The Navy's failure to keep records of 600,000 to 1 million healthy servicemen it required to take sulfa drugs during World War II has made it all but impossible for surviving veterans today to claim benefits for sulfa-related illnesses.

And the Navy's virtual cover-up of the sulfa program—by destroying Navy publications and later denying that it ever conducted the program—almost guaranteed that any veteran making inquiries in later years would be kept in the dark.

But one of those men made inquiries and refused to take "no" for an answer. Marine veteran William J. Carrig of the Town of Tonawanda has spent the past three years fighting the government for his own records, records he is entitled to.

Mr. Carrig, now 55, recalls receiving sulfa drugs while in training at a Navy base in Norman, Okla., whose sulfa program had more of the trappings of a reckless experiment than those at other bases. Only 18 years old at the time, he complained of abdominal and urinary problems almost immediately.

A decade later, the persistent problem was solved with the removal of a kidney. Mr. Carrig is convinced that sulfa crystals in the kidney caused the years of pain.

The Navy went ahead with its sulfa drug program in 1943 despite published reports at the time that sulfa was dangerous to the kidneys and the urinary tract.

In its attempt to control the outbreak of respiratory infections at stateside training stations, the Navy required trainees to swallow sulfa pills every day, often under threat of punishment. Participation in the program was not noted on military records unless the trainees were among the more than 600 men who had adverse reactions. Ten of them died.

Despite warnings in medical journals, the Navy did not even tell most of the men what the pills were, nor did it bother to inform them of some simple precautions that were then known to the medical profession.

The systematic administration of sulfadiazine, a sulfa compound, to Navy and Marine trainees at eight bases during the first winter, 1943–44, is recounted in a fat document obtained by The News during its investigation.

"The Prevention of Respiratory Tract Bacterial Infections by Sulfadiazine Prophylaxis in the U.S. Navy" was published in 1944 by the Bureau of Medicine and Surgery of the Navy Department.

Known as "Navmed 284," the document lists 620 severe reactions to the drug, including 10 fatalities, but does not name any of the men.

The section dealing with Bill Carrig's base in Oklahoma contains many details that, in retrospect, point to a cavalier attitude on the part of those running the sulfa program.

Officers at Norman admitted in the report

that "blood chemical determinations were not made to ascertain the presence of residual effective level before the next regular dose was administered."

Such a check might have revealed sulfa crystals in some of the men's urine.

The officers at Norman also made sure men going off base on weekend liberty did not lose any sulfa from their systems. These men were given extra sulfa before leaving the base.

But the most poignant part of the Norman section of Navmed 284 has to do with the men who complained of bad reactions to the drug.

"No deaths occurred," the Navy reported. "In several cases, patients were interviewed and examined who complained of gastrointestinal disturbances.

"In each case, some other factor was disclosed and the drug was not discontinued in a single instance because of real or fancied gastrointestinal symptoms"—including the abdominal complaints of Bill Carrig.

But they had another problem at Norman. Fifty-one trainees suffered skin rashes, some erupting so badly that the rash looked like German measles.

Instead of dismissing the 51 men from the program, the report says, "an attempt was made to confirm the original impression (of sulfa allergy) by reproducing the lesion after an interval of from seven to 14 days.

"Of these 51 cases, the dermatitis was reproduced later in 17 instances by the administration of small daily amounts of the drug. In most cases, the eruption reappeared after 1 or 2 grams . . ."

Still, the Navy was not satisfied that these men should be dropped from the experiment. After one to four weeks, 15 of them were given sulfanerazine, a derivative of sulfadiazine. This time, only three of them had a bad reaction.

If any of the trainees were aware of the dangers of the white pills they were taking each day, there was not much they could do. But some of them did try.

At Norman, where 8,000 Navy and Marine trainees received sulfa, "all sorts of subterfuge were uncovered by tactful investigation," according to Navmed 284. This was the base where Bill Carrig recalled standing in line at the barracks water fountain and having his mouth inspected with a flashlight after he swallowed his sulfa tablet.

"Examination of the oral cavity following ingestion of the tablets was employed at some of the musters," the Navy reported. "Fear of untoward reactions was not a significant motive among those failing to cooperate."

Mr. Carrig thinks a few of the men may have suspected the white tablets contained saltpeter, a compound that reduces sex drive.

NAVMED 284 goes on to describe the sulfa program's first winter at other Navy bases across the country. It must be noted that despite this detailed report, the Navy has denied knowledge of these tests.

At Great Lakes Training Center in Chicago, 188,000 enlisted men received sulfa during the winter of 1943–44. There were 384 adverse reactions, five of them so bad that the men lost much of their skin. Three men died, two of them age 18, one of them 22 years old.

Six men died at the training station in Farragut, Idaho, where 80,000 men received sulfa daily. All six deaths resulted from granulocytopenia—a chemically-induced blood deficiency marked by severe depression of the bone marrow, prostration, chills, swollen neck and sore throat often with ulceration.

The five who had been on sulfa (and the one who had not) all died after receiving sulfa in the hospital. The Navy report concluded that "therapeutic doses of sulfonamide aggravated a severe disease process initiated by (sulfa) prophylaxis."

In other words, giving men sulfa drugs as a preventive could cause a drug poisoning that got only worse when treated with more sulfa drugs. The military was in the grip of a sulfa fad.

Sulfa compounds continued to be used liberally by the Navy in treating personnel who got sick. And it was used by all branches of the armed forces for wounds suffered in the field.

It must be remembered that penicillin had been discovered but could not yet be mass-produced during the war. And so the nation's chemical industry produced a record 10 million pounds of sulfa in 1943, and the Navy apparently used it almost as casually as aspirin.

Thousands of other healthy trainees were given sulfa daily: at Memphis, Tenn., there were 61 bad reactions; at the Navy Pier, Chicago, 131 reported sick; at Bainbridge, Md., 85 reactions, one fatal; and at Davisville, R.I., the seasoned Seabees put up a struggle, and 10 percent of them had their liberty cards taken away.

At the training center in Sampson, N.Y., in the Finger Lakes region, 63,392 enlisted men received sulfa with no fatalities reported.

"The dispensing of tablets was under the direct personal supervision of each company commander and company clerk," Navmed 284 states. "A check-off list ensured that each man received his two tablets, and he was required to swallow them with water in the presence of the company commander.

"No one was excused from taking the drug unless he possessed a certificate from the medical officer of his unit indicating that he was sensitive to sulfonamide."

The News tried to obtain copies of the "check-off lists"—including names of the men—but the U.S. Navy said it was unable to locate them.

Officers at Sampson did not report how many adverse reactions occurred, but said they were usually skin eruptions, with a few cases of genitourinary system reactions.

Their report concluded, however, that "urinary complications were virtually nonexistent," and "persons may be given small daily doses of sulfadiazine prophylactically (as a prevention) over a long period of time without the danger of producing renal (kidney) impairment."

And yet, while that program still was going on, many articles in medical journals warned of the contrary.

The January 1944 issue of the Journal of Urology warned that sulfa crystals could cause blockage in the kidneys and that the mounting popularity of sulfa against infections was alarming. It suggested that if sulfa was needed as therapy for patients, sodium bicarbonate should be swallowed to keep the crystals dissolved.

The News interviewed more than 50 veterans who served at those bases during the sulfa program. None of them recalled taking baking soda with the "white pills," or even being given the simple warning that they should drink extra water while on sulfa.

As early as May 1943, the Annals of Internal Medicine had an article warning of kidney problems and speculating about sulfa damage to the brain and central nervous system.

The Canadian Medical Association Journal warned in May 1944 that sulfa damage to the kidneys could be fatal. It, too, suggested baking soda during sulfa therapy.

Among many other warnings were two articles in the June 1944 issue of the Kentucky Medical Journal that should at least have dampened the Navy's enthusiasm for extending the sulfa program second winter.

"When sulfadiazine was first introduced we had many reports proclaiming the fact that renal pathology did not occur," wrote Dr. Eunice S. Greenwood of Louisville, "but in the last year we have had to change our views . . .

"By the end of 1942, six fatal cases of anuria (failure to excrete urine) from this drug were reported. Others were reported for 1943 . . ."

Dr. Greenwood noted that the November 1943 issue of U.S. Army Medical Reports recommended that even on the battlefield—where emergency use of sulfa could save lives—all casualties should receive only one dose of 4 grams of sulfadiazine and no more until hospitalization.

And yet, at most of the bases discussed in Navmed 284, the preventive dose was 1 gram a day for three months or more, for a total of 90 grams, or about three ounces.

Furthermore, the other article in the Kentucky Medical Journal warned that blockage of the kidneys by sulfa had been observed "after even a day's administration of customarily 3 grams" to a patient.

The Navy received direct warnings from the medical community.

Dr. T. Duckett Jones of Boston, reviewing preliminary findings by the Navy in the Sept. 9, 1944, issue of the Journal of the American Medical Association, warned that the men might be made sensitive to sulfa by continued use—so that perhaps some day, when they really needed sulfa on the battlefield, they would have an adverse reaction to it.

After the first six months, the Navy concluded that the use of sulfa during the first winter had been 85 percent effective in preventing respiratory tract infections. During winter months, such a program could be expected to save "a day per man per month" in sick bay.

The program also probably saved many lives of men who would have come down with a fatal infection of such a disease as scarlet fever, rheumatic fever or spinal meningitis.

But the second winter—1944–45—brought unexpected problems to the sulfa program, and the Navy reaped the whirlwind for having ignored simple precautions. It is not known how many men were involved in this second winter's program, but it may have been nearly as high as the 600,000 men the Navy admits it gave sulfa during the first winter.

The problems during the second winter are revealed in a 1949 monograph, "The Epidemiology of Hemolytic Streptococcus During World War II in the U.S. Navy."

The book, published by Williams and Wilkins Co. of Baltimore, was authorized by two former Navy officers who had played prominent roles in the wartime sulfa program.

Dr. Alvin F. Coburn, a nationally known authority on streptococcal diseases, was the Navy commander who had organized the program for the Navy; after the war, he joined Northwestern's Rheumatic Fever Research Institute.

Dr. Donald C. Young, as a lieutenant commander, had run the sulfa program at Norman, Okla.; after the war he became medical director of the Communicable Disease Service of Detroit's Herman Kiefer Hospital.

Dr. Young was the officer who Bill Carrig said he recalls at the swimming pool that day in 1944, when he and other trainees were forced to stay in the water until they were exhausted.

By the winter of '44–'45, the Navy was experiencing what it called a "loss of effectiveness" of the sulfa program. It traced this to the appearance and spread of strains of disease that were resistant to sulfa drugs.

Had the sulfa program actually induced the development of sulfa-resistant strains? Coburn and Young agonized in their report over this possibility. Six months after the program began, they boasted, all the germ

specimens taken from patients with acute throat infections proved to be sensitive to sulfa—except those found at Farragut, Idaho.

Sulfa had already proven to be nearly useless in preventing pneumonia at Farragut and other bases. In fact, pneumonia had increased five-fold during the program at Norman.

But now something was happening at Bainbridge, Md., that indicated the sulfa program might be giving birth to a sulfa-proof strain. Late in the second winter of sulfa use, some specimens of resistant disease were discovered in the men.

Then, in January 1945, a resistant strain appeared at San Diego training center—where sulfa had not been used. But many men could have carried the strain with them from the eight other centers as they headed overseas by way of San Diego.

Next, a resistant strain popped up at Norman . . . and then at Memphis. But Coburn and Young concluded that "it was not possible to determine from the available evidence" whether the sulfa program had backfired and caused these strains to emerge.

The sulfa program was not effective at Great Lakes in late 1944. In fact, two of the camps there actually showed a sharp rise in sick rates during the program, then a drop when it was discontinued.

At Farragut, the men in a group receiving sulfa daily showed more infections than the control group that did not. At one point during 1944, medical officials at the program's headquarters in Bethesda, Md., concluded that so sulfa dosage would have proved effective at Farragut.

In 1945, Coburn and Young reported, "outbreaks occurring throughout the Navy were caused chiefly by strains indistinguishable from those which had been identified at Farragut."

They concluded:

"The solution of this key problem must await more fundamental work on the genetics and the metabolism of the streptococcal cell."

Thus ended a two-year sulfa program described by the Navy as "the largest controlled investigative study ever undertaken." The program's "productive results" were destined to "find their way into the history of preventive medicine."

But no one bothered to keep track of the men in the program and what happened to them afterward. Nor has the Navy made it possible for veterans to resurrect the raw data, much less to obtain reimbursement for damages suffered from a program virtually disavowed by its sponsors a generation later.

LETTERS OF DENIAL

The Navy didn't mince words in twice insisting that there were no sulfa-drug tests conducted at training bases during the late stages of World War II. The denials are in letters from 1977 and 1978. The News, however, obtained a copy of yet another document—a Navy report called Navmed 284—that contradicted those denials. Navmed 284 not only confirmed the tests, but also hinted at some of the negative side-effects suffered by otherwise healthy sailors and marines given sulfadiazine.

DEPARTMENT OF THE NAVY,
Washington, D.C., June 1, 1977.

WILLIAM J. CARRIG,
40 Harding Street,
Kenmore, N.Y.

DEAR MR. CARRIG: This is in reply to your letters of 23 March 1977 to the Chief, Bureau of Medicine and Surgery, and the Commandant, Marine Corps.

A review of the research files of this Bureau fails to reveal evidence of an approved research study involving the use of sulfa drugs conducted at the Naval Air Technical Training Center, Norman, Oklahoma at any time during your active military service.

At the time of your active service, regulations required an official entry be made in health records of all personnel participating in medical research projects. A review of your original health record which has been retrieved from the Federal Records Center does not indicate that you participated in an experiment involving the use of sulfa drugs.

I regret that we have not been able to provide you with more information on this matter.

Sincerely,

C. E. BRODINE,
Captain, Medical Corps, U.S. Navy, Special Assistant for Medical Research and Development, by direction of the Surgeon General.

DEPARTMENT OF THE NAVY,
Washington, D.C., January 30, 1978.

Mr. WILLIAM J. CARRIG,
40 Harding Avenue,
Kenmore, N.Y.

DEAR MR. CARRIG: This is in further reply to your inquiries to the Bureau of Medicine and Surgery and the Naval Medical Research and Development Command wherein you requested information regarding what you contended were experiments dealing with sulfa drugs conducted at the Naval Air Technical Training Center, Norman, Oklahoma, during 1944.

All the information held by the Bureau of Medicine and Surgery pertaining to your medical treatment while in the Marine Corps has been furnished to you by previous correspondence of June 1, July 29, and August 26, 1977. A detailed review has been conducted of all research projects sponsored by the Bureau during the period 1944–1946. Also identified in this review were naval activities involved in authorized research studies relating to sulfa drugs. No such study sponsored by the Bureau was conducted at the Naval Air Technical Training Center, Norman, Oklahoma, during that time.

ROBERT E. BROACH,
Lieutenant Commander, JAGC, USN, Special Assistant to the Surgeon General for Medico-Legal Affairs.

CONCLUSION

MASS CHEMOPROPHYLAXIS: THE U.S. NAVY'S SIX MONTHS' PROGRAM FOR THE CONTROL OF STREPTOCOCCAL INFECTIONS

(By Commander Alvin F. Coburn (MC) V(S), U.S.N.R.)

Altogether, throughout this program more than 600,000 Naval trainees received daily doses of sulfadiazine to protect them from respiratory diseases. The results of 6 months' observation permit an appraisal of this prophylatic measure. Before attempting to weigh the advantages and disadvantages of this strategy for attacking respiratory pathogens, one must first understand the nature of the problem at the Naval training activities that instituted this Straptococcal Control Program.

VETERANS WHO RECALL TAKING SULFA TABLETS TELL OF NAVY ROUTINE

(By Modesto Argenio and Anthony Cardinale)

The Buffalo Evening News has found several World War II veterans who remember being handed sulfa pills very day and being required to swallow them at Navy training bases.

The News also located several Navy and Marine veterans who don't remember the sulfa pills but who served at those bases during that time, and later suffered kidney-related problems. Some of them had received sulfa as treatment for illnesses.

Finding any of the more than 600,000 veterans was often difficult, because the U.S. Navy destroyed records and even denied the existence of the sulfa disease-prevention program in later years.

By failing to note on medical records each serviceman's participation in the 1943–45 sulfa program, and by destroying original records and removing a published report from circulation, the Navy effectively short-circuited the men's chances of learning about possible dangers and later receiving compensation for damages.

William Carrig, 55, of the Town of Tonawanda, was the first veteran to contact The News. He served at Norman, Okla., during the sulfa program and immediately suffered abdominal pains. The mysterious ailment became chronic, and a decade later a kidney was removed.

His best friend at Norman, Donald Gerard of Mishawaka, Ind., remembered the white "horse pills" but didn't suffer any ill effects. The sulfa program there was from Feb. 17 to May 30, 1944.

As Mr. Carrig described it, the men were lined up at the drinking fountain when they returned to their barracks from class each day, were handed two large white pills and swallowed them. He said a first sergeant checked their mouths with a flashlight to make sure they complied.

A Medina man who was at Norman at the time, Burt G. Raymond, said he was in one of the Marine barracks, and it was quarantined for two months because of an outbreak of spinal meningitis.

"One man died eight bunks away from me," Mr. Raymond recalled. "Another man died, but he was downstairs."

His barracks received special attention, he said, and the men were told the pills they were taking were sulfa drugs.

"The first sergeant was there, with a doctor and a pharmacist's mate," he said. "We'd line up and step forward. The doctor would throw the pill in your mouth, and the sergeant was there right by the water fountain and made sure you didn't hide it under your tongue and that you swallowed it."

Were the men warned of the dangers of sulfa drugs or advised to drink extra water; and take baking soda?

"I doubt it seriously," Mr. Raymond said. "Today I would ask questions, but then—when they said take it, you took it. They socked that sulfa to us every day, three times a day."

A friend of his, A. Wayne Goodman of Indianapolis, also remembered the pills.

"We had to stand in line, and each guy had to open his mouth, and they made sure you took it," Mr. Goodman told The News. Neither he nor Mr. Raymond suffered any apparent side-effects from the sulfa.

Other area men served at the Navy base at Sampson, N.Y., during its sulfa program from Dec. 1, 1943, to April 1, 1944.

James J. Harkins of 51 Neumann Parkway, Town of Tonawanda, had a kidney removed in 1955, the year after Bill Carrig lost his. He doesn't remember the sulfa-prevention program at Sampson, but he does recall receiving sulfa drugs later on, in San Francisco, when he came down with a bad cold.

The News investigation found that the Navy was liberal in its use of sulfa drugs for therapy as well as using it as a preventive against infections for more than 600,000 trainees.

Even in 1943–45, military and civilian doctors were warning not only of the dangers of sulfa, but of the possibility that some men receiving it as a prevention might become sensitive to it, so that when they received it later for a battle wound or an illness, it could cause serious damage.

"I started having trouble right after coming out of the Navy," Mr. Harkins said. "I

took a lot of those pills at 'Frisco, and I didn't know what they were at the time."

Mr. Harkins said he doesn't know what damaged his kidney and isn't receiving any service disability.

Carl Hazen of 52 Moore Ave., Kenmore, told The News he remembers "getting pills at the water fountain" both at Sampson, where he was stationed from November 1943 to January 1944, and at the Navy training center in Memphis Tenn., where a sulfa program was conducted from Feb. 1 to April 1, 1944.

"Every day, at noon muster, they gave you the pills and made sure you swallowed them," he said of his Norman days. "You didn't get past muster if you didn't take them.

"In Memphis, we had to take some too. I was there from January to May or June 1944, going to gunnery school."

Mr. Hazen has had heart surgery in recent years but doesn't recall any health problem that might be traced back to sulfa.

Brendan Komenda of Lackawanna, who has suffered kidney problems and two heart attacks, said he didn't recall the disease-prevention program while he was at Sampson but did receive sulfa drugs for pneumonia on that base. Navy documents unearthed by The News reveal that sulfa was used as a preventive and a treatment for pneumonia but eventually proved virtually useless against pneumonia.

Mr. Komenda, who is the training officer at the U.S. Navy Reserve facility on Porter Avenue, said his kidneys have bothered him since the war, but he has always blamed it on injuries suffered when two of his ships went down in the Pacific. Now he is not so sure.

John Bates of 331 Chelsea Place and Dominic Bifaro of Blasdell were stationed at Sampson during part of the sulfa program and don't recall taking the pills. Mr. Bates has had urinary infections, and Mr. Bifano has suffered hypertension and has had heart surgery since then.

Kenneth Perry of the Town of Tonawanda, who served at Sampson and Norman during those years and has had urinary problems, said he wasn't aware of sulfa pills, but "they threw a lot of pills at you, and I wouldn't be surprised if they used us for guinea pigs."

The News received responses from veterans across the country who served at Navy bases where sulfa programs were conducted.

John D. Tall of Newark, Del., who is on a kidney dialysis machine, served part of his Navy service at Bainbridge, Md., where there was a sulfa program from Dec. 13, 1943, to April 2, 1944.

Mr. Tall vividly remembers taking large white pills and being told it was preventive measure. He says he remembers being lined up every morning and receiving the pills.

An emphysema victim who has also had heart surgery, Mr. Tall spent 77 days in intensive care with kidney failure and lost a great deal of weight. His doctors cannot determine why his kidneys have failed.

Lewis Munschy called from Fresno, Calif., and said he was stationed at Farragut, Idaho, which The News learned had a sulfa program from Dec. 5, 1943, to April 1944. He was in the hospital with a fever.

"I got kidney stones from it," Mr. Munschy said of the sulfa drugs. "I was overseas when I got shot up. I was in a field hospital in Guam. They doped me up until I passed it, and they told me it might have been a sulfa crystal."

Booth H. Pendell of Kingston, N.Y., remembers taking sulfa pills at Sampson in early 1944. He has had high blood pressure since then.

"We knew they were sulfa," he said. "We had to take them to avoid getting the flu bug. I cannot say we were forced to take them, but they gave them to us once a day and while we were standing in line."

One Navy veteran who was contacted in Dallas, Texas, angrily asked whether the News intended to tell how many lives were saved by the Navy's sulfa program.

But as he talked, he admitted that he had asked his wartime friends about the issue, and that one of them remembered. The friend had been absent without leave, he said, and when he returned his punishment was to "stand in the chow hall line and pass two big old white pills out" to each man.

The Dallas man refused to reveal when and where this happened, or to put his friend in contact with The News.

DOCTORS STYMIED IN TRACING EFFECTS ON SULFA "VICTIMS"

(*Warning—This drug may cause severe toxic reactions and irreparable damage . . .* Label on sulfa bottle.)

(By Modesto Argenio and Anthony Cardinale)

What should veterans know today about the effects of sulfa drugs if they think they were among the more than 600,000 Navy and Marine trainees in the Navy's sulfa program during World War II?

That question is not easy to answer.

The Navy has done nothing to keep track of these men or to warn them of possible long-range effects of taking sulfa pills every day for an average of three months.

In fact, the Navy told a Buffalo-area veteran 35 years later that it never conducted such a program.

Eli Lilly Inc. still produces sulfadiazine, the sulfa compound chosen by the Navy for its wartime test program. The drug can be obtained only by prescription.

The chilling warning on the label states that sulfadiazine "may cause severe toxic reactions and irreparable damage." It advises that the patient "maintain adequate fluid intake" and that the blood be examined daily for signs of anemia or leukopenia, and the urine be checked for blood.

"Constant supervision of the patient is essential," the warning concludes. A pharmacist contacted by The Buffalo News during its inquiry had some sulfadiazine in stock. He said this batch was made in 1976, and the demand for it is very small.

During its investigation, The News researched in medical journals and consulted kidney experts about the effects of sulfa drugs. The News attempted to answer the following questions for the benefit of thousands of veterans across the country:

—If a trainee swallowed 3 ounces of sulfadiazine in three months in 1943, '44 or '45, how long might it take for sulfa crystals in his kidneys to dissolve?

Once the crystals were dissolved, could they have left behind any damage that could contribute to kidney and related problems 10 years later? In 20 years? After 35 years?

If so, what should the Navy have told the men at the time they were required to take sulfa pills daily? What could the men have done after the war, if the Navy had revealed the nature of the experiment then? What, if anything, can the men do today?

Dr. Hemchandra M. Pandit teaches physiology at D'Youville College. His doctorate degree is in biology. He took part in kidney research at Buffalo General Hospital from 1966 to 1968, and he has studied the effects of sulfa drugs.

He worked in a leper colony in Bombay, India, from 1957 to 1962 and notes that sulfa drugs still are used effectively against that disease.

For several weeks, Dr. Pandit has been examining the evidence available in the case of William J. Carrig, the Town of Tonawanda Marine veteran who lost a kidney 10 years after being in the Navy's sulfa program at Norman, Okla.

In addition to the 3 ounces of sulfadiazine taken during the Navy's disease-prevention program, Mr. Carrig also received from Navy doctors 7 ounces of sulfa for a serious ear infection.

Dr. Pandit is intrigued by Mr. Carrig's claim that sulfa damage led to the loss of his kidney, and he now believes there's a good chance he is right. But he speaks cautiously, noting that many of the medical records—including the biopsy of the removed kidney—still haven't been released by the Veterans' Administration.

"Let us be honest," Dr. Pandit said. "I was not there; we cannot say it caused the problem."

The passage of time and the absence of crucial records make it difficult to reconstruct Bill Carrig's lifetime medical history and to rule out other factors that may have contributed to the problem, he said.

The effects of sulfa on the human body are complex.

"When you take sulfa," Dr. Pandit said, "certain enzymes in the body are inhibited. Sulfadiazine inhibits the biochemical reactions of bacteria so they won't reproduce."

Sulfa drugs can damage the body in two ways. One, by crystallizing in the kidneys. Two, by introducing toxic agents into the blood.

The kidneys usually are the central region to be damaged, Dr. Pandit said, but many other organs are affected by the kidneys, including the heart and the brain. Thus, many illnesses may directly be caused by sulfa.

"Sulfa also causes aplastic anemia," he said. This is a blood deficiency caused by defective functioning of blood-forming organs, such as the bone marrow.

At the very least, Dr. Pandit said, the Navy should have advised the men to drink extra water. But once the damage was done, could the Navy be blamed for the loss of a kidney 10 years later?

"It could take 10 to 20 years to lose a kidney," he replied. "Think of a child suffering rheumatic fever. He can go until his 30s and 40s before discovery of a heart murmur."

Once it's too late to "flush it out" by drinking water and taking medication, what can the veteran do to minimize the consequences of having taken so much sulfa?

"Have a urine test," Dr. Pandit said. "And a kidney function test. They inject dye into the blood, and if there's an obstruction, it can be seen by X-rays."

Other medical sources have pointed to the danger of sulfa allergies. The April 1945 issue of the Navy Medical Bulletin contained an article on "Abuse of Sulfonamides." Capt. Richard A. Kern expressed alarm at the Navy's use of sulfa compounds to treat minor ailments.

"Above all," he wrote, "such promiscuous use of sulfonamides may lead to a considerable number of cases of sensitization, rendering future use of the drug dangerous at a time when its help is desperately needed, as for example in the treatment of a pneumonia or dressing of a battle wound."

He "strongly condemned" the routine use of sulfa for acute catarrhal fever because it could bring on allergy to sulfa.

"The sulfonamides are excellent sensitizers," he wrote. "Fifteen percent of the population is allergic. This means that at some time in the lives of these people, they exhibit an obvious manifestation of allergy, such as asthma, hayfever, allergic eczema or urticaria."

Bill Carrig says asthma was the main reason for his early retirement from the Chevrolet plant in the Town of Tonawanda. His physician listed bronchial asthma along with his laryngectomy as the cause of his disability.

The News posed the same questions to Dr. Sidney Anthone, who with his brother, Dr.

Roland Anthone, is recognized as a leading kidney surgeon in the Buffalo area.

The one-gram daily dose of sulfadiazine for three months by the Navy was "not a huge dose and is a very acceptable dose for an adult, even over three to five months," he said. But he stressed the importance of monitoring the patient's reactions to it.

Urine samples should be examined for evidence of sulfa crystals he said. This is something the Navy did not do routinely for the hundreds of thousands of healthy men receiving sulfa daily, The News has found.

Dr. Anthone said those who experience crystallization of sulfa in the kidneys usually are sulfa-free within a few months as the crystals dissolve in the urine. And so he was cautious when asked about possible long-range damage.

"I don't believe that there would be any ill effects of sulfa intoxication 20 to 40 years later if no such reaction was evident at the time the drug was taken," Dr. Anthone said.

But because the great sulfa craze of the 1940s has been reduced to a trickle in the medical world today, doctors aren't normally called upon to look for sulfa as a culprit in kidney disease.

To supplement his own medical experience with sulfa, Dr. Anthone conducted a computer search of articles about sulfa intoxication of the kidneys. He drew attention to an article written by Drs. Louis Weinstein, Morton A. Madoff and Charles M. Samet in the New England Journal of Medicine.

The article on "The Sulfonamides," or sulfa drugs, warns of the extensive list of bad reactions they can cause.

"They involve nearly every organ system, often in multiple fashion and to a varying degree. Some of those reported are bizarre, and it is frequently difficult to determine, from isolated case reports, whether they have been directly related to the drug."

Without a doubt, sulfa drugs "are capable of inducing reactions some of which are very severe and even fatal," the article continues.

"The systematic administration of sulfonamides may be complicated by the appearance of manifestations resulting from injury to the urinary tract. Although the incidence of these reactions has decreased in recent years because of the development of compounds of greater solubility and of sulfonamide mixtures, these still occur often enough . . ."

If the sulfa drug does not remain dissolved in the urine, the article warns, it can deposit crystals in the kidneys, pelvis, ureters or bladder and lead to irritation and obstruction of the urine. These, in turn, "lead to irreversible tubular changes and death."

As to how long sulfa damage might remain in the body, the article states that "sulfonamide crystalluria of serious degree may be overlooked during life and noted only at post-mortem examination."

Among other side effects have been goiter, hypothyroidism, arthritis, and neuropsychiatric disturbances, it adds. The risk of rashes, fever, blood dyscrasias, urinary-tract complications and liver damage was listed as 6.5 percent of those treated with sulfadiazine.

At this stage of its investigation, The News has not found a medical authority who can specifically answer the questions relating to servicemen who were subjected to the Navy's sulfa program during World War II.

However, one ray of hope for veterans who want to know the answers may have escaped the Navy's policy of not noting the men's participation in the program in their medical records.

According to documents obtained by The News, the Navy did make a notation in medical records whenever an enlisted man sufferred an immediate reaction to sulfa drugs. They simply noted that the serviceman was sensitive to sulfa drugs.

While the records don't mention the sulfa experiments—or how it was learned that the man was sulfa sensitive—the Navy could screen all the medical records of Navy and Marine enlisted men from that period. It could then send a notice to each "sulfa-sensitive" veteran that he may have been part of the sulfa program. That's a small but potentially significant step.

This gesture might prove to be too little too late. But if it can help make a better life for one former serviceman—and if the armed forces can learn a lesson from the Navy's mistakes—the effort will have been worthwhile.

RIGHT TO KNOW WAS TORPEDOED IN NAVY SULFA TEST

(By Modesto Argenio and Anthony Cardinale)

As many as a million American veterans used in a World War II Navy sulfa drug experiment may never know for sure that they were subjected to the drugs.

They may never be able to cut through the military's red tape or to reconstruct the volumes of destroyed or misplaced records, or to halt the passage of precious time to piece together lives contaminated by the experiment.

The Navy, despite repeated requests from The Buffalo News, would shed little light on the tests.

In fact, there is evidence of an attempt to cover up the sad consequences of the experiments. Some veterans, like ex-Marine William Carrig, of the Town of Tonawanda, believe that's the case.

The Navy, for its part, has been evasive, claiming ignorance because of misplaced or destroyed records and at one point denying information requests in classic "Catch-22" language.

Some of the doctors involved in the tests refused to answer questions even though they are now leading lives as private citizens. They referred inquiries to the Navy.

The bottom line is this: there is significant evidence that the sulfa tests, while well-intended, may have backfired, leaving a national legacy of legions of veterans in the dark about their involvement in the tests.

The men who may have suffered the consequences are effectively short-circuited from getting a fair share of compensation.

Mr. Carrig puts it this way: "Every day, the evidence grows thinner. Every time one of us dies, that's one less bit of evidence."

In its official correspondence, the Navy point-blank denies ever testing sulfa on U.S. servicemen.

Yet Washington's archives contain documents detailing the tests.

And in dozens of News interviews, veterans say they remember the sulfa pills they were given at training bases.

Bill Carrig's claim is simple and represents, in microcosm, the gut issue for fellow sailors and Marines tested.

He contends he was among the more than 600,000 sailors and Marines who were given large doses of sulfadiazine in the Navy's tests.

The sulfa tests, he charges went awry and have since triggered among veterans many chronic sicknesses and sometimes mysterious diseases that are difficult to account for.

As The News previously reported, the Navy insists no such tests ever occurred.

The Navy told this to Mr. Carrig on Jan. 30, 1978, when Lt. Cmdr. Robert E. Broach flatly insisted that "no such study" of sulfa drugs ever took place in 1944 at the Norman, Okla., training base. The base, since mothballed and deeded in part to the University of Oklahoma and in part a municipal industrial park, was where Mr. Carrig underwent metalsmith training.

Yet a 1944 report—issued by the same Navy Bureau of Medicine and Surgery for which Lt. Cmdr. Broach works—details the sulfadiazine program.

The report describes how more than 600,000 trainees were given doses of the drug over a six-month period in 1943–44.

One of the co-authors of the report, a doctor, was hesitant to discuss the sulfa tests. Despite repeated requests for assistance in examining the results of the tests. The News team was referred to the Navy by Dr. Donald C. Young.

It was Dr. Young and Dr. Alvin F. Coburn, a specialist in treating streptococcus diseases, who wrote ringing praises of the tests.

Dr. Young, in a Nov. 12 letter to The News, wrote: "I was a member of an independent epidemiology unit at Norman, Okla. We did not participate in the medical activities of the station."

He would not elaborate and instead referred requests for records to "the senior medical officer of the station, the office of the station hospital, senior medical officer or the office of the Surgeon General in Washington, D.C."

But Norman, Okla., like Sampson, N.Y., and many of the other bases at which the tests were conducted, has been closed for years. The News tracked down key documents in this case despite Navy denials.

The Navy gave The News a spate of "technical denials" of requests for information, insisting on Nov. 5 that "frankly, it is highly unlikely that those records still exist in any retrievable form."

It went even further when The News appealed the denials. The Navy, in similar language, insisted that "a review of our files and records has failed to locate the document you have referred to."

Yet, The News found one key document—Navmed Report 284—available through medical school libraries and the National Institutes for Health, another government agency. A computer search at the State University of Buffalo revealed where the document could be found.

The Navy did admit—for the first time in The News investigation—that the document was an "official" Navy pamphlet. But it said this document was declared obsolete in 1954, and "all copies were subsequently ordered disposed of."

Excerpts from that report appear with this article. They clearly identify it as a Navy publication and one of its authors as Dr. Young.

Still earlier this month Dr. Young tersely rejected additional requests to discuss the sulfa tests:

"I was a member of an independent investigative unit.

"I had no contact with the officers and enlisted men.

"The information you desire should be obtained from official Navy medical documents."

At the very least, The News has found evidence that sulfa was recorded as being used for therapy in Norman, Okla., by the Navy. The Navy provided medical care for Marines, and Bill Carrig's personal medical records reflect that care.

Abstracts obtained by Freedom of Information requests show that while he suffered from an ear infection, otitis media, in February 1944, he was laid up in Dispensary Number 32 at the Norman base.

There he was treated with sulfa, according to his medical history. He received several ounces of sulfa.

Later, while en route to the Pacific, he was again treated with sulfa drugs, the records show.

While on board ship heading for the Marshall Islands, he contracted catarrhal fever, a flu-like illness that the Navy was on record as treating with massive doses of sulfa.

While shipboard records contain—surprisingly—no notations on what steps doctors took to care for Mr. Carrig, the diagnosis is unequivocal:

"Enteritis, acute, catarrhal, cause undetermined."

Other aspects of the shipboard records also contain surprises. Medical routing slips—"buck slips" that routinely show up in the reams of paperwork in any military administrative endeavor—were stamped with "Secret" classifications.

Mr. Carrig is at a loss to explain why. The Navy, likewise, didn't explain the classified imprint. Nor did it explain why the "Secret" stamps were later crossed out and the word "Declassified" printed over them.

The Navy's apparent reluctance to delve into the sulfa testing led to a classic "Catch-22" situation. On three occasions during its investigation the News asked the Navy's Bureau of Medicine and Surgery to:

—Supply the names of some of the approximately 600,000 men on whom sulfa was tested.

—Disclose any long-term bad effects the drugs had on the men.

—Explain why there apparently was a failure to note the sulfa testing on the personal medical records of sailors and Marines.

Each request was turned down as the Navy cited what it called "technical" denials.

The News appealed to the Navy office of the Judge Advocate General.

The Navy turned down the appeal on the grounds that, contrary to its own ruling, there was no technical denial in the first place and therefore an appeal was out of order.

Capt. Matthew J. Gormley III, acting deputy assistant judge advocate general, wrote:

"A careful review of your appeal has resulted in the determination that the inability of the Bureau of Medicine and Surgery 'to locate any records fitting the description of those you seek' is not a 'technical denial' and is therefore not appealable."

He concluded:

"Accordingly, it is considered that there is nothing to appeal in this instance."

Bill Carrig is convinced the Navy has a deliberate "desire not to locate records." He says three years of his own research have assured him that "the experiments were conducted and not recorded."

In an attempt to shed light on the tests, he asked U.S. Attorney General Benjamin Civiletti to help in 1979.

The result was a formal but not very informative reply from a junior Justice Department official.

Mr. Carrig also has been upset at the encounters he has had with the Veterans Administration. The VA has given him a runaround and has only grudgingly allowed him to examine some of his own medical records, he says.

Compounding the confusion behind the sulfa experiments is the relationship between the Navy and the "independent investigative unit" that was testing the drugs. Attempts to clarify the links have been frustrated, with the Navy claiming inability to document the tests and Dr. Young remaining tight-lipped.

There is other evidence in medical publications, however, that the Navy and the military had territorial interests in sulfa.

As early as 1948, researchers reported that in the waning days of the war, the nation did indeed go sulfa-crazy.

Dr. Elmore H. Northey, in a tract published as part of a monograph series issued by the American Chemical Society, notes the depth of investment in sulfa.

The United States produced 10,005,307 pounds of sulfa drugs in 1943 alone, he noted. That was enough to care for almost every man, woman and child. Dr. Northey noted:

"If we assume that an average course of treatment requires 35 grams of drug, this would mean that an incredible number of patients (129,000,000) could have been treated with the drugs produced in 1943."

Obviously, not all those people required sulfa treatment.

Where did the drugs actually go?

Much of it went to the Armed Forces both ours and those of our allies. But much of it was also getting duty. Why?

In the face of this peak production of sulfa, Dr. Northey noted, penicillin was being developed and mass-produced. It was among along with a host of antibiotic drugs that were replacing sulfa on a large scale.

There is no doubt, he adds, that sulfa saved many lives.

It is not the family of sulfa drugs that is at issue today. Rather it is the bitter aftertaste left with American veterans who, having paid the price of war, now are left to wonder whether they were unsuspecting tests subjects.

They, among so many, have earned the right to know.

NEWS SERIES STIRS MEMORY OF SULFA TESTS

(By Modesto Argenio and Anthony Cardinale)

More than two dozen local veterans of World War II have called The Buffalo Evening News to say they, too, were in the Navy's sulfa drug program, described in the series "The Bitter Pill."

The six-part series, which ended Sunday, exposed the 1943–45 experimental program in which the Navy attempted to control respiratory infections at its training bases by requiring the men to swallow sulfa tablets daily.

Many of the veterans who called The News said they either suffered immediate reactions to the drug or later came down with illnesses that might be blamed on sulfa.

One of the men, George Rease, of 50 Merrimac, said he suffered a serious skin rash after taking sulfa pills at the Navy base at Sampson, N.Y., and was given a yellow card excusing him from further participation in the disease-prevention program.

"The above-named person is sensitive to sulfonamides," the card states. "This individual reacted unsatisfactorily to prophylactic (preventive) doses of sulfadiazine consisting of one (1) gram daily. Further administration of sulfonamides is contraindicated."

Mr. Rease said he had to show the card at noon each day in order to pass roll call without taking another sulfa pill.

"I came down with a very bad skin rash," Mr. Rease said. "Great big sores. It lasted 10 days. We used to have to line up for noon chow and stand at the water fountain and take pills. They opened your mouth and checked to see we took it."

Seven months later, he continued, he began suffering cramps. The mysterious attacks laid him up for nine months in various naval hospitals and plagued him after he received a medical discharge.

"I had very severe cramps on board ship," Mr. Rease said. "I lost quite a bit of weight in Philadelphia Naval Hospital for three months. They didn't find anything."

Later, while stationed at Boston, he suffered cramps again and spent three months at Chelsea Hospital, he said. Transferred back to Sampson, he was hospitalized another three months and was discharged. Another attack in 1948 sent him to Sisters Hospital in Buffalo, and the problem has continued through the years, he said.

Another local veteran who served at Sampson has offered The News the first evidence that somebody in the Navy made an attempt to note in medical records that the men were involved in the sulfa program. George Ciancio, 95 Canterbury Lane, Kenmore, said he saw his records and copied something that intrigued him.

"Nobody has these," he said. "I just out of curiosity copied it verbatim and typed it."

The piece of paper he copied said: "This man has received 1 gram of sulfadiazine daily for 5 weeks as a prophylaxis."

The Navy should have been wise enough to make that notation in the records of all the men participating, he said.

"I was in the medical corps in the Navy," Mr. Ciancio said. "I don't really recall taking the sulfa pills. Whenever we gave sulfa (as treatment in hospitals) we always gave sodium bicarbonate with it."

The baking soda was then known as a precaution that would prevent the sulfa from crystallizing in the kidneys. The News investigation still has turned up no veterans who recalls receiving that advice while taking sulfa in the Navy's mandatory preventative program.

Mr. Ciancio said he suffered leg cramps and back pains in basic training and was assigned light duties. The pains continued after the service, he said, and he has been treated for high blood pressure.

Another local man who was a medical corpsman at Sampson told The News he recalls giving the sulfa to the men.

"I am quite perturbed at the Navy's denial of the forced use of sulfa," wrote Donald J. Doyle of Boston, N.Y. "I administered sulfa to recruits on a daily basis without the supervision of a medical officer.

"I was ordered to put on report any man who refused to take the sulfa. These recruits were severely reprimanded and given extra duty. They only refused once."

He never had to report anyone, and he never saw adverse reactions to the drug, he said. But other corpsmen told him "the side-effects they observed, from body rash, hives, eyes swollen shut, abdominal distress and difficult urination."

In addition to the sulfa preventative program, he said, the Navy used sulfa drugs indiscriminately in its hospitals and dispensaries.

Pasquale Scarpello, of 504 Plymouth Ave., told the News he took sulfa drugs at the base in Norman, Okla., because of an outbreak of spinal meningitis in a Marine barracks.

"Then we were really, really forced to take the sulfa," he said.

He said he suffered no ill effects, but he has had a series of heart attacks since 1960.

Ralph Goodwin, 3375 Genesee St., Cheektowaga, said he remembered a quarantine at the naval base at Bainbridge, Md., where the sulfa program was also conducted.

"I was a platoon leader," he said. "I happened to get hold of a packet of the sulfa drugs. It had fine writing like you see on some counter drug like aspirin. I read what can happen to you—it scares the hell out of you, excuse the language.

"I told my platoon, 'Fake it and make believe you're taking it. Hold it in your hand and just drink water.' They listened to me."

Mr. Goodwin said he began suffering ulcers after he was discharged. The ulcers bothered him for three years and he feels "sulfa had a lot to do with it." Since 1966 he has suffered asthma and emphysema, he said.

John D. Schreiber, 33, Melant Drive, Orchard Park, trained at Great Lakes, Ill., and recalled how the sulfa program was administered.

"Each evening, just before 'lights out,' we lined up," he wrote. "A corpsman gave each of us two sulfa pills, and we worked our way to the drinking fountain. There a chief petty officer, our commanding officer, watched us put the pills in our mouths and wash them down."

Mr. Schreiber recalled that 15 to 20 of his fellow trainees came down with scarlet fever. Then we went overseas.

"At Okinawa, I picked up a bad rash on my face and hands," he continued. "It would form a crust on my skin. It would bleed . . .

Once, after I came home, I lost a week of work for the same thing."

Another Great Lakes trainee, Chester F. Bulan, 125 Hertel Ave., told The News he was in the sulfa program but didn't suffer any ill effects. A member of American Legion Post 1010 and Disabled American Veterans 188, he said he wants to see veteran groups put pressure on the Navy, to release all available information on the program.

James Geary of Harrisonburg, Va., was visiting Buffalo for the holidays when he saw the series in the News. He called and said the Navy was distributing sulfa pills almost like candy while he was stationed at Farragut, Idaho.

"They had these little bowls of pills in the cafeteria," he recalled, "and even the civilian employees at the base were encouraged to take them as a prevention."

Mr. Geary was an officer and spent two years at Farragut, a large training base that experienced the worst epidemic of respiratory diseases in the Navy. During its second winter the sulfa program backfired, according to Navy documents.

"The germs thrived on this drug," he said. "The germs that survived the drug were the ones that reproduced and became immune to it."

One veteran who recalls becoming ill and breaking out in rashes after receiving daily doses of one gram of sulfa for nearly three weeks was Fred Winship of Gowanda.

His records show that he was first administered the pills on March 24, 1944 at Sampson. He has a document dated April 9, 1944 from the chief medical officer excusing him from taking any more sulfa because he had become sensitive to it.

For Rocco Porcellio of Lackawanna, the Navy was a way of life for longer than World War II. He made it a career, putting in 21 years before retiring. But he vividly remembers being given the sulfa pills at Sampson, and at Navy Pier, Chicago.

And he remembers that it was not a matter of choice.

"They told us the big white pills were for cat fever. I remember we were given them as we left the mess hall. There were two doors, but one was locked and you could only go out through the other.

"When you got there, there were pharmacist mates with the pills and the flashlight. And there were two SPs to make sure you took 'em."

Mr. Porcellio said he has suffered allergies and kidney problems but has never known why.

The News obtained Navy documents describing the unprecedented sulfa program at eight bases. More than 600,000 enlisted men were given sulfa daily during the first year. No figures were given for the second winter, 1944–45.

The bases and dates were:

Sampson, N.Y.—E, F, and G units, Dec. 1, 1943 to April 1 1944, and again January to May 1945.

Norman, Okla.—A, B, D (Marines) and E units, Feb. 17 to May 30, 1944.

Bainbridge, Md.—Dec. 13, 1943 to April 2, 1944, and January to April 1, 1945.

Memphis, Tenn.—Feb. 1 to April 1, 1944, and January to March 1945.

Farragut, Idaho—Dec. 5, 1943 to April 1944.

Great Lakes, Ill.—Dec. 1, 1943, to April 15, 1944, and October 1944 to Feb. 1, 1945.

Navy Pier, Chicago—Feb. 8 to March 1944.

Davisville, R.I.—(Seabees) Nov. 15, 1943 to March 1944.

THE BITTER PILL—NAVY'S FLAWED SULFA PROGRAM

It is an alarming, tragic story that has been revealed in The News' six-part series on the Navy's World War II sulfa program. It is a story that cries out for answers, especially as to how such a massive experimental program could have been virtually covered up all these years, with no thought of the thousands of unknowing servicemen whose health may have been impaired.

One can understand the well-intended motivation behind the project, which involved giving daily doses of sulfa drugs to 600,000 or more healthy Navy men during World War II.

The Navy was trying to control respiratory diseases in crowded barracks, and it thought that sulfa, the new so-called "miracle drug," might be the answer. The Navy did succeed in controlling scarlet fever and some respiratory diseases and undoubtedly saved lives. But the side-effects of the drug may also have caused several deaths and serious kidney and other diseases in thousands of servicemen.

The worst aspect of this undertaking was the laxity with which such a broadly based experimental program was carried out. Other branches of the service were at the time shying away from the routine use of sulfa drugs because of the serious reactions that had been discovered. Medical journals at the time gave warnings of the hazards of using the drug. But the Navy forged full speed ahead, making no attempt to take note of the program in the individual medical records of the unknowing servicemen or to make any follow-up check on their health. Because of its hazards, sulfa today is used only in a limited way, and warnings of the toxic nature of the substance are on the label.

Also inexcusable was the Navy's attempt to quietly forget about the whole episode. Painstaking research efforts by News reporters Modesto Argenio and Anthony Cardinale were repeatedly rebuffed by Navy officials, who said they had no record that any such preventive program had taken place. But when The News produced a copy of a Navy document describing the venture, officials said that it had been declared "obsolete" and destroyed long ago.

This whole matter should now be further explored—either by Congress or by a presidential commission—to find out how this could have happened and to establish guidelines for the future. In addition, there is the terrible injustice done to thousands of servicemen who may unwittingly have gone through life with various resulting medical problems. While the Navy admits to no record to the sulfa program, it does have records of any men who suffered immediate reactions to the drug. As many as possible should be tracked down by the Navy so that they can be assisted with possible medical problems or with disability compensation.

A thorough investigation of this tragically mishandled episode should help to guarantee that such a thing never happens again.

CONGRESS SHOULD PROBE SULFA

The News' series, "The Bitter Pill," telling of the tragic effects of the Navy's use of sulfa drugs in World War II, has prompted forthright calls for action by two area congressmen. Both Rep. John J. LaFalce, D-Town of Tonawanda, and Rep. Henry J. Nowak, D-Buffalo, have called for congressional probes of the wartime program and have sent copies of The News' series to various committee chairmen and federal departments.

From 1943 to 1945 the Navy used the new sulfa "miracle drug" in an experimental program to try to control respiratory diseases in crowded barracks. It had some beneficial results, but, tragically, the dangerous side-effects of the drug may have caused death or disease among the more than 600,000 healthy Navy men involved in the program.

Noting that medical journals at the time had warned of these dangerous side-effects, Rep. LaFalce declared: "The series of articles seems to indicate that the Navy chose not to heed these warnings and instead proceeded into a large-scale and basically uncontrolled experimental program, heedless of the consequences."

Mr. Nowak said that "the most important question must be what remedial action can be taken to assist the veterans who unwittingly participated in a program that may have contribtued to or caused serious health problems." Rep. Nowak urged Navy Secretary Edward Hidalgo to investigate the case with a view to developing a remedial program.

One of the most disturbing aspects of the program is that thousands of veterans may have suffered from side-effects of the drug without any knowledge of the cause of their illnesses. And, as Rep. LaFalce noted, many who suspected the cause of their ailments "have been frustrated in their efforts to gain assistance from their government or even acknowledgment that the program existed." Since The News' series was published, scores of veterans have come forward and given further information about the program.

Beyond assisting afflicted veterans with medical treatment or disability compensation, the congressional investigations should help to provide guidelines in order to prevent such dangerous experiments in the future.

AGENT ORANGE VICTIMS OFFER TO JOIN FORCES IN BATTLE OVER SULFA

(By Modesto Argenio and Anthony Cardinale)

Vietnam veterans fighting for compensation for effects from Agent Orange exposure said today they wish to join forces with World War II veterans who may have suffered from the Navy's sulfa program.

The sulfa disease-prevention experiment with more than 600,000 servicemen was exposed in a six-part series in The Buffalo Evening News last week and attracted the attention of Edmund E. Miller and John Crockett.

Mr. Miller, 30, of 292 Herkimer St., said during an interview that sulfa damage should be added to the list of items on the agenda of the Concerned Veterans of Western New York.

"I read about the sulfa in the paper and I said, 'Them too,' " Mr. Miller said. "Nothing surprises me now. What they got away with after using Agent Orange, they probably figured they slid by with this too."

The News series, "The Bitter Pill," revealed for the first time how the Navy systematically gave sulfa pills daily to healthy trainees without their permission, without safeguards and without keeping proper records for following up the men's medical fate.

Mr. Miller said he and Mr. Crockett, whose group is affiliated with the Disabled American Veterans, will open an office in a week or two at the State University of Buffalo to answer Vietnam veterans' questions about such problems as Agent Orange and delayed stress syndrome.

They are among 125 area Vietnam veterans who are suing the government and chemical manufacturers for a host of ailments they say have slowly emerged from their exposure to Agent Orange, a toxic defoliant the military used to spray the jungles of Vietnam.

Mr. Miller said the office in Room 211 of Townsend Hall on UB's Main Street Campus can handle sulfa inquiries from Navy and Marine veterans of 1943–45 as well and can send out forms requesting a copy of one's military medical records.

The telephone number of the office will be 831–2369, but Mr. Miller also invited World War II veterans to call him at his home, 883–2673, until the office officially opens.

"These are old-timers, and some of them are going to want to go to the Veterans Administration for help on this sulfa thing," Mr. Miller said. "Don't—for heaven's sake—don't go down there to the VA. I've been jerked around there nine years."

Mr. Miller's proposal delighted William J. Carrig, the Town of Tonawanda Marine vet-

eran who first came to The News with the story of his experience with the Navy sulfa program.

Mr. Carrig said he plans to confer with Mr. Miller and has already been in touch with another veterans' action group that is concerned with compensation for radiation damage suffered by servicemen during atomic testing and during the cleanup in Hiroshima and Nagasaki after the Japansee surrender.

"When you think of the groups of different men involved in different hazards in the U.S. armed forces," Mr. Carrig said, "it's pathetic. This was unnecessary. So unnecessary. If we can prevent these things from happening in future generations, it will be worthwhile."

Mr. Miller acknowledged that there have been many misunderstandings between veterans of World War II and the Vietnam War but said it's about time for them to get together.

"We've got to fight together to get what we need," he said.

"We'll help them find out about sulfa, and they can help us get what we need for Agent Orange."

Mr. Miller is scheduled to speak to a meeting of American Legion commanders on Jan. 29 and intends to include sulfa damage on his list of concerns.

His group is currently circulating petitions asking the government to provide funds for non-VA medical research into the effects of Agent Orange and to provide quality medical treatment for more than 2,000 Vietnam veterans who came home with exposure. The same kind of research and treatment should be provided veterans suffering sulfa damage, he said.

LaFalce Asks Probe of Sulfa Tests

Rep. John J. LaFalce, chairman of the House subcommittee on general oversight, called today for a "detailed investigation" of the U.S. Navy's World War II sulfa program by five powerful congressional committees, plus the Defense Department and the surgeon general.

The town of Tonawanda Democrat called "haphazard" the Navy's attempt to control barracks infections by systematically using sulfa drugs on from 600,000 to a million healthy Navy and Marine trainees from 1943 to 1945.

The experimental program was disclosed in a six-part series, "The Bitter Pill," by The Buffalo Evening News last week. The News discovered many medical journals from the 1940s containing warnings of the dangers of sulfa drugs.

"The series of articles seems to indicate that the Navy chose not to heed these warnings and instead proceeded into a large-scale and basically uncontrolled experimental program, heedless of the consequences," Rep. LaFalce said.

Rep. LaFalce strongly criticized the Navy's failure to keep track of the massive drug testing program and to alert veterans of potential long-term side effects they may suffer.

The News series revealed how the Navy systematically ordered healthy trainees to take sulfa pills daily without sufficient safeguards and without keeping detailed records for following up the men's medical condition later on.

The Navy's sulfa testing program, he charged was "haphazard and left in its wake many innocent victims."

Rep. LaFalce said the questions raised by The News disclosures, "concerning as they do a large group of men who joined in the greatest and most difficult military struggle the world has ever known, deserve the attention of all Americans."

He declared that "a thorough investigation can help us guard against ill-advised and improperly controlled health tests like these in the future.

"Further, we may learn the true extent of the problem: How many veterans have had side effects and how serious are they.

"Finally, such an investigation may help lead to remedies and just compensation for those veterans who were innocent victims of this haphazard testing program."

Mr. LaFalce asked for specific investigations by the House Committee on Veterans Affairs, the health subcommittee of the House Commerce Committee, the Senate Committee on Veterans Affairs, the Senate Health Committee and the General Accounting Office.

He noted that "sulfa drugs were relatively new when the tests were performed. It was clear to medical researchers that these drugs could be very helpful in preventing or treating various diseases . . . But many medical researcers at that time also worried that sulfa drugs like so many generally beneficial things, could have side effects which might reduce or eliminate the desirability of using them."

Mr. LaFalce pointed to the strong evidence that the Navy engaged in questionable testing of sulfa drugs, possibly subjecting unsuspecting recruits to side effects that the congressman said could have "impaired their health and well being."

He voiced concern in a series of letters to five congressional committees, the Defense Department, the surgeon general, the Veterans Administration, the Department of Health and Human Services and the General Accounting Office, which is the investigative arm of Congress.

Since the series appeared, scores of Western New York veterans have come forward and said they recalled being given the sulfa pills and suffered reactions immediately or have been plagued with mysterious illnesses since then.

Rep. LaFalce told Rep. G. V. Montgomery, chairman-designate of the House Committee on Veterans Affairs:

"During the past several days, I have become aware of a potentially explosive issue which could involve nearly a million Navy veterans of World War II. I am writing to draw your attention to this most serious matter and to urge that your committee institute an investigation as soon as possible after the new Congress convenes."

Rep. LaFalce, who is a ranking member of a number of House financial committees, including the Committee on Banking, said he forwarded copies of the copyright Buffalo Evening News series to the congressional committee chairmen and federal department heads.

He told them:

"No doubt the Navy's intentions were good, but questions raised by this testing program and its aftermath are disturbing indeed.

"Why weren't those tested notified of their 'guinea pig' status?

"Why didn't the Navy at least make note of a recruit's participation in the testing program in his medical records?

"Why, nearly 40 years later, has the Navy been—or at least seemed to be—less than forthcoming when asked about details of the program and its aftereffects?"

Rep. LaFalce said he was most disturbed by "the probability that a great number of recruits who involuntarily and unknowingly participated in this program have suffered from side effects that have impaired their health and well being.

* * * * *

"No doubt some, like those Vietnam veterans who were exposed to Agent Orange, have no idea of the cause of their illnesses.

"And even those who suspect that their problems began during this experiment, as The News series shows, have been frustrated in their efforts to gain assistance from their government or even acknowledgment that the program existed and might have contributed to their problems."

Nowak Asks for Probe of Sulfa Tests

Washington.—Rep. Henry J. Nowak called on the secretary of the Navy Wednesday to conduct an inquiry into "the serious and disturbing questions" raised by a Buffalo Evening News series on the Navy's use of sulfa drugs on more than 600,000 healthy servicemen during World War II.

The Buffalo Democrat sent copies of the series, "The Bitter Pill," to Navy Secretary Edward Hidalgo and Rep. G. V. "Sonny" Montgomery, incoming chairman of the House Veterans Affairs Committee, asking both for an investigation.

"Based on the circumstances detailed in The News' series," Mr. Nowak wrote, "the most important question must be what remedial action can be taken to assist the veterans who unwittingly participated in a program that may have contributed to or caused serious health problems.

"I respectfully request that you expeditiously initiate an inquiry into the serious and disturbing questions raised by this series of articles, with the goal of developing appropriate remedial measures for adversely affected veterans."

Quoting a signed column by Murray B. Light, editor and vice president of The News, the congressman asked the Navy secretary and Rep. Montgomery these questions:

1.—If the Navy had to use sulfa as a respiratory disease preventative in the training bases, why didn't it tell the men involved they were being given sulfa?

2.—Why did not records of the men indicate they had been involved in the program?

3.—Why was a follow-up survey of the men not made after they were discharged?

4.—Why does the Navy continue to deny the sulfa program existed?

Rep. Nowak said the sulfa program may be likened to the Agent Orange problem of the Vietnam War, and cited the need for a government program to help those veterans who can prove they were exposed to sulfa and suffered health damage because of it.

Rep. Nowak's call for a Navy investigation came within hours of a request from Rep. John J. LaFalce, chairman of the House Subcommittee on Oversight, for a "detailed investigation" of the sulfa program by five congressional committees, plus the Defense Department and the surgeon general.

Number of Vets Linking Sulfa, Ailments Grows

(By Modesto Argenio and Anthony Cardinale)

Nearly 100 area veterans have called or written to The Buffalo News in response to its recent series, "The Bitter Pill" and most are convinced they were harmed by the Navy's sulfa drug program during World War II.

The Navy and Marine veterans remembered being required to take sulfa pills daily as a preventative measure against various diseases in the crowded barracks.

Some of them recalled suffering immediate reactions to the toxic drug—from skin rashes and sores to swollen hands and feet.

Others recited health problems they have suffered since leaving the service. These include urinary disfunctions and loss of a kidney and development of allergies.

An Ashland Avenue man told an entirely different story about how the Canadian Navy administered its own sulfa program during the war. George Chase said he served in the Canadian Navy and it observed all the precautions that the U.S. Navy should have observed.

"When we took sulfa," Mr. Chase said, "we marked the time we took it. And we took a

tablet containing bicarbonate of soda. If you got three sulfa pills, you took three of the other pills too.

"If you went back and didn't have that written down, you got hell. Even on board ship in the North Atlantic they did it the same way. They told us these were powerful drugs and not to be played with. We were told to drink a lot of fluids too."

Taking fluids and baking soda were two precautions mentioned in medical journals available to Navy officials at the time, The News investigation disclosed.

Robert Crandle of Hamburg has lost a kidney and feels it was because of the sulfa drugs he was required to take in the U.S. Navy's base at Sampson, N.Y.

"I recall the pills very well," he said, "I thought it was saltpeter. Nobody seemed to know exactly what they were for. I had my left kidney taken out on Oct. 3, 1979. I didn't know I had a kidney problem."

Mr. Crandle was rushed to the hospital with congestive heart failure, and surgeons found that pressure on his heart was caused by a blocked kidney that hadn't functioned for a long time.

Anthony DeBergalis of Sloan, a Marine veteran, said he is certain he received sulfa pills as a preventative at Camp Pendleton, Calif. from September to December 1944. Navy documents unearthed by The News hadn't mentioned this base.

"They told us it was salt pills," Mr. DeBergalis said. "Because of the heat we needed salt pills. But they used to be small; the pills I'm talking about were larger.

"I broke out in a rash all over my body. I was in St. Margarita Ranch Hospital about five weeks with big sores. Fifteen to 20 of us had the same thing in that ward."

Mr. DeBergalis said he has had a problem of blood in his urine for many years. But an examination in 1979 didn't reveal the cause.

James Hibit of Clarence told The News he received sulfa at Sampson and suffered "a tremendous reaction." His feet and hands swelled to three times their normal size, he said. He was treated with adrenaline shots. Later, he added, he developed allergies, and he still receives anti-allergy shots each month.

Robert G. Gillette of 49 Kirkover St. recalls receiving what the Navy called "your horse pills" during basic training at Great Lakes, Ill. They took the pills at 5 a.m. before breakfast. He remembered two trainees who refused to take them.

"They had to run around the drill field eight or nine times," he said. "They took the sulfa after that."

Mr. Gillette said he broke out in a light skin rash immediately. Later, in a submarine at Midway in the Pacific, a wrist swelled up and he was taken to a Quonset hut hospital for surgery.

Since 1968 he has had persistent kidney or bladder troubles, he said, adding: "Something is wrong with me, and I don't know why."

Joseph Girome Jr. of 2299 Fillmore Ave. said he received sulfa drugs on a naval ship, the U.S.S. *Alaska*, late in the war and suffered hives that required treatment for a year after he was discharged.

"I never was told," he said. "We were mess cooks and because of dysentery the pharmacist mate gave sulfa to us. They just gave them to you and you took them."

His hands and feet swelled, he said, and he received adrenaline shots two or three times a day to counteract the allergic reaction. Since then he has continued to suffer allergies, he said.

Anthony Gullo of 48 Tioga St. said he suffered stomach trouble for 32 years since receiving sulfa daily at Sampson. He has a Navy card stating that he is allergic to sulfa.

"I kept getting cramps and they sent me to the dispensary," he said. "I'd go back again and again. After boot camp, they operated on me for appendicitis—and it wasn't that. I've had all kinds of tests and they still don't know why."

Mr. Gullo added that he has had kidney trouble for the past 15 years and wonders if it was the sulfa.

Navy Gave Sulfa to Recruits in 1970, Veteran Reports

(By Modesto Argenio and Anthony Cardinale)

Evidence has surfaced that the U.S. Navy was forcing sulfa drugs on healthy trainees as late as 1970, long after the end of its World War II sulfa program involving more than 600,000 trainees.

The Buffalo Evening News, which exposed the Navy's 1943–45 program last month in a series, "The Bitter Pill," has found two men who claim sulfa tablets were handed out to basic trainees at Great Lakes, Ill., in 1970.

Great Lakes Training Center was one of the eight bases identified in Navy document obtained by The News as a site where sulfadiazine was distributed daily to wartime trainees in efforts to control an outbreak of respiratory diseases.

The Navy gave sulfa to 188.000 enlisted men at Great Lakes during the winter of 1943–44. There were 384 adverse reactions to the drug—three of them fatal.

Thomas J. Garrett, 30, of Amherst, one of nearly 200 veterans who have responded to the series, claims he was ordered to give sulfa tablets to his fellow basic trainees in July 1970.

A former counselor of youths troubled with drugs, Mr. Garrett said he joined the Navy to become a medical corpsman. During basic training, he was offered "your chance to learn how to be a corpsman," he said.

"They gave me a bottle of sulfa and said to pass it out to the men," Mr. Garrett told The News. "They lined up next to the fountain with the company commander. I'd swear my medical reputation on it—they were sulfa. I passed them out. It was a constant thing for two weeks on a daily basis."

Mr. Garrett said this happened at Camp Barry, which had been part of Great Lakes during World War II and served as a reception area for incoming recruits when he arrived.

Asked why the Navy used sulfa drugs during July, he said he was told the pills would prevent dehydration during long marches in the heat.

"That's not so," Mr. Garrett quickly added. "I studied toxicology, and that's absolutely false. Sulfa definitely will leave crystals (in the kidneys)."

As during World War II, the Navy failed to warn the men to drink extra liquids and take bicarbonate soda to keep the sulfa dissolved in the kidneys, he said.

"One guy broke out in hives," Mr. Garrett told The News, but he wasn't sure it was the sulfa. "The next day, some of the men couldn't walk, they were sick. Some had nausea and diarrhea and abdominal cramps. They were bent right over."

Trainees who failed to take the sulfa pills in 1970 were placed on report for disciplinary action, Mr. Garrett said.

"They had to do calisthenics or swab down the decks with a toothbrush if they didn't take them," he said.

The News contacted one of Mr. Garrett's fellow basic trainees, Petty Officer Frank Corder, a medical corpsman who is stationed at the Navy Reserve Center in Adelphi, Md. Mr. Corder said he too was at Camp Barry but arrived earlier, in May 1970.

"Yes, I remember it," he said. "It was mandatory. It lasted two days. They never told us why. 'Just take it.' It was an ungodly figure—70 of us in our company. That was just one day's worth of people coming in. Others came in the next day."

The sulfa couldn't have been intended as a preventative, he said, because there weren't any diseases in his company.

Sulfa Tests Prod Moynihan To Call for GI "Bill of Rights"

(By Modesto Argenio and Anthony Cardinale)

New York State's senior U.S. senator Saturday proposed the enactment of a servicemen's "Bill of Rights" so that the Navy's testing of sulfa drugs on more than 600,000 healthy recruits will never happen again.

Sen. Daniel Patrick Moynihan asked the Defense Department to cooperate with Congress in a non-partisan effort to pass what could be historic legislation that would explicitly bar the use of servicemen as "guinea pigs."

The New York Democrat asked Caspar Weinberger, the incoming Secretary of Defense for the Reagan administration, to give top attention to proposed investigations into the testing of drugs on servicemen.

Sen. Moynihan, in a letter to Mr. Weinberger, said that disclosures by The Buffalo News in its recent series, "The Bitter Pill," must be followed up by investigations in both the House of Representatives and the Senate.

He called upon Mr. Weinberger to instruct the Navy to cooperate fully in the coming investigations into its use of sulfa drugs on from 600,000 to a million healthy servicemen during World War II.

Sen. Moynihan said he plans to introduce a historic measure that would put into law a "Bill of Rights" to protect members of all the armed forces from being used as unwitting subjects in drug experiments.

Such a "Bill of Rights" would require the military to inform servicemen of what drugs they are being given, keep complete records of what each received, and make these documents available to them upon request.

Sen. Moynihan's action follows moves in the House by Rep. John J. LaFalce, D-Town of Tonawanda, and Henry J. Nowak, D-Buffalo, calling for investigations into disclosures made in the Dec. 23–38 News series.

In his letter to the incoming secretary of defense, Sen. Moynihan said he was concerned about "the health and legal rights" of military personnel.

"The Buffalo Evening News in an investigative piece has recently brought to light disturbing information about an experimental drug testing program conducted by the Navy on its own men during World War II," he wrote.

"Over 600,000 men apparently were given untested sulfa drugs without having been advised properly of the risks involved and without any medical follow-up after their discharge from the Navy.

"A variety of health problems and early deaths have been apparently linked to these tests. House and Senate investigations of this situation must certainly be conducted in order to ascertain exactly what has happened and what compensation may be due these men.

"This Nation owes them that much, and I urge that the Navy be instructed to cooperate fully with the congressional inquiries into these sulfa drug testing programs.

"Vastly more important, however, is that such a thing not be allowed to happen again. I intend to explore the feasibility of legislation that would codify a military service personnel bill of rights.

"Such an undertaking would clearly require the full and active cooperation of the Department of Defense. I therefore ask that you join me at the very outset of what I know will be a non-partisan effort to ensure that the legal rights of military personnel are clarified and enforced.

"I am enclosing the entire series from The Buffalo Evening News about the sulfa drug testing program. I commend them to you. It is a most thorough report from a most renowned newspaper."

Two powerful veterans lobbies also have demanded that investigations be launched into the use of sulfadiazine—just one of a family of so-called miracle drugs—on healthy sailors and Marines during the World War II.

While Navy documents obtained by The News point to claims of early successes for what was intended as a disease-prevention program, there was also evidence that the effort showed signs of backfiring.

Recruits given the drugs at first seemed to ward off a variety of respiratory and other diseases that were crippling eight major Navy training bases in the United States.

However, after a time, the men showed signs of bad side-effects such as skin problems and extreme negative reactions. Some died.

A former Marine, now living in the Town of Tonawanda, conducted a one-man crusade to bring the tests to light.

The Navy has yet to respond to repeated requests for detailed information on the sulfa program and on the identities of the men involved.

Nearly 200 veterans, though, have responded to The News series by calls, letters and visits to the newspaper and have given their personal accounts of involvement with sulfa drugs while in the service.

At the insistence of the national leaders of both the American Legion and the Veterans of Foreign Wars—groups representing more than 5 million veterans—the Veterans Administration and key congressional committees have been alerted to the drug episodes.

NAVY CONSIDERS INVESTIGATION OF SULFA PROGRAM

WASHINGTON.—Vice Adm. J. William Cox, surgeon general of the U.S. Navy, today promised Rep. Henry J. Nowak "a substantive reply" to his inquiries about disclosure that the Navy ordered more than 600,000 healthy servicemen to take sulfa drugs during World War II.

The Buffalo Democrat had asked on Jan. 1 that the Navy and the House conduct inquiries into "the serious and disturbing questions" raised by The Buffalo Evening News series "The Bitter Pill."

Rep. Nowak said that Vice Adm. Cox briefly advised him today that his letter "has been received and is under study" and that a reply will come by Feb. 17.

At the same time, Rep. Nowak was informed by the chairman of the House Veterans Affairs Committee that the Armed Services Committee should take the lead in a congressional investigation of the Navy's use of sulfa drugs during the war.

Rep. Nowak had forwarded The News series to Rep. G. V. "Sonny" Montgomery, D-Miss., chairman of the Veterans Affairs Committee, asking him to investigate and to explore "what remedial action can be taken to assist the veterans who unwittingly participated in a program that may have contributed to, or caused serious health problems."

Rep. Montgomery agreed that "a series of questions raised by The News articles needs to be answered by the Navy." But, he said, "the appropriate format would be a hearing conducted by the Committee on Armed Services, which has jurisdiction over the Navy.

"Based upon the results of such a hearing," he added, "a determination can then be made as to whether or not the Committee on Veterans Affairs should take any action."

Rep. Montgomery said he has forwarded the series to that committee's chairman, Rep. Melvin Price, D-Ill., and asked him to take action. Rep. Nowak said he, too, is writing to Rep. Price to ask for an investigation.

A similar response was sent by Rep. Montgomery to Rep. John J. LaFalce, D-Town of Tonawanda, who on Dec. 31 called for an investigation by five powerful congressional committees, the Defense Department and the U.S. surgeon general.

Martin J. Fitzgerald, director of the Office of Congressional Relations of the Comptroller General, has informed Rep. LaFalce that his request for an inquiry by the General Accounting Office has been referred to the Human Resources Division.

Sen. Daniel P. Moynihan, D-New York, announced on Saturday that he has sent The News series to Defense Secretary Casper Weinberger requesting cooperation in a nonpartisan effort to pass a historic servicemen's medical bill of rights. Such a law would disclose what drugs were being given and mandate proper record-keeping for future reference.

MOVEMENT GROWS FOR SERVICEMEN'S BILL OF RIGHTS

(By Modesto Argenio and Anthony Cardinale)

The need for a servicemen's medical bill of rights has been reinforced by Army, Navy, Marine, and Air Force veterans who have come forward to tell of being ordered to take sulfa drugs during the late 1950s, the 1930s, and the early 1970s.

The use of sulfa pills on healthy servicemen by all four branches of the armed forces took place long after the Navy's sulfa disease-prevention program of World War II, in which from 600,000 to a million healthy servicemen took the drug.

A flurry of telephone calls to the Buffalo Evening News—following its series, "The Bitter Pill,"—indicates not only that the Navy learned nothing from its World War II mistakes, but that the other services later fell into the same trap.

After reading for the first time about the Navy's little-known World War II program—and about veterans who feel their health was harmed by it—Senator Daniel P. Moynihan announced on Saturday a plan to draft a historic bill of rights for military personnel.

The New York Democrat sent The News series to Caspar Weinberger, President Reagan's secretary of defense, and urged him to instruct the Navy to cooperate fully in investigations by the Senate and House. So far the Navy has refused to acknowledge the sulfa tests, despite a 1944 Navy document obtained by The News.

Senator Moynihan's bill would require the military to inform servicemen of what drugs they were being given and to keep complete records that could be made available on demand.

The latest round of phone calls was sparked by a News story on January 14 in which Thomas J. Garrett, 30, of Amherst, and Petty Officer Frank Corder of Adelphi, Md., said they recalled sulfa drugs being given to healthy trainees during basic training in 1970.

Naval officers at Great Lakes, Ill., apparently made the same mistakes in 1970 as they had during the World War II sulfa program at that base and at least seven others across the country. Both men said they were not properly warned of the dangers of sulfa, advised of precautions to take, or given a record of sulfa use for future reference.

Air Force veteran Richard Wysocki of 85 Bryson Street told The News he was given sulfa drugs from April to July 1956 while in basic training at Lackland Air Force Base in Texas.

"Every time we went on a march, they told us to take these pills to keep from dehydrating," Mr. Wysocki said. "We got it from the time we got there until we left. We used to take extra pills on bivouac.

"I got diarrhea from it," he said. "I got very bad kidneys—I probably can't prove the service did it. But I never had that problem before the service."

Army veteran Stephen E. Wilson of Clarence said he was required to take sulfa pills in July 1961 when he was in basic training as a member of the National Guard at Fort Dix, N.J.

He suffered no ill effects at the time, he said, but in 1973 he had kidney stones, and again in 1978. His doctor doesn't know what caused it, he said.

Navy veteran Bernard Holland of the Town of Tonawanda said he received sulfa drugs in August 1966 during basic training at Great Lakes and suffered an immediate reaction.

"That night," he said, "I had extreme fever and chills and my blanket was soaked from sweating. A guy had handed them out in a big container. When you're 18, you don't ask too many questions."

Another Navy veteran, Dale Galley of Cheektowaga, said he received sulfa at Great Lakes in July 1969 and began to have kidney stones in 1971.

"They told us it was a new form of sulfa drugs," Mr. Galley said. "There was a big scare over spinal meningitis and we took it as a prevention. Naturally we gobbled it down. This went on for about two months."

He had kidney stones while stationed at Jacksonville, Fla., and later while on board the USS Franklin D. Roosevelt, he said. Since returning home, he has had two attacks of kidney stones, most recently last August.

"I had dye tests," he said. "The doctor's report shows multiple kidney stones in both kidneys. What I'd like to know is: how do we form a group to get to the bottom of this?"

Larry Frasca of Blasdell was at Great Lakes for basic training in February 1969 and remembers receiving sulfa drugs.

"We thought it was saltpeter," he said. "Ever since, I always get kidney problems in the winter—kidney infections. I never really noticed until 1973. First I got sharp pains in the side. Now, I've had a kidney infection for the last month. The X-rays found nothing.

"I just called them up (at the Veterans Administration) and said I'd have to file a claim. The woman said, 'You've been sick only two weeks and you want to file a claim? If you really want to . . .' You know what I think? They'll do anything to save a buck."

A fourth Navy veteran, Joseph Guadagno of West Seneca, said he received sulfa drugs in October 1969 at Great Lakes. Like the other Navy men, he said it happened at Camp Barry, an old part of the base used for receiving new recruits.

"I was forced to take the drugs," Mr. Guadagno said. "They just told us it was for dehydration. The guy that gave it to me told me it was sulfa."

He suffered no ill effects, he said. But he confessed, "I kept it between my fingers and drank water (in front of the officers) because I was skeptical of it. I took it just a couple times."

Marine veteran James Bernas of Cheektowaga told The News the men in his basic training company were given sulfa drugs from February to April 1970 at Parris Island, S.C.

"They came with a large brown bottle," he recalled. "I said I was allergic to penicillin and sulfa, so they gave me instead some streptomyacin daily, but I didn't take it. Later I found out they didn't even enter it in my records."

Mr. Bernas said the officers explained there were so many recruits coming from all over that they feared an outbreak of diseases.

"They forced the other guys to take the sulfa," he said. "One guy walked up and down, and we all stood in front of our beds. They said it tasted pretty terrible—chalk-like. If you didn't take it, you had to go down and see the company commander."

A Marine reserves veteran, Thomas Rinaldo of Kenmore, said he received sulfa during boot camp in 1971. He immediately suffered

kidney problems, but it took him nearly six years to obtain a discharge from the reserves.

"Once I got in the service, I developed bad kidney stones," he said. "I never had them before in my life. I got them three, four, five times a year."

The kidney stones became serious in 1972, and the next year he had surgery to replace a blocked tube from one kidney. But the Marines continued to require him to report one weekend a month and two weeks each summer.

"My doctor said I should be out after the operation," Mr. Rinaldo said, "but this Navy doctor (in the reserves) said my problem wasn't in the medical book so I couldn't get out. That made me mad, because they knew what I had—and a page was missing from their medical book.

"Then a new Navy doctor came in 1976. He let me out that day. I still don't know if I'm eligible for benefits. My doctor told me I'd eventually lose that kidney. He has an analysis of the kidney stones. He said there were sulfa crystals in there."

Few of the veterans who contacted The News managed to see their own medical records while in the service. Albert P. Hujer, a Lockport teacher, remembers breaking out in a violent rash that blistered and bled after he was given sulfa for catarrhal fever while at the Sampson, N.Y. Navy base in 1944.

He later became a pharmacist's mate but even then his own medical records were kept under lock and key. "We were told we'd get court martialed if we pried into our records," he said. Because of his later kidney infections, he is now petitioning to get those records from government archives.

VETS CAN SEEK EVALUATION FOR DRUG DAMAGE

(By Roland Powell)

WASHINGTON.—The Veterans Administration announced today it is launching a special evaluation program at all its hospitals for veterans claiming they were harmed by military sulfa programs.

VA Administrator Max Cleland announced the plan in a letter to Rep. John J. LaFalce, D-Town of Tonawanda, who had called for an investigation of disclosures by The Buffalo Evening News series, "The Bitter Pill."

The congressman responded today that the plan is a good start but that the VA should do more. He asked how the VA plans to inform veterans of the hazards of the secret 1943–45 sulfa program and of the treatment that will soon be available.

Mr. LaFalce has asked the VA and several powerful congressional committees to investigate after The New series Dec. 23–28 revealed that more than 600,000 healthy sailors and Marines were required to take sulfa drugs daily during World War II and that many of them might be suffering kidney disease and other ailments as a result.

Mr. Cleland said the VA is concerned about the issue and would work with the Navy to "investigate the matter appropriately." He wrote:

"The chief medical director has initiated a cooperative dialogue with the surgeon general of the Navy to ensure a coordinated effort. He is also having developed a medical evaluative procedure to be followed at our medical centers if veterans request evaluation for alleged sulfa toxicity resulting from administration of this drug in 1943 and 1944.

"This matter is being brought to the attention of all our medical center directors with the request that they immediately report any such cases to Central Office."

The VA administrator told Rep. LaFalce that his inquiry was the first such notification the agency has had about the issue.

He said that subsequently the American Legion requested information concerning William J. Carrig of the Town of Tonawanda, a Marine Corps veteran, who told The News he suffered internal problems after taking the drug during the 1943–44 program and believed it was responsible for his loss of a kidney in 1954.

Mr. Cleland said the records showed Mr. Carrig had his kidney removed at the Buffalo Veterans Hospital but "he has never, to our knowledge, asked the VA to evaluate him for sulfa toxicity.

"To date, our Buffalo VA Medical Center has received no requests from veterans seeking to be examined for sulfa side effects as a result of The Buffalo News articles. To our knowledge no veterans have requested such an examination at any of our medical centers."

Replying to the VA letter, Rep. LaFalce said he was pleased to learn the medical evaluation program was being developed for veterans who suspected they received sulfa during their service, and he asked for detailed information on that procedure once it was established.

While that was good news, the congressman said, he expressed concern that "nowhere in your letter do you outline how veterans are to be informed of the possible health risks associated with the exposure to sulfa drugs or how they are to be informed of the VA Medical Center treatment that will soon be available."

Mr. LaFalce said:

"The importance of informing veterans of the risks and possible treatments is paramount, and I believe that the VA, working in conjunction with the Navy Department, has an affirmative responsibility to identify as many veterans who may have been exposed as they can so that these individuals can be alerted to any possible health risks and the availability of follow-up testing.

"I hope you will institute such an identification and notification process as soon as possible."

Rep. LaFalce also asked the VA to provide him information on how many veterans seek medical treatment at VA centers, information he said would be useful in a potential congressional investigation of the sulfa drug problem.

Reps. LaFalce and Henry J. Nowak, D-Buffalo, have asked congressional committees to hold hearings. Their requests have been acknowledged, but so far no hearing dates have been set.

Sen. Daniel P. Moynihan, D-New York, has asked Defense Secretary Caspar Weinberger to order the Navy to cooperate in Senate-House investigations. He also asked for nonpartisan support of a proposed Servicemen's Medical Bill of Rights covering all the armed forces.

Since the series appeared, The News has been flooded with letters and telephone calls from veterans saying they recalled the mandatory sulfa disease-prevention program and suspect their kidney problems are a result of it.

The News also has disclosed that sulfa drugs have been used sporadically on healthy basic trainees since World War I not only by the Navy but also by the Army, the Marines and the Air Force. Some veterans claimed they were ordered to take sulfa as recently as the early 1970s and now have kidney ailments.

CONGRESS SETS SULFA PROBE BY TWO PANELS

WASHINGTON—Senate and House Armed Services committees have agreed to look into allegations that some Navy and Marine Corps veterans of World War II may have been harmed by being forced to take sulfa drugs.

A series of articles in The Buffalo Evening News in December revealed that many of the 600,000 veterans who took the drugs may have suffered ill effects, possibly including kidney disease.

A number of congressional committees as well as the Navy were asked to investigate.

It was decided the lead committees in such an inquiry should be those dealing with the armed services.

Rep. Melvin Price, D-Ill., chairman of the House Armed Services Committee, today advised Rep. John J. LaFalce, D-Town of Tonawanda, he had asked the investigations subcommittee to look into the matter.

He said The News series by Modesto Argenio and Anthony Cardinale had been turned over to the staff of the subcommittee chaired by Rep. Richard White, D-Texas, and that the Navy "has been requested to furnish the subcommittee with a report on the program."

Similarly, Sen. John Tower, R-Texas, chairman of the Senate Armed Services Committee, also contacted Mr. LaFalce and expressed appreciation to him for calling Sen. Tower's attention to the matter.

Sen. Tower said that as chairman of the committee with jurisdiction over the Navy he had asked the service to provide him with a report on "the results of the investigation conducted by The Buffalo Evening News."

When that report is received, Sen. Tower said the committee then would decide what further steps it should take.

A major reason for seeking the Armed Services committees' involvement was that they might be in the best position to force a response out of the Navy, one which to date has been slow in coming.

SULFA PROBE BY CONGRESS MAY SPUR PUBLIC HEARINGS

(By Modesto Argenio and Anthony Cardinale)

The decision of two powerful congressional committees to investigate allegations that healthy sailors and Marines were forced to take sulfa drugs during World War II could pave the way for public hearings. Congressional sources told The Buffalo Evening News today that the decision of the Senate and House armed services committees to look into the allegations "is a major breakthrough in terms of a thorough examination of the problem."

The chairmen of both committees wrote Rep. John J. LaFalce, D-Town of Tonawanda, to confirm plans for the inquiries.

Sen. John Tower, R-Texas, told Rep LaFalce, 'I have requested the Department of the Navy to provide the committee with a report on the results of the investigation conducted by The Buffalo News."

The News series, "The Bitter Pill," which appeared last December, told that 600,000 or more veterans had been given sulfa drugs in an experiment in 1943–45 and that many later suffered kidney diseases and other ailments.

Some servicemen, according to documents obtained by The News, died during the tests.

Rep. Melvin Price, D-Ill., chairman of the House Armed Service Committee, took a step toward formalizing a congressional investigation by ordering his own Investigations Subcommittee to examine the results of The News series.

The Navy already has promised that it will have some sort of reply on the test program by Feb. 17.

Although the tests were conducted decades ago, concern over the long-term effects on veterans and servicemen has grown.

Sen. Daniel Moynihan, D-New York, who has begun work on a medical Bill of Rights for servicemen, today released a follow-up on his request for an investigation by the Defense Department.

Timothy J. Russert, Sen. Moynihan's counsel, said the Senator fully intends to press "onward" with his own bill of rights plan because this is "a matter of greatest urgency."

He has informed Secretary of Defense Casper Wineberger that "such a thing not be

allowed to happen again," the Senator's aide added.

Rep. Price told Rep. LaFalce that he expects the Navy Department to furnish a full report on the sulfa tests to Investigations Subcommittee chairman Rep. Richard White, D-Texas.

Major veterans organizations, including the American Legion and the Veterans of Foreign Wars, have also demanded investigations of the sulfa program.

And the Veterans Administration has begun to solicit veterans who believe they may have been unwitting subjects.

The Navy has said that it is unable to supply The News with the names rosters of men involved in the tests. The tests were conducted at eight Navy training bases and involves sailors, Marines and Seabees.

PENTAGON PROBING SULFA TESTS; TRACING OF SUBJECTS EYED

(By Modesto Argenio and Anthony Cardinale)

The Department of Defense, reacting to The Buffalo News series "The Bitter Pill," says it is attempting to determine when and where the Navy used sulfa drugs on healthy servicemen and whether it's feasible to track the men down.

The recent series revealed that from 600,000 to a million Navy and Marine trainees received sulfa daily during World War II as a disease preventative. Several of them died during the program, and many veterans have said they are suffering medical complications.

Senate and House committees are considering scheduling hearings as a result of the series, but they are awaiting a report from the Navy as requested by Rep. John J. LaFalce, D-Tonawanda, and Rep. Henry J. Nowak, D-Buffalo.

The surgeon general of the Navy has promised them "a substantive reply" by Tuesday.

The first clues of the Defense Department's approach to the investigation were provided in a letter to Rep. LaFalce this week.

Acting General Counsel Leonard Niederlehner noted that it is difficult to reconstruct the events of nearly four decades ago, but the Navy's Bureau of Medicine and Surgery is making "intensive efforts" to gather and evaluate facts about sulfa use.

"We are informed that the bureau hopes to complete its initial investigation by Feb. 17, 1981," he wrote. "The bureau's objective is to answer two questions by that date: When and where was the sulfa testing program conducted, and is it feasible to determine which military members received the drug."

The news disclosed the dates and locations of eight Navy training bases where sulfa treatment was mandatory for enlisted men. The data was available from Navmed 284, published in 1944 by the Bureau of Medicine and Surgery, and from a book published in 1949 by two former Navy officers who had played prominent roles in the program.

Without recording names of servicemen, these documents recount how upwards of 600,000 healthy men were ordered to take sulfa drugs at these bases:

Sampson, N.Y.—Dec. 1, 1943, to April 1, 1944, and January to May 1945.

Norman, Okla.—Feb. 17 to May 30, 1944.

Bainbridge, Md.—Dec. 13, 1943, to April 2, 1944, and January to April 1, 1945.

Memphis, Tenn.—Feb. 1 to April 1, 1944, and January to March 1945.

Farragut, Idaho—Dec. 5, 1943 to April 1944.

Great Lakes, Ill.—Dec. 1, 1943 to April 15, 1944, and October 1944–Feb. 1, 1945.

Navy Pier, Chicago—Feb. 8 to March 1944.

Davisville, R.I.—Nov. 15, 1943 to March 1944.

Navmed 284—which the Navy at first denied publishing, and later acknowledged it had "declared obsolete" in 1954—spelled out how men were lined up daily and ordered to swallow sulfa, how some were punished for resisting, and how 620 men suffered serious medical reactions—at least 10 of them fatal.

The News disclosed that the Navy didn't properly inform the men they were taking sulfa, didn't offer them a choice, didn't advise them to drink extra water and take sodium bicarbonate, didn't note their participation in their individual records, didn't do follow-up checks on their health, and years later denied the program had ever existed.

The Veterans Administration in a major development on Jan. 28 announced that it was launching a special evaluation program at all its hospital for veterans claiming sulfa damage. But it noted that no veterans had ever complained about the virtually unpublicized 1943–45 sulfa program.

Rep. LaFalce responded to VA Administrator Max Cleland:

"Nowhere in your letter do you outline how veterans are to be informed of the possible health risks associated with the exposure to sulfa drugs or how they are to be informed of the VA Medical Center treatment that will soon be available.

"The importance of informing veterans of the risks and possible treatments is paramount, and I believe that the VA, working in conjunction with the Navy Department, has an affirmative responsibility to identify as many veterans who may have been exposed as they can, so that these individuals can be alerted to any possible health risks and the availability of follow-up testing.

"I hope you will institute such an identification and notification process as soon as possible."

The task of informing veterans has also been undertaken by the national commanders of the American Legion and Veterans of Foreign Wars. The Legion is asking veterans to call its Washington office at 202–861–2700 for help in documenting claims to the VA.

The VFW has also urged veterans to call their closest VA office and schedule an appointment for a medical evaluation if they feel their health was impaired by any military sulfa program.

Since publishing "The Bitter Pill" and follow-up stories. The News has learned that the Army, Navy, Marines and Air Force sporedically used sulfa on healthy recruits during initial days of basic training during the late 1950s. 1960s and early 1970s. Many of the men claim they have suffered kidney damage.

Servicemen's Medical Bill of Rights has been proposed by Sen. Daniel P. Moynihan, D-New York, covering all the armed services. Such a law would require that servicemen be told what drugs they are taking, be given a choice, and receive a written record of it for future reference.

While prevention of future misuse of sulfa and other drugs by the military can be controlled by the passage of a law, it will be a great deal more difficult to compensate veterans who claim they already have been harmed by such programs.

Claims for treatment or compensation will hinge on whether the Navy can—and will—determine from its files which veterans were in the sulfa program and how to contact those still alive today.

Navy documents obtained by The News indicate that a notation was made in medical records whenever a trainee suffered an immediate reaction to the sulfa. The Navy simply noted in the individual's records that he was sensitive to sulfa.

Although these records don't mention the sulfa program—or how it was learned that the trainee was sensitive to sulfa—this notation in records of men who served at those bases during those years may provide a starting point for locating men who may have been harmed by the program.

In his letter to Rep. LaFalce this week, Mr. Niederlehner said that once the current Navy investigation is completed, the bureau will continue to collect "pertinent information," especially any correlation between sulfa disease-prevention programs and adverse physical side-effects.

He went on to say that since World War II the Defense Department "has taken significant steps to protect its members from forced involvement in medical experiments.

"Each military department provides by regulation that only volunteers who have given their informed written consent may participate in studies involving risks beyond the hazards of their normal duties. Moreover, a study may not be conducted unless it satisfies the rigorous standards prescribed by regulations and is approved by a review group composed of professionals with appropriate training and background."

In addition, a directive to govern all research activities involving human subjects is being prepared by the Office of the Undersecretary of Defense for Research and Engineering, Mr. Niederlehner continued.

This directive would make applicable to the Defense Department the Department of Health and Human Services' rules protecting human sub'ects in research. The Defense Department has already issued instructions on the investigational use of drugs.

These include the requirement that a professional review board approve each study and that any clinical investigation not classified on national security grounds adhere to the drug-testing regulations of the Food and Drug Administration.

"I want to reiterate," he concluded, "this department's continuing commitment to safeguard the rights of all service members to choose freely whether to volunteer for medical studies and to be assured that studies in which they do participate are carefully planned and safely administered."●

ADDITIONAL COSPONSORS

S. 170

At the request of Mr. PACKWOOD, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 170, a bill to amend the Internal Revenue Code of 1954 to allow the charitable deduction to taxpayers whether or not they itemize their personal deductions.

At the request of Mr. MOYNIHAN, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 170, supra.

S. 255

At the request of Mr. MATHIAS, the Senator from Nevada (Mr. CANNON) was added as a cosponsor of S. 255, a bill to amend the patent law to restore the term of the patent grant for the period of time that nonpatent regulatory requirements prevent the marketing of a patented product.

S. 517

At the request of Mr. BENTSEN, the Senator from Kansas (Mr. DOLE) was added as a cosponsor of S. 517, a bill to amend the Clean Air Act to provide for further assessment of the validity of the theory concerning depletion of ozone in the stratosphere by halocarbon compounds before proceeding with any further regulation of such compounds, to provide for periodic review of the status

of the theory of ozone depletion, and for other purposes.

S. 550

At the request of Mr. PACKWOOD, the Senator from Alabama (Mr. DENTON) was added as a cosponsor of S. 550, a bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

S. 888

At the request of Mr. PACKWOOD, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 888, a bill to provide effective programs to assure equality of economic opportunities for women and men, and for other purposes.

S. 969

At the request of Mr. ROTH, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 969, a bill to establish a national export policy for the United States.

S. 1125

At the request of Mr. MATHIAS, the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1125, a bill to eliminate the reduction in social security benefits for spouses and surviving spouses receiving certain Government pensions, as recently added to title II of the Social Security Amendments of 1977.

S. 1131

At the request of Mr. DANFORTH, the Senator from California (Mr. HAYAKAWA) 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. 1172

At the request of Mr. JEPSEN, the Senator from North Carolina (Mr. HELMS), the Senator from Texas (Mr. TOWER), and the Senator from Idaho (Mr. SYMMS) were added as cosponsors of S. 1172, a bill to amend the Internal Revenue Code of 1954 to eliminate the holding-period requirements for capital gains treatment.

S. 1229

At the request of Mr. MOYNIHAN, the Senator from Tennessee (Mr. SASSER), and the Senator from Maine (Mr. MITCHELL) were added as cosponsors of S. 1229, a bill to continue through December 31, 1982, the existing prohibition on the issuance of fringe benefit regulations.

S. 1326

At the request of Mr. SASSER, the Senator from North Dakota (Mr. ANDREWS), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Oklahoma (Mr. BOREN) were added as cosponsors of S. 1326, a bill to amend title 38, United States Code, to authorize a service pension of up to $150 per month for veterans of World War I and for certain surviving spouses and dependent children of such veterans.

S. 1348

At the request of Mr. SASSER, the Senator from Oregon (Mr. HATFIELD) and the Senator from Kentucky (Mr. HUDDLESTON) 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. 1368

At the request of Mr. HUMPHREY, the Senator from North Carolina (Mr. EAST) was added as a cosponsor of S. 1368, a bill to amend the Internal Revenue Code of 1954 to provide that services performed for camps by certain students who generally are not eligible to receive unemployment compensation will not be subject to the Federal unemployment tax.

SENATE JOINT RESOLUTION 74

At the request of Mr. MATHIAS, the Senator from Nevada (Mr. CANNON) and the Senator from Florida (Mr. CHILES) were added as cosponsors of Senate Joint Resolution 74, joint resolution designating the week of October 4 through October 10, 1981, as "National Diabetes Week."

SENATE JOINT RESOLUTION 89

At the request of Mr. KENNEDY, the Senator from Maine (Mr. MITCHELL) was added as a cosponsor of Senate Joint Resolution 89, joint resolution on the hunger strike in Northern Ireland.

SENATE RESOLUTION 65

At the request of Mr. DURENBERGER, the Senator from Vermont (Mr. STAFFORD) and the Senator from Pennsylvania (Mr. HEINZ) were added as cosponsors of Senate Resolution 65, resolution to promote alternative nonanimal testing procedures.

AMENDMENT NO. 77

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of amendment No. 77 intended to be 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. 78

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of amendment No. 78 intended to be 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. 82

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON) and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of amendment No. 82 intended to be 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. 83

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON) and the Senator from West Virginia (Mr. ROBERT C. BYRD) were added as cosponsors of amendment No. 83 intended to be 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. 84

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON) and the Senator from Georgia (Mr. NUNN) were added as cosponsors of amendment No. 84 intended to be 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. 85

At the request of Mr. BIDEN, the Senator from Georgia (Mr. NUNN), the Senator from Missouri (Mr. EAGLETON), and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of amendment No. 85 intended to be 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. 86

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON) and the Senator from Arkansas (Mr. BUMPERS) were added as cosponsors of amendment No. 86 intended to be 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. 88

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON), and the Senator from Arizona (Mr. DECONCINI) were added as cosponsors of amendment No. 88 intended to be 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. 89

At the request of Mr. BIDEN, the Senator from Florida (Mr. CHILES), the Senator from Missouri (Mr. EAGLETON), and the Senator from Georgia (Mr. NUNN) were added as cosponsors of amendment No. 89 intended to be 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. 91

At the request of Mr. BIDEN, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of amendment No. 91 intended to be 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.

SENATE RESOLUTION 155—RESOLUTION RELATING TO THE 50TH ANNIVERSARY OF RADIO CITY MUSIC HALL

Mr. MOYNIHAN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 155

Whereas, in 1932, the Radio City Music Hall in New York City opened its doors to a public longing for the uplift and optimism that emanated from its stage, and

Whereas, for five decades, the musical

stage shows and Rockettes dance troupe presented at the Radio City Music Hall have been universally acclaimed, though they are uniquely American in origin and character, and

Whereas, America's greatest motion pictures have premiered and played at Radio City Music Hall, and

Whereas, Radio City Music Hall has been declared an architectural landmark, and

Whereas, the majesty of the Radio City Music Hall and the magic of its performing arts have enchanted audiences drawn from all over America and the world: therefore, be it

Resolved, That the Senate hereby acknowledge the fiftieth anniversary of Radio City Music Hall in 1982, and expresses the appreciation and admiration of the Nation for all those who have performed in or managed the Radio City Music Hall and who have thereby contributed significantly to the cultural achievement of the United States.

● Mr. MOYNIHAN. Mr. President, today I am introducing a resolution to salute the 50th anniversary of Radio City Music Hall. Fifty glorious and memorable years of the showplace of the Nation, to be sure, are cause for celebration. I also ask unanimous consent to include in the RECORD a short history of the institution. I hope that the entire Senate will join me in marking this occasion in our Nation's history of cultural achievement.

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

RADIO CITY MUSIC HALL, 1932–1982—FIFTY GLORIOUS, MEMORABLE YEARS

Considering its present world renown and the affection its patrons have heaped upon it throughout its 50-year history, Radio City Music Hall today is an international institution. Fittingly enough, back in 1930 when the Rockefellers were building their Center, it was first named the International Music Hall. At that time, John D. Rockefeller, Jr.—against all the financial odds of those strained economic times—stuck out his chin and decided to build a world center of entertainment. To his credit, he called upon the best minds to formulate the plans, among them Samuel L. Rothafel—better known as Roxy—the famed motion picture entrepreneur who then staged the spectacular shows at the Roxy Theatre.

Roxy had managed the largest theatres in the world at the time, and the new Music Hall was to be the largest. He thought big, and he thought lavishly. This new palace would fulfill his ultimate dream—to present a new form of live stage entertainment so spectacular that it would eclipse the motion picture itself.

It was Roxy who supervised the building of Radio City Music Hall and who, it is said, gave the architects the idea for its famed arched ceiling. While he was on an ocean liner returning from Europe where he had studied the latest theatre construction, Roxy marveled at the sight of the setting sun over the water. Inspired, he decided that this was how he wanted his new showplace to look.

Roxy made his ideas known to the architects, including the design supervisor, the young Edward Durell Stone. And one of the greatest American designers of the day—Donald Deskey—was called upon to produce, with his artist-associates, the glowing Art Deco interior.

The "Showplace of the Nation" opened on December 27, 1932. The public immediately fell in love with the place. It was elegant; it was quiet; it was sensational in its loftiness; and it was American.

The lavish stage show that Roxy had envisioned soon shared the bill with the motion picture—the new talkies that had captured the public's fancy. There was no better place to showcase a motion picture than in this king-of-theatres. Lines of patrons queued up around the block eager to fill the 6,200 seats. Where could one go for a better show? After all, beside the motion picture, there was the world's largest Wurlitzer theatre organ, the Symphony Orchestra, the Corps de Ballet, and the fabulous Rockettes.

For more than four decades the greatest motion pictures graced the huge screen on the world's largest stage. And they played the Music Hall first—films like King Kong, Of Human Bondage, Sunset Boulevard, An American in Paris, The Philadelphia Story, True Grit, Mary Poppins, and Disney's all-time classic, Snow White and the Seven Dwarfs. The Academy Award films number in the dozens. It was at Radio City that audiences were introduced to Bette Davis, Cary Grant, Katharine Hepburn, and the magic of Fred Astaire and Ginger Rogers.

During those years, more than 255 million people purchased admissions making the Music Hall—by far—the most popular, single entertainment attraction in the world. But in the 1970s the public's interest began to change and, with it, the kind of entertainment they sought. By 1978 there were plans to close the theatre forever. But the public wouldn't have it.

Plans for the restoration of the Hall were announced in April 1979 by Robert F. Jani, a newly appointed president of Radio City Music Hall Productions, Inc. The interior had been declared a landmark and that meant that all the carpets, draperies, wall coverings, and furnishings had to be maintained in their original design. In an incredible one-month period, every piece of fabric was either replaced or restored, the bronze doors and marble pillars polished, and even the 24-carat gold ceiling in the Grand Foyer completely cleaned.

Fortunately, the unique stage machinery, unknown in other theatres, was in mint condition. The three huge stage elevators, the revolving turntable, the orchestra lift that can traverse the stage, the three-ton gold contour curtain—largest ever created, still make the Hall the most perfectly equipped in the world.

The new Radio City Music Hall Entertainment Center reopened on May 31, 1979 with a new format of 90-minute live stage shows, ironically, a return to Roxy's original plan. The first musical spectacular, A New York Summer, played to over 600,000 people. This was followed by It's Spring featuring the Vienna Choir Boys, A Rockette Spectacular starring Ginger Rogers, Manhattan Showboat which saluted 100 years of American entertainment, and America, a special tribute to the nation. And, of course, there is the traditional and universally acclaimed Christmas Show, now the Magnificent Christmas Spectacular.

In addition, the Entertainment Center presents concepts by top performing artists, among them Linda Ronstadt, Chuck Mangione, Ella Fitzgerald, Anne Murray, Diana Ross, Peter Allen, and Frank Sinatra. In February 1981, the Center hosted the nationally televised Grammy Awards, presented by the Academy of Recording Arts and Sciences.

Radio City Music Hall Productions, Inc. has established itself as a multi-faceted entertainment enterprise. Since its formation the Rockettes have appeared in Las Vegas, San Francisco, Dallas, Miami, and London. Three of the Music Hall's spectaculars have been taped as major television specials, and a soundtrack album has been made in Radio City's own recording studio.

It is only fitting, then, that in its Golden Jubilee year tribute be paid to this magnificent institution that has meant so much to so many. Radio City Music Hall Entertainment Center reigns today as one of the most extraordinary—and magical—theatre palaces in the world.●

SENATE RESOLUTION 156—RESOLUTION RELATING TO ENGROSSING AND ENROLLING OF BILLS

Mr. MOYNIHAN submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES 156

Whereas the number of bills, acts, and resolutions introduced in the Senate has greatly increased, and

Whereas the length and complexity of measures adopted has similarly increased, and the language of legislation grows ever more distant from the language of the people, and

Whereas this development has both resulted from and in turn has caused increasing dependence of the Senate on professional staff, and

Whereas the staff having done the work, it is the inevitable and natural tendency of Senators to leave the matter at that, and

Whereas, if continued, this can only bring the legislative process into disrepute, and the laws also; be it therefore

Resolved, That it is the sense of the Senate that no bill shall be engrossed or enrolled which a majority of Members present and voting for the particular measure cannot attest to having read.

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF JUSTICE AUTHORIZATION ACT, 1982

AMENDMENT NO. 96

(Ordered to be printed.)

Mr. HELMS proposed an amendment to amendment No. 69 to the bill (S. 951) to authorize appropriations for the purposes of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

AMENDMENT NO. 97

Mr. BIDEN (for himself, Mr. KENNEDY, Mr. NUNN, Mr. BUMPERS, Mr. CHILES, and Mr. DECONCINI) submitted an amendment intended to be proposed by them to the bill S. 951, supra.

NOTICES OF HEARINGS

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, the Senate Committee on Governmental Affairs will hold a hearing on S. 1080, the Regulatory Reform Act of 1981, S. 344, the Agency Accountability Act of 1981, and S. 1360, the Regulatory Negotiation Act of 1981 on Tuesday, June 23, 1981 at 10 a.m. in room 3302 of the Dirksen Senate Office Building. For further information, please contact Dan Bensing at 224–4751.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. COHEN. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Senate Select Committee on Indian Affairs.

The hearing is scheduled for June 23, 1981, beginning at 10 a.m., in room 1114, Dirksen Senate Office Building. Testimony is invited regarding S. 1088, a bill to promote the goal of economic and social self-sufficiency for American Indians, Hawaiian Natives, and Alaskan Natives.

S. 1088 was introduced in the Senate on April 30, 1981, and was referred to

the Select Committee on Indian Affairs. The Committee reported the bill on May 15, 1981, with the understanding that a hearing would be held with further consideration of the bill at a business meeting, if necessary, before the bill is considered on the Senate floor. Testimony of Indian witnesses was received on June 10th. June 23rd hearing will be limited to administration witnesses only.

For further information regarding the hearing, you may contact Timothy C. Woodcock, staff director, or Jo Jo Hunt, staff attorney, on 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be deemed to have met during the session of the Senate on Thursday, June 18, to hold hearings on the Israeli air strike and related issues.

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

ADDITIONAL STATEMENTS

FISCAL DISPARITIES

● Mr. DURENBERGER. Mr. President, since coming to the Senate in 1979 I have attempted to build a record on the distressing problem of fiscal disparities, a problem of increasing, but unrecognized importance. Such disparities arise in numerous forms and yield to no single comprehensive solution. That is why it is imperative that we become aware of their many manifestations and begin to think about the range of solutions available to us.

On May 13 the Subcommittee on Intergovernmental Relations, which I chair, held hearings on Federal allocation formulas and fiscal disparities. At that time I pointed out two particular instances where disparities among governments' ability to raise revenues from their own resources base hold the potential for great disruption in the delivery of public services, for social and economic hardship, and more far reaching, the potential for strained relations among governments perhaps leading even to regional economic warfare.

One such case is widespread and familiar to any of my distinguished colleagues from States with old industrial central cities surrounded by growing and increasingly affluent suburbs. As business and middle-class citizens have fled the central cities for the haven of suburbia, they have left behind a stagnant city populated by the poor and the elderly. The dwindling of the city's tax base has meant that in order to maintain an adequate level of public services for its citizens, it has been forced to tax its even smaller tax base at an increasingly higher rate.

Another instance of fiscal disparities is of fairly recent origin, and is attributable directly to the enormous increases in the cost of energy. By simple good fortune, some States have located within their geographic boundaries large mineral and energy deposits which give these States potentially great tax wealth capacity, while other less energy rich areas increasingly must endure substantially greater tax burdens to raise the same amount of revenue. Compounding this is the ability of some of these States to levy enormous severance taxes on the extraction of the energy resources which can be exported wholely or in part to the citizens of energy dependent States.

Today, Mr. President, I call to the attention of this body yet another instance of fiscal disparities, this time a case particularly difficult to deal with. Those of my colleagues from States with twin border cities will recognize immediately the disparity likely to arise when two cities share the same socioeconomic environment but must exist in drastically different fiscal/legal environments because each happens to be in a different State. Minneapolis, St. Paul are not the only twin cities in my home State of Minnesota.

Three other of our cities are twins with sister North Dakota cities, and each is presently suffering from the disparities that arise when artificial political divisions overlie a larger social and economic system. The twin cities I am referring to are Fargo-Moorhead, Grand Forks-East Grand Forks, and Breckenridge-Wahpeton. Compound all of this with the fact that our Minnesota cities' North Dakota siblings are able to benefit from the vast energy revenues flowing into North Dakota, and you have indentified a situation that might easily lead to the deterioration of the "poor-sister." There is good evidence that this invidious process has already begun in the case of Moorhead.

In a recent front page article in the Minneapolis Tribune the situation in the Red River Valley I refer to was described in detail. I urge my colleagues to read the article closely.

The State of Minnesota is working hard to find answers to the difficult problems posed by this unfortunate situation. We faced similar problems in the Minneapolis-St. Paul metropolitan area and were able to alleviate the fiscal disparities by passing the Minnesota Fiscal Disparities Act of 1977, a model approach to addressing urban/suburban disparities. But the present situation presents much more difficult problems because most of its causes lay outside the reach of the Minnesota Legislature. In the case of metropolitan fiscal disparities in the seven county twin cities area it was possible for the citizens of Minnesota to make the hard choices, bite the bullet, and solve their own problems. In the present case, no matter how willing the citizens of Minnesota may be to help their fellow citizens by such measures as tax abatements, foregoing increased gasoline taxes, and so forth, the heart of the problem will persist. Because the cities of North Dakota are able to provide services with revenue generated by the energy windfal, it is possible for them to keep income, property, and sales taxes low, and keep their Minnesota sisters at a permanent comparative disadvantage in the competition for business and residents.

This is but one example of the types of fiscal disparities that confront us. I am sure my fellow Senators will become sensative to what is happening, because this is an area of growing national concern.

Mr. President, I ask that the Minneapolis Tribune article be printed in the RECORD.

The article follows:

MINNESOTA HAS THOSE OLD "BORDERLINE BLUES"

(By Steve Berg)

And from his window high up in City Hall, Morris Lanning can look down at the Red River, a muddy little stream that forms the border between Minnesota and North Dakota, and he can look out at the buildings of downtown Fargo just a few blocks away.

The city across the river is bustling with new businesses, new jobs, new houses, new people.

Lanning's town looks green and prosperous. But that's a facade, he says. Moorhead and the other border towns of East Grand Forks and Breckenridge are being bled white by high taxes and by people with good, old-fashioned Minnesota common sense who have come to realize that they can live and do business much more cheaply by crossing a bridge to North Dakota.

North Dakota's income taxes are about two-thirds less; its sales tax one-fourth less; its workers' compensation insurance rates 50 percent less. Even with the freeze imposed on border gasoline taxes last week by the Minnesota Legislature, the North Dakota gasoline tax is one-fourth less. And its local property taxes, aided this year by $104 million paid to the state by coal and oil companies, are going down, not up.

To those who watch business, the consequences seem graphic.

Moorhead grew hardly at all over the last decade, while the population of Fargo and West Fargo shot up by 22 percent. More than a dozen companies have jumped the border in the last five years and nearly all new firms are picking the North Dakota side of the river. Moorhead's troubled public school system is losing pupils at triple Fargo's rate and has had to close nearly half its schools in the last five years.

"We've had people suggest that I organize a pick and shovel brigade and dig a big trench on the east side of town to re-route the river," Lanning said, reflecting the sentiments of many here that if you can't beat North Dakota, you might as well join it.

"We could fill in the old river bed and turn it into the longest golf hole in the country," he said, laughing the same way he does when suggesting that Minnesota can solve its budget crisis by selling Moorhead to North Dakota for $600 million.

"With all the Norwegians in Moorhead (Lanning is one) we would raise the collective I.Q. of North Dakota by about 10 points," he quipped.

Disparities are nothing new between Fargo and Moorhead.

At the turn of the century, Fargo was dry and Moorhead had 52 saloons. Eventually Moorhead "reformed" and grew into a pleasant, cozy college town in which one-third of its residents were students at Moorhead State University or Concordia College.

Moorhead people have always been fiercely loyal to their city, believing it a bit more prestigious to live in Minnesota, a state of lakes and trees, rather than in North Dakota, a state with a sagebrush image and a reputation for fewer services and poorer schools.

"People have been willing to pay more for the so-called Minnesota quality of life," said Willis Kingsbury, Moorhead's community development director.

"Maybe some of that was valid in the past," he said, "but Fargo-Moorhead is really one community and I challenge anybody to show me how the schools or the quality of life is any better on one side of the river than on the other. Now it's the people of Moorhead who are caught in the wrong part of town."

Although tax disparities have existed for years, they suddenly seem more important for two reasons, he said. Inflation makes them more significant to people. And North Dakota is using its energy resources to widen the tax gap.

"We're living next to a new generation OPEC state," Kingsbury said.

This year North Dakota will collect an estimated $104 million from energy companies for the privilege of taking coal, oil and natural gas from its land.

As a result, collections from corporate income taxes are expected to drop by 15 percent and personal income taxes by 31 percent. The state is so rich it refused to raise gasoline taxes and other fees to maintain its highways and chose instead to use money from its general fund.

A new tax on crude oil will pump more money into education—$14 million more next year. The state's revenue from energy taxes could triple by 1983 when it expects to collect $304.6 million, fueling fears here that North Dakota could eliminate its income tax altogether.

That kind of wealth coupled with a populace that traditionally has not demanded the services Minnesotans have makes it easy for North Dakota to provide lucrative tax incentives for business.

A recent study by Alexander Grant & Co., a Chicago accounting firm, rated North Dakota the fourth best state in which to do business (after Mississippi and the Carolinas). It ranked Minnesota 37th. As Moorhead businessmen are fond of pointing out, the muddy little Red River is only 50 yards wide between their town and Fargo.

The cases of Moorhead, East Grand Forks and Breckenridge, are not nearly so dramatic as the exodus from "Taxchusetts" to neighboring New Hampshire or the rebellion over California taxes. There's no real rebellion here. People are just slipping quietly across the river and smiling more at tax time.

Craig Johnson is one.

Johnson grew up in Sidney, Mont., moved to Moorhead 10 years ago to attend Concordia College and married a Minnesota woman from White Bear Lake. They lived in a Moorhead apartment. When it came time to buy a house last year, the Johnsons could have bought a comparable house for about $15,000 less in Moorhead. But they chose to cross the river and move into a two-story brick house in north Fargo.

"It came down to taxes," said Johnson, 28, tax manager for a Fargo accounting firm. "Had everything been equal, we would have preferred to stay in Minnesota. My wife, especially, feels an attachment. She almost cried when we had to put on the North Dakota license plates. But I see us both moving up in our careers and making more money. Taxwise, it just doesn't make sense to live in Minnesota."

Johnson backed up his opinions by hauling out two sets of tax forms. In Minnesota, a family of four with the husband earning $30,000 a year and wife earning $15,000 would pay $2,700 in income taxes, he figured. In North Dakota, the same family would pay $820.

If the family lived in a home valued at $100,000, it would pay a property tax of $1,924 a year in Moorhead (that includes a $650 homestead exemption) and $1,450 in Fargo, according to figures supplied by city tax offices. The total tax savings in North Dakota: $2,354.

Many of those jumping the border or selecting the North Dakota side when first moving into the community are like the Johnsons, young and prosperous.

Victor Schramm has been a Moorhead home builder for 47 years. Now he specializes in building custom homes in the $100,000 to $250,000 range.

"Fifteen years ago, I never built in Fargo," he said. "Now, 90 percent of my business is over there." Schramm said he has built only one home in Moorhead in the last five years. He said, "It's lucky for Moorhead that interest rates are so high, otherwise more people would be moving."

Border patterns also are reflected in the schools where enrollment in Moorhead has dropped three times faster than in Fargo. In the last five years, Moorhead has closed six of 13 schools and laid off more than 100 teachers. Last week, the school board had to borrow $1 million to finish the term. No schools have closed in Fargo and West Fargo is planning a new school.

Some fear that more liberal welfare laws in Minnesota will further complicate the border towns' problems. "We don't want to become a welfare dump," said Mike Casper, city clerk in Breckenridge, a city losing out to Wahpeton, N.D., just across the river.

The business exodus has been more dramatic.

Leon Simon's father first opened a furniture store in Moorhead 55 years ago. Now Simon's only Moorhead outlet is a small odds and ends store open only part of the year. His two big stores are in Fargo.

"It became apparent that more of my affluent customers were not going to be living in Moorhead," he said. "It makes sense to be where your customers are."

A large furniture manufacturer dictated that one of his new stores be located near West Acres, Fargo's large regional shopping center. His other Fargo store was simply a good business deal.

Simon dislikes the notion that he has deserted Moorhead. He still owns a bank and two neighborhood shopping centers here. Still, he has moved his official residency to Florida. "My accountant told me I couldn't afford to live here anymore," he said, "that I'd be crazy to live in Minnesota."

Again, people here prefer to talk about the numbers.

A survey of 11 companies that had jumped the border from Moorhead to Fargo during the last five years showed that most relocated because of high income and property taxes and high workers' compensation payments.

A fast food restaurant valued at $375,000 would pay a property tax of $16,600 in Moorhead, for example, but only $6,688 in Fargo, according to the survey. In Moorhead, the owner of a trucking firm would pay $1,923 in workers' compensation premiums for every driver making $16,700 a year. In Fargo he would pay $410.

"Despite what the Legislature did this session, we figure workers' compensation rates would still be three times higher in Minnesota," said Curtis Aanenson, vice president of Old Dutch Foods, Inc., which is moving one of its potato chip plants from East Grand Forks to Grand Forks. Old Dutch plans to double its work force in North Dakota.

"We would like to have stayed in Minnesota," Aanenson said. "If you're going to move to Alabama and Mississippi it seems like such a big move. But going just across the river is relatively easy."

Old Dutch is the 27th business that has closed in East Grand Forks in the last five years. Eleven of those have moved to North Dakota.

"For a town our size, we should have three or four times the business," said Don Schneider, the East Grand Forks community development coordinator. "It feels bad."

North Dakota's official attitude to the plight of the Minnesota border towns could be symbolized by the shrug of a shoulder. After all, the state has always felt like a colony of Minnesota, particularly of the banks and grain companies of the Twin Cities.

"We've been shipping truckloads of money to Minnesota for generations," said North Dakota Gov. Allen Olson, who led a business recruiting mission to the Twin Cities earlier this month and who campaigned on improving his state's business prospecting. "Minnesota is good fishing, and I'm not talking only about fish."

Bob Everson, director of Fargo's industrial development corporation, is more sympathetic, "What Minnesota is doing to its business is nothing short of slaughter," he said. "Sure, Moorhead companies are coming over here, but we wouldn't think of recruiting them. This is a family affair."

It may be more of a family affair if the efforts of Moorhead and the other border towns fail to ease disparities. Most do not give much credence to the notion that Moorhead would actually try to secede from Minnesota, but answers to such questions are often left dangling and people recall the mid '50s when a flood control project changed the course of the Red River and a small part of Moorhead suddenly became Fargo.

"I love Minnesota," said Moorhead's Mayor Lanning. "I'm not ready to bail out yet. But remember that North Dakota once got a piece of Moorhead, and . . ." ●

THE EMERGENCY DEPARTMENT NURSE

● Mr. INOUYE. Mr. President, the hospital emergency departments of our Nation vigilantly provide 24-hour health care services ranging from aspirins for the common cold to cardiac resuscitation for the unexpected heart attack victim.

The emergency department nurse is a central health professional figure whether the situation is routine or life threatening. The emergency department nurse is the one that negotiates the boundaries between the hospital and community; often guiding the patient and family through the sometimes traumatic maze of hospitalization; or simply providing direct care and information which alleviate the need for hospitalization.

To patients and families, the emergency department nurse is becoming a more familiar face. In fact, between 1954 and 1978, public use of hospital emergency departments increased a dramatic 706 percent compared to a population increase of 34 percent.

The explanation for this striking figure includes the predictable: Increased crime and improved prehospital emergency medical service which delivers more "live" victims to the hospital. The surprising explanation, which most emergency centers say account for 50 to 70 percent of all clients, is that an increasing number of people now turn to the emergency department for assistance with minor medical problems and/or questions concerning health education.

This client population does not require physician emergency department care; but relies heavily on the expertise of the emergency departments in every State in cities, this population includes many high risk groups: The elderly, children, minorities, and the poor.

These 60,000 nurses employed in 6,500

emergency departments in every State in the country are rarely recognized for their contributions to the health care of our Nation. Who are they? What do they do?

The emergency department nurse is a registered nurse; that is a graduate of an approved nursing education program authorized by the State to prepare persons for licensure. After successful completion of the program, this graduate must then meet various State requirements for licensure in the State in which he or she wishes to practice. The majority, and an ever-increasing number of emergency department nurses, are prepared at the baccalaureate level in university programs accredited by the National League of Nursing.

By the progressive nature of the development of nursing education, nurses are currently being educated to care for the majority of minor health care problems seen in emergency departments. For even more advanced theoretical foundations and expanded skills, many emergency nurses are seeking masters and nurse practitioner education. I might add, they still must meet the State licensing requirements.

In addition, a certification examination has also been constructed and implemented which evaluates a nurse's knowledge about emergency care. This, in turn, provides a mechanism to insure the employer and the client that this nurse has the necessary baseline of knowledge and skill in emergency care.

The emergency department nurse usually functions in the following manner. When the client enters an emergency department, the nurse conducts a preliminary assessment to determine the nature of the client's condition—critical or noncritical and the degree of severity. If the client arrives by ambulance and is wheeled in on a stretcher, it is usually critical and the assessment will often require the application of advanced pathophysiological knowledge and lifesaving techniques in collaboration with physicians.

Furthermore, the nurse will provide psychological and emotional support to the client and family experiencing this crisis. On the other hand, if the assessment concludes that the client is noncritical, the nurse will collect the necessary information from the client, make a nursing diagnosis and complete the appropriate nursing intervention.

Some examples of nursing interventions are health education, reassurance, first aid information or minor medical care and community resource information. Primary health care problems of prevention and health promotion are becoming priority agenda items for the emergency department nurse. Research is providing direction for instructional content and techniques to prepare the emergency department nurse for her role as a health care provider. A physician may not be involved in this health professional/client interaction.

The working environment of hospital emergency departments can be described as high risk and high stress. Yet, even with the shortage of nurses, 88 percent of all hospitals unable to fill their full-time nurse positions, only 1 percent of the hospitals are unable to fill their emergency department nursing positions. In fact, many hospitals report a 12 to 18 month waiting list for nurses desiring to work in emergency care.

The stress of the setting is real; but the constant challenge to heal is equally real and professionally stimulating. The emergency department nurse is continuously challenged to organize and integrate advanced nursing knowledge and skills, to formulate, then implement a nursing intervention and finally evaluate the effectiveness of that intervention.

There are many other challenges: the synchronization of a collegial relationship with their physician partners; the peak experience of saving lives, and then with equal care and skill, working with the homeless alcoholic; the continual contact with distraught families and sometimes distraught communities; and the hourly opportunity to provide health education working with community resource agencies.

The emergency department nurses are meeting these challenges and contributing to the improvement of health care for today and tomorrow. For I believe that major improvement in our Nation's health care does not solely depend on the sophistication of technologies for the treatment of diseases. We cannot overlook the development of more effective strategies for health promotion and disease prevention such as demonstrated by emergency department nursing care.

The role of emergency department nurse affects the nurse's overall life perspective. This health professional experiences life very differently than the majority of the world. While most Americans eagerly anticipate the national holidays, the emergency department nurse is dreading the inevitable car accidents and deaths. Rain and snow mean slippery roads. Spring and summer bring more drownings, criminal assaults and rapes. At times death operates like a revolving door; but the emergency department nurse continues healing, comforting, and health promoting activities that provide significant intrinsic satisfaction.

Let me emphasize that the hospital emergency department is no longer a fearful place, associated only with stretchers, blood, and death; but, mostly through the efforts of the emergency department nurse, it is becoming a place of health education, patient advocacy and health promotion. I wish to acknowledge the emergency department nurse's outstanding contribution to the health care of the American people.●

LEARNING UNLIMITED

● Mr. LUGAR. Mr. President, I would like to submit for the RECORD an article from the Washington Post which examines one Indianapolis high school's approach to alternative education. The students are taking an active part in establishing their own curriculum, and the results are very positive.

The article follows:

LEARNING UNLIMITED: INDIANA SCHOOL'S EXPERIMENT ASKS STUDENTS TO CONTRACT FOR WHAT THEY WANT TO STUDY

(By Dan Morgan)

INDIANAPOLIS.—For most of the 3,200 students attending big, affluent, suburban North Central High, school this year meant going to class, joining a sorority, worrying about tests, thinking about college.

But for about 400 of North Central's students, it meant a chance to break away from that traditional routine.

Senior Vicki McBride spent an hour a week with a mentally retarded 8-year-old child, an experience that forced her to come to grips with her own feelings about sickness and suffering.

Shelley Herman, a junior who describes her reading skills as only average, negotiated a written "contract" with her English teacher to read 1,000 pages of literature in six weeks and had the contract witnessed by her parents.

For other students "school" meant working in last fall's state political campaigns, conducting a telephone interview with a top aide to Office of Management and Budget Director David A. Stockman, meeting at the home of a classmate to discuss religious differences between Jews and Christians, and taking a course from a school secretary with no formal teaching credentials.

These departures from traditional schooling were all part of this year's curriculum in Learning Unlimited, an alternative educational program that will go into its eighth year at North Central next September.

In many respects, programs such as these seem strangely out of place today in U.S. secondary education, which seems otherwise to be beating a hasty retreat from the innovation and change of the last two decades.

Alternative education was popular a few years ago. But many public schools, responding to parental concerns, are moving away from experiments tried in the 1960s and 1970s and back to more traditional methods. Budget cuts have dampened enthusiasm for bold new programs.

Educational "frills," ranging from driver education to creative writing, are under attack by proponents of a "back-to-basics" approach to schooling. And influential spokesmen of the political New Right are attacking schools for exceeding their mandate in discussing sex, values and morals in the setting of the classroom.

Ironically, though, some educational reformers have never been more optimistic about the prospect for change. They maintain that programs such as Learning Unlimited contain just the ideas, techniques and concepts needed to revitalize the American public high school and save it from its increasingly vociferous critics.

These programs, say the reformers, can show the way to deal with teacher "burnout" and provide more options inside the public school system for concerned parents.

"We view the trend [of public opinion] as a boon to alternative education," says Gary Phillips, a former juvenile probation officer who helped found Learning Unlimited. He now directs the national School Improvement Project, which receives funds from the Charles K. Kettering Foundation of Dayton and Eli Lilly Endowment of Indianapolis.

"Along with 'back-to-basics' there is concern for accountability, more examination of what schools do, and a search for alternatives," Phillips maintains.

"Since I got out of high school in 1957, schools have not changed very much," Phillips goes on. "But society has changed. We have kids who 'out-know' their teachers. We

have kids getting information in other ways. Teachers tell me that students are more apathetic, that schools are less important to them, that there is less family support, that homes are more chaotic, that students have a different attitude to authority. But when I ask the teachers what they are doing differently, they say, 'not much.' "

Similar doubt about the adaptability of the American high school was expressed in a controversial study, called "Giving Youth a Better Chance," published in 1979 by the Carnegie Council on Policy Studies in Higher Education. It recommended that large high schools be broken up into smaller units and proposed such radical changes as reducing classroom time to three days a week to allow more time for work experience and community activities.

In Phillips' view, educators misunderstand public opinion if they think most parents want schools to teach mastery of facts rather than deeper skills and attitudes that could last a lifetime.

He contends that the current interest in religious and private schools shows that parents want schools to be concerned with values and spiritual matters that go beyond book learning. And he is convinced that the public high school of the future will provide new opportunities for community and parental involvement.

Phillips says he has been given a mandate by Kettering and Lilly to "change the American high school"—a monumental task that he predicts will take at least 10 years. At this stage he is directing several modest experiments, including one at a large, minority-dominated Indianapolis public high school. The next step, which will come in several years, will be to build a national network supporting extensive change, he says.

The Learning Unlimited experiment was one outgrowth of an effort in the early 1970s to improve the quality of education at North Central, an affluent school in suburban Washington Township that even then ranked as one of the most successful high schools in the country.

Phillips and his faculty were given broad freedom to try new techniques that would attract not only potential dropouts but also the "silent majority" of successful but unchallenged students.

What has come out of this is a high school within a high school whose methods would shock many conventional teachers and administrators.

Students sit in on planning meetings with teachers, answer the telephones, or go off with a teacher for a "family group" meeting at a local fast-food shop. Others conduct "tele-lectures"—telephone interviews. They have had writer Studs Terkel, the mayor of Indianapolis and Lillian Carter's Secret Service man on the line.

They have also grilled speakers representing the Moral Majority, the American Nazi Party and the Communist Party of the U.S.A. at "town meetings."

But the core of the program today is "individualized learning," a lofty concept that is brought down-to-earth by the requirement of student contracts. These contracts, which are negotiated with teachers, define the students' objectives for each course.

Students are expected to identify their own weak points and set up a challenge that can strengthen them. In line with Learning Unlimited's view that all kinds of personal development have a bearing on educational achievement, contracts often contain a component that is not directly academic, such as working with retarded children, learning how to change a tire or going on a "walkabout," or experience being away from home.

The contract system is meant to shift some educational responsibility from the school to the youngster—to "transfer ownership of education to where it belongs," as Phillips puts it. But it is also intended to fit the challenge to the need of the student.

Phillips says he believes "ownership" should be extended to failure as well as success. At North Central he offered students with behavior problems an option of writing contracts in which they "chose to fail" as a means of forcing them to accept responsibility for their actions.

At the other extreme are highly gifted students, such as Jonathan Tanner, for whom the program has had benefits. A brilliant but somewhat shy student who was recently accepted by Harvard, Tanner contracted to take alternative gym because "I'm not really a great athlete . . . but in the alternative program you were rated on how hard you try rather than how good you are to begin with."

Tanner also signed up for a government class with Learning Unlimited teacher Bob Faris and set himself the goal of improving his ability to work in a group. With Faris's help Tanner became involved in several ambitious projects in which he worked with classmates on computers, and instructed the class on how redistricting was likely to work in Indiana based on his analysis of census data.

Over the years the program has had its share of criticism. In its early days, other North Central faculty members sometimes complained that Learning Unlimited teachers raided their classes looking for promising students. Faculty members acknowledge that the program also attracted more than its share of hippies and drug users in its early period.

Even today, Learning Unlimited students say, other North Central students sometimes joke that the program is for "freaks" and that it was less academically challenging than conventional school courses.

A senior quoted without identification recently in the student newspaper said of the program: "I cheated on tests, did no homework and received an 'A' for the semester . . . I majored in McDonald's."

But those familiar with the program take sharp issue.

"We tell the other kids how much fun we're having visiting coal mines or helping retarded kids and they say since you're having so much fun you must be cheatin' at something," was one student's answer to the criticism. "They don't understand it, so they knock it. I'm just as glad because otherwise they'd all want to be in."

Shelley Herman, now a junior, says students who criticize the program lack the self-motivation required to succeed in it. Herman says she was bored with school until she joined the program.

For others, Learning Unlimited seems to be providing a sanctuary from the impersonality and social pressures that are present at any big high school.

"I feel close and comfortable to people here," said a girl. "I come to them with my problems and I don't feel I'm imposing."

For teachers, Learning Unlimited has provided flexibility and freedom from bureaucracy. English teacher Mike Cupp says he was nearing "burnout" at a junior high school when he moved to Learning Unlimited. Now he says he stays friends with some of his students years after they graduate.

For parents, the appeal of the program is that it offers a different kind of educational experience for their children at the end of the same bus ride, rather than at a private school, or at some other high school.

One indication of the program's overall acceptance was the decision of the township to assume the costs of continuing the program after the Lilly Endownment funds ran out four years ago.

Jim Ellisberry, the assistant principal in charge of Learning Unlimited, acknowledges that evaluating the program is not simple. "We're dealing with outcomes that are difficult to measure," he says. "It's a lot easier when you're dealing just with Scholastic Achievement Test scores."

A 1976 study of grades and test scores attained by students in and out of the program found no significant difference.

More important in Ellsberry's view are two other surveys. One in 1978 asked Learning Unlimited students and a control group from the regular school how they rated their high school experience in developing such attributes as appreciation of beauty, managing time, acquiring information, social relationships and ability to direct themselves. Learning Unlimited students ranked their program higher to a significant extent.

A doctoral study conducted by Tom Gregory of Indiana University asked graduates of 20 Midwest high schools to outline what they thought an ideal secondary program should be and then compare it with their own experiences. The difference between ideal and reality was smallest in the sample of Learning Unlimited graduates.

Whether the experiences of an affluent suburban school can be transferred to the nation's deeply troubled big-city schools is another question.

However, Gary Phillips insists that he is developing a process and a concept that can be transferred, and already has been on a limited basis.

At George Washington High School, an inner-city school attended mainly by minorities, 73 out of 88 teachers have volunteered to give up one free period a week to work on ways to "make the school a better place."

One experiment has involved bringing in five executives from the local General Motors plant as part-time teachers. Officials of the plant had complained about the caliber of youth hired locally.

But in their initial approaches to the students, Phillips said, the executives ran into problems of their own. When they lectured the students about the importance of hard work they got a cold response.

Only when they changed their teaching tactic to give the students a chance to describe how they would set up their own business (a professional basketball team) did the class come alive with a discussion about hiring, the need for supporting services and loans.

Phillips cites this to illustrate his belief that schools can succeed if they work with the forces that influence youth rather than fight against them.●

PROGRAMS ADMINISTERED BY THE HERITAGE CONSERVATION AND RECREATION SERVICE

● Mr. JACKSON. Mr. President, on May 31, the Secretarial order abolishing the Heritage Conservation and Recreation Service (HCRS) went into effect. I think it is appropriate to take a few minutes and reflect on the status of several of the important programs administered by HCRS—formerly the Bureau of Outdoor Recreation (BOR).

I would not want the relatively quiet demise of this Bureau to be construed as acquiescence on the part of this Bureau to be construed as acquiescence on the part of this Senator to the demise of programs such as the land and water conservation fund, the historic preservation fund, the surplus property for parks program and the program providing recreation planning assistance to public and private utilities. In my view, these programs are as important and viable today as they were when they were established. Regardless of who administers them, it is important that they not

be allowed to atrophy and that their significant benefits to all Americans are not lost forever.

With regard to the land and water conservation funds, approximately $5 billion has been appropriated since 1965 with 40 percent of these funds made available to Federal land managing agencies, 59 percent to States on a matching basis, and 1 percent for the administration of the program. Through fiscal year 1980, more than 2.8 million acres have been purchased by the National Park Service, the Forest Service, the Fish and Wildlife Service, and the BLM. Since 1965, about 27,500 State projects have been completed using the 50–50 matching funds and more than 2 million acres of land have been protected at the State level.

In my own State of Washington, the land and water conservation fund has assisted over 390 city, county, and State recreation projects. The $48.6 million in Federal funds awarded since 1965 have been matched by Washington State and its local governments for a total investment in recreation of over $97.2 million. The largest acquisition project in the history of the land and water conservation fund created the L. T. Murray Wildlife Recreation Area in Washington State.

In 1977, the fund contributed to the purchase of St. Edwards Seminary from the Catholic Church and provided a 300-acre urban State park with over 3,000 feet of waterfront on Seattle's Lake Washington; 1.5 million people in the Seattle metropolitan area enjoy this new facility. In fact, it was designated 1977's outstanding LWCF project by the Secretary of the Interior.

Even with these impressive statistics, the backlog of both congressionally authorized but unacquired lands and State projects grows. As our population and park- and recreation-related visits increase, we should not be turning away from the LWCF but should be making a concerted effort to meet the recreation needs of the American people through proven programs such as this.

In response to this growing backlog and growing recreation need, the administration has proposed no funding in fiscal year 1982 for the State grant program and only $45 million for Federal land acquisition. I have stated on several occasions that I find this proposal inadequate and am pleased that the Senate Energy and Natural Resources Committee has seen fit in its reconciliation recommendations to go on record in support of additional funding for the LWCF.

In this regard, Mr. President, I should note that the committee also recommended additional funding for the historic preservation program, another successful program administered by the HCRS and transferred to the National Park Service.

The historic preservation fund grants-in-aid are the major means by which the Federal Government promotes preservation of the Nation's historic and cultural heritage and aids the public and private sectors in integrating their activities with historic preservation. The popularity of this program is evidenced by the fact that State historic preservation officers receive approximately $200 million of preliminary project applications each year. These projects are frequently the catalyst for significant private investment. Similarly, the General Accounting Office has stated that:

> Reducing the historic preservation fund from $32 to $5 million in fiscal year 1982—as President Reagan has proposed—would cut off Federal funding of State historic preservation offices and, therefore, greatly reduce their role in the National Archeology Program, which costs about $100 million annually and is not working well. Because of a lack of Federal direction and criteria on determining whether an archeological site is of national significance. Federal agencies could spend billions of dollars over the next 10 to 30 years on archeological studies, many of which may not be necessary. State historic preservation offices could play a greater role in helping Federal agencies determine whether archeological properties are significant and eligible for listing on the National Register of Historic Places.

Like the land and water conservation fund and the historic preservation fund, the other programs I mentioned are vitually important and have the support of the American people. So, too, they deserve the support of the Congress.

In summary, Mr. President, I just want my colleagues, the public, and the administration to know that as far as I am concerned the end of HCRS does not mean the end of the many worthwhile programs administered by HCRS and its predecessor, the BOR. I will continue to monitor these programs carefully and give them the support I think they deserve.●

DEATH OF JOHN S. KNIGHT

● Mr. GLENN. Mr. President, I was deeply saddened to learn of the death of John S. Knight from a heart attack he suffered Tuesday in his hometown of Akron, Ohio.

History will undoubtedly regard Mr. Knight as one of the leading forces of 20th century American journalism, both for his intelligence and integrity as an editor and for his success in creating one of the largest and most-respected newspaper chains in America.

I was a great personal admirer of Mr. Knight. He was more than a manager of news operations. He was a man of definite and well-considered opinions which I came to respect.

Mr. Knight's newspaper career began more than 60 years ago in a sportswriting position at the Akron Beacon Journal.

Within 4 years, Mr. Knight became the paper's managing editor. Within another 9 years, he became its publisher. From these posts be began instilling the principles of responsibility and excellence in his newspaper. These trademarks d'stinguish the Beacon Journal today, and will undoubtedly continue to do so for many years to come.

By the early 1940's, Mr. Knight had expanded his newspaper holdings, purchasing two papers in Miami and one in Detroit. Following acquisitions in Chicago, Philadelphia, and Macon, Ga., the Knight newspapers merged with the California-based Ridder chain to become one of the largest newspaper groups in this Nation.

As an editorial writer, Mr. Knight had the courage to take unpopular stands, such as his early opposition to U.S. involvement in the Vietnam war. It was his series of articles against this involvement that led, in large part, to his winning of the Pultizer Prize for editorial writing in 1968.

And yet, in spite of his position as head of a growing newspaper group, Mr. Knight never dictated editorial policy to his newspapers. Instead, he earnestly supported the editorial independence of each member of the Knight-Ridder chain.

It is significant to note that Mr. Knight's personal life was marred by tragedy. He was a widower three times. One of his sons was killed in World War II. Another died of a brain tumor. And, a grandson was fatally wounded during a violent mugging in 1975.

It is difficult, if not impossible, to state how deeply Mr. Knight will be missed by the city of Akron and the Beacon Journal. He was completely committed to both. He gave freely of his time and personal fortune to many worthwhile and charitable civic causes. He also maintained a heavy involvement with the daily operation of the Beacon Journal. In fact, I understand that Mr. Knight was in the newsroom shortly before his death on Tuesday to discuss an item appearing in that day's paper.

As the Beacon Journal so precisely stated for all of us in its eulogy of Mr. Knight, "(We) will never forget his lifelong dedication to excellence."●

OLDER AMERICANS EMPLOYMENT OPPORTUNITIES WEEK

● Mr. DURENBERGER. Mr. President, in designating the week of September 6–12, Older Americans Employment Opportunities Week, Congress will reaffirm its committment to the older worker. Labor Day week is an especially appropriate week for us to celebrate the achievements of older Americans and encourage continued support for their employment opportunities. At a time when all America's resources are being closely appraised, we cannot afford to ignore one of our greatest resources—our older workers.

We need only look to the White House to see a man well past retirement age doing an excellent job. At 70, Ronald Reagan is handling the most grueling job in Government. In the private sector, his 70th birthday would have marked the point of mandatory retirement. Instead, it marked the beginning of a new phase in his public service, and a new beginning for all Americans.

My friend and fellow Minnesotan, Warren Burger, is another older American serving the public well past normal retirement age. The Chief Justice will celebrate his 74th birthday this September as the highest official in our judicial system. As Chief Justice of the Supreme Court, he carries out his weighty responsibilities with wisdom and prudence. How much poorer would this Nation be if we

deprived ourselves of men such as Warren Burger?

We cannot afford to dismiss the benefits of age too lightly. These men and hundreds of men and women like them are contributing to the welfare of our country well past the magic age of 65. But there are equally able Americans who see retirement not as a retreat, but as defeat. Through mandatory retirement regulations, veiled job discrimination, and other barriers, many would-be older workers are forced out of the job market. This is an unacceptable situation. If this resolution does anything, it will reassert the positive contributions older workers have to give.

The opportunity to continue working is just as important as the opportunity to retire. We all gain when the older worker has the option of continued employment whether he or she stays in the same position, or chooses other alternative employment possibilities. We gain a senior citizen who is more economically self-sufficient. We gain a senior citizen who is a supporting member of our economy. We gain a senior citizen who feels a sense of purpose and usefulness.

We need to focus on what we in Congress can do to encourage employment opportunities among the older members of the work force. Through the interest and efforts of my colleague, Senator HEINZ, we on the Special Committee on Aging will continue to explore employment options for older workers. The needs and opportunities for older Americans is a challenge that grows 1,400 people stronger every day. I look forward to meeting this challenge and feel that this resolution is a vocal step in the right direction.●

VIOLENCE SPAWNED BY THE KU KLUX KLAN

● Mr. GRASSLEY. Mr. President, in recent weeks I have become particularly concerned about reports of growing violence spawned by the Ku Klux Klan, and have expressed those concerns in this body.

Despite the upsurge of this racially-divisive group, one would think that a State such as Iowa, with a minuscule minority population, would escape such movements fueled by bigotry. Earlier this month, however, the Cedar Rapids Gazette cited fears of Klan activity in the Cedar Rapids area, and called for a response shaped by both justice and reason. As noted by the Gazette, it would be tragic either to ignore discrimination against any ethnic group, offering no impediment to such practices, or to fuel racial tensions through overreaction.

As an example of a sane, judicious response to pockets of injustice which yet exist in our society, I would like to insert the following June 13, 1981, Cedar Rapids Gazette editorial in the RECORD.

The editorial follows:

RELAXING RACIAL STRAIN

Mainly on the strength of claims alleging price discrimination against blacks at a Ku Klux Klan-supporting tavern on the southeast side, an uncharacteristic adversary situation based on race has started to unfold in Cedar Rapids. As background, there have been events that led some members of the black community to feel mistreated by some members of the city's Police Department.

Two mistakes should be avoided by officials and complainants in handling these grievances. One mistake would be to disregard them—let the problem drift and passively await events. The other would be to puff up the problems into something bigger than they are.

On the matter of police relationships, a mechanism has been formed to bring both sides together periodically for looking at and working out whatever differences arise. If both are willing to communicate and follow through, a gradual accommodation should clear the smoke.

On the tavern matter, its separate elements of possible price discrimination and of Ku Klux Klan entanglement should be distinguished and kept suitably apart.

If blacks were charged more for beer than whites, as contended, that would be a violation of the federal Civil Rights Act's public accommodations section. Proof, as laid out one way or the other through legal proceedings now actively in the investigative stage, is what will settle that part of the case and bring whatever changes may be called for under law.

Fund solicitation for the KKK and personal support by management or patrons for that cause are something else. While high on bigotry and low on wisdom, that activity is not illegal. It does invite contempt and scorn from most of us. But KKK support alone is no ground for suppression, confrontation, license revocation, picketing or any other kind of interference with law-abiding people's rights to think or advocate whatever they choose.

Until the Klan's small pimple on the local body politic grows into something active—doing things that breach the peace, infringe on others' rights or otherwise defy the law—the only attack it may warrant is verbal. Mere support should not be blown up into something it is not. Or given an urgency completely out of scale and with its size.

"Don't go by what they say—just what they do" is always sensible advice. Sufficient patience all around to let the gears of justice move as they're supposed to—and have started to—is the No. 1 need among all concerned now. Stalled off also by a shared resolve to keep the gears in motion till the necessary settlement arrives, worse mistakes than any made so far can stay out of the works.●

THE OECD AND THE INTERNATIONAL TRADE IN SERVICES

● Mr. INOUYE. Mr. President, yesterday the organization for economic cooperation and development (OECD) concluded a ministerial meeting to discuss trade and development issues of interest and concern to its members.

One of the issues which the U.S. delegation raised at the meeting was trade barriers in the international trade in services. This trade consists of the commerce in nontangibles and includes such vital activities as transportation, financial services, communications, engineering and construction, tourism, and many other activities.

Our service trade constitutes approximately 30 percent of our total international turnover in goods and services. It provided the United States with a current account surplus of approximately $34 billion in 1980, a sum that some observers claim is understated since accurate statistics are not available. The surplus was, however, large enough last year to give us a small official surplus in our current account and to make up for a disappointingly large deficit in the merchandise account.

This sector, however, is quite vulnerable to protectionism since most service industries are stringently regulated. These controls originate in domestic regulation and are designed to promote certain national goals, often including protection of domestic industries. This is particularly true in certain important industries such as telecommunications and data processing, which many countries restrict for political, social, or economic reasons.

The OECD ministerial meeting was important because it marked the first time at which the United States seriously raised the issue of the international trade in a multilateral forum although it was raised briefly at the Tokyo round multilateral trade negotiations. Our Government presented to the OECD ministers a statement of U.S. objectives for trade negotiations in services.

Because the U.S. Government is giving this issue such a high priority, I believe that we in the Congress should focus on the initiatives the U.S. Trade Representative Bill Brock made in Paris at the OECD meeting.

Ambassador Brock and his staff are to be congratulated for their work in this area. I hope that the U.S. effort can restrain foreign protectionist proposals in this sector. At the same time, I also hope that the administration will give this area even greater attention and resources and provide American service firms strong support in their export efforts.

I ask that the following items be printed in the RECORD at this time: First, a press release which accompanied the approval by the Cabinet level Trade Policy Committee of the U.S. Government Work Program on Trade in Services; second, the text of the work program; third, the U.S. statement of objectives presented at the meeting.

The material follows:

OFFICE OF THE
U.S. TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C.

BROCK URGES SERVICE INDUSTRIES TO EXPORT

United States Trade Representative Bill Brock today challenged U.S. service industries to be "aggressive and persistent" in marketing their product overseas, as he released the U.S. Government Work Program on Trade in Services.

Brock said, "Services trade is the frontier for expansion of export sales.

"Aggressive cultivation of foreign markets by U.S. service industries is as critical to our economic recovery as is increased export of goods," the Administration's chief trade policy spokesman said. The work plan was approved at a recent meeting of the Cabinet-level Trade Policy Committee.

Services include engineering and construction, banking, accounting, shipping, insurance, movies, advertising, commercial aviation, communications and many others.

The work program has five components: (1) full use of existing bilateral arrangements with other governments to resolve current trade problems brought to the govern-

ment's attention by the private sector; (2) inclusion of services in the review of U.S. export disincentives; (3) domestic and international preparations for future multilateral trade negotiations on services; (4) review of domestic legislative provisions relating to the achievement of reciprocity for U.S. service industries; and (5) review of the adequacy of U.S. statistics on trade in services.

Services industries employ seven of every ten working Americans and represent up to two-thirds of our gross national product. Accurate data on trade in services do not exist, but the actual value of U.S. service industry exports probably well exceeds the approximately $35 billion in annual sales currently reported in government statistics.

Brock also released a statement of U.S. objectives for trade negotiations in services which has been made available to the Organization for Economic Cooperation and Development (OECD). Under the auspices of the OECD, a number of studies are underway to identify barriers to trade in services and examine other key issues in this sector.

U.S. GOVERNMENT WORK PROGRAM ON TRADE IN SERVICES

Trade in services has become increasingly important to the United States, both in terms of its growing volume and in terms of its support of the export of U.S. goods. Trade in services leads to the same economic gains for the United States as trade in goods, and U.S. objectives regarding trade in services are generally the same as U.S. objectives regarding trade in goods. Congress laid the foundation for similar treatment of trade in both goods and services in the Trade Act of 1974.

Many U.S. service industries are experiencing major trade problems, both as a result of foreign barriers and as a result of U.S. policies that unduly burden U.S. exports. In recognition of the growing importance of U.S. trade in services and the relative lack of existing mechanisms for dealing with the trade problems in services, trade issues relating to services will be given a high priority in the Administration's trade program. Set out below is a work program that has five components: (1) full utilization of existing bilateral arrangements with other governments to resolve current trade problems brought to the government's attention by the private sector, (2) inclusion of services in the review of U.S. policies that burden U.S. exports, (3) domestic and international preparations for future multilateral trade negotiations on services, (4) review of domestic legislative provisions relating to the achievement of reciprocity for U.S. services industries, (5) review of the adequacy of U.S. statistics on trade in services, with the purpose of recommending possible improvements.

Any of the work that is carried out in services needs to take account of some relatively unique qualities in many service sectors and service occupations. A number of services, are considered critical to economic, social and national security goals, and governments have traditionally felt the need to regulate these industries to assure broad societal goals. These goals can also be used, however, as a shield for protectionist ends, and it is a legitimate purpose of trade policy to seek to minimize such abuses.

Full utilization of existing bilateral channels for resolving current trade problems in services:

Every effort will be made to deal with pressing current trade problems through bilateral contacts with responsible foreign officials. Where services are covered by bilateral treaties of Friendship, Commerce and Navigation (FCN treaties) or bilateral agreements covering certain service sectors (e.g., aviation), the government will seek full enforcement of such provisions. Where no existing provisions exist, consultations will take place in the context of the overall bilateral commercial relationship with the country concerned.

Bilateral efforts can frequently lead to satisfactory solutions to trade problems in services, even though there are currently few effective international agreements on trade issues in services. Bilateral discussions of current trade issues in services moreover can help to establish a better understanding of the nature of trade barriers in services. In the absence of formal international agreements, however, the possibilities for the successful resolution of trade problems in services will vary considerably country by country and sector by sector. A more satisfactory outcome will require the negotiation of broader and more effective international agreements on trade in services.

Inclusion of services in the review of U.S. policies that burden U.S. exports:

The Administration will give specific consideration to U.S. service industries in the review of export policies which is now underway. Some U.S. service industries have indicated that a number of U.S. government policies pose a more formidable barrier to exports than do barriers imposed by foreign governments. The three policies most frequently mentioned in this regard are the taxation of Americans working abroad, the Foreign Corrupt Practices Act, and the enforcement of anti-trust policies.

Special attention will also be given to coverage of services in export assistance activities, including the work of the foreign commercial service. Services is also covered in the export trading company legislation now being considered by the Congress.

Domestic and international preparations for future multilateral negotiations on trade in services:

The Administration will assign a priority to domestic and international efforts to lay the groundwork for future multilateral negotiations on trade in services. Such negotiations will be aimed to reduce barriers to trade in services and to establish international rules for fair trade in services and procedures for effective enforcement.

In the Trade Act of 1974, Congress established a mandate for the negotiation of international agreements limiting non-tariff barriers to trade in services. Some progress was made during the Multilateral Trade Negotiations (MTN), but the task proved too difficult for a comprehensive treatment in the context of those negotiations. Since the conclusion of the MTN, the government has initiated consultations with the private sector and with other countries in the OECD and the GATT, for the purpose of identifying the major barriers to trade in services and formulating an agenda for future negotiations.

The analytical work to date has established that trade in services is hampered by a wide variety of barriers. Indepth analysis of these barriers is now needed in order to determine what might be negotiated. Before officials in other countries are prepared to commit the necessary resources for such an in-depth analysis, they will need a political signal from ministers. The United States is therefore seeking a political endorsement of the work on services by the OECD Ministerial in June. In order to help guide the discussion of a possible ministerial statement on services, the U.S. has circulated a Statement of Objectives for Trade Negotiations in Services. This paper has been prepared in consultation with the private sector and the Congress. (See attachment)

Review of domestic legislative provisions relating to the achievement of reciprocity for U.S. services exports:

The Administration, in consultation with the Congress, will review domestic laws aimed to achieve reciprocal treatment of U.S. service exports. The purpose of this review will be to assure the availability of domestic legal tools for effectively pursuing reciprocity and the development of a coherent U.S. approach to reciprocity in services.

Over the past few years Congress has added reciprocity provisions for services both in trade legislation (Section 301 of the 1974 Trade Act authorizing the President to retaliate against unfair foreign trade practices) and in legislation dealing with the regulation of certain service industries (e.g., aviation and banking). Legislation now pending before Congress would provide additional reciprocity provisions in other service sectors (e.g., communications). A number of states have enacted reciprocity provisions in connection with regulatory activities under their jurisdiction.

An evaluation of the reciprocity provisions that have been in effect for some time could provide useful insights into the design of new provisions. It could also provide the basis for possible amendments of existing provisions.

Review of the adequacy of U.S. statistics on trade in services:

The Administration will review the adequacy of U.S. statistics on trade in services. To a considerable extent, official data on international trade in services fails to cover a number of key services and inadequately measures exports and imports of other services. To prepare the ground for a comprehensive review, several agencies have awarded external research contracts to two outside firms who are currently analyzing the gaps in existing data and possible sources of additional data. When those contracts are available, steps will be taken to establish a private advisory panel and an interagency committee for the purpose of recommending improvements in official data.

OBJECTIVES FOR TRADE NEGOTIATIONS IN SERVICES

INTRODUCTION

Trade in services will be a key issue for the 1980s. Trade in services is of growing importance to the economies of the OECD countries, both in terms of the volume of that trade and in terms of its relationship to trade in goods. Some service sectors such as data processing and telecommunications are among the most dynamic sectors of our economies, and will be one of the major sources of increased productivity in our economies over the coming decade.

Governments need to identify what their overall objectives should be for future work on trade in services.

I. Premises

Trade in services among nations can contribute to the same economic benefits as trade in goods, including economic efficiency, economic growth, increased domestic employment and productive investment.

In the past 30 years, trade in services has increased substantially. While accurate data on trade in services do not exist, the value of international transactions in services (excluding dividend and interest payments) more than doubled in the decade from 1960 to 1970 and again from 1970 to 1975.

Trade in goods and services are closely interrelated. Growth of trade in services can stimulate growth of trade in goods and vice versa. At the same time, when restrictions are placed on trade in services, there can be negative effects on trade in goods and on the achievement of a country's macroeconomic objectives.

Over the past several decades, a body of international rules and procedures has development with respect to trade in goods which contributes to the maintenance of a free and open multilateral trading system. For the most part, these rules and procedures have not specifically applied to trade in services. Since services increasingly affect the achievement of national and international

economic goals, however, there is a need to assure that nations set, as specific objectives, the liberalization of trade and the achievement of fair competition in services.

Efforts to liberalize international trade and to improve international cooperation in services must take account of some relatively unique qualities in many service sectors and service occupations. A number of services, for example, are considered critical to economic, social, and national security goals. Banking, insurance, transportation, and communications fall into this category. Governments have traditionally felt the need to regulate these industries to assure that the interests of consumers and broader societal goals are properly protected. A number of service occupations such as doctors, lawyers, and accountants provide services that require a high degree of reliability and governments have felt the need to regulate those professions. Any liberalization efforts in services need to give full recognition to these unique aspects of services.

Legitimate government policies, however, can be administered on a discriminatory basis, either intentionally or unintentionally and become a shield for purely protectionist goals. Governments should be willing to agree on rules and procedures which will ensure that regulations designed to achieve legitimate economic, social, and national security goals are adopted and implemented in a manner which is the least distortive of trade.

Future international work on trade issues in services should be based on the premise that if governments do not develop a system of cooperative practices for trade in services and, if they do not expand to trade in services principles and procedures which have been accepted with respect to trade in goods, they will not have adequate means to assure an orderly expansion of economic relationships in services. In the absence of such efforts, intergovernmental tensions can be expected to increase and the multilateral system for economic cooperation in other areas could be weakened.

II. Status

At present, no coherent international framework exists for resolving trade problems in services. Some services are covered by bilateral agreements covering these services or by multilateral agreements providing for cooperation at the technical level. For the most part, however, governments must rely on bilateral contacts on a case by case basis to resolve individual trade problems. While such consultations in an overall commercial context can help to resolve some issues, there are some real limitations to what can be accomplished without a more organized negotiating process for exchanging commitments.

There is relatively open trade in many areas of services, but there is also a disturbing trend toward increased restrictiveness in some areas. This trend is emerging at a time when there are strong protectionist pressures affecting trade in goods. Restrictions on trade of goods, however, fall within the international discipline of the GATT, which provides an element of international constraint on national actions. There is not the same degree of discipline at this time in trade in services as on trade in goods.

The provisions of the OECD "Code of Liberalization of Current Invisible Operations" provide a measure of discipline on national restrictions on services. The effectiveness of the instrument is limited, however, by the many reservations and exceptions to the code and, like all OECD instruments, by the absence of enforcement procedures. As a result, in recent years, it has not proven to be an effective vehicle for removing restrictions.

Services are also included in the OECD Declaration of International Investment and Multinational Enterprises and in the OECD Code of Liberalization of Capital Movements. These commitments in the area of investment offer further guidance on the treatment accorded the service sector by OECD member countries.

In addition, services are covered by the OECD Trade Declaration; member countries have declared their determination "to pursue efforts to reduce or abolish obstacles to the exchange of goods and services" and to "avoid restrictive measures in the trade field, and on other current account transactions which might create snowballing effects; have an adverse impact on inflation, productivity and growth potential; or inhibit the dynamic development of world trade and its financing . . ." It has been difficult, however, to give operational meaning to this statement.

In the last year the OECD Trade Committee has undertaken a study of trade in services with the assistance of the Maritime Transport Committee, the Insurance Committee and the Committee on Capital Movements and Invisible Transactions (CMIT). This study is designed to identify barriers and examine the key issues in trade in services. The Trade Committee has also agreed to begin a discussion of general goals in services.

Work has also been initiated in the Committee on Capital Movements and Invisible Transactions to review the OECD Code of Liberalization of Current Invisible Transactions and to identify possible revision to the code that would make it more effective. In the Working Party on Information, Computer and Communication policies, work is underway to examine the economic implication of transborder data flows.

The GATT Consultative Group of 18 has also begun work on trade in services, starting initially with a review of the GATT articles as they relate to services trade.

III. Objectives

Future work on trade in services should be guided by the following objectives:

A. Develop bilateral and multilateral approaches to consultations and negotiations on trade issues in services:

Which would draw trade issues in services into the same kind of bilateral commercial consultations process and ministerial discussions used in goods trade.

Which would build on past commitments embodied in the OECD Trade Declaration, and the OECD "Code on Liberalization of Current Invisible Operations."

B. Seek a mutual exchange of commitments on the liberalization of barriers to services trade:

Which make best use of existing procedures and instruments for addressing the problems of service industries.

Which would reduce or eliminate quantitative or qualitative restrictions.

Which would reduce the use of discriminatory tariffs and other discriminatory measures.

C. Establish a set of principles for trade in services:

Which would give all countries an equivalent opportunity for exchanging commitments on a reciprocal basis.

Which would include acceptance of nondiscriminatory treatment in the adoption or application of governmental regulations affecting services.

Which would recognize the validity for services of such accepted trade principles as transparency, due process, right of access to domestic judicial review and right to pursue issues through government channels when private efforts fail.

Which would encourage governments to consider the trade effects of regulations and seek to minimize trade distortion to the extent possible.

D. Establish procedures for effective implementation of trade rules in services:

Which would provide for regular multilateral consultation on issues.

Which would provide for dispute settlement procedures.

Which would include provisions for effective enforcement of any agreements.

Which would provide araringements for subsequent negotiations on additional commitments.

IV. Future steps

In order to further international cooperation in services, governments of OECD member countries at the Ministerial level

A. Should reaffirm as their goal the commitment in the Trade Declaration of 1980 "to pursue efforts to reduce or abolish obstacles to the exchange of . . . services" and request the organization to systematically examine commerical practices which distort international trade in services, with a view toward determining the most effective means for reducing or eliminating such practices.

B. Should reinforce the commitment in the Trade Declaration of 1980 to "avoid restrictive measures in the trade field," including services, and charge the organization with the task of giving operational meaning to this commitment.

C. Should encourage member countries to fully utilize informal means of consultation to resolve difficulties adversely affecting current trade in services.●

SENATOR BAUCUS' MARATHONS

● Mr. LUGAR. Mr. President, as an ardent supporter of physical fitness, and of running in particular, I would like to take this moment to recognize, formally, the achievements of my distinguished colleague, Senator MAX BAUCUS of Montana. Since the days of Pheidippides in ancient Greece the marathon has been the most grueling of all athletic endeavors. Mr. BAUCUS is the first U.S. Senator to enter, and to complete the entire 26 miles 385 yards of the modern marathon.

By his very presence in these Chambers, he has shown himself to be a better man than Pheidippides, who, upon completion of that very first marathon, expired. To avoid a similar fate, Senator BAUCUS trained extensively for his marathons, running hundreds of miles in preparation. Having completed three marathons, Senator BAUCUS is an extraordinary example for all Americans interested in physical fitness, and I commend him to my constituents as well as to the people he serves in Montana.

I ask that these articles pertaining to Senator BAUCUS' marathons be entered in the RECORD.

The articles follow:

BAUCUS SETS SIGHTS ON MARATHON

HELENA, MONT.—Montana Democrat Max Baucus hopes to become the first U.S. senator to finish a full marathon.

Baucus was easily elected to the Senate in 1978 after serving two terms in the U.S. House.

He knows he's not going to win his next race: all 26 miles, 385 yards of the Governor's Cup Marathon here June 2.

But he says he will finish what he starts.

"A few members of the House of Representatives have run marathons," Baucus said. "But I'll be the first U.S. senator to finish one—at least as far as I know."

Baucus has been training diligently for the race, logging 45 miles per week from February through March.

This month, he has increased his running

regimen to 60 miles per week, including a few 20-mile runs.

"I feel terrific. I think I can make it. I only want to finish," he said.

"I've been lucky. I expected sore muscles and other such problems, but other than a few blisters, I feel good."

Baucus, 37, says he has lost 22 pounds in the past eight weeks.

"I didn't figure this would happen," he said. "I've just been running more and eating less, but I mostly credit the running."

To prime for the marathon, Baucus competed May 5 in a seven-mile race in Missoula. He covered the distance in just over 50 minutes, which was more than eight minutes faster than his time in the same race last year.

Baucus has been getting some expert advice in preparing for the marathon.

He had lunch recently with Bill Rodgers, who has won the Boston Marathon the past two years and is acknowledged as America's best marathoner, and Joan Benoit, winner of the 1979 women's division in the famous Boston run.

SENATOR BAUCUS HOOKED ON RUNNING

(By Sen. MAX BAUCUS)

"I'm getting hooked on this nonsense . . . Running, that is . . ." For the past several years I had engaged in intermittent jogging like the Missoula run each spring. But in the back of my mind, was that nagging question: Could I make 26 miles, 385 yards.

I wasn't really planning on trying to answer that question, to be brutally honest. So, my 1978 campaign manager, Bob Fitzgerald, answered it for me. In a lighthearted moment, he challenged me to run in the 1979 Governor's Cup Marathon last June. Later I wondered whether I was in a light-headed mood, but I accepted.

Bob began training in earnest after the election. He ran in the Honolulu marathon in December 1978. I began in earnest to be a U.S. Senator. And, then I realized that if I was going to enter the Governor's Cup, I had to finish the Governor's Cup. And, to finish, I was going to have to train.

In the late winter months I began to make time in my schedule for running, at 6 a.m. four to five times a week. After being on the potluck, cookies and coffee campaign trail for 14 months, it was tough at first. But I tried to remember coach Bobby Knight's (Indiana Hoosiers basketball) admonition that everyone has the will to win, but few people have the will to prepare to win. So, on through the rainy, snowy streets of Washington, D.C. I continued to train.

I always thought I would finish a 26-miler, but when I got right down to the starting gun's sound, I felt my palms grow noticeably moist. It's so easy to say what one will do, it's something else to have done it. But the crowds along the way cheered me immeasurably and were in fact much of the reason I was able to hold it together mentally through the race. I had mixed thoughts in the early stages of the race. I felt I would try to go for a fast time. By the middle stages, I hoped I could just finish and not embarrass myself, and in the last few miles, I became elated because I knew I would finish. I think I even managed a quasi-sprint at the end, finishing my first 26-miler in a fog but quietly appreciative of that adventure. I intend to run again this year and to do it faster.

I also ran in the Marine Corps Marathon in Washington last October—somehow starting in the front row. I noticed all the runners around me weighed a good deal less than I and after that I just tried to avoid getting trampled by the long, lean hungry ones directly behind me. All's well that ends well, though. I finished in three and a half hours, cutting ten minutes off my Governor's Cup time.

After two marathons and several 10K races, I have learned some facts about runners. After being soundly beaten by many women in all my races, I asked the inevitable question: Why aren't women allowed to race the 5,000 meter, 10,000 meter and 26-mile marathon in the Olympics?

The reason I heard didn't seem to make sense, and so along with Sen. Nancy Kassebaum of Kansas, I cosponsored a bill to allow women to participate in these races at the 1984 Olympics. There are a lot of champions waiting in the wings and I can hardly wait to see them get their chance to live up to their potential.

I look forward to running in the Governor's Cup again this year. The bonds of friendship gained while racing are something I cherish. It is as much a part of the adventure as the running itself. These days I'm a sea-level runner but am anxious to get back to Marysville for the start of the 1980 Governor's Cup. I'm more anxious, though, to see you all at the end of Last Chance Gulch . . . winners all.

ZEZOTARSKI AND DANZER TAKE GOVERNOR'S CUP

HELENA.—Stan Zezotarski of Helena became the first two-time winner of the Governor's Cup Marathon Saturday, and Anne Danzer, also of Helena, set a women's record with her first-place finish.

Zezotarski, 26, crossed the finish line 2:29.33, some five minutes slower than his record-breaking time in 1980. He almost didn't run this year because of injuries suffered in the April 20 Boston Marathon.

Danzer, 33, who finished third last year, came in with a time of 2:56.26, wiping out the 2:58.34 mark set last year by Jenny Tuthill.

Following Zezotarski in the marathon were Jim Walker of Bozeman in 2:32.59; Dave Coppock, Missoula, 2:37.38; Cyle Wold, Kalispell, 2:38.02; and Tim Tayne, Bozeman, 2:38.36.

The other top female finishers were Patricia Decker, Whitefish, 3:21.05; Bobbie Dixon, Helena, 3:26.17; Mary Peet, Billings, 3:27.51; and Marian McCall, Bozeman, 3:29.25.

The 26-mile, 385-yard course began at Marysville in the mountains northwest of Helena. The 20-kilometer run started along the marathon route and the shorter races were run within the city. All races finished near the Federal Building in downtown Helena.

The following were unofficial winners and times in other events:

20-kilometer, Scott Descheemaeker, Bozeman, 1:05.55; and Cheryl Johnson, Helena, 1:16.42;

10-kilometer, Tony Banovich, Butte, 35:54; Christine Hoth, Billings, 40:11;

5-kilometer, Mike Houlihan, Bozeman, 15:18, Lynn Creek, Bozeman, 18:22.2;

Masters, Bill Foulk, Bozeman, 2:40.38; and Carolyn Woodbury, Missoula, 3:39.44.

Johnson's time set a record in the 20-kilometer run.

Awards were presented by Gov. Ted Schwinden at a noon awards ceremony. The race was co-sponsored by Montana Blue Shield and Helena's Last Chance Runners.

The races drew 2,100 entries, 200 more than last year's race.

A special award went to Mike White as a marathon winner in the wheelchair division. White participated last year in his wheelchair in the 10-kilometer event. A second special award also went to Sen. Max Baucus, D-Mont., the only U.S. Senator who runs marathons, organizers said. He has now completed three Governor's Cup marathons.

Jenny Goodwin of Surfer Paradise in Queensland, Australia, was given a special award for coming the longest distance to run in the race. Goodwin ran in the 5-kilometer race.●

THE WCBS FIRST AMENDMENT PROJECT

● Mr. MOYNIHAN. Mr. President, WCBS–TV in New York City has put together an outstanding series of programs that deals with an enormously important question: The role of the first amendment of the Constitution in the United States today.

From the very beginning, our Nation has been marked by a fervent passion for liberty. For us, the idea of freedom has never been a hollow, lifeless concept. It has been a reality. And so it must remain.

But if we are to preserve the freedoms embodied in the first amendment, all of us must come to a greater appreciation and understanding of them. As long as they remain mere abstractions, they are endangered. People must grasp the importance of these freedoms as integral and essential parts of their lives. Then they will survive; then they will be cherished as they should be.

WCBS–TV is doing what needs to be done. Through its "First Amendment Project," it is educating its viewers in an imaginative and effective way about the history, meaning, and enormous importance of the freedoms guaranteed by the amendment. All of us who care about freedom will benefit from the fine work of WCBS–TV, which, I am quite sure, will instill in many people a deep and abiding commitment to liberty.

A few days ago, Edward M. Joyce, the vice president and general manager of WCBS–TV, explained the purpose of his station's 3-week first amendment project. Mr. Joyce said:

> The freedom of expression made possible by the first amendment to the Constitution is among all nations unique to the American experience. We appear to be in the era of its re-examination. If as a result of our project, the public better understands the issues at stake, we will feel we've made a significant contribution.

I am confident that WCBS–TV will succeed in meeting its goals as stated by Mr. Joyce. The 3-week program that the station has assembled is very impressive and comprehensive, exploring a wide variety of issues through several different formats.

A highlight of the WCBS–TV project will be a simulated trial debating the right of the press to use confidential sources. This issue is considered by many constitutional experts and observers to be one of the most important first amendment debates of our time. Mr. Floyd Abrams, the distinguished constitutional attorney, will defend the right of the press to use unnamed sources. Arguing that the use of confidentiality by the press should be limited will be William Rusher, editor of the National Review.

The project started on Monday, June 8, with a series of editorials dealing with first amendment issues such as regulation of journalists, shield laws, and book banning. The station will also broad-

cast a first amendment announcement specially produced for this project.

Another creative element of the series of "Freedom Thoughts," is dealing with important first amendment legal cases and issues. They will be presented by prominent people such as Tom Wicker, associate editor of the New York Times; Harrison Salisbury, journalist/historian; Terence Cardinal Cooke of the New York Archdiocese; Coretta Scott King, president of the Martin Luther King Center for Social Change, and others.

On two consecutive Sundays, the station's weekly religious program, will focus on church/State and Church/media relations. The Reverend Daniel C. Fore, spokesman for the moral majority in New York, and Father Robert Drinan, former U.S. Representative from Massachusetts and currently professor of law at Georgetown University Law Center, will join correspondent Dave Marash for a discussion on this controversial topic.

Book banning is the subject. Tracing the case in which a local school district banned nine books from its school library in 1976, the program examines whether the school board was within its constitutional rights to ban the books from the school library.

WCBS–TV will also broadcast the made-for-TV-movie "Fear on Trial," for the first time on local television.

I heartily congratulate the management and staff of WCBS–TV for undertaking "The First Amendment Project." It is another example of the station's well-known commitment to public service. I hope that other stations around the country will take note of what WCBS–TV has done. It is worthy of imitation.●

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, S. 951, which will be stated by title.

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.

AMENDMENT NO. 70 TO AMENDMENT NO. 69

The ACTING PRESIDENT pro tempore. The pending question is on amendment No. 70 to amendment No. 69.

Time for debate on this amendment is limited to 3 hours—1 hour under the control of the Senator from Connecticut (Mr. WEICKER), 1 hour under the control of the Senator from North Carolina (Mr. HELMS), and 1 hour under the control of the Senator from West Virginia (Mr. ROBERT C. BYRD).

Mr. HELMS. Or his designee.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, it is my intention to speak for a few moments, and then such time as the Senator from North Carolina cares to have he will have. But I remind my colleagues that this morning we will be voting on the Weicker amendment and that amendment states:

. . . 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.

Mr. President, this amendment has absolutely nothing to do with busing. It has to do with the separation of powers, that concept of the division among the legislative, executive, and judicial branches of Government. It has to do with the concept of checks and balances, and it has to do with the measure of freedom any branch has from incursion by any other branch.

The amendment which it amends prohibits an entity of the executive branch of Government from pursuing the enforcement of the law, specifically that aspect of enforcement which is the seeking of a remedy.

As such, I feel that the amendment which the Weicker amendment amends is patently unconstitutional.

I said many times yesterday and throughout the week that advocacy for the principle contained in the Weicker amendment should have been the primary responsibility of the President of the United States or more particularly the Attorney General of the United States. It is not the legislative branch that is being inhibited. The incursion does not incur on the legislative branch. It is the executive branch whose powers are being eroded.

And the President has the duty of not only representing and effectuating his views and the views of his party, but he also has the constitutional duty as President of the United States to protect and to preserve the powers of his Office. That is totally separate and apart from whatever his philosophies might be.

In the absence of either the President or the Attorney General performing that defense, it has fallen on the shoulders of the Senator from Connecticut and others of his colleagues to see the Constitution of the United States preserved to the greatest possible extent.

Mr. President, I am not here this morning to go through all the reasons that were quite carefully and extensively enumerated yesterday as to why I think the Weicker amendment should be passed, but it certainly would be a shock, I think, to anyone outside this Chamber to be confronted with the fact that the Senate of the United States did not reaffirm the constitutional duties of the Department of Justice and the courts of the United States.

Aside from the constitutional issue, the civil rights issue is of course, enormously important.

I have tried during the course of this debate to educate my colleagues and those in the public to the fact that civil rights is not just a matter of race, not just a matter of black or white; rather civil rights is a matter that pertains to every one.

It usually comes into play on behalf of the most disadvantaged elements of our society, which means that it will be used in our time, in our generation by women, by the elderly, by the disabled and retarded, by those of different ethnic and racial background who are in a minority, be that American Indians or Hispanics. These are the more immediate problems for this generation in this time.

But civil rights is not something that belongs to a few persons marching down the street in the advocacy of their self interests. The civil rights that we talk about are constitutional rights that belong to every one of us.

That is the other point that I have tried to make during the debate.

So there we have it to the extent of trying to preserve the Constitution in terms of the constitutional structure of Government, separation of powers, and preserve the constitutional rights of each of us, which rights have no meaning in the absence of remedy.

It does no good to any person aggrieved if the wrong established is impossible of correction.

Many will complain that the remedies have either been too vigorous or too sweeping. But who are we to judge in retrospect as to how sweeping was the illegality? Those matters were decided by other of our fellow citizens serving as jurors and judges in other times.

Certainly any one of us as a matter of historical perspective would agree that race discrimination was broad, it was oppressive, it was all consuming, it was devastating, and few will argue as a matter of present perspective that in different ways that discrimination still goes on.

We become free as a nation when all are free. We become strong as a nation when the weakest among us has full access to this Constitution.

It is to those matters that I have tried to address myself. It is to that which the amendment addresses itself.

If this body wants to go on record as opposing the remedy of busing, so be it.

At the same time, this body can also reaffirm its faith, its belief, its commitment to the Constitution of the United States by voting for my resolution.

The distinguished Senator from Pennsylvania (Mr. SPECTER) is on the floor and has indicated a desire to address some remarks on this matter, and I now yield to him 5 minutes.

The PRESIDING OFFICER. (Mr. COHEN). The Senator from Pennsylvania.

Mr. SPECTER. I thank the Senator from Connecticut.

I wish to speak in support of Senator WEICKER'S amendment. As I read his proposed amendment it was my initial thought that it was a self-evident proposition that would not need to be introduced and voted upon because it recites conclusions which I think are obvious.

It provides:

[E]xcept 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.

This statement is simple and direct in saying two things:

First, it provides that Congress shall not legislate to limit the Department of Justice's enforcement of the U.S. Constitution. This is the obvious constitutional responsibility of the Department of Justice and, in my opinion, something that Congress cannot limit through legislation.

The executive branch of the Government created by the Constitution has its responsibility to enforce the Constitution, and that is a constitutional mandate which is not subject to limitation by Congress.

The second part of the proposed amendment recites that nothing in the act shall be interpreted to diminish the authority of the U.S. courts to enforce fully the Constitution of the United States.

Before hearing the extensive debate on this subject in the course of the last 2 days, and before coming to the U.S. Senate just a few months ago, it would have been my view that such a statement would realistically be superfluous; it is long past the point of debate that the U.S. courts have the authority and the responsibility under the Constitution to enforce the Constitution.

But if these points need to be emphasized, then I think it is my responsibility to lend support to Senator WEICKER by saying it is my opinion that there should be no doubt about the authority and responsibility of the Department of Justice to enforce the Constitution and the authority and responsibility of the U.S. courts to enforce the Constitution.

It is my further thought that we may not do indirectly what cannot be done directly, and that it would be inappropriate to limit through the power of the purse and through the appropriations process the wherewithal for the Department of Justice to move forward to discharge its constitutional duty as the Department of Justice sees fit.

The genius of the American governmental system under our Constitution for almost 200 years has been the separation of powers. The Constitution explicitly vests in the executive, through the executive article, certain powers, among them the power to enforce the Constitution, and explicitly vests in the judicial article the authority of the judiciary to enforce the Constitution.

Congress and the U.S. Senate have their own powers, and plenty of them, but not sufficient to interfere with or contradict the powers which have been given to the executive or the judicial branches.

So any effort to interfere with the executive or the judiciary, in my view, conflicts with the mandates of the Constitution.

These principles, it seems to me, are applicable, whatever one's views may be on busing.

In the State of Pennsylvania, where the issues of integration and the issues of conflict on racial matters and tensions which have existed in the cities and towns in Pennsylvania——

The PRESIDING OFFICER. The Senator has consumed 5 minutes.

Mr. WEICKER. I yield such further time as the Senator may require.

Mr. SPECTER. I thank the Senator. I shall be relatively brief.

The point I was making was that the issue of integration, race relations, is a critical one, and one which has consumed a great deal of the time and attention of the people of Pennsylvania.

On the issue of busing the people of Pennsylvania are not satisfied with busing, and there is widespread opposition to busing. The predominant view among blacks and whites is that the answer is quality neighborhood education. There is widespread opposition to busing.

But I do not view this proposed amendment as one on busing. Senator HELMS has spoken and has criticized the consequences of busing in the United States. I think there is a great deal to be said in criticism of what busing has meant. But, notwithstanding the consequences of busing, it is my judgment that the courts cannot be limited if the courts decide that busing is an appropriate remedy. That is not for the Senate and not for the Congress to say.

If the Attorney General of the United States elects to seek a remedy of busing—although there has been strong indication that he does not intend to do so in this administration—again, it is not for Congress and not for the Senate to say whether we like busing or dislike busing, and I emphasize that the balance of opinion has been in opposition to what busing has meant.

I would like to make two other points very briefly, and I appreciate the time yielded to me. One is that the Attorney General, as the Nation's chief law enforcement officer, is a quasi-judicial official and, as such, he is vested with broad discretion. The position of Attorney General is not unlike that of a State attorney general or the county prosecutor or the district attorney. It is difficult to define in many respects whether the Attorney General or a law enforcement official really belongs in the judicial branch or in the executive branch. By definition he has been placed in the executive branch, but he has broad quasi-judicial power.

The discretion that a law enforcement officer must exercise, I would suggest, may not appropriately be limited through the appropriations process, and I say that with some experience as a prosecuting attorney. The discretionary judgments which have to be exercised inhere uniquely in that person who has that responsibility. That is another reason why I do not think it is appropriate, aside from the constitutional issue, for the Congress to tell the Attorney General, who has that quasi-judicial authority and discretion, how he should act.

The final point that I would like to make relates to the availability of busing as a remedy, which availability would encourage settlement among the parties. The litigation process is such that, absent the likelihood of settlement, the courts cannot possibly take care of the enormous volume of litigation which is presented to them. The possibility of the remedy of busing is sufficiently extreme to encourage those who do not wish to have that as a possible judicial order to exercise extraordinary care to find a solution and a compromise short of busing.

If busing is to be eliminated as a possible judicial solution, then the settlement process and the reconciliation process will be dealt a severe blow. So that even those who are opposed to busing have said that its availability as a potential remedy is very important in the litigation process to encourage innovative thinking and agreement among the parties, and to find ways short of busing to achieve the goal of integration to which this country is dedicated.

I thank the Senator from Connecticut for yielding.

Mr. WEICKER. Mr. President, I thank the distinguished Senator from Pennsylvania for his remarks. Coming from one who has spent a great deal of his life in the area of justice and probably knows it as well as any Member on this floor, I very much appreciate his support and his perceptive remarks.

Mr. JOHNSTON. Will the Senator from Delaware yield me 10 minutes?

Mr. BIDEN. I yield 10 minutes to the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I rise in opposition to this amendment because I think it totally guts the Helms amendment. Now, to be sure, the Helms amendment does not prevent busing and is not a massive assault upon busing, but simply upon the power of the Justice Department acting individually to bring and maintain such actions.

This kind of language in the Weicker amendment has a long history. Indeed, language very similar to it, if I recall correctly, was inserted in the Civil Rights Act of 1964. The Senate will remember that, in the Civil Rights Act of 1964, for the first time the Justice Department was authorized to bring and maintain these kinds of actions. Prior to the Civil Rights Act of 1964, constitutional rights were considered to be individual rights, maintainable only by the individual; that the Justice Department was not authorized to champion those rights.

So along comes the Civil Rights Act of 1964 where the Congress said, "We will give to the Justice Department that right and authority and power." At the same time, the Congress very clearly, they thought, put a provision actually defining desegregation, saying, "Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, or re-tion," et cetera, "and shall not mean the assignment of students to public schools in order to overcome racial imbalance."

The Congress thought that they were very clearly defining desegregation as not to deal with the question of racial bal-

ance and the kind of language that is contained in the Weicker amendment was inserted, apparently very innocent language.

The Court, however, used the Weicker language to nullify the rest of it and to order massive busing, to order a change in racial balance. That is why I say it guts completely the Helms amendment.

There are, indeed, as the distinguished Senator from Pennsylvania said, two parts of the Weicker amendment. I quite agree that the second part relating to the power of the courts, that is that nothing shall be "interpreted to modify or diminish the authority of the courts of the United States to enforce fully the Constitution of the United States," that is a statement with wh'ch no one can disagree. I think it is totally logical as it appears in this amendment and is not objectionable.

What is objectionable is the first sentence which states that nothing shall limit the power of the Justice Department to enforce the Constitution of the United States.

Now, again, Mr. President, this is something that is not required by the Constitution. It is not inherent in the Constitution. It is not an article three power of the Justice Department. It is a Congress-created power, created in the Civil Rights Act of 1964 for the purpose of relieving the NAACP legal defense fund and others of what was really an enormous burden of bringing and maintaining suits to desegregate schools all across the country, and particularly at that time in the South: a power, which I must say, Mr. President, was needed to be granted, because otherwise we would have not made any progress in desegregation, a goal which I very strongly support and pursue.

However, Mr. President, we have gone from the ridiculous to the sublime, or should I say we have gone from what is a laudable goal and a good purpose to that which is ridiculous and absurd.

If I may tell you, Mr. President, how this power of the Justice Department has worked in practice in my State, I think my colleagues will understand why I feel so strongly about the Justice Department. Rapides Parish, or county as it would be in another State, is located in the central part of Louisiana and the Justice Department, not private plaintiffs, were pushing for further relief in the school desegregation case in Rapides Parish, La.

At the behest of the leadership in Rapides Parish, both black and white—and that leadership includes the most prominent members of the black community, elected members of the school board—they asked me and my other colleagues in the congressional delegation to intercede with the Justice Department to try to prevent what the Justice Department was asking for, which was massive, long distance, cross-parish busing. And so we went to the Justice Department and asked, first, for a delay and, second, for some relief from the order which they were seeking.

Now the interesting thing at this time, Mr. President, was that it was not the private plaintiffs. The private plaintiffs were individuals who brought the suit back in the 1960's who had long since passed out of the school system, gone and graduated. There was, in effect, no private plaintiffs left. What this was was a suit, then, in effect, between the Justice Department and the Rapides Parish School Board.

And just who was the Justice Department representing? Black students, black parents in Rapides Parish? Oh, no. Oh, no, Mr. President, they were there present and represented and asking the Justice Department not to do it. "Don't do it, Justice Department," appealing to their elected representatives.

But the Justice Department—a rouge elephant gone amuck with their own agenda, representing no one, not representing the majority of the people in the country, not representing black citizens in Rapides Parish, not representing anybody but their own agenda, their own inbred desire to propose and get busing to the maximum extent regardless of the circumstances—said "No."

I was flabbergasted. I was flabbergasted that, with the kind of showing we made, with the kind of united community support, we would not get any help.

So they went to the court and the court felt obliged to order massive busing.

What kind of bus route? Thirty to forty miles one way. Mr. President—thirty to forty miles. Can my colleagues understand what thirty to forty miles means? Can you undersand why I am on this floor trying to restrict busing? That is one direction. That might be 70 miles round trip.

You saw it on CBS News. They tried to close the Forest Hills School there. It was on CBS News night after night. You remember, Mr. President. They formed a private school with black and white teachers and black and white students. Can you imagine that?

Here the Justice Department is, over the wishes of black citizens of Rapides County, La., closing a school, saying, "You have to be bused 35 or 40 miles," and, and jointly, the students have to set up their private school.

Mr. President, if that is not the height of the ridiculous, I do not know. Why do the people not feel cut off from their Government by that kind of high-handed governmental action? We have to reign in the Justice Department. That is what the Helms amendment does. It says, "Justice Department, you are not representing anybody and quit asking for busing."

Whether it is going to be effective in doing that, I do not know, but I do know that the Weicker amendment denudes the meaning of the Helms amendment totally and completely, just as the same kind of language in the Civil Rights Act of 1964 denuded the nonracial balance language of the Civil Rights Act of 1964.

I invite my colleagues to look at the case of Swann against Board of Education, a 1970 case, from the U.S. Supreme Court, which says precisely that.

So, Mr. President, we are not taking away constitutional rights. Those rights do not and never did exist under the Constitution. There is a whole line of cases to the effect that those kinds of rights are individual rights which must be individually maintained and brought and vindicated. That is the way it has always been, for 200 years, up until the Civil Rights Act of 1964.

All the Helms amendment is saying is that for this year, in this appropriation, we are going to restrict that right, not to bring suits for desegregation but simply for the purpose of bringing suits for busing, directly or indirectly for busing.

The PRESIDING OFFICER. The Senator has consumed 10 minutes.

Mr. JOHNSTON. Mr. President, I am now in control of the time. I yield myself 1 additional minute.

Mr. President, this would not restrict the right of the Justice Department to bring a suit for unconstitutional action under the 14th amendment. For example, if there were a question of discriminatory assignment of teachers, the Justice Department, acting under the Civil Rights Act of 1964, could bring, maintain, and appeal a suit involving 14th amendment rights provided they did not relate to busing.

All the Helms amendment does is restrict that right, and perhaps not even effectively so. But at least it constitutes a very strong signal, a very strong expression of intention by this Senate and by the House as well, which has already passed it, that the Justice Department should not continue to bring and maintain suits for cross-town busing.

For that reason, Mr. President, I would hope that my colleagues will vote against the Weicker amendment.

The PRESIDING OFFICER. Who yields time?

Mr. WEICKER. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. First of all, I would like to bring to the attention of my colleagues, more particularly the distinguished Senator from Louisiana, section three of article II of the Constitution of the United States, which enumerates the duties of the President, more particularly the executive branch of Government—

He shall—

Not he might—

He shall take care that the laws be faithfully executed.

It is very simple and very direct. It does not make any difference as to whether or not there is any Civil Rights Act of 1964 or whatever other legislation is passed. The laws shall be faithfully executed. "He shall take care that the laws be faithfully executed."

How can he take care that the laws be faithfully executed when the agency of that branch that has that responsibility is removed from such activity?

Mr. JOHNSTON. Is the Senator asking a question?

Mr. WEICKER. I would be glad to have a response.

Mr. JOHNSTON. Mr. President, that language, I quite agree, is susceptible to that interpretation. However, there is a long line of cases going back I do not

know how far—I would be glad to get those for the Senator—which say, in effect, that constitutional rights are personal rights which must be personally brought. That was the whole reason for that provision in the Civil Rights Act of 1964 authorizing the Attorney General to intervene on behalf of individuals.

The 14th amendment due process and equal protection rights were simply so interpreted by the Supreme Court.

So while that language may be susceptible of that interpretation, that is not the way the Supreme Court has interpreted. As the Senator knows, what the Supreme Court says is law.

Mr. WEICKER. The Senator is absolutely correct. The Supreme Court has spoken. That is now the law of the land. Brown against the Board of Education, Charlotte against Mecklenburg. And so is the Civil Rights Act of 1964.

And the President is obligated. "He shall take care that the laws be faithfully executed."

I would suggest, by virtue of the Helms amendment, that becomes an impossibility, with the absence of money necessary to see that the law shall be faithfully executed. I might add the Helms amendment is not a issue here right now, but clearly, the Helms amendment is an end run of the Constitution.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WEICKER. I yield myself 1 more minute.

I do not in any manner, shape, or form, I want it clearly understood, portray the language of the Weicker amendment as being innocent language. It is not meant to be innocent language. It means exactly what it says, and in terms of what flows therefrom it is very tough and very specific language.

It says that the Justice Department shall enforce the Constitution of the United States, and "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."

There is nothing innocent about that.

If, indeed, a proponent of the Helms amendment can stand on the floor of the Senate and say such language guts the Helms amendment, enforcing the Constitution of the United States by either the Justice Department or the executive and the judiciary, if, indeed, it is as he says it is, how does that speak for the quality of the Helms amendment?

Here you have words from a proponent of the Helms amendment that enforcing the Constitution would gut the Helms amendment.

I would hope so. I would hope so.

Mr. President, I will, in a minute, suggest the absence of a quorum, which, by agreement with Senator HELMS, will have the time for the quorum call charged equally to both sides.

It is my understanding that others desire to speak on the amendment at this time and, that being the case, I shall not ask for the quorum call. I see the distinguished Senator from Maine on his feet. I am delighted to yield 10 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER (Mr. SPECTER). The Senator from Maine is recognized.

Mr. COHEN. I thank the distinguished Senator from Connecticut for yielding. I want to express my support for his amendment.

Mr. President, the Supreme Court of this country has ruled that mandatory or forced busing shall be used as a means to achieve racial balance in our schools; in other words, to open up to black children the same educational opportunities that are available to children whose skin is white. I find myself in a somewhat unique situation in that I am in agreement with the Senator from Delaware as well as in agreement with the Senator from Connecticut (Mr. WEICKER).

I am in agreement with the Senator from North Carolina and the Senator from Delaware in that I find that busing has proved to be artificial, ineffective, and ultimately, an unfair means of achieving what the Supreme Court has ruled to be a constitutional guarantee. But on the procedure, I find myself in complete agreement with the Senator from Connecticut.

I know, Mr. President, that frequently, it has been said that we simply cannot legislate morality in this body. We cannot make people more moral through legislation. I have heard that argument made, although I point out that we are about to legislate on issues involving prayer, abortion, capital punishment, and the promotion of family values. I submit that these issues involve deep philosophical views and moral values that we will undertake to legislate upon in the coming weeks and months.

Whether or not we can legislate morality or force people to become more moral, it seems to me that we can insist that we, as Americans, live up to what our Constitution requires and guarantees. The Supreme Court has ruled that involuntary busing is one option, maybe even the last option, that should be used to achieve a measure of racial balance in our public school systems. As I indicated before, I think experience has demonstrated the inadequacy and unfairness of the vehicle of busing. It has produced anger, violence, and hatred, and a good deal of hypocrisy, I might add, on the part of legislators, who have stood in the House and the Senate and argued in favor of forced busing while enrolling their own children into private school systems in order to avoid the pangs of forced busing.

The value derived by black children who have been given access to white schools cannot be measured or quantified, at least not for decades or generations to come. Whatever value history might assign to it, that judgment necessarily will have to take into account the hours lost on the buses that my friend from Louisiana has talked about, the 30 and 40 miles in one direction, the hours spent in those buses, and the silent agony endured by black children and white children, I might add, endured because of the community hatred that has been inflamed. Equality of educational opportunity is guaranteed under the Constitution and in my judgment, it is not going to come about, is not going to become a reality, until such time as there is a reduction in the disparity of economic opportunity in this country for American blacks that has existed in the past and continues to exist today.

For years, for decades, blacks were denied access to full citizenship, to the right to vote, to the job market, to trade unions, to restaurants, hotels, motels. Yes, even to baseball diamonds—as Satchell Page and Jackie Robinson will tell you. So they raised their voices and asked the Court for what they said the Constitution entitled them to.

The Court said separate is not equal. You cannot take people who are similarly situated and treat them differently. In response, Congress passed legislation.

We said no, you cannot turn your back on a black person at the coffee table because of the color of his skin. You cannot turn him out into the street from a hotel or motel because of the texture of his hair. And you cannot deny him access to the polls, you cannot refuse to rent or sell a house to him, based upon the pigment in his skin.

Finally, the Court said, you cannot by design or indifference effectively consign their children to schools in the ghetto.

As I indicated earlier, I agree with the Senator from North Carolina and the Senator from Delaware that busing is an unwise educational—certainly an unworkable social—policy. That is in distinction to the Senator from Connecticut. I think it is unfair to force the housing of children beyond the neighborhoods where they and their parents live. On the substance, I am in agreement with Senator BIDEN and Senator HELMS. On the procedural issue, again, I come back to Senator WEICKER.

There are ways to change the rulings of the Court. If we do not like a ruling of the Supreme Court as far as the constitutional guarantees are concerned, we can do a number of things. We can file a new lawsuit challenging the prior decision. The Court has been known to change its mind. Stare decisis is not cast in concrete. We can do that as one means of changing the ruling of the Court.

We could, I suppose, if we could not change the ruling, seek to change the composition of the Court. That might come about in a matter of weeks or possibly months, new people coming onto the Court who have different viewpoints, different philosophies. So we can change the ruling or change, indeed, the composition of the Court, or we can ultimately change the Constitution itself if we do not like the ruling of the Supreme Court.

We are about to consider a constitutional amendment on the right to life. We have already adopted in both Houses of Congress an equal rights amendment. There will probably be an amendment to the Constitution requiring a balanced budget. So if we really want to change the Court's ruling, there are other constitutionally recognized means of doing so.

But what we have chosen by going the route suggested by Senator HELMS is not the traditional method. We are saying we

do not like the Court's ruling, but instead of seeking to change the ruling or changing the composition of the Court or changing the Constitution itself, we are going to pass a law that is going to prevent the Justice Department from enforcing a constitutionally guaranteed right.

Now, maybe this is constitutional. Sam Ervin says it is so, and maybe he is right. I certainly do not purport to stand on equal footing with respect to his knowledge of the Constitution, so maybe it is constitutional. But I think it is an invidious way to deal with the Constitution itself.

Today the issue is one of busing, and I ask my colleague from Connecticut, I suppose it would be possible for Congress to pass a law dealing with, let us say, an amendment offered to a bill that any school district that receives Federal funding may, in its discretion, consider the institution of voluntary nondenominational prayer in its school system, and that the Justice Department shall be precluded from bringing any lawsuit to challenge or contest that particular decision by a local school district. I assume that once we let this particular genie out of the bottle, this precedent out of the bottle, then it could apply to any of the critical and very serious and controversial social issues that this body is going to be deliberating upon in the coming weeks and months.

Today it happens to be busing; tomorrow it certainly could be prayer or capital punishment or any of the other very controversial social issues that are raging throughout this country and this Congress.

So it is not simply a matter of procedure that the Senator from Connecticut is raising.

It is not simply a procedural versus a substantive issue here, because in this case, procedure becomes substance. They become indistinguishable, they merge. So I think we should be aware of our act today. It might be popular, and I dare say if we took any of the opinion polls, they would show an overwhelming majority, both black and white, people in this country are opposed to forced busing. So current opinion would dictate the result that Senator HELMS and Senator BIDEN hope to achieve.

We should be aware of this act today because it is so popular, because it satisfies current opinion; but I believe it sacrifices something very precious in the process, something that is fundamental to protecting our constitutional freedoms.

I was reading last evening some of Loren Eisley's works and came across the following statement. He said:

> Our religious and philosophical conceptions change so rapidly that the theological and moral exhortations of one decade become the wastepaper of the next epoch. The ideas for which millions yielded up their lives produce only bored yawns in a later generation.

Mr. President, I hope we will not treat the separation of powers under our Constitution with a bored yawn. Our Constitution has to have an anchor, not just sails filled with the wind of popular opinion.

Mr. WEICKER. Mr. President, I thank the distinguished Senator from Maine for his very eloquent presentation of this matter. I know it certainly comes from the heart as much as the mind.

Mr. President, I suggest the absence of a quorum, with the time to be deducted from all three sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HELMS. Mr. President, I yield to the distinguished Senator from Iowa such time as he will require.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I thank the Senator from North Carolina for yielding.

Mr. President, I rise in support of the amendment by the Senator from North Carolina and opposed to that amendment of the Senator from Connecticut.

The issue of racially oriented forced school busing raises a number of very serious questions which we are addressing here throughout this past week in the debate on this legislation.

First, is busing in which children are chosen for their school assignment based totally upon the color of their skin constitutionally permissible?

Second, has busing achieved its goal of improving the quality of education for minorities?

Third, is it better to spend limited school district funds on buses, drivers, and gasoline than on teachers salaries and textbooks?

Finally, is the Federal Government acting properly within the scope of our Federal system of government when the Justice Department and the Federal courts attempt to impose their judgments over that of locally elected officials, in the operation of school districts where no intentional acts of discrimination are found?

The answers to each of these questions is obviously "No." Busing has been a failure. It has been well intentioned, but nevertheless a runaway, costly failure. It is well past time that Congress pull in the reins on the Justice Department and prevent it from doing any more of the extensive damage to our educational system and neighborhood schools than it has already done.

I thank the Senator for yielding and yield back to the Senator from North Carolina.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, may I inquire as to how much time the Senator form North Carolina has remaining?

The PRESIDING OFFICER. The Senator has 55 minutes and 35 seconds remaining.

Mr. HELMS. I thank the Chair.

Mr. President, let me at the outset pay my respects to my distinguished friend from Connecticut. He and I have done battle from time to time in this Chamber, and there have been times when both of us have been highly enthusiastic in defense of our respective positions.

In this case I do not question his sincerity, but I do believe that he is sincerely wrong.

Let us get a few things straight at the outset:

The Helms amendment in no way is violative of the Constitutiton. If I believed that for one moment I would not have offered it. It deprives no one of his rights.

To the contrary, it responds to a growing outcry across this country by the vast majority of Americans, black and white, who are sick and tired of seeing their children hauled across cities and counties just to satisfy the whim and caprice of some Federal judge or bureaucrat.

What we have now in terms of forced busing and the participation by bureaucrats in the Justice Department is a travesty that has been manifest throughout the Federal Government for years. Career bureaucrats protected by Civil Service say, in effect: "We do not care what the policy of the administration is. We do not care what the wishes of the American people may be. We are going to continue our activist roles, and we are going to use the money of the taxpayers to force upon them governmental actions which are injurious to their welfare."

Mr. President, this has to stop. And this amendment simply goes to the heart of the question, shall these lawyers and bureaucrats in the Justice Department, who have been there from administration to administration to administration, be permitted to continue to go around this country and promote forced busing? This Senator says no, and I believe I have the support of the American people in saying it.

The Helms amendment does not proscribe to any degree anyone's rights. It simply says to the Justice Department, "You shall no longer go out and promote forced busing."

That is a clear enough message, and I think it is a long overdue message.

The House of Representatives has already by an overwhelming majority endorsed the Helms amendment and now is the time for the Senate to do likewise. The Senate did it last year. True enough the then President (Mr. Carter) vetoed it with a self-serving declaration right before election. But he was wrong, and I think to some degree that may have been a part of his defeat this past November because in vetoing my legislation he was violating something very dear to the people of this country and depriving them of a remedy to which they were entitled, and which Congress had approved.

As for my able friend from Connecticut, I say again that I do not doubt his sincerity, but there were times during his extended remarks that I looked around this room to make sure that we were not in the Supreme Court cham-

ber instead of the Senate Chamber. The Senator from Connecticut was declaring what was constitutional and what was not. Almost always he said, "I know," as if his view of the Constitution was final and not subject to debate. I felt obliged to note at one point that the problem with a lot of folks, as Will Rogers once said, is that they know things that are not so.

Now, the Helms amendment was drawn with the assistance, the approval, and the endorsement of a number of fine constitutional lawyers including one down in North Carolina named "Sam J. Ervin, Jr." I have consulted other constitutional authorities; without exception they have said that the Helms amendment is absolutely constitutional. So the Senator from Connecticut is no final authority on the Constitution.

The Weicker amendment is an obvious effort to gut the Helms amendment. It is like the boy who went fishing and he caught a little fish. He had him in his hand and had his pocketknife out and said: "Do not wiggle, little fish. I am not going to hurt you; I am just going to gut you."

That frankly is what the Senator from Connecticut wants to do. He says he is not going to hurt my efforts to stop forced busing. He is merely going to gut them. I do not believe this Senate will be misled.

Mr. President, the protests for the past couple of days in this Chamber, some of them bordering on sanctimony, have been quite interesting.

For example, one Senator yesterday engaged the Senator from Connecticut in a series of prearranged questions about the Helms amendment. The Senator almost pontificated as he declared that my amendment is unconstitutional. He was agreeing with the Senator from Connecticut. It was interesting that the Senator who was asking the prearranged questions has never sent one of his several children to a public school. Not one of his children has ever been bused. His children all have attended expensive private schools. That is his business—until he takes the position that children from families not as wealthy as the Senator's must endure the tyranny of forced busing.

So you will understand, Mr. President, why the Senator from North Carolina was less than impressed with the pious protestations of the Senator from Massachusetts.

Mr. President, all three of my children attended public schools. I have four grandchildren. Two of them are old enough to go to school and they ride the bus to public schools. They are bused across town. But my opposition to forced busing, Mr. President, predated by many years my grandchildren's being the victims of forced busing.

So, Mr. President, I must say when I hear all of these protestations about the unconstitutionality of the Helms amendment, "Sorry, Senator, but I don't agree with you."

Neither does Senator Sam Ervin nor the distinguished Senator from Louisiana (Mr. JOHNSTON) who is a crackerjack lawyer. Neither do countless other constitutional authorities.

So I hope Senators who may be listening on their loudspeakers will understand that the constitutional arguments they have heard from Senators WEICKER, KENNEDY, and others just do not hold water. I hope Senators also will understand that the Weicker amendment, offered by the distinguished Senator from Connecticut, is purely and simply an attempt to gut the efforts to remove from the bureaucrats and lawyers in the Justice Department any justification for their continuing to go out across this country to promote forced busing.

By adopting the Helms amendment this Senate will join the House in saying, "Stop it."

When this issue was before the Senate last year, Mr. President, I recall going to the telephone and talking with Senator Ervin because the very same arguments were being made then that are being made today, "Oh, the Helms amendment is unconstitutional."

I remember that conversation last year with Senator Ervin very well. I called him. I said, "Senator, tell me one more time, is this amendment constitutional?" He said, "Absolutely."

Following that, Senator Ervin went public. The headline in the Raleigh News and Observer, for example, reads "Sam Ervin '100 Percent' Behind Anti-busing Bill by Helms."

Mr. President, I ask unanimous consent that this news story from the Raleigh News and Observer be printed in the RECORD.

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

SAM ERVIN "100 PERCENT" BEHIND ANTI-BUSING BILL BY HELMS

MORGANTON.—Former Sen. Sam J. Ervin Jr., D-N.C., says he agrees with the anti-busing legislation Sen. Jesse A. Helms, R-N.C., introduced last week.

"I approve of Helms 100 percent," said 82-year-old Ervin, who retired from the Senate in 1974 after a 20-year stint that culminated in his heading the Watergate hearings.

"When you bus you have to divide children, and some can be sent to neighborhood schools," he said. "But the second group is denied that right. It's not equal protection because two groups are being treated differently.

"Also, when busing is ordered, the school board must take the second group and transport them elsewhere, solely on the basis of race."

Ervin and Helms said Saturday that they had consulted on the bill before it was introduced so any constitutional problems could be worked out.

Although constitutional scholars have said the bill, if passed today, would face a challenge in the courts, both men still believe the legislation will legally put an end to busing.

"I agree with Helms. I think busing is the worst tyranny ever perpetrated on America," Ervin said.

The bill, attached as a rider to a large appropriations bill, won approval Thursday on a vote of 42-38, with 21 Democrats and 21 Republicans behind it.

"I'm no lawyer, and before I got into this thing I consulted with Sam Ervin to check the constitutionality," Helms said in a telephone interview from Washington. "He told me he tried to do the same thing when he was in the Senate, and there was no way opponents could contrive that Congress doesn't have the authority to do so."

Although busing is already widespread in the South, the legislation may affect school systems in other areas that have registered federal orders to desegregate.

Sen. Lowell Weicker, R-Conn., said he holds little hope of mustering enough support to stop the bill, co-sponsored by Helms and J. Strom Thurmond, R-S.C.

If approved, political observers say there is little chance President Carter will veto it because it is tied to such a large appropriations bill.

Ervin also said Saturday he has high hopes for the Reagan administration and new conservative Republican majority in the Senate.

Ervin said he would like to see the Senate balance the budget "since the Democrats didn't have the intelligence to do it."

He said he isn't worried about Reagan appointing several former Nixon and Ford appointees to key Cabinet positions. Ervin, whose chairmanship of the Watergate hearings helped end the Nixon administration, said Nixon's only crime was Watergate and that involved only a handful of people in his administration.

Of Henry Kissinger, Ervin said, "I just don't like his style of diplomacy," and blamed him for much of the current turmoil in Iran. Kissinger "went around the world whispering into the ears of foreigners that we'd support them," Ervin said.

(Mr. D'AMATO assumed the chair.)

Mr. HELMS. I thank the Chair.

Along about the same time, Mr. President, the Greensboro Daily News carried a story headlined "Helms Gets Ervin OK On Antibusing Law." In that story are contained several observations by Senator Ervin which are entirely relevant to the debate here today just as they were relevant to the debate last year.

So that the RECORD can be complete I ask unanimous consent, Mr. President, that the story in the Greensboro Daily News also be printed in the RECORD.

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

HELMS GETS ERVIN OK ON ANTI-BUSING LAW

(By Bob Hiles)

When U.S. Sen. Jesse Helms, R-N.C., introduced anti-busing legislation last week he had the blessing of one of the nation's leading constitutional experts, former U.S. Sen. Sam J. Ervin, Jr., D-N.C.

Both Ervin and Helms said Saturday night they had consulted on the bill before it was introduced so any constitutional snags could be worked out.

And despite the claims made Saturday morning by constitutional scholars that the bill, if passed Monday, would face a challenge in the courts, both Helms and Ervin stood by their beliefs that the legislation will legally put an end to busing.

"I'm no lawyer, and before I got into the thing I consulted with Sam Ervin to check the constitutionality," Helms said in a telephone interview from his Washington, D.C., residence. "He told me he tried to do the same thing when he was in the Senate, and there was no way opponents could contrive that Congress doesn't have the authority to do so."

Helms said when he addressed the full Senate Thursday, the day the bill won preliminary approval, "I told Senators (Jacob) Javits (D-N.Y.), (Edward) Kennedy (D-Mass.) and (Lowell) Weicker (R-Conn.) that they didn't have any argument with

me, but with one of the greatest constitutional authorities in the country, Sam Ervin.

"I read part of the notes I made of my conversation with him (Ervin)," said Helms. "He was a great senator, and I trust him."

Ervin, who retired from the Senate in 1974 after a 20-year stint that culminated in his chairing the Watergate hearings, said Saturday, "I approve of Helms 100 percent."

Contacted in his home in Morganton, the 82-year-old Ervin said he tried several times to pass legislation which would put an end to busing for integration. "In those days you couldn't get out of the committee. But I still say when a federal court orders busing it violates the equal protection clause of the Constitution in two ways.

"When you bus you have to divide children, and some can be sent to neighborhood schools. But the second group is denied that right. It's not equal protection because two groups are being treated differently.

"Also, when busing is ordered, the school board must take the second group and transport them elsewhere, solely on the basis of race.

"I agree with Helms," the still feisty Ervin said, "I think busing is the worst tyranny ever perpetrated on America."

Helms said although busing is already the widely prescribed remedy to achieve desegregation in the South, the bill will aid schools in other sections of the country. Also, desegregation plans are subject to periodic review, "and this bill will enable local school boards to do something else," he said.

"The public schools have just about been destroyed in terms of effectiveness, and it is time for a fresh start to build up the quality of education," said Helms.

Helms said his office "has received hundreds of telegrams from all over the Nation from people saying 'thank God' there will be an end to busing."

The appropriations bill, with the anti-busing rider, was approved 42–38 Thursday, with 21 Democrats and 21 Republicans supporting it. However, it still must pass in overall appropriations vote Monday.

Weicker, a strong opponent of the anti-busing legislation, said he had little hope of mustering enough support to stop the bill which was co-sponsored by Helms and Sen. Strom Thurmond, R-S.C.

If approved, Washington observers say there is little chance the Carter administration would use a veto to stop it, since it is tied to such a huge appropriation. Attorney General Benjamin Civiletti has said the anti-busing bill is unnecessary and infringes on his department's authority to conduct litigation to achieve compliance with constitutional demands.

Come January, however, Civiletti will be out of a job, and a Reagan appointee may have a different view of the bill.

Ervin, a Democrat who at times differed with Helms during their two years together in the Senate, said Saturday he has high hopes for the Reagan administration and the new Republican Senate majority.

"I voted a straight Democratic ticket," Ervin said. "But four years ago Jimmy Carter ran to balance the budget, and wound up adding more to the federal deficit than Nixon."

Ervin is a longtime supporter of a constitutional amendment requiring a federally balanced budget. He said he'd like to see the newly elected conservatives get the nation out of debt "since the Democrats didn't have the intelligence to do it.

"It has been obvious for years the federal government should have either reduced expenditures, or levied enough taxes to pay the bills," said Ervin. "If they had levied taxes, though, the people wouldn't have stood for it."

He said "any individual or nation that makes debts it doesn't intend to pay is just dishonest."

Ervin, long known for being outspoken on almost any subject, also had comments on former President Gerald Ford, ex-Secretary of State Henry Kissinger, and President Carter's campaign defeat.

Ervin said he isn't upset that Reagan is drawing heavily on former Nixon and Ford appointees to fill key cabinet positions. The man who ruled over the Watergate hearings said Nixon's only crime was Watergate, and that involved only a handful of people in his administration.

As for Ford, "He was a good man but not the brightest to ever be president."

And if he had his druthers, Ervin would "not want to see Henry Kissinger" land a job with the Reagan Administration. "I just don't like his style of diplomacy."

Ervin said Kissinger should bear much of the blame for the current crisis in Iran, because he "went around the world whispering in the ears of foreigners that we'd support them."

When asked about President Carter's defeat, Ervin said, "I think he stole a page from Lyndon Johnson's notebook, when he painted Barry Goldwater as a warmonger, Carter thought he could scare people into voting for him."

The ploy backfired, he said.

Mr. HELMS. I thank the Chair .

I wish I had the time, Mr. President, to read and emphasize what Senator Ervin said. What he said is precisely the same that has been said by other constitutional lawyers around this country.

We did not fly into the stratosphere to draft this amendment. I am not a lawyer. I have more sense than that, Mr. President. [Laughter.] When I run into a constitutional question, I seek the advice of good constitutional lawyers. In preparing this amendment I sought and received advice from constitutional scholars.

Let us take a few moments to reiterate the intent and scope of the Helms amendment. I was intrigued yesterday when my very good friend, whom I love and respect, Senator HATFIELD, attempted to relate the Helms amendment with an effort made by Senator HATFIELD and Senator McGovern some years ago with respect to cutting funds for the Vietnam war. Senator HATFIELD lamented the fact that his effort was not approved, and he reached the conclusion that inasmuch as his and Senator McGovern's position did not prevail on constitutional grounds that likewise the Helms amendment should not prevail.

The difference is that national defense is in the Constitution. Forced busing is not in the Constitution, Mr. President. It is not even in the Civil Rights Act of 1964 which was invoked here so many times during the last 2 or 3 days.

As Senator Hubert Humphrey, bless his departed soul, said many times, it was never intended for that act to include forced busing.

Now, Hubert and I many times were in adversary position on this floor. I remember the countless times that he stood there and I stood here and we disagreed and debated full tilt. Most times he would win, sometimes I would, but that did not matter. We always walked off this floor arm in arm.

I remember the last time Hubert came on this floor. He was so sick and frail. He knew it was his last time. We knew it was his last time, and he knew that we knew. He came down this aisle, and he shook hands with the leadership.

I was standing right back there, Mr. President, and he left at this point and came around and put his arm around me and said, "I love you." And I loved him. He knew that I did.

We disagreed legislatively, but Hubert Humphrey is a man whose memory I shall always treasure.

It has been asserted during the debate on this matter that the amendment "could be interpreted in its widest sense as preventing the Department of Justice from initiating any investigation of discrimination."

Mr. President, that simply is not so. As a matter of fact, I have repeatedly maintained that the point of this amendment is to exercise the power and the responsibility of Congress under section 5 of the 14th amendment to determine what is a proper remedy and what is not a proper remedy for the enforcement of its provisions.

So, Mr. President, my amendment, which the Senator from Connecticut seeks to gut, emphatically says that mandatory busing, forced busing in common parlance, is not a proper remedy under the terms of the 14th amendment, and anybody who can read the document I hold now in my hand, the Constitution of the United States, and draw any conclusion that there is anything unconstitutional about my amendment is straining his credibility.

My amendment does not go further than to declare that forced busing is not a proper remedy. And that is something that the Senate has a right to do, that this Senate has a duty to do, and that the vast majority of Americans want this Senate to do.

It does not, let me repeat, go further than that to prohibit the Justice Department from engaging in all activity to prevent discrimination. We are talking only about forced busing in this amendment. Any broader interpretation of the Helms amendment is neither necessary nor reasonable.

Now let us get down to brass tacks. It is a tested rule of statutory construction, Mr. President, that a legislative provision should be construed in a fashion so as to make it constitutional rather than to force upon it an interpretation which is obviously unconstitutional. As much as the distinguished opponents of my amendment may wish to construct an application for it which is unconstitutional, the fact remains that the amendment speaks only, only of prohibiting the Department of Justice from going into Federal court to promote and establish forced busing. And as far as this Senator from North Carolina is concerned, any broader application of the provision is beyond its language and its intent and any attempt to stretch its meaning beyond that is totally irrelevant.

Having said all that, Mr. President, I deny that the question is not on forced busing. Certainly, we are talking about forced busing. I would not have intro-

duced the amendment if I had not been interested in stopping forced busing. So to say that we have some little constitutional argument going on here and that is all, is just not accurate. Mr. President, there are certainly two constitutional sides to this argument. I say again that if I am required to make a judgment, make a choice, I shall accept the judgment of Sam Ervin just as quickly, at least, as I will that of any Member of the Senate as presently constituted.

Senator WEICKER says his amendment has nothing to do with busing. I say to the Senator that it has everything to do with busing. His amendment would leave that door ajar just a bit so Justice Department lawyers and bureaucrats could assist pro-forced busing zealots to rush to the courts and try to figure out what Congress really meant when it passed this bill with both the Helms amendment and the Weicker amendment.

So, Mr. President, let no Senator misunderstand what my good friend from Connecticut is doing.

The Weicker language could be seized upon by activist lawyers in the Justice Department, protected by civil service, and others as a basis for continuing to promote forced busing. And it is time we halted unequivocally the legal advocacy of mandatory busing by any underling in the Justice Department.

The Weicker amendment would cloud and possibly undermine the objective we hope to accomplish in passing the Helms amendment. This is the motivation behind the Weicker amendment and it should be defeated.

The Senator from Connecticut was defeated on this issue last year by a vote of the Senate and, if anything, the reasons to oppose his amendment this year are even more compelling.

The Senator from Connecticut claims that his amendment will simply insure that the Constitution is upheld. In so representing, he has overstated the scope and effect of the language in the Helms amendment. My amendment does no damage to the Constitution, and anyone who feels that it does is confusing the question of constitutional protections and the power of the Congress to limit actions and expenditures by the Justice Department. The current language does not limit any court-ordered remedy; it simply redirects the thrust of the remedies favored and advocated by the Department.

It is important that this point be emphasized. The Helms amendment is not a limitation on the jurisdiction of any court. Neither is this provision a limitation on the Justice Department's authority and directive to pursue discrimination in education. The Justice Department is still free, in fact, still obligated, to eliminate discrimination. The current language of the amendment very simply contains another directive to the Department, to supplement the many directives which we have earlier given the Department. We are simply telling the Department that, as it continues its efforts against discrimination, it is to seek alternative remedies, instead of forced busing. Such a directive is, without doubt, within the power of Congress.

The true issue in the Weicker amendment is not of constitutional dimension; it is an issue of whether or not we want to make the Department more responsive to the desires of the American people, who obviously favor more reasonable, yet equally effective remedial approaches to proven instances of de jure discrimination. To claim that the Helms amendment impedes the authority to fight discrimination is simply clouding the issue.

Mr. President, the question before the Senate is the Weicker amendment. His amendment is not necessary for any constitutional protection. It is simply an attempt to undo the Helms amendment. The Weicker amendment is superfluous at best and confusing or contradictory in any other light. We have an obligation to make sure that the Department acts in an effective and reasonable way. If we do less, we are not providing the accountability which the American people deserve. I oppose the Weicker amendment because I believe it seriously undercuts a needed and reasonable directive to the Justice Department.

So, Mr. President, the issue here is not who knows more about the Constitution than someone else. The issue is how much longer are we going to allow the Federal bureaucrats in the Justice Department to torment the little children of this country and in the process continue to destroy the quality of education in America.

If it is not clear to all Senators now, I do not know when it will be clear, that forced busing has done more to destroy confidence in and support of the public schools of America than any other device since public schools came into existence.

So, Mr. President, let the record be clear: The issue we confront now is the responsibility of Congress to determine what is and what is not a proper remedy to enforce the mandates of the 14th amendment, and that is what the Helms amendment does. The Helms amendment reaffirms the intent of Congress that busing is unacceptable as a remedy.

Mr. President, the vast majority of the American people agree that it is unacceptable. Every poll I have seen shows that the vast majority of Americans, black and white, minority and majority, are fed up with seeing their children hauled right past a neighborhood school, in some cases hauled as far as 15 or 20 miles away, consuming gasoline, spending tax dollars, lowering the quality of education, creating hostility, and diminishing the capability of the teachers to educate our children.

In my conversation with Senator Ervin last year, he discussed the Civil Rights Act of 1964. He was a Member of this body at the time that law was enacted. He stated that the only regulation intended under that act—and it was clear that this was the case—was to prohibit invidious segregation. He said that the act says:

> That no officer of the Federal Government and no court should require the transportation of children for the purpose of achieving racial balance.

I wrote down something else Senator Ervin said.

He said:

> Oceans of sophistry—

And that is what we have been hearing throughout all these busing debates—

> oceans of sophistry cannot wash away the plain fact that busing of schoolchildren deprives those who are being bused of their right under the equal protection clause to attend the school nearest their homes.

So what we have been doing with this folly of forced busing is violating the equal protection clause, and in doing so we have wasted hundreds of millions of dollars, and the Lord knows how much fuel and time. For what? Absolutely nothing, Mr. President.

I asked Senator Ervin about the Supreme Court decision on which some of the arguments heard yesterday and today have been based, and he said:

> The Supreme Court by intellectual dishonesty and an intellectually dishonest ruling ignored the equal protection clause.

Now, Mr. President, let me read from a Senate document containing a statement by Senator Ervin. This bears the date of Tuesday, February 19, 1974. It was published by the Senate Subcommittee on Constitutional Rights of the Committee on the Judiciary. Senator Ervin said this in his opening statement that morning:

> During the 19 years I have served in the U.S. Senate, I can think of no group of people who have stood in greater need of relief from Government tyranny than the thousands of innocent, little schoolchildren who are being bused to schools many miles away from their neighborhoods in order to satisfy the social theories of Federal bureaucrats and to comply with constitutionally unsound federal court orders. Under the guise of enforcing the 14th amendment's "equal protection" clause, these bureaucrats and Federal courts have undermined any reasonable understanding of the fundamental principle of "equal protection of the law." Although there are pious assertions to the contrary, what has in fact occurred is the assignment and transportation of schoolchildren to public schools on the basis of race in order to achieve a certain, specified "racial balance." In my sincere opinion, this is absolutely contrary to "equal protection of the law."

Those were the words of Sam Ervin in February 1974, and they are just as true today as they were in the day that that distinguished North Carolinian uttered them.

I hope some Senators may be listening on their loudspeakers in their offices because the plain truth is that we are not talking about a constitutional issue here. We are talking about the responsibility of this Congress, specifically this Senate, to determine what is a proper remedy to enforce the mandates of the 14th amendment.

Nobody wants to violate the Constitution, but this Senator and some others want to protect the rights of some innocent little children who have been used as pawns in a shell game. I think the American people spoke pretty clearly on November 4 and said, in effect, that enough was enough and part of it was with respect to schoolbusing.

So let us have no more of this business about: "I know what the Constitution is and everybody who disagrees with me is proposing to violate the Constitution." It is not so.

They need not try to argue with me. Let them argue with Sam Ervin. And I will take his judgment at least as quickly as I will take the judgment of anybody in this Senate as presently constituted.

Mr. President, notwithstanding all that has been said, the bottom line on this issue is whether this Senate is going to face up to its responsibility and its right under the Constitution to determine what is a proper remedy to enforce the mandates of the 14th amendment.

That is all that is at issue. Nothing else matters.

I go back to my reference to our former distinguished colleague from North Carolina, Senator Sam Ervin. I very much doubt there will be any question about Senator Ervin's being one of the great constitutional scholars of our time, and he absolutely rejects the notion that we are somehow violating the Constitution with the Helms amendment.

At this point, I ask unanimous consent to have printed in the RECORD an article entitled "The Supreme Court's Abuse of Power," written by another distinguished legal scholar, Prof. Lino Graglia of the University of Texas Law School.

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

THE SUPREME COURT'S ABUSE OF POWER

(By Lino A. Graglia)

Do we have an imperial judiciary? To put the question in more manageable form: What at this time, in our system of government, are the actual effective limits on what our judges can do? Specifically, what are the limits on what the Supreme Court can do, acting in the name of constitutional law? We know that judges can order the reapportionment of our legislatures, state and federal; remove most restrictions on the availability of abortion and on the distribution of materials historically considered obscene; prohibit prayers and devotional Bible reading in public schools; and require the transportation of public school children in order to increase racial mixing in the schools. And we now know that a judge can even require that a neutered male be permitted to compete in the women's division of the United States Open Tennis Tournament. The British Parliament, it used to be said, can do anything but make a man a woman; this limitation it appears, does not apply to our judges. The list could easily be extended, but this is surely enough to show that the question is a serious and important one.

The basic theoretical limit on the power of courts—the basic argument used to reconcile judicial power with elected, representative government—is of course, that judges can do no more than apply and, if need be, interpret the law; pre-existing, authoritatively established statements of rules and requirements. As Justice Roberts put it in the famous statement in the *Butler* case (1936), judges in constitutional cases merely place the challenged statute alongside the relevant constitutional provision and see whether the two square. (A carpenter could do it.) Justice Roberts wrote:

"When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment."

Now, that statement was made in a case that illustrates almost as well as any that this is not what judges do. Nearly all present-day students of the matter will agree that Justice Roberts somewhat undestated judges' power of choice. But (a modern defender of judicial power will argue), although the frequently litigated provisions of the Constitution are very general and indefinite, they do provide the basic principles that, properly understood, indicate the "correct" decision on specific constitutional questions.

The fact is, however, that a serious constitutional question is such not because it involves a basic principle of value but because it involves several such principles or values in conflict. In virtually all cases that actually come to the Supreme Court for decision, there is nothing in the Constitution to indicate how the conflict of principles or values should be resolved. As a practical matter, the Constitution is simply irrelevant to constitutional law except that it provides the peculiar phrases—typically "due process," "equal protection"—used to state the ultimate conclusions reached. If this is a surprising statement, it is only because belief that the Constitution contains answers to all questions of social policy is an article of our secular religion—it is not for nothing that judges wear black robes and the Supreme Court sits in a temple—or, for the more sophisticated, because the statement violates a widely accepted, though grossly misleading, convention concerning our references to the work of judges.

The irrelevance of the Constitution to constitutional law can be easily demonstrated. For example, there was a time when "the Constitution" permitted the assignment of children to schools according to race in order to separate the races. There was then a time when "the Constitution" prohibited such assignment. There was then a time (the present) when "the Constitution" was adduced as *requiring* the assignment of children to schools according to race—but, now, in order to mix the races. In all of this time, of course, the Constitution was not changed in any relevant respect.

To take another example from the same area of law, school segregation was held unconstitutional in the *Brown* case because it was found to violate the Equal Protection clause of the Fourteenth Amendment.

Another case decided at the same time involved school segregation in the District of Columbia, under the jurisdiction of the Federal Government, to which the Fourteenth Amendment does not apply. The unavailability of the Equal Protection clause—the supposed basis of *Brown*—of course made no difference in the result reached. The Supreme Court simply found that school segregation in the District of Columbia violated the Due Process clause of the Fifth Amendment—an amendment adopted in 1791 as part of a Constitution that recognized black slavery. If the Fifth Amendment had also been considered unavailable for some reason, school segregation in the District of Columbia would undoubtedly have been found to violate some other constitutional provision—although the Constitution is very short, it is extremely general and vague, as befits a Constitution but does not befit a provision of law enforceable by judges.

Taking an example from another area, the Constitution specifically, in four places, recognizes capital punishment, but some justices have nonetheless taken the position that capital punishment is constitutionally prohibited, and a majority of the justices have found it constitutionally permissible only in very limited circumstances—have found that it is unconstitutional, for example, as a punishment for rape.

As a final example—looking at the situation from the other side, so to speak—one of the most specific and definite provisions of the Constitution is the provision prohibiting states from impairing the obligation of contracts. It is clear that this provision was intended to prevent the states from adopting debtor relief laws, and this was considered so important that it is one of the very few limitations on state power written into the original Constitution. Yet when a debtor relief law came before the Court in the *Blaisdell* case in 1934—in my opinion the most clearly unconstitutional statute ever to come before the Court—the Court held it constitutional. I do not want to seem to be objecting to that decision, in which the political process was allowed to prevail; I cite it only to illustrate that the provisions of the Constitution, even the clearest, do not bear on constitutional decisions, except as they provide the explanations offered by the Court. It is indeed possible to imagine a legislative or other official act that could be realistically said to violate a constitutional provision, but such legislation is almost never enacted—and, as the *Blaisdell* case illustrates, in the extremely rare cases where it is enacted, it is not necessarily held unconstitutional.

If, as should be clear, the Constitution does not in fact significantly determine or limit the Supreme Court's power, what, if anything does? Another basic justification often offered for the Court's apparently unlimited power in our supposedly democratic system of government is, surprisingly, that the Court has no "real" power at all. Even if it is not significantly limited by the Constitution, this argument goes, the Court controls neither the sword nor the purse, and the effectiveness of its decisions therefore depends "ultimately" on its "moral authority."

The Court is thus often likened to a very respected and influential teacher or spiritual leader. However, as Clinton McCleskey has pointed out in *Judicial Review in a Democracy: A Dissenting Opinion*, the views of teachers and preachers are not ordinarily enforced by the power of the state. Little Rock can attest that the enforceability of Supreme Court decisions does not depend upon the Court's ability to persuade its opponents, and that the Court has an effective call, if need be, upon the bayonet. It seems easy for many to forget that a Supreme Court decision is not less enforceable or effective because the Court's opinion is demonstrably incoherent, its reasoning illogical, and its factual statements inaccurate. Few people read Supreme Court opinions, and fewer still study them critically and compare the facts as stated by the Court with the facts shown in the record of the case. In any event, what it means to be supreme is that your views prevail even when you are clearly wrong. As Justice Jackson said, in a concurring opinion in *Brown* v. *Allen*, the Supreme Court is not final because it is infallible, but it is infallible for all practical purposes because it is final.

The claim that the Supreme Court's power derives from and is limited by moral principles, or by a supposed need on the justices part to maintain unusually high standards of integrity, is no less fictional than the claim that it derives from or is limited by the provisions of the Constitution. The Court's freedom from authoritative determinations that it has erred has the effect on Supreme Court justices that is predicted by Lord Acton's dictum concerning the tendency of power to corrup.

As Thomas Jefferson never tired of reminding us, judges are not more than other rulers: immune from the effects of the possession of power.

"Our judges [he wrote to William C. Jarvis in 1820] are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps. Their maxim is '*boni judicis est ampliare jurisdictionem*,' and their power the more dangerous as they are in office for life and not responsible, as the other functionaries are, to the elective control."

Indeed, because in our legal theory judges are not authorized simply to announce their policy views, but are required to claim a constitutional basis for their decisions invalidating the acts of other officials—a basis that typically does not in fact exist—the practice of judicial review is inherently inconsistent with candor. In effect, judges finding unconstitutionality must demonstrate what cannot be demonstrated, and wide departures from usual standards of accuracy and rationality are the inevitable result. How wide these departures are at any given time depends on how much the judges are willing to attempt, and for more than two decades now our judges, as already noted, have been willing to attempt a very great deal. As a result, they have been forced to explain and justify their actions with opinions that can make no claim to intellectual coherence or respectability, and they have engaged in practices—preversions of legislation, misstatements of fact, and patently fallacious reasoning—that would, if they were engaged in by any other government officials, be considered scandalous and lead to demands for impeachment.

The Supreme Court's almost total freedom from the restraints of honesty and rationality can be demonstrated, and the nature and source of constitutional law can be understood, only by detailed study of the Court's actual performance in specific areas of constitutional law. No area serves better for this purpose than the area of race and the schools, where the Court's decisions have led to a constitutional requirement that public school children be transported out of their neighborhoods and away from their neighborhood schools in order to increase racial mixing or "balance" in the schools. In 1954, in the *Brown* case, the Court held that segregation is unconstitutional. As important as that case was and is for its holding, it is far more important for the fact that it basically changed the views of the country, and specifically of judges, as to the proper role of judges in our system of government. *Brown* was less a traditional lawsuit than an attempt to bring about a social revolution through the courts. The success of that revolution, some ten years later, inevitably led to the belief that there is nothing that courts cannot or should not do. This new view of its power and position led the Supreme Court in 1963, in the *Green* case, to move from *Brown's* prohibition of segregation to the vastly more ambitious and questionable requirement of integration.

Brown's prohibition of segregation had, by 1968, proven very disappointing to some. The assignment of children to schools in order to keep the races apart—and, indeed, all legally required racial separation—had come to an end by 1968, but in the schools of the South, as in the schools of the North, much racial separation continued to exist. The idea therefore arose to *require* by law that the races be mixed—that is, to compel a greater degree of integration than results from the prohibition of segregation and the use of non-racial methods of assignment. Legally compelled integration, however, faced a major and perhaps insurmountable obstacle, the need to overcome the very principle that had been the justification of *Brown's* prohibition of segregation. *Brown* could be and was explained and justified as simply a prohibition of all racial discrimination by government. Compulsory integration, however, requires that racial discrimination by government be made not only permissible but mandatory.

Compulsory busing for racial balance takes place in this country, despite great popular opposition, not because of the Supreme Court's moral authority, but, on the contrary, because of the Court's relative freedom from moral restraints. There is no logical difficulty in distinguishing between racial discrimination to separate the races and racial discrimination to mix them, or in holding that the Constitution prohibits the former but requires the latter. As a practical matter, however, such a holding was impossible—even the power of the Supreme Court is, of course, not absolute. After many years of emphatic insistence that racial discrimination by government is constitutionally prohibited, the Court could hardly announce all of a sudden that racial discrimination is sometimes constitutionally required.

The Court, however, did not permit this difficulty to stand in its way. In law all things are possible (for example, the changing of a man to a woman), for all that is necessary is to change the meaning of words. The Court simply determined to impose a requirement of integration in fact, by what it ordered to be done—but, simultaneously, to deny that it was doing so, to insist that the requirement was only "desegregation," the ending and undoing of the segregation prohibited in *Brown*. To this day the Court has never admitted—in fact, has consistently denied—that there is a constitutional requirement of integration as such; in theory there is no constitutional objection to the existence of all or nearly all black and all or nearly all white schools within a school district or in close geographical proximity.

This strategy—insisting that the requirement was not integration but only desegregation—had enormous advantages for the Court. First, it appeared to confine the requirement to the South and, therefore, served to minimize the attention and concern of the North. A constitutional requirement of desegregation would obviously be applicable only where there was or had been unconstitutional segregation. Second, denying that there was a constitutional requirement of integration obviated all need to attempt to justify such a requirement on its own merits—either in terms of any constitutional principle, or in terms of the benefits that might be thought to result. Finally and most importantly, instead of having to attempt the unappealing and unpromising task of justifying a constitutional requirement of racial discrimination, the Court was able to claim that it was merely continuing to enforce *Brown's* prohibition of racial discrimination.

The only difficulty with the Court's "desegregation" (or "remedy") rationale for compulsory racial mixing was that it did not comport with what the Court was doing in fact. Each succeeding case made clearer that the Court was not requiring merely the ending or undoing of the segregation prohibited in *Brown*, but was requiring integration or racial balance for its own sake, the ending of racial separation in the schools regardless of how that separation was caused. A true requirement of desegregation would result today in no or almost no transportation of pupils in order to undo racial separation, because existing racial separation in the schools is not the result of racial discrimination by school authorities but is simply and clearly the result of residential racial concentration. In short, the Court has perpetrated a fraud, has done by deception what it felt it could not do honestly. This hardly disputable fact did not, however, cause the Court's decisions to be less binding, effective, or enforceable. Busing for racial balance pure and simple continues to take place throughout the country.

That gross misrepresentations of fact and patently fallacious reasoning in the Supreme Court's opinions do not detract from the efficacy of its decisions may be illustrated by consideration of two of the Court's major decisions on race and the schools, *Swann* v. *Charlotte-Mecklenburg Board of Education*, the Court's first busing case, and *Keyes* v. *School District Number One, Denver, Colorado*, which brought compulsory integration and busing to the North. In *Swann* (1971) the Court, as always, insisted that the requirement was not integration but only desegregation. The "objective," the Court said, was to see that "school authorities exclude no pupil of a minority race from any school system, directly or indirectly, on account of race."

What the Court required in fact—the assignment of children to schools other than their neighborhood school according to race in order to increase racial mixing—was, of course, the exact opposite of this. The exclusion of pupils, minority as well as majority, from schools because of their race was in fact not prohibited but required. Thus, a requirement of racial exclusion was justified by the Court in no other way than by insisting that racial exclusion was prohibited—a justification that can suffice only when offered by a decision-maker subject to no review and no contradiction.

Similarly, the Court stated in *Swann* that the busing it required was needed to "accomplish the transfer of Negro students out of formerly segregated Negro schools and the transfer of white students to previously all-Negro schools." In fact, however, most of this busing could not be so explained. Most of the schools out of which blacks were being bused were never segregated black schools; they either had been segregated white schools that became heavily black because of the growth of the black population after segregation ended, or had been built in the first place after segregation ended and therefore had never been segregated at all. The justification offered by the Court for what it was doing was simply inapplicable to the facts of the case before it.

The Court also stated that the busing ordered by the District Court was justified because of, first, the District Court's express finding, approved by the Court of Appeals and not challenged here, that a dual school system had been maintained by the school authorities at least until 1969; [and] second, its finding, also approved by the Court of Appeals, that the school board had totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own, notwithstanding the patient efforts of the District Judge who, on at least three occasions, urged the board to submit plans.

This important statement is incorrect in every respect. First, the board had not maintained a dual system until 1969, but had abolished the dual system by 1965 at the latest. The District Court had so held in 1965, and that holding was affirmed by the Court of Appeals sitting *en banc* in 1966. Second, the board had not "totally defaulted" in submitting a desegregation plan. It had submitted a plan that would have achieved a higher degree of racial balance than can be found in almost any school system in the country—that would, for example, have made every high school majority white. The Board's plan, at least with regard to the high schools and junior high schools, more than complied with every standard stated by the Court in *Swann* itself.

Finally, the District Court had not found that the Board had "totally defaulted," and the Court of Appeals, of course, had not approved any such finding. In fact, the Court of Appeals majority was so complimentary of the Board that the dissenting Court of Appeals judges criticized the majority for "implying that the actions of this Board had been exemplary."

Most important, the Supreme Court in

Swann affirmed a District Court busing order on the basis of supposed findings by the District Court that the District Court did not in fact make. The District Judge did not purport to require busing to eliminate the dual system (which, as the Court of Appeals held in 1966, had been eliminated by 1965). The District Judge, much more ingenuous than the Supreme Court, openly stated that in his view busing was required simply because "the rules of the game had changed," and under the new rules, as he understood them, racially balanced schools were constitutionally required to improve black academic performance. He believed, on the basis of testimony by education "experts," that a "dramatic improvement" in black academic performance could be "produced" by "transferring underprivileged black children from black schools into schools with 70 percent or more white students." The Supreme Court, never mentioning black academic performance, simply ignored the District Court's actual basis of decision and pretended that the District Court had ordered busing to undo racial separation resulting from prior unconstitutional segregation.

Finally, the Supreme Court faced here a very serious problem in dealing with the 1964 Civil Rights Act. With that Act, Congress adopted *Brown's* prohibition of racial discrimination by government as a matter of national legislative policy. A very important feature of the Act was that it authorized the Attorney General of the United States to bring desegregation litigation. The Act explicitly provided, however, that "desegregation" meant the assignment of students to schools "without regard to race," and did not mean assignment "to overcome racial imbalance."

The Act also provided, redundantly, that it did not authorize the transportation of students from one school to another to achieve racial balance, and, finally, that it did not prohibit the assignment of students to schools on any basis other than race. The assignment and transportation of students to schools on the basis of race in order to achieve racial balance was, of course, exactly what the Supreme Court in fact required in *Swann*. While it purported to do so pursuant to the Constitution and not pursuant to the Act, the Act was clearly an embarrassment; the Court did not want to seem to be acting contrary to the congressional policy expressed in the Civil Rights Act. The Court therefore simply stated that the Act's definition of desegregation and its strictures on seeking racial balance were applicable only to the so-called de facto segregation of the North and were inapplicable to the South where racial separation in the schools had been explicitly required by law.

This "interpretation" of the Act is, to put it as charitably as possible, totally without basis in the Act or in its legislative history.

The Act's repeated explicit provisions that it could not be used to seek racial balance were written in at the insistence of Representatives from the South in order to protect the South. Far from being concerned with making the Act inapplicable to "de facto segregation" (racial separation or imbalance not required by law), Congress believed that a racial balance requirement would be unconstitutional because it would require racial discrimination by government in school assignment, and that, everyone thought, had been prohibited by Brown.

Senator Humphrey, the Senate floor manager of the bill that became the Civil Rights Act, stated:

"While the Constitution prohibits segregation, it does not require integration. The busing of children to achieve racial balance would be an act to effect the integration of schools. In fact, if the bill were to compel it, it would be a violation, because it would be handling the matter on the basis of race and we would be transporting children because of race."

A clearer example of judicial perversion of an act of Congress would be impossible to find. Not only were the Act's limitations made meaningless, but the Act became, in the hands of the administrative agencies (HEW's Office of Education and the Civil Rights Commission) and the courts, the essential tool for the imposition of the very racial balance requirement that Congress had sought to ensure could not be imposed.

The Court's opinion in Keyes is at least the equal of its opinion in Swann for defiance of logic and misrepresentation of matters of fact. If, as the Court continued to insist, the constitutional requirement was not integration but only desegregation—the ending or undoing of unconstitutional segregation—how one might wonder, could the requirement be applied to Denver, which had never required segregation? Indeed, the Colorado Constitution had from the beginning explicitly prohibited school segregation; Colorado, and Denver in particular, with very small black populations until the 1950s, had always been leaders and models in civil rights matters. The almost unbelievable fact is that Denver was found to violate the Constitution and was required to bus schoolchildren for racial balance not because it had ever practiced segregation but because it had been exceptionally committed to increasing integration.

Despite Brown's and the Colorado Constitution's prohibition of all racial discrimination, in the early 1950s the Denver school board voluntarily undertook the practice of racial discrimination to increase racial mixing in the schools. The board required that race be taken into account in school decisions, that schools be located and attendance boundary lines drawn so as to increase integration.

A more impressive display of misrepresentation, irrationality, and abuse of power would be difficult to find in the work of any other institution of government. If it should be found in any other institution, it would undoubtedly lead to widespread censure and demands for corrective action. The best evidence, perhaps, of the invulnerable position and enormous power the Supreme Court has now achieved in our system of government—of the existence, that is, of an imperial judiciary—is the fact that the Court apparently remains free from such censure and such demands.

No more schools were thereafter built in northeast Denver, an area of black residential concentration. In a final display of its commitment to integration, the board then decided to require busing, and not only the busing of blacks into white neighborhoods, which might have been accepted in Denver, but also the busing of whites into black neighborhoods. Predictably, this was too much for even the citizens of Denver, and they promptly elected a new school board, which rescinded the busing requirement before it could be put into effect. However, in the American system of government as it currently operates, a victory at the polls remains a victory only so long as it is not disapproved by the courts—a function performed in some other systems by the military. A suit was brought challenging the rescission, and a federal District Judge held it unconstitutional on the paradoxical ground that a measure to increase integration, although not constitutionally required, may not, once it has been voluntarily adopted, constitutionally be repealed. He ordered that the schools of northeast Denver be racially balanced as if the busing requirement had not been rescinded.

The Supreme Court in *Keyes* did not adopt the District Judge's theory that voluntary measures to increase integration may not be halted—indeed, in a later case it explicitly rejected that theory. As in *Swann*, the Court, instead, simply ignored the actual basis of the District Judge's decision and pretended that he had found that the Denver school board had racially discriminated to separate the races, despite the District Judge's explicit statement that he had *not* found racial discrimination apart from the rescission. The Court thereupon in effect instructed the District Judge that he had not gone far enough in ordering busing, that he should have ordered the elimination of majority black schools not only in northeast Denver, but also in central Denver, the other area of black residential concentration. The District Judge could do this, the Court said, by finding that the majority black schools in central Denver were the result of the racial discrimination by the board that the District Judge had supposedly found in northeast Denver.

The logical and factual defects in the Supreme Court's opinion include that 1) the District Judge had *not* found racial discrimination by the school board in northeast Denver except on the basis of his rescission theory; 2) such discrimination, even if it had been found, could not possibly have been why the schools in central Denver were majority black prior to the time that the schools in northeast Denver became majority black; 3) far from having racially discriminated to separate the races, the Denver school board had voluntarily undertaken to increase racial mixing, and found itself in constitutional difficulty only because of those efforts; and 4) the existence of majority black schools in central Denver was in any event obviously the result, not of racial discrimination by the board, but of residential patterns.

Mr. HELMS. There is another whom I would mention today. His name is Raoul Berger. Dr. Berger is professor emeritus of Harvard Law School.

Dr. Berger, I believe, would identify himself as substantially to the political left of JESSE HELMS, but he is a man whom I admire and respect because he does know constitutional law and he is regarded as one of the top constitutional scholars of this land.

I wish I could hear a debate between Raoul Berger and LOWELL WEICKER. Both of them are articulate, both of them are intelligent, and both of them are forthright. But I daresay that Raoul Berger would win. I have a letter from Dr. Berger dated November 29, 1980. It says:

DEAR SENATOR HELMS: The enclosed, a nutshell summary of my "Government by Judiciary: The Transformation of the Fourteenth Amendment" (Harvard Press, 1977), affords constitutional footing for proposed school-prayer, anti-busing, affirmative action measures, which in truth seek to effectuate the original intention of the framers of the Fourteenth Amendment.

Now, what does Raoul Berger say? Bear in mind, Mr. President, that about 10 or 11 years ago Raoul Berger was on the other side of this argument as to whether Congress had a right to proscribe the courts, whether Congress has got a right to say, "You shall not do more of this."

Dr. Berger made a 180-degree turn. Let me read what he said in an address before the National Organization on Legal Problems of Education, a speech he made on November 14 last year in Boston:

There is widespread dissatisfaction with the judicial takeover of functions confided by the Constitution to the States and the people. Concern over federal intrusion into the field of education, for example, busing, affirmative action, judicial administration of a school system, is but one facet of the problem. Others are perturbed by judicial administration of prisons which in effect supplants legislative discretion in making budgetary allocations. Still others decry interference with local control of pornography, abortions, the local administration of criminal law. The people reluctantly obey such decrees because they are told so the Constitution requires.

I might parenthetically state that is exactly what Senator WEICKER is doing. He is giving his opinion, and I respect his opinion, even though I do not agree with it. But because he does not like something does not automatically make it unconstitutional.

I think we ought to listen to the counsel of Raoul Berger and Sam Ervin and other constitutional scholars who are so recognized when they say that LOWELL WEICKER is a good guy but he is wrong.

Let me continue on what Dr. Berger said in his speech in Boston on November 14, 1980. He asked the question:

But what if the requirement is that of the justices rather than that of the Constitution?

Ah, Mr. President, there is the point. Some of us have been saying for years that the Federal courts have been legislating instead of adjudicating. That is precisely what has happened, and this Senate and House of Representatives are long overdue in putting their respective feet down and saying, "No more. This is a tripartite system of government. We are the representatives of the people. We have a right, we have a duty, to put an end to the demonstrable folly of forced busing which has been tormenting little children for no purpose whatsoever except to satisfy the whim and caprice of some Federal judge somewhere or some Federal bureaucrat or a whole nest of them in the Justice Department."

So the pending Weicker amendment is not an innocuous amendment. It seeks to create some question as to whether the Senate really means it when it says "Stop this forced busing," or at least "Stop the Justice Department bureaucrats from promoting it."

Mr. President, I say again, the Senate spoke last year on this question of Justice Department bureaucrats and lawyers promoting forced busing. The House has spoken on it.

My dear friend from Connecticut says, "Well, I have a little amendment here that just may be innocuous and I want to slide it in." I cannot let him slide it in without a fight, because it will leave the door ajar to all sorts of contests in the courts as to what Congress really meant when it said the Justice Department shall no longer promote forced busing.

Let me also address myself to what a rather distinguished citizen of this country has said about what he calls the pet crusades of orthodox liberals.

He is the distinguished scholar and professor of economics, Thomas Sowell.

Let me read you what Thomas Sowell says. The headline, "A Black 'Conservative' Dissents." The subheadline is, "Busing and affirmative action may be a pet crusade of orthodox liberals, but, a black scholar contends, neither in fact does much real good."

Mr. Sowell begins by saying:

Being a black "conservative" is perhaps not considered as bizarre as being a transvestite, but it is certainly considered more strange than being a vegetarian or a bird watcher. Recently a network television program contacted me because they had an episode coming up that included a black conservative as one of the characters, and they wanted me to come down to the studio so that their writers and actors could observe such an exotic being in the flesh.

Am I a black conservative? It is hard enough to know what a "liberal" or a "conservative" is without the additional racial modifications. Supposedly a "conservative" is satisfied with the status quo, but in more than 40 years of listening to people, ranging from welfare recipients to the President of the United States, I have never come across this mythical being who is satisfied with the status quo.

Mr. President, I am fascinated with the entire article and I would enjoy reading it into the RECORD, but I am not going to do that.

Mr. President, I ask unanimous consent to have this article printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. The point Dr. Sowell made is one that surely should be obvious to all Senators. That point is simply, is it not time to listen to the American people? Let us not obfuscate the real question by saying, "I happen to know that it is unconstitutional to say to the Justice Department, 'you cannot promote forced busing any more.' "

This Congress has the right to proscribe remedies for the enforcement of the 14th amendment, but I will leave that debate to the constitutional lawyers. The debate about constitutionality is not between JESSE HELMS and LOWELL WEICKER, but it is between LOWELL WEICKER and Raoul Berger. I am not a lawyer. But I have an instinctive understanding, I think, of what is right for this Congress to do. And certainly, what is right for this Congress to do at this moment is not to tamper with the position strongly taken by both the Senate and the House to tell the Justice Department and all of its bureaucrats and all of its lawyers that, "No longer will you promote forced busing."

Senator WEICKER has said over and over again during the past couple of days that his amendment has nothing to do with busing. Senator WEICKER'S amendment to my amendment is designed solely to gut my efforts to stop forced busing. And I say to Senator WEICKER that his amendment has everything to do with busing. His amendment would leave the door ajar so that Justice Department lawyers and bureaucrats can assist pro forced busing zealots to rush to the courts and try to confuse the issue of what Congress really meant when it passed this bill with both the Helms amendment and the Weicker amendment.

That is what it would do. It would muddy the water. It would tone down and leave in a confused state the declaration that this Senate should and must make, that the Justice Department shall not further promote forced busing. And that is the reason I urge Senators to oppose the Weicker amendment to the Helms amendment, because no Senator should misunderstand what my good friend from Connecticut is attempting to do.

The little fish is in the Senator's hand and he is saying, "Hold still little fish. I'm not going to hurt you; I'm just going to gut you."

The Weicker language if adopted will be seized upon by those activist lawyers down in the Justice Department—the ones who have been here from administration to administration to administration, protected by civil service—the Weicker language would be seized upon by these and others as a basis, however specious, for continuing to promote forced busing. And it is time we stopped unequivocably the advocacy of mandatory busing by any underling in the Justice Department. The Weicker amendment would cloud and possibly undermine the objective we hope to accomplish in approving the Helms amendment.

Mr. President, the issue in this debate is not which Senator knows more about the Constitution than another. The issue is, How much longer are we going to allow the Federal bureaucrats in the Justice Department to torment the little children of this country and in doing so continue to destroy the quality of education in America?

If it is not clear to Senators now, I do not know when it is going to be clear that forced busing has done more to destroy confidence in and support of the public schools of America than any other device since public schools came into existence.

I could recite countless instances in which this is true, including many in my home town.

I would mention a decision by a Federal judge in Mecklenburg County, which had as part of its provision what lawyers say in Latin "reductio ad absurdum."

Do you know, Mr. President, that the zealots in that case caused that judge to assign a school bus to one student? That school bus went to one end of the county in the morning and picked up one child, hauled him all the way across Mecklenburg County to his school, and brought him back in the evening. One school bus, one driver, one student, for a distance, as I recall, of about 27 miles a day.

And for what? No wonder the people of this country are fed up. No wonder that in poll after poll after poll they say, "Stop it," blacks and whites alike.

And in my conversation with Senator Ervin last year, he discussed the Civil Rights Act of 1964, which has been often alluded to in this debate. Senator Ervin was a Member of the Senate at the time the law was enacted. He stated that the only regulation intended under that act—and it is clear that this is the case—

the only regulation intended under the act was to prohibit invidious segregation.

He quoted it:

That no officers of the Federal Government and no court should require the transportation of children for the purpose of achieving racial balance.

And this was confirmed, countless times on this floor, by Senator Humphrey, who was one of the leading architects of the Civil Rights Act of 1964.

I wrote down something that Senator Ervin said that day last year when I talked with him. He said:

Oceans of sophistry cannot wash away the plain fact that busing of school children deprives those who are being bused of their right under the equal protection clause to attend the school nearest their homes.

So what we have been doing, Mr. President, with this folly of forced busing is violating the equal protection clause and in doing so we have wasted literally hundreds of millions of dollars. Lord knows how much fuel, gasoline, how much time, and for what constructive purpose, Mr. President? None.

I asked Senator Ervin about the Supreme Court decision on which some of the comments heard yesterday and today on this floor have been based. Senator Ervin said:

The Supreme Court, by intellectual dishonesty and an intellectually dishonest ruling, ignored the equal protection clause.

Mr. President, let me now read from a Senate document containing a statement by Senator Ervin. This bears the date of Tuesday, February 19, 1974. That was the last year Senator Ervin was a Member of this body. It was published by the Senate Subcommittee on Constitutional Rights of the Committee on the Judiciary. Senator Ervin said this in his opening statement:

During the 19 years I have served in the U.S. Senate I can think of no group of people who have stood in greater need of relief from government tyranny than the thousands of innocent little school children who are being bused to schools many miles away from their neighborhoods in order to satisfy the social theories of Federal bureaucrats and to comply with a constitutionally unsound Federal court order. Under the guise of enforcing the 14th amendment's equal protection clause, these bureaucrats and Federal courts have undermined any reasonable understanding of the fundamental principle of equal protection of the law.

I continue to quote Senator Ervin:

Although there are pious assertions to the contrary, what has in fact occurred is the assignment and transportation of school children to public schools on the basis of race in order to achieve a certain specified racial balance. In my sincere opinion, this is absolutely contrary to equal protection of the laws.

I have quoted Senator Ervin at some length because what he has said is identical to what many, many other constitutional authorities have told me.

Mr. President, let us have no more of this business about "I know what the Constitution is and everybody agrees the Helms amendment is a proposed violation of the Constitution."

It is no such thing. This is not the Supreme Court; this is the U.S. Senate.

Mr. President, that is about all I have to say. This Congress has the right and the duty to prescribe remedies for the enforcement of the 14th amendment. I am going to leave the debate to the constitutional lawyers. I am not a lawyer. But one thing is clear: The debate about constitutionality is not between JESSE HELMS and LOWELL WEICKER or JESSE HELMS and TED KENNEDY or JESSE HELMS and JOHN CHAFEE or JESSE HELMS and MARK HATFIELD or JESSE HELMS and MAC MATHIAS. This is not the Supreme Court. This is the U.S. Senate.

Our duty here is to take a look at the equal protection clause and note that countless thousands of children have been denied their rights by the tyranny of forced busing. Our duty here is to be responsive to the pleadings of the vast majority of the American people who say, "Enough is enough."

Our duty here is not to be misled by an amendment that would cleverly gut my efforts to put an end to forced busing. Our duty here is to put an end to the actions of bureaucrats in the Justice Department who have been going out and promoting forced busing. If we do not have the right to do that duty, Mr. President, I do not know that we can legitimately profess to have the right to represent our people.

I have an instinctive understanding, I think, of what is right for this Congress to do. I am not imposing my morality on anybody. I heard as much about abortion and prayer in school yesterday as I heard about busing. I had to look to make certain which amendment was pending.

We are talking about busing, forced busing, and the judgment we will make when we vote on the Weicker amendment and the Helms amendment is whether we are going to fish or cut bait.

Mr. President, if we are against forced busing, if we want to respond to the pleas of the American people, the Weicker amendment will be defeated and the Helms amendment will be approved.

EXHIBIT 1

A BLACK "CONSERVATIVE" DISSENTS

(By Thomas Sowell)

Being a black "conservative" is perhaps not considered as bizarre as being a transvestite, but it is certainly considered more strange than being a vegetarian or a bird watcher. Recently a network television program contacted me because they had an episode coming up that included a black conservative as one of the characters, and they wanted me to come down to the studio so that their writers and actors could observe such an exotic being in the flesh.

Am I a black conservative? It is hard enough to know what a "liberal" or a "conservative" is, without the additional racial modifications. Supposedly a "conservative" is satisfied with the status quo, but in more than 40 years of listening to people, ranging from welfare recipients to the President of the United States. I have never come across this mythical being who is satisfied with the status quo. I know of no statistical research, or even casual observations, that would lead to the conclusion that so-called "conservatives" are more content, complacent or less outraged than people who carry the label "liberal." Some of the angriest people I know are called "moderates." Since truth-in-labeling laws do not apply to politics, there is little than can be done about all this.

Once it is realized that "liberal" and "conservative" are simply arbitrary designations for opposing political teams (more elegant but no more meaningful than "Dodgers" and "Mets"), we can turn to the substance of the issues between them. From this point of view, a so-called "conservative" is nothing more than a dissenter from the prevailing liberal orthodoxy. A "radical" would simply be someone who carries the liberal orthodoxy to further extremes.

Why would a black man dissent from the prevailing liberal orthodoxy, and especially on such racial issues as busing, "affirmative action" and the like? The question itself shows how pervasively the mass media have stereotyped and filtered the news. Most black people oppose busing. Polls that showed a black majority in favor of busing a few years ago have begun to show black pluralities and, finally, an absolute majority of blacks against busing. What is rare is to see any black opponent of busing in the media. The media-created black "spokesman" usually shares media-created values. The impression is insinuated that such "spokesmen" represent the "grass roots," or "authentic" ghetto blacks, while black dissenters from the liberal orthodoxy are from a remote "middle class" fringe. This impression must be insinuated, because there is little evidence for it—and a tremendous amount of evidence to the contrary. Many of the most fiery "militants" are middle-class Negroes now trying to live down their past by being blacker-than-thou, like true converts.

When the Supreme Court struck down state-imposed segregation in 1954, the decision was justifiably hailed as the climax of a struggle of many decades against Jim Crow laws and gross discrimination in the availability of public services, including education as a crucial necessity. Two more decades of bad faith, foot dragging and evasions produced ever tighter judicial control, culminating in court-ordered busing to achieve racial "balance." In short, we have arrived at a position that was not implicit in the original decision, and in many ways goes counter to the original concern for insuring individual constitutional rights without regard to color or other group characteristics.

The prevailing liberal orthodoxy insists that busing is essential for black children to receive their constitutional rights—and that they are to have their rights if it kills them. King Solomon is said to have chosen the true mother of a disputed infant by asking the two women concerned whether each would agree to having the baby cut in half to satisfy their rival claims. It was perhaps the first confrontation between principles of humanity and statistical "balance." Fortunately, King Solomon did not rely on H.E.W. guidelines for a solution.

Remarkably little attention has been paid to the black children who are supposed to benefit from busing. Certainly, little attention has been paid to the facts about their educational or phychological well-being before or after court-ordered "integration." It was assumed from the outset in 1954 that separate schools are inherently inferior. Anyone familiar with the history of numerout all-Jewish or all-Oriental schools could have exposed this for the sheer nonsense it was, and there are also a number of all-black schools that would have exposed this fallacy. All-black Dunbar High School in Washington had an average I.Q. of 111 in 1939, compared with the national average of 100—and this 15 years before sociological stereotypes were enshrined as the "law of the land."

The really crucial assumption behind involuntary busing is that some tangible benefit will result—presumably to black children, but, one would hope, to white children as well, and to the cause of racial understanding and mutual respect. The hard evidence does not support any of these assumptions. One can select isolated pieces of data to support the assumptions, but at least as much evidence can be found showing declining academic performances, lower self-esteem by

black children and greater racial antagonism on the part of both black and white children after busing is imposed.

Busing is not a policy but a crusade. For a policy, one can ask, "Does it work?" "At what cost?" "What is the human impact?" For a crusade, the relevant questions are: "Whose side are you on?" "Is your courage failing?" "Can we dishonor the sacrifices of those who went before by turning back now?" The last thing a crusader wants to hear is cost-benefit analysis. And if the crusader is a white liberal whose only children are in private schools, his courage knows no bounds.

One of the last refugees of those who admit the sorry academic and social record of involuntary busing is the so-called "hostage" theory of integration. According to this view, the only chance black children have for getting a fair share of educational resources is to be mixed in with white children, so that discrimination is thwarted. This assumes that it is easier for courts to control racial "balance"—in the face of "white flight"—than to control dollars and cents paid from a central fund. It also assumes a greater educational effect from differences in per-pupil expenditures than existing studies substantiate.

Finally, there is the simple vested interest of civil-rights lawyers and leaders who have a heavy personal stake in pursuing the courses of action that brought them success and prominence in the past. There is nothing peculiar in this. It is, in fact, all too human. Generals have long been known for fighting the last war. In view of history, it may be too much to expect any organization to stop on a dime and then head off in another direction in high gear. But it is not too much to expect the rest of us to be able to see when a given approach has made its contribution, served its purpose and become counterproductive. We certainly need not repeat the mistake of Vietnam by sacrificing the younger generation to spare leaders the embarrassment of losing face.

The question may once have been "segregation" versus "integration" but it is that no longer. Neither Federal, state nor local government may segregate any longer. "Racial balance," however, is in most cases a will-o'-the-wisp, as changing neighborhoods, private schools and exodus to the suburbs repeatedly defeat the numerical goals of busing. In some cases, there is more racial separation in the classroom after years of busing than before. As for "integration" in some more meaningful social and psychological sense, going beyond racial body count, compulsory transportation is the least likely process for achieving that goal. It is a tragic commentary on the liberals' misunderstanding of their fellow human beings that they cannot grasp the difference between the effects of voluntary interracial association and involuntary placement in the same buildings. It is true that, prior to the 1954 Supreme Court decision, much evidence showed greater tolerance and better educational results for black children when going to schools—usually neighborhood schools—with white youngsters. But these were black and white schoolchildren who chose to live and go to school in the same neighborhood, and who grew up around one another—not strangers confronting strangers in an atmosphere of compulsion, anxiety and heightened racial defensiveness.

The grand delusion of contemporary liberals is that they have both the right and the ability to move their fellow creatures around like blocks of wood—and that the end results will be no different than if people had voluntarily chosen the same actions. It is essentially a denial of other people's humanity. It is a healthy sign that those assigned these subhuman roles have bitterly resented it, though it may ultimately prove a social and political catastrophe if heavy-handedness finds a target in blacks as scapegoats.

The same statistical approach to human problems found in the busing controversy is applied to the labor market in the Federal "affirmative action" program. There is also the same heavy reliance on assumptions, the same disregard of facts and the same crusading assurance that whatever one does in a noble cause is right.

One of the first things that is done in many noble causes is lying. "Affirmative action" is no exception. The racial, ethnic and sex quotas that are set under "affirmative action" hiring are denied by calling them "goals" and attempting to make elaborate scholastic distinctions between the two. We are told that "goals" are not "really" quotas because goals are flexible while quotas are rigid. But this revision of the English language ignores both facts and usage. "Quota" is no new or exotic word the liberal missionaries must explain to the heathen. There are immigration quotas, import quotas, production quotas and all kinds of other quotas—and whether those quotas happen to be met or not during a particular time period, no one denies that they are quotas. Quotas are quantitative rather than qualitative criteria. Everybody knows that, and that is precisely what critics object to.

"Affirmative action" quotas are supposed to compensate minorities and women for past injustices, but before any benefit can compensate anybody for anybody, it must first be a benefit! There is very little hard evidence that "affirmative action" has that net effect, just as there is very little hard evidence that busing benefits black schoolchildren. Black income as a percentage of white income reached its peak in 1970—the year before mandatory quotas ("goals and timetables") were established—and has been below that level ever since (due largely to the recession). In short, blacks achieved the economic advances of the 1960's once the worst forms of discrimination were outlawed, and the only additional effect of quotas was to undermine the legitimacy of black achievements by making them look like gifts from the Government.

Undoubtedly, here and there some individuals have gotten jobs they would never have been eligible for otherwise. But however striking such examples might be, the overall picture depends on two other factors—what proportion of the labor force such people constitute, and the extent to which "affirmative action" has the offsetting consequence of actually reducing job opportunities for minority or female applicants. Since quotas apply not only to hiring but also to pay and promotion, some employers choose to avoid later problems by minimizing the initial hiring of nonwhite or female applicants. This is particularly true where there is a substantial risk that any applicant—of whatever race or sex—may have to be let go later on. For example, in the academic world, the "up-or-out" promotion system means that the top universities are constantly firing many junior faculty members at the end of their contracts, without any explicit "fault" being alleged. The legal and political dangers in applying this policy to minorities and women give universities an incentive either to avoid hiring minorities and women or to sidetrack them into special administrative jobs where this policy does not apply. Other industries also create "special" or "token" jobs for similar reasons, with the same net effect of reducing the career prospects of minorities and women—as a result of Government pressures designed to have the opposite effect.

Despite a tendency to consider women as a "minority," both the history and the present situation of women are quite different. Contrary to a fictitious history about having come a long way, baby, women today have less representation in many high-level positions than 30 or 40 years ago. In earlier times, women made up a higher proportion of doctors, academics, people in Who's Who, and in professional, technical and managerial positions generally. If you plot on a graph the proportion of women in high-level jobs over the past several decades, and on a parallel graph the number of babies per woman, you will see almost an exact mirror image. That is, as women got married earlier and earlier and had more and more babies, their careers declined. In recent times, as the "baby boom" passed and both marriage rates and child-bearing declined, women have started moving back up the occupational ladder relative to men—though in many cases not yet achieving the relative position they held in the 1930's. This upturn was apparent before "affirmative action" quotas.

If you go beyond the sweeping comparisons of "men and women" that are so popular, it is clear that marriage and childbearing have more to do with women's career prospects than employer discrimination. In 1970—before mandatory "goals and timetables"—single women in their 30's who had worked continuously since high school averaged higher earnings than single men in their 30's who had worked continuously since high school. In the academic world, single women with Ph.D.'s achieved the rank of full professor more often than single men who received their Ph.D.'s at the same time—and this again, before quotas.

These are among the many facts ignored by proponents of "affirmative action." Such facts are relevant to policy but they do not support a crusade, which requires an identifiable enemy, such as male chauvinist employers. A much stronger case can be made that career women are discriminated against in the home, where they are expected to carry most of the domestic burdens, regardless of their jobs. But there is no crusade to mount, and no political mileage to be made, from advising women to go home and tell their husbands to shape up. Both messiahs and politicians have to be able to promise people something, and very often that involves misstating the original problem, in order to make the promise sound plausible.

The grand assumption that body count proves discrimination proceeds as if people would be evenly distributed in the absence of deliberate barriers. There isn't a speck of evidence for this assumption, and there is a mountain of evidence against it. Even in activities wholly within each individual's control, people are not evenly distributed: The choices made as to what television programs to watch, what games to play, what songs to listen to, what candidates to vote for, all show the enormous impact of social, cultural, religious and other factors. One-fourth of the professional hockey players in the United States come from one state; more than a quarter of all American Nobel prize winners are Jewish, more than half of all professional basketball stars are black. Can one state discriminate against the other 49?

Can Jews stop Gentiles from getting Nobel prizes, or blacks keep whites out of basketball? Obviously there are reasons of climate, tradition and interest that cause some groups' attention to be drawn strongly toward some activities, and that of other groups toward other activities. It need not even involve "ability." Some groups that have been tremendously successful in some activities have been utter failures in other activities requiring no more talent. Even such an economically successful urban group as American Jews had an unbroken string of financial disasters in farming, while immigrants from a peasant background succeeded, even though peasant immigrants could not begin to match the Jews' performance in an urban setting. As a noted historian once said, "We do not live in the past, but the past in us."

It takes no imagination at all to see the heavy weight of the past among both minorities and women. Even those minority and female individuals who are able to take advantage of higher educational opportunities do not specialize in the same fields as others,

but disproportionately choose such fields as education and the humanities—where most people are poorly paid, regardless of sex or race. There are good historical explanations for such choices, but these are not necessarily good economic reasons. However, unless we are prepared to deny free choice to the supposed beneficiaries of "affirmative action," it is arbitrary social dogma to expect an even distribution of results.

Should we do nothing? That is the bogeyman of unbridled discrimination that "affirmative-action" spokesmen try to scare us with. But we were not doing "nothing" before quotas came in. The decade of the 1960's saw some of the strongest antidiscrimination laws passed anywhere, backed up by changing public opinion and by a new awareness and militancy among minorities and women. The dramatic improvement in the economic position of blacks was just one fruit of these developments. Despite the tendency of "affirmative action" proponents to conjure up images of discrimination in decades past, the question is, what existed just before the quotas, and what has happened since? That is the relevant question, and the answer shows a mountain laboring to bring forth a mouse—and often not succeeding. As we have seen, the ratio of black income to white income has never been as high since mandatory quotas as it was just before such "goals and timetables."

Why is "affirmative action" so ineffective despite all the furor it stirs up? Simply because its shotgun statistical approach hits the just and the unjust alike. Just as the crime does not consist of demonstrable discrimination against someone, but of a failure to meet governmental preconceptions, so the punishment does not usually consist of penalties imposed at the end of some adjudicatory process but of having to go through the process itself. For example, the University of Michigan had to spend $350,000 just to collect statistics for "affirmative action." For all practical purposes, that is the same as being assessed a $350,000 fine without either a charge or proof of anything. Most "affirmative action" proceedings do not end up in proof of guilt or innocence, or in any penalty though many end up settled by "peace with honor" in the form of elaborate plans, with good intentions spelled out in statistical detail: 1.3 more black accountants per year, 2.7 more female chemists, etc. If King Solomon had operated under "affirmative action," he would have promised each women 0.5 children, and gone back to business as usual.

It has long been known that the road to hell is paved with good intentions, and that is where they lead in this case. And since many of the quotas were virtually impossible of achievement from the outset, there is even less reason than usual to expect much from such statements under such pressures. Just as in television the medium is the message, so under "affirmative action" the process is the penalty. And since this penalty falls on the guilty and the innocent alike, it provides no reason for even the worst bigot to change. Nor will it exempt even the purest heart from the harassments of bureaucrats. Indiscriminate penalties do not produce change but only resentment. As in the case of busing, resentment against Government heavy-handedness is often misplaced as hostility to the supposed beneficiaries. The fact that there is really very little benefit to any group only completes this tragic farce.

One of the reasons why many programs that don't work still keep going strong is that they sound so noble. Moreover, championing the disadvantaged is not only an inspiration but an occupation. To be blunt, the poor are a gold mine. By the time they are studied, advised, experimented with and administered, the poor have helped many a middle-class liberal to achieve affluence with Government money. The total amount of money the Government spends on its many "antipoverty" efforts is three times what would be required to lift every man, woman and child in America above the official poverty line by simply sending money to the poor. Obviously, there are a lot of middlemen who get theirs: administrators, researchers, consultants, staffers, etc. These are the army of people who "take care" of the poor in a variety of ways. Such caretakers are the modern equivalent of the missionaries who came to do good and stayed to do well. It is no accident that the highest income counties in the United States are in the suburbs of Washington, D.C. Poverty is the cause of much of that affluence.

Central to the costly "caretaker" approach to helping the poor—by paying money to someone else—is an image of the poor as too helpless to make it with mere money. A picture is said to be worth a thousand words, but this particular image is worth billions of dollars to the caretaker class. Public resentment at the tax cost of the "antipoverty" establishment takes the form of disenchantment with the poor and minorities, though most of the money ends up in the pockets of people who are neither.

Like every army, the army of caretakers requires both material and moral support. The taxpayers supply the material support. The moral support comes from those who accept the image of the helpless poor and who project that image—and the corresponding "need" for caretakers—through the mass media, in the colleges, and to a captive audience of millions in "social studies" in the public schools. Since many who project such an image are themselves products of years of the same kind of sociopolitical conditioning, something very close to perpetual motion has been created.

The image of the helplessness of the poor is repeatedly invoked to defeat proposals for income maintenance, educational vouchers and any other reforms that would enable the poor to make their own decisions and eliminate the caretakers. How helpless are the poor? And—since I am speaking as a black "conservative"—specifically, how helpless are blacks?

History shows that one of the most massive internal migrations in this country has been the movement of millions of blacks out of the South in the last two generations, in order to seek a better life for themselves. This was a spontaneous decision of millions of individuals, not organized by indigenous "leaders" nor promoted by outside caretakers. Going even further back in history, to 1850, the census of that year showed that most of the half-million "free person of color" were literate, despite (1) being denied access to public schools in most parts of the country, (2) being forbidden by law to go to any schools in many Southern states, and (3) having very low incomes and occupations and few opportunities to cash in on the education. Private and even clandestine schools for blacks existed all over the United States in 1850, most of them supported by blacks themselves out of meager incomes.

Today, many ghetto blacks in cities across the country are sending their children to Catholic schools—though the blacks in question are usually Protestants—in order to seek better education than the public schools provide. For example, it has been estimated that more than 10 percent of all black children in Chicago go to Catholic schools. If educational vouchers were to make education free at both private and public institutions, would black parents be too helpless to make a choice among the various schools available to them? Or is the real problem that many caretakers in the educational bureaucracies would find themselves out of a job?

At a time when every silly trend in education is proclaimed in the media as an "innovation," the struggle of thousands of poor black families to send their children to private school is a nonevent for those who shape public opinion. Where these private schools are Catholic, they are often in ghetto neighborhoods abandoned by earlier Catholic immigrant minorities, and it is not uncommon today for the bulk of the student body in these schools to the non-Catholic. Some of the Catholic schools have achieved remarkable educational success with black students, at far lower cost per pupil than the public schools. But it isn't news.

Indeed, black advancement in general isn't news. The research team of Scammon and Wattenberg was roundly denounced in the media when it reported very substantial gains of blacks across a broad front, in education, income, occupation and housing in the decade of the 1960's. In olden times, messengers were sometimes killed for bringing bad news to the king. Today those who bring good news are in jeopardy, for they are threatening the whole caretaker industry and undermining an image supported by the caretakers' allies in the media and in politics.

How unusual is a so-called "black conservative"? Not very. Being an exception to a media image is not being an exception in real life. The real opinions of flesh-and-blood black people have repeatedly been found to be completely different from the "black" opinions of media-selected "spokesmen."

An Ebony magazine poll comparing the views of blacks with those of college students found blacks consistently more "conservative" than the college students. The great majority of blacks considered this country worth defending against foreign enemies and rejected violence as a means of achieving social change. A Gallup poll found that a substantital majority of blacks regard the courts as too lenient on criminals. Still another survey found that more than three-quarters of the blacks described themselves as "sick and tired" of hearing attacks on "traditional American values."

So being a black "conservative" is not quite as distinctive as it might seem.

Mr. President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I intend to take about a minute or so and then yield back the remainder of my time. If the Senator from North Carolina and the Senator from West Virginia wish to do so, we can get to the matter of the vote.

The Weicker amendment. let me read it in its entirety—nothing omitted, nothing added:

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.

Twice in the last 10 years, I stood on the right side of the well and I raised my right hand and I swore the following oath:

I, Lowell Weicker, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

"I swear that I will support and defend the Constitution of the United States." The Weicker amendment does no more than make sure that the same oath that I took, the same allegiance

that I swore, the same direction that I set for myself is assured both the executive and the judicial branches of the Government. The choice, then, in a matter of minutes, is between the Constitution of the United States, or a de facto Constitution, that consists of the opinions of this day, this time, this Senate. Such politicking, philosophizing will be gone in a short time. This, the Constitution, has to last.

That is the issue, Mr. President.

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

The PRESIDING OFFICER. Do all Senators yield back their time?

Mr. THURMOND. Mr. President, I rise in support of the amendment offered by the Senator from North Carolina, of which I am a cosponsor, to prohibit the Justice Department from bringing or maintaining suits that indirectly or directly require the transportation of any student to a school other than the one nearest the home of the student.

This amendment was recently adopted by the House by an overwhelming vote of 265 to 122. Language similar to the pending amendment was passed by the Congress last year, but was vetoed by President Carter.

Mr. President, the American people do not support the forced busing of schoolchildren away from their neighborhoods. A recent Harris poll found that 74 percent of Americans feel that busing to other parts of town is "too hard on the children." Busing is unpopular among both whites and blacks. It forces children to be transported away from their neighborhoods and homes in the name of achieving racial quotas. What really is at stake is quality education for all our children.

The pending amendment is a step in the right direction. It will take the Department of Justice out of the business of intervening in what is a local problem—achieving a quality education for all citizens.

Mr. President, I ask unanimous consent that a few articles on this subject be printed at this point in the RECORD.

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

[From the Washington Star, Dec. 1, 1980]

THE MESSAGE IS LOUD: END RACIAL BUSING

(By James J. Kilpatrick)

Solid majorities in both the House and the Senate have been doing their best to send the federal courts a message on racial-balance busing. Regardless of what happens in the pending appropriations bill for the Justice Department, sooner or later that message will be emphatically delivered.

What the Congress is saying, loud and clear, is that the people are fed up with this evil and futile business. If the message from the expiring 96th Congress does not get through, be assured that the incoming 97th Congress will shout it out. And an incoming president will join in the cry.

This is where we stand on racial balance busing: Both houses have agreed to language that would prohibit the Justice Department from using public funds "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." An exception is made for handicapped children.

PRACTICAL EFFECT

In one sense, to be sure, there is less to this amendment than meets the eye. The language would not prevent private litigants, such as the National Association for the Advancement of Colored People, from petitioning for a busing odrer. The language would not prevent a district judge from imposing such an order on his own. The only practical effect would be to halt the Justice Department from advocating forced busing as the government's choice of desegregation remedies.

During the course of Senate debate, Connecticut's Lowell Weicker made the absurd argument that it is no busines of the Congress to speak to judges. "Why should Congres interpose itself in the judicial process?" he demanded.

The short answer is that Congress, not the courts, holds the power of the purse, and Congress, not the courts, has power to pass appropriate legislation to enforce terms of the 14th Amendment. The anti-busing provision is fully within the constitutional powers of the legislative branch.

Beyond this, the provision expresses sound public policy. Ultra-liberals and other social engineers are fond of saying airily that there is nothing new about "busing." After all, before courts began issuing their busing orders, 10 million children already were riding buses to school every day. The contention is specious. In the old days children were bused to get them to school. Today millions of children are being forced into buses for another reason entirely—to achieve an arbitrary racial balance.

Such busing is morally wrong. To cart children around a city solely because of the color of their skins is racism, blatant and overt racism, precisely as evil as the racially segregated busing of 26 years ago.

Such busing is educationally wrong. No convincing evidence yet has been produced to show that busing helps black children as a group. The findings of Dr. James S. Coleman, who once was an advocate of this remedy, have caused him to back away from the optimistic predictions he made in 1966.

Racial-balance busing adds to disciplinary problems; It makes the involvement of parents more difficult; it diminishes public support for public schools; and it diverts large public sums from the business of teaching.

There is overwhelming evidence that court-ordered busing, in the end, simply does not work. Justice is blind, they say, and surely federal judges are blind to reality when they suppose they can reorder the lives of unoffending families by judicial fiat. Judges may work all night to fashion decrees, school by school, intended to put precisely 50.3 per cent white skins and 49.7 per cent black skins in a classroom, but the skins will not stay put.

In city after city, the phenomenon of "resegregation" swiftly has developed. Dismayed by disciplinary problems, both white and black families flee the public schools. Enrollments drop, and everything—parents, children, schools and communities—often is worse off than before.

Through his attorney general, President Carter has indicated he will veto the Justice appropriations bill. Let him. He has the power to do so. But in one form or another, the message will return.

[From the South Carolina (State), Apr. 5, 1981]

FORCED BUSING IS BECOMING PERMANENT, POOR SOLUTION

(By D. L. Cuddy)

"You know what? I'm against forced busing, too!" That remark was made by a young intellectual black principal while I was addressing a meeting (in Raleigh, N.C.) of the local Fellows of the George Washington University Institute for Education Leadership.

The principal's pronouncement was based on the fact that the burden of busing has fallen predominantly on blacks. In a school system where the black-white ratio is 30–70, for example, 70 percent of the black students must be bused to achieve racial balance, but only 30 percent of the white students must be bused.

And if the purpose of forced busing is to achieve societal integration, increasing numbers of blacks are beginning to wonder if the required movement of their children to integrated schools during the day, and back to segregated neighborhoods at night, isn't becoming a permanent "solution" to the problem of racial discrimination rather than the temporary solution forced busing was originally designed to be.

Decades ago, "freedom of choice" was a slogan ussed by many whites largely for the purpose of maintaining segregated schools, with black schools usually of inferior quality. To correct this situation, the federal government logically was asked to assist blacks in receiving guaranteed equal educational opportunities. From that request, however, the federal government embarked on a policy that at least tacitly supports the racist view that black students cannot learn unless they are seated next to whites.

As one who attended a racially integrated school in the South in 1952 (two years prior to the Supreme Court's Brown decision), and who taught in both predominantly black as well as predominantly white neighborhoods, I can say two things regarding black-white educational relationships.

First, in schools where educational excellence rather than social promotion is emphasized, there appears to be less racial discrimination.

Second, during my public school teaching career, I had more disciplinary difficulty with spoiled students from affluent neighborhoods than I did with economically deprived, yet educationally motivated, black students in the same school. While the Scholastic Aptitude Tests scores for white students have been declining for approximately the past 17 years and many white youths have seemed determined to ruin their lives with drugs, black students whose parents have emphasized educational achievement have had a golden opportunity to excel.

From time to time, I meet several of my black former students and now find that one works at the local state university, one at a television station, one is working toward her college degree in psychology, and I believe one is now an officer in the Air Force.

The point here is that, with government protection guaranteeing equal educational opportunities, blacks can perform as well as whites; but neither blacks nor whites want the government to adopt the principle that it can force people to do that which they do not want to do (e.g., forced sterilization, euthanasia).

While blacks desire federal protection against discrimination so that they may attend whatever school they wish, go to any public establishment they choose and live wherever they please, blacks do not want government implementing a policy that, for example, would require the break-up of black neighborhoods, forcing the residents against their will to disperse throughout the white community. Blacks as well as whites have pride in their neighborhoods and realize the importance of neighborhood schools.

What of the contention, though, that we live in a world where blacks and whites must live together, and abandonment of forced busing might lead to a return to a segregated, albeit voluntarily, society?

It should be emphasized here that the problem is not busing, but rather "forced" busing. There is nothing wrong with students voluntarily requesting to be bused to schools outside their neighborhoods. There

is nothing wrong with school systems developing districts within which black neighborhoods already exist so that an integrated school system may occur naturally.

And although "magnet" schools are undesirable for many because they tend to develop elitist attitudes among students, a majority of the American people might favor instead of forced busing an approach where students of all races voluntarily would choose to attend secondary schools offering programs fitting students' special interests.

Concerning the government's role, it is entirely proper for the government to guarantee that each school receive proportional financial support, and that teachers include all races and be of equivalent ability in each school. There is also nothing wrong with government offering developers incentives to construct housing projects on the outlying growth areas of urban communities that would allow racial representation.

As indicated earlier, the problem is "forced" busing. And blacks increasingly seem to be voicing their opposition to this apparently permanent federal policy, the burden of which falls predominantly on the children and their race.

[From the Washington Post, Mar. 17, 1981]

LOS ANGELES VOTES TO END ITS SCHOOL BUSING PROGRAM

(By Jay Mathews)

LOS ANGELES.—The Los Angeles School Board voted today to dismantle a mandatory school busing desegregation program, a nationally unprecedented act expected to give a significant psychological boost to antibusing groups throughout the country.

By a 5-to-0 vote, the board told the school staff to be ready by April 20 to allow any child now being bused for racial balance to return to his or her neighborhood school.

Several teachers and parents, including some opponents of busing, said the early switch would bring chaos and asked the board to wait until the next school year, but board members said they thought parents ought to have a choice as soon as possible.

Some young, white supporters of the busing plan yelled "for shame, for shame!" from the audience as the board took the vote in a packed meeting hall. But the action reflected a popular political movement in the city and seemed likely to have influence even outside California.

"I think the time has come for a reevaluation of pinning all the hopes and dreams of the civil rights movement on busing," said school board president Roberta Weintraub in an interview. She said the board's success in overturning a two-year-old court ordered busing system might have the same nationwide impact as California's real estate tax reduction plan known as Proposition 13.

Some court-ordered desegregation schemes, such as in the southern California community of Inglewood, have been dismantled in the past, but only after enormous growths in minority populations have made them pointless. Attorneys for both sides said today this is the first case they know of in which busing for racial balance has been stopped while a substantial number of white pupils—about 23 percent—still remained in the schools.

Fred Okrand, an American Civil Liberties Union attorney who has represented parents and groups supporting the desegregation plan, said he would challenge the reversal in the courts. But most attorneys interviewed said they expect the U.S. Supreme Court to support the antibusing forces, at least in this case.

Despite the morale boost the Los Angeles case gives to antibusing forces outside California, it provides few if any helpful legal precedents. The program—which buses 23,346 pupils throughout the crazy quilt school district, sometimes as far as 25 miles—began because California's courts took an unusually broad view of what constitutes illegal school desegregation.

The courts held that segregation was illegal even if it was unintentional. A statewide antibusing measure, called Proposition 1, sought to bring California law into line with federal law, which generally permits court ordered busing only in cases where intentional segregation has been proven.

An appellate court ruled that Proposition 1 was constitutional and last week the state Supreme Court dominated by judges usually in favor of desegregation, astounded all sides in the case by declining to review the appellate court's decision.

The school board's only black member, Rita Walters, said last week she was "appalled and horrified." She said the turnabout "built the walls of segregation ever higher and pulls us further apart." Today, Walters was in Washington on board business and did not vote.

The percentage of white pupils in the school district has been declining steadily, both before and after the busing plan began. Whites made up about 50 percent of students in 1970 when a Superior Court judge ruled the schools were segregated, and declined to 37 percent in 1976 and to 23 percent this year. Experts blame white flight from districts affected by the busing scheme for some of the decline, but say that declining birth rates and enormous increases in immigration of Hispanic families also helped bring the change.

Superior Court Judge Paul Egly, who has supervised the busing plan, has spoken publicly of its importance as a symbol of concern for the education of blacks and Hispanics in the city. Over the weekend, he denounced the reversal of the plan and today dropped out of any further consideration of the case.

From its beginnings in 1963, the effort to desegregate the Los Angeles city schools has followed a course as bizarre and unpredictable as the city itself. The crucial blow to the busing law was Proposition 1, which passed by a 2-to-1 statewide vote in 1979. But the scheme was severely handicapped from the start by having to serve a district that stretches in odd chunks and corridors more than 40 miles from the Pacific coast north to the Santa Susana mountains. The district encompasses the barrios of east Los Angeles and the spectacular seaside hills of the Pacific Palisades, the port neighborhoods of San Pedro and the tract homes of the San Fernando Valley.

After lengthy court battles, the school board proceeded in 1978 with a desegregation scheme for its half-million pupils. It relied on special "magnet" schools devoted to the arts or other special skills and on automatic transfers for any pupils in poor neighborhoods who wished to attend better equipped schools far from their homes—all programs that are expected to continue.

But the plan also included a busing program affecting about 57,000 pupils—23,000 who rode buses, and 34,000 in the receiving schools. This last element galvanized the predominantly white northwest part of the city, particularly the San Fernando Valley, into a potent antibusing force.

One antibusing parent, Bobbi Fiedler, was first elected president of the school board and then elected as a Republican member of Congress. Elections soon gave the school board a strong antibusing majority.

[From the U.S. News & World Report, Inc., 1981]

PRO AND CON ON SHOULD FORCED BUSING BE ENDED?

(Interview with Dennis L. Cuddy)

Yes—Blacks should have the right "to attend any school of their choice."

Q. Mr. Cuddy, why do you feel school busing for racial desegregation should be stopped?

A. Because forced busing, as a permanent solution to the problem of how to integrate society, is discriminatory against blacks. For example, to achieve integration in a city that is 70 percent white and 30 percent black requires the busing of 70 percent of those of the minority race, but only 30 percent of the white students.

In addition, it becomes more difficult for the minority students who are bused to participate in extracurricular activities before and after school. And their usually poor parents are deterred from attending parent-teacher meetings or their son's or daughter's athletic or cultural events in schools on the other side of town.

Lastly, there's the loss of respect and responsibility for the school's condition and leads to increased vandalism by those of both races.

Q. Proponents of busing say it has lessened discrimination. Wouldn't there be a danger that this trend might be reversed?

A. No. The question assumes that forced busing is the only means of maintaining an integrated society, but that's not true. It is doubtful that those blacks living or working in predominantly white neighborhoods would move to predominantly black neighborhoods simply because forced busing was terminated.

We should continue to have an integrated society and maintain the right of blacks to attend any school of their choice, to go to any public establishment they please and to live wherever they desire.

So, if a certain percentage of black parents do not want the government telling them that they must send their children to schools outside of their neighborhood, the government should not be able to overrule the parents.

Q. How would you enforce the right of blacks to attend schools of their choice?

A. It should be made legally incumbent on every school system to provide equal educational opportunities in all schools. Then relatively few students would choose to leave their own neighborhood schools.

Q. Job opportunities for minorities have increased since busing for integration began. Can't this be attributed at least in part to the better education blacks are receiving?

A. Well, forced busing is not the only way blacks can obtain a quality education. As one who attended an integrated school in the South before the Supreme Court's 1954 Brown decision, I can attest to that.

Marva Collins, a Chicago teacher, and the All Saints School in Harlem, among others, have shown that economically deprived minority students can score higher than the national average on tests.

As for job opportunities for blacks, those who strive for educational excellence will be able to obtain employment in almost any major American industry today and have tremendous opportunities for advancement. This is not because American industry has suddenly felt a magnanimous attitude toward minorities, but because executives realize that it is in their own economic self-interest to hire the most qualified person, regardless of race.

Q. Another reason busing is said to be ineffective is that it is not required between separately administered city and suburban school districts. Why shouldn't this be tried?

A. In countywide school systems, such busing is already occurring, and I have nothing against the city school system expanding to include the county. My only questions are: What about those black parents who feel their children can be guaranteed an equal educational opportunity in their own neighborhood school? Why would they want their children bused across town every day just to attend a school with a certain percentage of white children?

Q. Since most black spokesmen adamantly

insist on school busing, wouldn't an end to busing deepen racial animosities between blacks and whites?

A. No, because the original purpose of mandated busing was to guarantee equal educational opportunity for all children, regardless of race. Thus, turmoil will only result if blacks are denied equal opportunity.

And may I suggest that whenever black leaders have appealed to the innate sense of justice and fairness in most white Americans, black Americans have had far greater success in achieving their goals than when they have appealed for something on the basis of race alone, which usually results eventually in a reactionary white backlash, unfortunately.

Q. How would you stop busing—by amendment to the Constitution, legislative action by Congress or some other means?

A. If it can be shown that equal educational opportunity exists for every child within a school system, then the courts will have no grounds for ordering continued forced busing of black and whites against their will.

Q. Is there any merit in voluntary programs such as that proposed by the government for St. Louis, which would give college-tuition payments to those who participate in busing programs?

A. Yes. Voluntary or incentive or options approaches are the best vehicles for achieving integration. Furthermore, you might try magnet schools—where those desiring college-preparatory instruction go to particular schools, those interested in technical education go to other schools, and those in the arts to still other schools.

But if we are not willing to try the incentive or voluntary approaches, then we must ask whether society would next adopt other unacceptable authoritarian programs. I definitely recommend the nonauthoritarian approach to integration as long as all students are guaranteed an equal opportunity to receive a quality education.

(Interview With William L. Taylor)

No—"Busing has been a very useful tool in correcting wrongs."

Q. Mr. Taylor, why do you favor the continuation of school busing?

A. First of all, it is a matter of the Constitution and the laws of this country. The Supreme Court has found that busing is an indispensable tool in some communities to eliminate the wrong that has been done to minority students through enforced segregation.

Secondly, despite all the furor over it, busing has been a very useful educational tool, as well as a legal tool in correcting wrongs. Researchers tend to agree that when you establish classrooms in which advantaged children are in the majority, there is a favorable educational environment for all children. Busing makes this possible.

Q. How do you answer the objection that parents of bused children are unable to participate in the activities at distant schools and bused students cannot engage in extracurricular programs?

A. Those claims are not generally true. After the Charlotte-Mecklenburg, N.C., busing plan was put into effect, for example, 10,000 parent volunteers came into the schools—far more than before. Black parents in other communities have told me that while the black school was closer, they actually felt more involved, more able to have an influence on the education of their children in the integrated schools. It is physically inconvenient in some cases, but that is not the only factor.

Q. What about incidents of racial strife?

A. When desegregation begins, sometimes there is conflict. But when you look at these communities a few years later, you often find there has been a large degree of acceptance.

Q. Haven't blacks who stayed in neighborhood schools done as well academically as those who were bused?

A. There is a good deal of evidence to the contrary. One researcher who is hostile to desegregation examined a voluntary program in Boston some years ago. He found that black children who went from the central city to suburban schools were getting into better colleges and doing better than black children who went to city schools.

In Louisville, Ky., despite substantial conflict as a result of busing, black students have made significant gains in achievement. And white students' education has not suffered in any way.

The desegregation process is giving people the chance to participate fully in this country, to realize their own potential. And that, I think, is what it's really all about.

Q. Aren't some inner-city schools becoming more black and some suburban schools more heavily white, despite busing?

A. The most successful programs involve a metropolitan area or county. That is true in many parts of the South, including all Florida counties, the city of Charlotte and Mecklenburg County, the city of Nashville and Davidson County, and Louisville. In these places, desegregation has not led to white flight.

As to Northern cities, the move toward suburbanization has been going on for 40 or 50 years. But if you look at two cities, one in which desegregation has occurred and one in which it has not occurred, five years after the desegregation order you're likely to see the same patterns of migration.

So if we're concerned about racial apartheid in our metropolitan areas, the answer is not to limit school desegregation but to do something about the basic conditions that give rise to apartheid.

Q. Should the courts take more-drastic steps, such as requiring busing between suburban and city school districts?

A. Well, if you prove there has been widespread deliberate segregation, you will get that kind of a remedy. The Supreme Court has ruled that not only must it be proved that segregation occurred, but also that it affected the whole metropolitan area. That's been proved in Wilmington, Del., and Indianapolis. It has not been proved to the Court's satisfaction in a couple of other cases, principally Detroit and Atlanta.

Q. In view of antibusing sentiment in Congress and President Reagan's opposition to busing, is there really any likelihood of strengthening busing laws?

A. Frankly, I don't think there's much prospect of a legislative remedy right now. Indeed, there are initiatives to try to cut back, through the use of legislation or constitutional amendments, the remedies that the courts have afforded.

The time of greatest progress in this country was when the courts, Congress and the executive branch all worked together in the 1960s, and recognized that this isn't just a political popularity contest. These issues are crucial to the future of our country.

Q. How practical is the Justice Department's proposal for St. Louis, which would give college-tuition payments to those who volunteer to be bused out of their neighborhoods?

A. Generally speaking, voluntary measures are certainly to be welcomed. The Justice Department plan draws on a Wisconsin statute that provides reimbursement both to school districts that send students, and school districts that receive students. That has had modest success in Wisconsin. In St. Louis, the added wrinkle is the tuition payments to students. There are all kinds of questions of equity than can be raised. What about students who are not college bound? I don't think anyone expects that it will deal with the basic condition of segregation that exists in that metropolitan area.

There are a number of voluntary efforts that have proved very useful. In Boston, there is a program under which some 3,000 minority students of all incomes have enrolled in suburban schools. There are counterparts in Connecticut, Rochester, N.Y., and other places. But these programs are not equitable in the sense that white students don't enroll in minority schools.

(By request of Mr. MATTINGLY, the following statement was ordered to be printed in the RECORD:)

● Mr. NICKLES. Mr. President, I rise in support of amendment No. 69 which states that the Department of Justice cannot use any of the sums authorized by this act to require the transportation of any student to a school other than the one closest to his own home, unless the student has special educational needs.

I believe, Mr. President, that despite the good intentions behind the court decisions and legislation of the last 27 years that have required busing for the purpose of desegregation, the overall result of such a policy has been failure.

However, I do not stand here just to represent my own thoughts on this matter. Public opinion polls on this issue have made an interesting statement on behalf of the American people in regard to integration and the use of busing to achieve that end, an ever growing number of Americans believe that a good education means one which brings together students of all races. In other words, Americans favor integration. Yet, there is substantial opposition to busing as the means to achieve desegregation in the school system. Why?

Because busing has not proven to bring enough gains toward the end goal of desegregation to offset the costs of this policy.

The price has included such things as higher transportation costs as Senator HELMS pointed out in his remarks on Tuesday. At a time when inflation and escalating oil prices are driving up such costs for the schools anyway, this burden becomes very heavy. Yet, such a financial burden might be affordable if the results of busing were positive. But they are not.

Instead of concentrating on improving the quality of education that all students receive, all those involved with education—students, parents, teachers, and administrators—are coping with the loss of the neighborhood school, community fragmentation and polarization, and racial quotas.

No wonder the public schools are in turmoil. No wonder student achievement tests are declining. We have, in effect, told them that their priority is not education, it is getting the right numbers of blacks and whites.

I believe that it is time to recognize that we have made a mistake. Busing has not proven to be the answer to the common goal of integration. There have got to be other incentives and ways. It is time to assist schools in their efforts at education, not put roadblocks in their path. Therefore, I support this amendment which limits the Department of Justice's activities in regard to busing.●

(By request of Mr. CRANSTON, the following statement was ordered to be printed in the RECORD:)

● Mr. HART. Mr. President, I support Senator WEICKER's amendment to provide that nothing in this legislation will limit the Department of Justice or the courts of the United States from fully enforcing the Constitution. It is a necessary amendment because the amendment of Senator HELMS would impose an unprecedented prohibition on the Government's ability to enforce our Constitution and civil rights acts.

I oppose the Helms amendment because it would prohibit the Justice Department from bringing any type of action which could result in a judicial order requiring busing.

But busing is not the real issue here. The real issue is whether Congress can prevent the executive branch from carrying out its constitutional duty to enforce the Constitution and the laws of the United States.

For the last two decades the Justice Department has been the most important force for desegregation efforts. Statistics last year showed the Department has been responsible for 544 of the 711 school districts under desegregation orders. Although private litigants can still bring segregation cases, if the Justice Department cannot enter a case which could result in busing, there will in practice be very little prosecution. The constitutional prohibition against segregation will stand, but the means to establish the right, and the remedy, will be gone.●

Mr. THURMOND. I am now ready to yield back our time.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask that it be charged against my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Connecticut. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from California (Mr. HAYAKAWA), the Senator from Oklahoma (Mr. NICKLES), the Senator from New Hampshire (Mr. RUDMAN), the Senator from New Mexico (Mr. SCHMITT), the Senator from Wyoming (Mr. SIMPSON), the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Montana (Mr. MELCHER), the Senator from Ohio (Mr. METZENBAUM), the Senator from Arkansas (Mr. PRYOR), the Senator from Tennessee (Mr. SASSER), the Senator from Mississippi (Mr. STENNIS), the Senator from Massachusetts (Mr. TSONGAS), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

On this vote, the Senator from Colorado (Mr. HART) is paired with the Senator from Arizona (Mr. DECONCINI).

If present and voting, the Senator from Colorado would vote "yea" and the Senator from Arizona would note "nay."

On this vote, the Senator from Hawaii (Mr. MATSUNAGA) is paired with the Senator from Tennessee (Mr. SASSER).

If present and voting, the Senator from Hawaii would vote "yea" and the Senator from Tennessee would vote "nay."

Mr. ROBERT C. BYRD (after having voted in the negative). Mr. President, on this vote, I have a live pair with the distinguished Senator from Ohio (Mr. METZENBAUM). If he were present and voting he would vote "aye." I have already voted in the negative. I, therefore, withdraw my vote.

Mr. COHEN (after having voted in the affirmative). Mr. President, on this vote, I have a live pair with the distinguished Senator from Texas (Mr. TOWER). If he were present and voting he would vote "nay." I have already voted "yea." Therefore, I withdraw my vote.

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

The result was announced—yeas 30, nays 45, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—30

Baucus	Gorton	Mitchell
Boschwitz	Hatfield	Moynihan
Burdick	Heflin	Packwood
Chafee	Heinz	Pell
Cranston	Inouye	Percy
Dixon	Jackson	Pressler
Dodd	Kennedy	Riegle
Durenberger	Leahy	Sarbanes
Eagleton	Levin	Specter
Glenn	Mathias	Weicker

NAYS—45

Abdnor	East	Long
Andrews	Exon	Lugar
Armstrong	Ford	Mattingly
Baker	Garn	McClure
Bentsen	Goldwater	Murkowski
Biden	Grassley	Nunn
Boren	Hatch	Pro mire
Byrd, Harry F., Jr.	Hawkins	Quayle
	Helms	Randolph
Cannon	Hollings	Roth
Chiles	Humphrey	Symms
D'Amato	Jepsen	Thurmond
Danforth	Johnston	Warner
Denton	Kassebaum	Zorinsky
Dole	Kasten	
Domenici	Laxalt	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Robert C. Byrd, against.
Cohen, for.

NOT VOTING—23

Bradley	Melcher	Stafford
Bumpers	Metzenbaum	Stennis
Cochran	Nickles	Stevens
DeConcini	Pryor	Tower
Hart	Rudman	Tsongas
Hayakawa	Sasser	Wallop
Huddleston	Schmitt	Williams
Matsunaga	Simpson	

So Mr. WEICKER's amendment (No. 70) was rejected.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 169

(Subsequently numbered amendment No. 93.)

(Purpose: To forbid the Department of Justice from bringing or maintaining any action to require, directly or indirectly, the mandatory busing of schoolchildren)

Mr. HELMS. Mr. President, I sent to the desk an amendment and ask it be stated, an amendment to the amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 169 to amendment numbered 69.

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

Mr. WEICKER. Mr. President, will the clerk please read the amendment which has just been sent to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

In lieu of the language proposed to be inserted by the amendment of the Senator from North Carolina, insert the following:

minus $37,653,000;

(C) financial assistance to joint State and joint State and local law enforcement agencies engaged in cooperative enforcement efforts with respect to drug related offenses, organized criminal activity and all related support activities, not to exceed $12,576,000, and to remain available until expended: $50,229,100;

(D) 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 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.

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

The PRESIDING OFFICER (Mr. HEINZ). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, might I have the attention of the distinguished Senator from North Carolina, the author of the pending amendment, the Senator from Connecticut, who is on the floor, and other Senators, as well?

Mr. President, could we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, it seems unlikely to me, after consulting with several Senators, that we are going to be able to complete consideration of the Department of Justice authorization bill. Indeed, it seems unlikely that we are going to be able to dispose of this next amendment in the time that remains to us this afternoon. As a result, it is almost certain that we will be on this bill when the Senate reconvenes on Monday.

I understand that certain Senators might wish to have their amendments pending this afternoon for the balance of the time remaining to the Senate and on Monday morning when we return, if necessary. In order to provide a schedule of activities for the Senate that appears to accommodate the convenience of most Senators and to assure us of the most progress on this measure, I would like to propose this unanimous-consent request:

UNANIMOUS-CONSENT AGREEMENT

SENATE TO CONVENE AT 11 A.M. MONDAY

Mr. President, I ask unanimous consent that if and when the Senator from North Carolina withdraws his amendment, the Senator from Louisiana be recognized then to offer an amendment and that debate continue on that amendment until no later than 2 p.m. today, at which time the Senate would stand in recess until the hour of 11 o'clock a.m. on Monday next; that on Monday at 11 o'clock, after the recognition of the two leaders under the standing order and the recognition of any Senators under special orders which may be entered, there be a brief period for the transaction of routine morning business of not more than 30 minutes in length in which Senators may speak for not more than 5 minutes each; and that at the end of the period for the transaction of routine morning business on Monday, the Senate resume consideration of the pending amendment, which would be the Johnston amendment.

Mr. President, that is my request.

The PRESIDING OFFICER. Is there objection?

Mr. WEICKER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, might I just request of the majority leader, in view of the fact that we are confronted with the possibility of a traffic controllers strike and we may have difficulty getting back in here, that the consideration of the proposed Johnston amendment might not commence before 1 o'clock.

Mr. BAKER. Mr. President, I would be reluctant to do that. I do not think, as a practical matter, that we are going to have any votes much before that time. We have no time agreement except for what I have just provided as time for debate on the Johnston amendment this afternoon. There will be no time agreements on Monday.

But given the present state of affairs, let us see if this would suffice. I recognize the problem identified by the Senator from Connecticut and I will do my best to accommodate the schedule of every Senator, especially the disrupted schedule of Senators if that should occur. But I would not want to enter an order that it would be at 1 o'clock.

ORDER FOR RECOGNITION OF SENATOR ROBERT C. BYRD AND SENATOR BAKER ON MONDAY

Mr. President, before the order is granted, I ask unanimous consent that on Monday next there be a special order in favor of the distinguished Senator from West Virginia, not to exceed 15 minutes, and the senior Senator from Tennessee not to exceed 15 minutes.

The PRESIDING OFFICER. Does the Senator wish that incorporated in the unanimous-consent request?

Mr. BAKER. Yes.

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

Mr. BAKER. Mr. President, I thank the Chair. I thank the Senator from Connecticut, the Senator from North Carolina, and the Senator from Louisiana.

Mr. President, pursuant to that order, I suppose the next question is whether or not the Senator from North Carolina intends to withdraw his amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

VITIATION OF ORDER FOR THE RECOGNITION OF SENATOR JOHNSTON

Mr. BAKER. Mr. President, I ask unanimous consent that the order entered previously with respect to the recognition of the Senator from Louisiana (Mr. JOHNSTON) in the event that the amendment offered by the Senator from North Carolina was withdrawn, and all the other aspects of that order, be vitiated.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BAKER. Mr. President, I might say the reason for that is that I find that the arrangements that appeared to have been worked out for the Senator from Louisiana to offer an amendment instead of the amendment offered by the Senator from North Carolina did not materialize. Since the remainder of that order had been predicated upon a time agreement for the remainder of this day for debate on the Johnston amendment that will not be offered, I find it necessary to revise that request which I do in the following manner.

ORDERS FOR MONDAY

ORDER FOR RECESS OF THE SENATE UNTIL 11 A.M., MONDAY, JUNE 22, 1981

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 11 a.m. on Monday next.

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

ORDER FOR THE RECOGNITION OF SENATOR ROBERT C. BYRD AND SENATOR BAKER

Mr. BAKER. Mr. President, I ask unanimous consent that after the recognition of the two leaders under the standing order there be a special order for the recognition of the Senator from West Virginia (Mr. ROBERT C. BYRD) for not to exceed 15 minutes and the senior Senator from Tennessee (Mr. BAKER) for not to exceed 15 minutes.

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

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY, JUNE 22, 1981

Mr. BAKER. Mr. President, I ask unanimous consent that on Monday, after the execution of the time for Senators under the standing order and the special orders, there be a period for the transaction of routine morning business not to exceed 30 minutes in length in which Senators may speak for not more than 5 minutes each.

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

ORDER FOR THE SENATE TO RESUME CONSIDERATION OF S. 951, DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1981, ON MONDAY, JUNE 22, 1981

Mr. BAKER. Mr. President, I ask unanimous consent, then, that at the close of morning business the Senate resume consideration of the pending measure at which time the second Helms amendment just offered will be the pending amendment and that the Senator from North Carolina be recognized for the purpose of continuing that debate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I have no objection, I simply wish Senators to be alert to the last request that, namely, Mr. HELMS be recognized when the Senate resumes consideration of the Helms amendment.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. Does the Senator reserve the right to object?

Mr. JOHNSTON. Mr. President, reserving the right to object, I very much wish to be recognized to call up my amendment, but I recognize that I would probably not be recognized anyway, and I hope this matter can be worked out over the weekend so that we will know where we are going. So I shall not object.

Mr. BAKER. Mr. President, let me say, if I may, that I can assure the Senator from Louisiana that if he is the first Senator seeking recognition this Senator will urge the Chair, indeed, to the extent that I may do so insist that the Chair recognize whatever Senator first seeks that recognition on whichever side of the aisle he may be located, for nothing is more fundamental to the procedure of the Senate than equality of that opportunity and other opportunities that are jealously guarded by the rules.

When we were in the minority that right was always and unfailingly protected by the then majority, and I can

promise the Senator from Louisiana that I will protect that right on behalf of the present minority.

Mr. ROBERT C. BYRD. I have no objection. I applaud the distinguished majority leader for the position he has taken.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. JOHNSTON. Mr. President, reserving the right to objection, this is only for the purpose of telling the distinguished majority leader that he is entirely correct. He has been scrupulously fair in carrying out the rules and the spirit of the Rules of the Senate, and I meant the Senator no implication to the contrary.

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

Mr. BAKER. Mr. President, it is 5 minutes before 2 p.m., and it is my intention to shortly ask the Senate to go into recess. I see no purpose to be served by continuing this debate today.

HELMS AMENDMENT NO. 96

Mr. President, therefore, if there is no further need to debate the Helms amendment at this time, I ask unanimous consent that there now be a period for the transaction of routine morning business not to exceed 15 minutes in which Senators may speak.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee?

Mr. WEICKER. Mr. President, reserving the right to object, I did not understand in the initial request or the initial proposal of the amendment by the Senator from North Carolina whether he had asked for the yeas and nays on his amendment. This might be a suitable time to do that.

Mr. HELMS. The yeas and nays have not been requested I say to my friend, and I hope that they will not be requested so we can leave viable the possibility of working out something with the Senator from Louisiana. Of course, that is a determination to be made by each Senator.

Mr. WEICKER. I sat here patiently, while indeed I had no objection to the Senator calling up his amendment and was glad to hear about it and tried to accommodate him and the Senator from Louisiana had his amendment, and we had a meeting of minds that resulted in the determination, maybe, that the amendment of the Senator from North Carolina is superior to that of the Senator from Louisiana.

Things are rather fluid. They are rather fluid out there, and I am just one of those fellows who wishes to have his sights on something. I have a feeling that this is getting a little too fluid.

On the other hand, as I said, I was amenable to having a discussion here. I do not want to interfere with something.

Mr. HELMS. Mr. President, if the Senator will yield, the amendment that the Senator from Louisiana (Mr. JOHNSTON) wishes to propose is not a substitute. It is a second-degree amendment.

Mr. WEICKER. I understand that.

Mr. HELMS. But the Senator used the word "substitute."

Mr. WEICKER. I agree with the Senator on that.

Clearly, whether it is the amendment of the Senator from North Carolina or the amendment of the Senator from Louisiana, it then makes what is referred to as the Helms amendment unamendable. That is what we are referring to.

Mr. HELMS. Of course.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee?

Mr. WEICKER. Mr. President, I wonder if the majority will suspend for 30 seconds while I consult with my staff on this. This is new matter to me.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, let me say before we do discontinue this conversation that this request now pending is that there be a period for the transaction of routine morning business.

Mr. WEICKER. I have no objection to that.

Mr. BAKER. Mr. President, I restate that request at this time.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

The Chair hears none. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank the Chair for its action and for the deliberate manner in which it executed that action.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, there are a number of matters that may be disposed of which are housekeeping measures.

ORDER FOR SENATE OFFICIALS TO TAKE CERTAIN ACTION DURING THE RECESS

Mr. BAKER. Mr. President, I ask unanimous consent during the recess of the Senate over until Monday, June 22, that messages from the President of the United States and the House of Representatives may be received by the Secretary of the Senate and appropriately referred, and that the Vice President, the President pro tempore and the Acting President pro tempore be permitted to sign duly-enrolled bills and joint resolutions.

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

RECORD TO REMAIN OPEN UNTIL 5 P.M. TODAY

Mr. BAKER. Mr. President, I ask unanimous consent that the RECORD remain open until 5 p.m. today for the introduction of bills, resolutions, statements, petitions, and memorials.

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

ORDER THAT COMMITTEES HAVE UNTIL 5 P.M. TODAY TO FILE REPORTS

Mr. BAKER. Mr. President, I ask unanimous consent that all committees have until 5 p.m. this day to file reports.

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

ORDER FOR THE RECOGNITION OF CERTAIN SENATORS ON TUESDAY, JUNE 23, 1981

Mr. BAKER. Mr. President, I ask unanimous consent that after the recognition of the two leaders under the standing order of Tuesday, June 23, the following Senators be recognized for not more than 15 minutes each: Senators BOREN, BENTSEN, ROBERT C. BYRD, CRANSTON, CHILES, SASSER, MELCHER, PRYOR, BAKER, and STEVENS.

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

ORDER FOR RECOGNITION OF CERTAIN SENATORS ON WEDNESDAY, JUNE 24, 1981

Mr. BAKER. Mr. President, I ask unanimous consent that on Wednesday, June 24, after the recognition of the two leaders under the standing order, the following Senators be recognized for not to exceed 15 minutes: Senators BOREN, PROXMIRE, EXON, JACKSON, MITCHELL, RANDOLPH, METZENBAUM, DECONCINI, BAKER, and STEVENS.

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

HIGH INTEREST RATES

Mr. BOREN. Mr. President, again I want to take the floor today, as I have done on the past 3 days, to call the attention of my colleagues to the serious problem which exists in our country and the immediate threat posed to the health of key segments of our economy caused by the effect of high interest rates.

As I have indicated, I intend to speak each day until the administration and those responsible for making policy in this area come forward with a program to deal with what will become a serious and grave crisis in this country if we continue to put off action to head it off.

I am very pleased that my colleague, the Senator from Kentucky (Mr. FORD), announced today he would join me in this daily series of remarks on this subject on the Senate floor. It is my hope that other Members of the Senate, who feel as we do that a great crisis threatens if action is not forthcoming by the administration, will also join us in this effort to awaken the entire country to the problem posed in the short run by the effect of high interest rates in critical areas.

Mr. President, we cannot afford to close our eyes to the signs of the mounting danger. The signs are all around us. The withdrawal of depository reserves in the Nation's thrift institutions amounted to $28 billion in 1980, and have continued at

the same pace in the first quarter of 1981.

The second quarter figures will soon be out, and I expect them to be every bit as alarming as those which have preceded them.

This constitutes the greatest reduction of monetary reserves in the history of the United States.

High interest rates also have deprived all but a tiny percentage of the people of this Nation of an opportunity to buy a home or to conduct personal and business financial planning.

For example, the increase of mortgage interest rates from 9 to 14 percent in the last 5 years adds nearly a quarter of a million dollars on a $60,000 house with a 30-year mortgage—a quarter of a million dollars onto the cost.

Mr. President, I will not take much more time but I again point out to my colleagues that current interest rates have produced one of the deepest housing and industrial collapses since the 1930's. Homebuilders are experiencing the highest rate of bankruptcy in 45 years.

As I have already indicated, thrift institutions are suffering gigantic profit losses, and unemployment in the construction industry is now twice the national average.

How long will this go on. Mr. President, before all of us in this Congress and in the administration unite to take action?

I again urge the President, the Secretary of the Treasury, and the key economic advisers of the administration to take note of this emergent crisis and to take action before it is too late.

I yield the floor.

EXTENSION OF COMPLIANCE DATES FOR STEELMAKING FACILITIES

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3520.

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

H.R. 3530

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 3520) entitled "An Act to amend the Clean Air Act to provide compliance date extensions for steelmaking facilities on a case-by-case basis to facilitate modernization", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Dingell, Mr. Waxman, Mr. Scheuer, Mr. Luken, Mr. Walgren, Mr. Broyhill, Mr. Madigan, and Mr. Brown of Ohio be the managers of the conference on the part of the House.

Mr. BAKER. Mr. President, I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. STAFFORD, Mr. DOMENICI, Mr. CHAFEE, Mr. RANDOLPH, and Mr. MITCHELL conferees on the part of the Senate.

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

Mr. BAKER. I yield.

Mr. RANDOLPH. Ordinarily when conferees are appointed it is not a matter of comment by Senators in the Chamber. But this conference, which will attempt to cope with the problems of a steel industry that is in dire need of the opportunity to adjust itself and to not face the extreme costs of some $800 million within a bracket of time, is one where it is very important that the Senate conferees and the House conferees come to grips as quickly as possible with the differences in the bills.

The bills do not have differences, as I see it, that cannot be brought into a consensus. I am sure that the able Senator from Pennsylvania, as well as the 47 Members of the Senate steel caucus, who are very knowledgeable on the problems of the steel industry, will agree that this is a highly important matter. That is the reason I take the time to say that there are conferences that go on and on. This conference, as I see it, must come to a very quick decision. I think there is no problem in doing that, but I just say for the RECORD that this industry needs that which will come to it from the passage of this legislation in its final form.

The PRESIDING OFFICER (Mr. ABDNOR). The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, will the Senator yield? I would like to associate myself with the comments of my good friend and colleague, the senior Senator from West Virginia. I also want to thank him and the chairman of the committee, Senator STAFFORD, for the very thoughtful, considerate but, nonetheless, expeditious way in which the Environment and Public Works Committee has handled this legislation.

The Senator from West Virginia is entirely correct in saying that the passage of this legislation is of a very urgent and timely nature. The fact of the matter is that there are differences between the House and Senate bills. In this Senator's judgment they are not major differences, they are not insuperable differences by any means, and with good fortune and good will on both sides we should be able to resolve those differences quickly and fairly to all sides.

It would be this Senator's hope, as expressed by the Senator from West Virginia, that we might indeed see progress and, hopefully, things can move along with such rapidity that we might even get a conference report before we go out for the July 4 recess. That would be extremely helpful.

Mr. RANDOLPH. We must do that. I say this with the majority and minority leaders on the floor at this time, both of whom are knowledgeable in the field of which we speak.

They are members of the Senate steel caucus and they know the facts. It is a situation which calls for action within the Senate which, in no wise, would tear down any legislation that is on the books. It was agreed to through the labor unions, through the environmentalists, through the operating companies, and carefully considered within our committee, as you know, as well as on the other side of the aisle. The very able chairman of our Committee on Environment and Public Works, Senator STAFFORD, has been instrumental in moving this legislation forward. His knowledge of environmental matters and his cooperation have enabled us to bring this measure to within one step of becoming law.

This legislation is necessary for a strengthened steel industry so vital to America.

Mr. HEINZ. Mr. President, if the Senator will yield further, I think the Senator is entirely correct.

I will not detain the Senate longer, except to say that the consequences of not passing this bill and getting it to the President just as quickly as possible could be extremely severe. We are talking about an extension of the deadline that is not very far away. Without the extension of that deadline, the fact is that the steel industry will be without the capital to modernize and become more competitive. And, subject as we are to increasing international competition, it becomes a matter of absolute survival of the steel industry as we know it today to get rapid action on this. Otherwise, even if the Senate and the House should agree and extend this deadline some date into the future, it would not do any good. The time for action is now.

I concur with everything the Senator from West Virginia has said.

Let me just say, on a personal note, that I just greatly appreciate everything the Senator from West Virginia has done to move this bill ahead. He has been in the forefront of the negotiations that took place last year between the Carter administration and the steel workers, the environmentalists, and the industry. I think it is fair to say, Mr. President, that without his able guidance and support and his able chairmanship of the steel caucus and his tremendous continuing interest in this matter, we would not be at the happy point today that we could be having this colloquy.

Mr. RANDOLPH. Mr. President, I think it is important for me to say that I am interested in the cooperative effort of the Senate on a matter of this kind. The work that has been done has not been done in the spirit of a section of the country. But with this industry facing up to an expenditure of $800 million if action is not taken now, that would not be in the best interest of the steel industry which, frankly, could not do the job in that time frame and at the same time carry out needed modernization. It would not be in the best interest of the United States.

And in a spirit of comity, but more in a spirit of unity and the desire to serve through this body and the other body, the best interest of the economy of America, I hope we will act and act quickly.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, could I inquire of the distinguished minority

leader if he might be in a position on his side to consider further nominations on today's executive calendar? I would invite his attention to the following nominees: Calendar Order No. 218, Thomas O. Enders, who I believe he indicated was cleared on his calendar this morning and has just been cleared on our side; all of the nominations appearing on page 3 under new reports, and on page 4 under U.S. Army, and all of the nominations placed on the Secretary's desk in the Air Force and Navy.

Mr. ROBERT C. BYRD. Mr. President, the nominations referred to by the distinguished majority leader have been cleared with the minority and is ready to proceed.

Mr. BAKER. I thank the minority leader.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of considering those nominations.

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

DEPARTMENT OF STATE

The assistant legislative clerk read the nomination of Thomas O. Enders, of Connecticut, to be an Assistant Secretary.

FEDERAL MARITIME COMMISSION

The assistant legislative clerk read the nomination of Alan Green, Jr., of Oregon, to be a Federal Maritime Commissioner.

DEPARTMENT OF THE INTERIOR

The assistant legislative clerk read the nomination of Daniel N. Miller, Jr., of Wyoming, to be an Assistant Secretary.

Mr. McCLURE. Mr. President, on June 18, the Committee on Energy and Natural Resources favorably reported the nomination of Daniel N. Miller, Jr. to be Assistant Secretary of the Interior for Energy and Minerals. The vote was 20 to 0. The committee's vote followed a nomination hearing held on June 16.

I am pleased to note, Mr. President, that Dr. Miller is very well qualified to be Assistant Secretary of the Interior for Energy and Minerals. He has been educated and trained as a petroleum geologist. Since 1969 he has served as the State geologist of Wyoming. In that capacity, he was also director of the Wyoming Geological Survey and a commissioner on the Wyoming Oil and Gas Conservation Commission. From 1963 to 1969 Dr. Miller was a professor of geology and chairman of the department of geology at Southern Illinois University. He also has 10 years of experience in the petroleum industry as a geological consultant and a senior exploration geologist.

Dr. Miller's educational background is particularly well suited to the position he will hold. He holds B.S. and M.S. degrees from the Missouri School of Mines and Metallurgy, and a Ph. D. degree with a major in geology from the University of Texas.

In his testimony before the committee, Dr. Miller expressed a realistic view of the challenges he will face when he assumes his new duties. He stated:

I have no simplistic solutions with regard to our national energy and mineral strategy, and I have no misconceptions about the complexities of the problems involved. But, as Assistant Secretary for Energy and Minerals, I can assure you that I will pursue this subject with vigor to make certain that Government is not the problem.

Dr. Miller also referred to several basic policy objectives that he regards as positive steps that can lead to a sound fuel and minerals policy. He told the committee:

In the short time I have been associated with the Department of the Interior, I have had an opportunity to see a few of the programs that relate to changes in regulatory reform, land management policies, and accelerated leasing schedules. In my view, these programs and a series of bills expected to be introduced during the 97th Congress are the first positive steps that the Nation has taken in years that directly address the energy and minerals issues before us. They can lead to a better understanding of our overall national resource position, and, from there, hopefully to a strong but flexible fuel and minerals strategy that will sustain a growing economy. I concur with these objectives, and the programs to implement them will receive my complete support.

Mr. President, on behalf of the Committee on Energy and Natural Resources, I am very pleased to recommend Senate approval of the Presidential nomination of Daniel N. Miller for the position of Assistant Secretary of the Interior for Energy and Minerals.

DEPARTMENT OF ENERGY

The assistant legislative clerk read the nomination of Shelby Templeton Brewer, of Maryland, to be an Assistant Secretary; and J. Erich Evered, of Nevada, to be Administrator of the Energy Information Administration.

NOMINATION OF SHELBY T. BREWER TO BE AN ASSISTANT SECRETARY

Mr. McCLURE. Mr. President, the nomination of Shelby T. Brewer to be Assistant Secretary of Energy for Nuclear Energy was favorably reported on June 18 by the Committee on Energy and Natural Resources. The vote was 20 to 0. Dr. Brewer's nomination hearing was held on June 16. He has fully complied with the committee's rules requiring submittal of a detailed information statement, and I am prepared to recommend Dr. Brewer's confirmation.

Dr. Brewer most recently has served as Director, Office of Plans and Evaluation, Office of Nuclear Energy in the Department of Energy. In this capacity, he has been responsible for strategic, implementation, and fiscal planning for nuclear fission energy programs in DOE. Before the creation of DOE in October 1977, Dr. Brewer served as chief of program planning and assessment in the liquid metal fast breeder reactor program in the former Energy Research and Development Administration. From 1971 to 1975, Dr. Brewer was a manager in U.S. civilian nuclear power programs in the Atomic Energy Commission. He was a consulting engineer at Stone & Webster, responsible for reactor containment design, from 1968 through 1971.

From 1964 through 1968, Dr. Brewer held a number of positions on the staff at the Massachusetts Institute of Technology, including director and chief project engineer for the organic reactor project, and research associate for the fast reactor test facility.

From 1960 through 1964, Dr. Brewer served as an officer in the U.S. Navy. For two of these years he was in charge of a division aboard the aircraft carrier U.S.S. *Randolph*. From 1962 to 1964, he served as director of the Departments of Nuclear Reactor Physics and Nuclear Reactor Engineering at the U.S. Naval Nuclear Power Staff in New London, Conn.

Dr. Brewer received his B.A. degree in humanities from Columbia University in 1959 and his B.S. degree in mechanical engineering from the same institution in 1960. He received his M.S. and Ph. D. degrees in nuclear engineering from the Massachusetts Institute of Technology in 1966 and 1970, respectively. Dr. Brewer is a member of the American Nuclear Society, Sigma XI, and the American Association for the Advancement of Science. He is the author of numerous papers and articles in the fields of fission reactor physics and engineering, strategic energy planning, and management control.

It is evident from Dr. Brewer's professional background that he has both technical expertise and substantial management experience. He is highly qualified for the position of Assistant Secretary for Nuclear Energy.

Dr. Brewer will be responsible for the planning and implementation of DOE programs for civilian nuclear reactor research and development. He will also plan and manage the naval reactor development program. In addition, the Office of the Assistant Secretary recently has been given new responsibilities. When the DOE was reorganized earlier this year, the Office of Uranium Resources and Enrichment was transferred to the Assistant Secretary for Nuclear Energy.

The responsibilities of the Assistant Secretary are obviously very demanding and very challenging. I am confident, Mr. President, that Dr. Brewer has the background and the ability to carry out those responsibilities with the degree of vigor and considered judgment that they demand.

During his testimony before the committee, Dr. Brewer expressed his views about the appropriate role of the Federal Government in the continuing development of our commercial nuclear power industry. He also outlined the priorities that industry and the Federal Government should establish in undertaking the necessary development activities. Dr. Brewer stated:

Our priority goal must be to stabilize nuclear policy for periods of time commensurate with the long leadtimes characteristic

of nuclear technology. The U.S. Government role should be to create and sustain a policy environment in which long term objectives beneficial to the Nation can be achieved by the native genius in the private sector, which in turn must be a partner in defining and achieving these objectives. Nuclear power development should not be regarded indefinitely as the ward—the responsibility—of the Federal Government. The Federal Government should be a reliable partner, but not an indulging or nagging parent.

Where a Government role in research and development is necessary—as in long term, high risk, high national benefit programs beyond the normal planning horizon of the private sector—it should be conducted in accordance with the doctrine of "management by objective." That means that we should know where we want to go and when we want to get there before we set out on the journey. It means that all costs and effort charged to that objective must be relevant to that objective. It means that Federal programs and projects should be conducted by planning, budgeting, and management linked to well-defined national objectives, rather than bottoms-up service to a plethora of interesting, but sometimes peripheral research and development activities.

I suggest, then, that industry and the Federal Government focus sharply on a few large national objectives rather than a host of small disaggregated efforts which do not add up to a national mission. In my view, there are five overriding priorities:

1. to remove institutional and regulatory impediments constraining the continued deployment of the light water reactor;

2. to proceed deliberately and swiftly to fulfill the Federal Government's responsibility to safely dispose of high level wastes;

3. to stabilize Government policy concerning reprocessing of light water reactor spent fuel and to attract renewed commercial interest in this technology;

4. to proceed to scale up breeder technology to unit sizes of commercial applicability; and

5. to restore U.S. credibility and strength in international nuclear commerce.

Mr. President, on behalf of the Committee on Energy and Natural Resources, I am very pleased to recommend Senate approval of the Presidential nomination of Shelby T. Brewer for the position of Assistant Secretary of Energy for Nuclear Energy.

NOMINATION OF J. ERICH EVERED TO BE ADMINISTRATOR OF THE ENERGY INFORMATION ADMINISTRATION

Mr. McCLURE. Mr. President, on June 18 the nomination of J. Erich Evered to be Administrator of the Energy Information Administration of the Department of Energy was favorably reported by the Committee on Energy and Natural Resources. The vote was unanimous, 20 to 0. The committee's vote followed a nomination hearing held on June 16.

As Administrator of the Energy Information Administration of the Department of Energy, Mr. Evered would be responsible for the collection, analysis and publication of a broad variety of energy-related data for use within DOE, other executive departments and the Congress, and for use by the public. Included in the information collected by the EIA is data on reserves, production, demand and consumption of various forms of energy. The EIA obviously plays a vital role in the formulation of national energy policies.

Mr. Evered has extensive experience in the areas of energy resources technology and management, and he also has congressional experience. He is a petroleum engineer and geologist, having earned a combined degree in geological engineering from the University of Oklahoma in 1974. The degree program included training and field work related to coal, oil shale, uranium and other energy sources in addition to a concentration in oil and gas exploration and production technology. Since graduation he has worked for both a major oil company and an independent oil company. His responsibilities ranged from oil and gas reserve calculations to the design and supervision of drilling and well completions.

In 1976 Mr. Evered joined the Washington staff of the late Senator Dewey F. Bartlett of Oklahoma for the duration of the 95th Congress as his energy advisor and legislative assistant. In that role he analyzed and advised Senator Bartlett on the significant energy legislation being dealt with at that time. The legislation included the Natural Gas Policy Act, the Fuel Use Act, the Department of Energy Organization Act, the OCS Lands Act Amendments, and the Surface Mining Control and Reclamation Act. I note, Mr. President, that Mr. Evered had the opportunity to work closely with many members and staff of the Comimttee on Energy and Natural Resources, since Senator Bartlett was a committee member.

Upon Senator Bartlett's retirement, Mr. Evered left Washington to join CER Corp., an energy resource consulting and project management company based in Las Vegas, Nev. Directing the geologic and engineering staffs at CER, he managed projects involving oil and gas reserves and property evaluation, as well as research into technologies for development of tight sands gas resources.

Mr. Evered's background in the energy industry obviously will have substantial value as he carries out his duties as Administrator of the EIA. As he told the committee:

One of the most important attributes I will bring to the Energy Information Administration is a broad-based understanding of the energy industry. My positions have required an ability to develop and synthesize relevant and timely energy information in order to make political and corporate decisions—separate but similar decisionmaking processes. Having worked for a Senator during what many refer to as the "Energy Policy Congress," I have a clear understanding of the significant issues and believe that I can provide new insights to guide the analytical staff of EIA.

Mr. President, Mr. Evered has fully complied with the committee's requirement regarding submittal of a financial disclosure report and a detailed information statement. On behalf of the Committee on Energy and Natural Resources, I am pleased to recommend Senate approval of the Presidential nomination of J. Erich Evered for the position of administrator of the Energy Information Administration of the Department of Energy.

IN THE U.S. AIR FORCE

Lt. Gen. Bryce Poe II, U.S. Air Force to be general.

Lt. Gen. James P. Mullins, to be general.

IN THE ARMY

Maj. Gen. Sinclair Lewis Melner, to be lieutenant general.

Maj. Gen. Nathaniel Ross Thompson, Jr., to be lieutenant general.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE AND NAVY

The assistant legislative clerk read sundry nominations placed on the Secretary's desk in the Air Force and the Navy.

Mr. BAKER. Mr. President, I ask unanimous consent that the nominations just identified be considered and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

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

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

Mr. BAKER. Mr. President, I understand that the distinguished chairman of the Environment and Public Works Committee is on his way to the floor to discuss a matter in morning business. I, therefore, suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

COMMEMORATING THE 45TH YEAR OF THE RANDOLPH-SHEPPARD ACT

Mr. STAFFORD. Mr. President, JENNINGS RANDOLPH, one of the ablest Senators that I have ever been associated with in this body, was a Member of the U.S. House of Representatives some 45 years ago tomorrow, the 20th.

At that time, a very important bill was signed into law known as the Randolph-Sheppard Act, which principally established an opportunity for people who were handicapped in their eyesight to have business establishments, in effect, in the Federal buildings of this country.

Mr. President, June 20 marks the 45th anniversary of the signing of the Randolph-Sheppard Act by President Frank-

lin Delano Roosevelt. This act requires that priority be given to blind individuals in the operation of vending facilities in Federal buildings and on Federal properties. The law is a tribute to the efforts of my friend and colleague, Senator JENNINGS RANDOLPH of West Virginia, to provide economic opportunities to the blind citizens of this country. Throughout his long career in the Congress, JENNINGS RANDOLPH has worked to improve the lives of blind Americans.

JENNINGS RANDOLPH has always recognized that blind individuals have the same hopes and goals as sighted people. Blind citizens want to work and to contribute to their community. It is this recognition that has guided him throughout his legislative career and has prompted him to labor for legislative solutions to the challenges that face blind Americans.

Realizing that something needed to be done to provide blind persons with an opportunity to become a part of the American marketplace, on January 24, 1935, the then Representative RANDOLPH introduced H.R. 4688, the original blind vendor bill. The measure authorized the operation of vending stands in Federal buildings and was the first national placement program for blind individuals. He worked with the late Senator Morris Sheppard of Texas to assure that this legislation would become law.

On June 20, 1936, the bill was signed into law (Public Law 74–732) by President Franklin Roosevelt. In 1974, the West Virginian successfully guided passage of amendments designed to further clarify the priority to be given to the blind vendor, to establish guidelines for the operation of programs, to include provision regarding the sharing of vending machine income with the blind vendor, and to establish guidelines for the uniformity of treatment of blind vendors by all Federal departments and agencies.

This law today serves as a cornerstone in the rehabilitation programs for our blind citizens. Thousands of blind Americans have earned their livelihoods by operating facilities. In 1979, there were 3,960 Randolph-Sheppard operators. Gross sales for the program were $224,300,000, and the average vendor income was $13,400. This law assists blind individuals in becoming self-supporting, taxpaying citizens. It also provides a vital role in demonstrating to the public that blind persons are capable and productive workers. The Randolph-Sheppard Act has served to open the doors of both Government and industry to men and women with other handicaps.

For 45 years this program has served our country and its blind citizens well. Blind vendors return in taxes and economic activity far more than the initial small investment required to establish their business operation. The blind individual has the opportunity to contribute to not only his economic well being, but also that of the country.

As a former chairman of the Subcommittee on the Handicapped and now as ranking minority member of the subcommittee, JENNINGS RANDOLPH has continued his efforts on behalf of blind Americans. His belief in the capability of the individual, whether or not a disability is present, led him to work for the enactment of the Randolph-Sheppard Act, and this belief will continue to guide his actions on behalf of the handicapped in the future.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

"LUCKLESS STRANGER" OR "AMERICAN HERO"

Mr. MATHIAS. Mr. President, a few days ago I received a letter from Mr. James D. Robb of Centreville, Va., which was cosigned by 80 Maryland and Virginia friends and coworkers of Gilbert Layton, who was killed in an automobile accident May 22 near Bowie, Md. I bring this to the attention of the Senate for several reasons, but principally to note that Gilbert C. Layton, 51, of Crofton, Md., was a printer and photocompositor at the Government Printing Office, whose work included preparing and printing the CONGRESSIONAL RECORD.

Mr. Robb's letter, in addition to noting that Gilbert Layton, helped to publish the daily Journal of the Congress of the United States, expresses anguish and outrage over a feature article in the Washington Post of June 6, 1981, about the driver of the automobile which crashed head-on into Mr. Layton's car killing both drivers instantly. The Post story describes Mr. Layton only as "a luckless stranger" whose car happened to be on the wrong road at the wrong time.

In a letter to the editor of the Post, Mr. Robb and the friends and neighbors of Gil Layton, express their views on Chip Brown's story. It is not my intention to criticize Mr. Brown or the Post, but I think it is only just and right that Gil Layton not go to his grave unremembered. Because the CONGRESSIONAL RECORD was in effect Gil Layton's own newspaper, I would like to insert excerpts of Mr. Robb's letter in the RECORD at this point:

> Gil epitomized what President Reagan referred to when he referred to American heroes in his inaugural address. He was the type of hard working family man. He married his high school sweetheart. He learned his trade as a printer in a small weekly newspaper in his home state of New Jersey. He served his country, serving in the Korean Conflict. He was honorably discharged, reaching the rank of Tech Sergeant. He came to Washington seven years ago when he got an appointment at the Government Printing Office as a linotype operator. He moved over to the photocomposition division when the GPO converted most of its composition to computerized typesetting.
>
> I don't ever recall Gil losing his temper although I am sure that he must have. His quiet manner made him one of the most likable people one would ever want to meet. I honestly know of no one who disliked him.
>
> I am thankful that I had the privilege of knowing and working with him and his memory will always be with me.
>
> This is the man that should be on America's front pages.

ASSEMBLY OF THE NORTH ATLANTIC TREATY ORGANIZATION

Mr. MATHIAS. Mr. President, it was my great privilege to be a member of the delegation from the U.S. Senate which recently attended the Assembly of the North Atlantic Treaty Organization.

The Assembly, as Senators know, is a representative group of legislators from all of the partners in the NATO alliance who come together periodically to discuss the problems of the alliance from the perspective of the various parliamentary bodies within the NATO community.

This year the Assembly was held in Italy. It had an unusually large attendance, and I believe that the large attendance was the result of some concerns that were felt by the alliance partners.

There are times when the NATO meetings are imbued with a sense of confidence, with a sense of security, which results from our joint efforts, but this meeting was of particular importance because it touched upon some of the problems and insecurities of the alliance that have not yet been solved.

Mr. President, the alliance, of course, faces, with the rest of the world, the unprecedented challenges of our time. The global population, which is already at a historic high level, is still soaring and will continue to grow, perhaps by as much as 50 percent before the end of the century.

The natural resources of this planet are being exhausted.

Nuclear weapons are proliferating.

These are the common problems of mankind.

Within the NATO alliance we have some special difficulties. There is a gap in the perception of our intramural problems between those NATO partners who are located east of the Atlantic Ocean and those of us who are located west of the Atlantic Ocean.

For that reason, I believe that this year's NATO assembly was of special significance because it laid upon the table this difference of perception. Note, Mr. President, that I do not say difference of opinion, I say difference of perception. because I think that is, in large part, what is at stake. These issues are now visible for the partners to see, to examine, to further discuss and, most importantly, to resolve.

They lie, I think, particularly in two areas. One is the feeling among Europeans that the United States does not understand sufficiently the political necessity in Europe of an ongoing effort in the area of arms control. On the other hand, among Americans, there is the feeling that our friends in Europe have too little appreciation of the special economic problems that are plaguing the United States at this time.

These issues have been discussed in a very comprehensive and objective way in an editorial that appeared in The Economist on June 6, 1981. The Economist has

set forth the arguments with precision, and I believe that the editorial would be of great assistance to Senators as they contemplate the decisions that we must make this summer in connection with national defense and with the provision for the NATO alliance. We should all be aware of the arguments that the editors of The Economist have made.

Mr. President, I ask unanimous consent that the editorial from The Economist may be printed in the RECORD at this point.

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

DID YOU SAY ALLIES?

The relationship between western Europe and North America, alias the Atlantic alliance, is in the early stages of what could be a terminal illness. The alliance has been in trouble plenty of times before, but this time is the worst yet. Guess who says this about Europe:

"Yes, there is a danger of neutralism. It is the result of a desire to let go, of an immense weariness. That makes me despair."

No, not a right-wing American, but the new Socialist foreign minister of France. Mr. Cheysson was talking mainly about the British, but what he said applies to many other Europeans too. And the Americans should not think it is all the fault of the feeble Europeans. Seven months ago they dismissed their own ineffectual President Carter, but that has not solved their part of the problem. The new Reagan administration has started to rearm America, which is essential; but it has not yet produced a policy which will rally the alliance around a rearmed America.

Like most illnesses, what has gone wrong with the western alliance is the result of an underlying condition, an immediate cause, and an over-hasty diagnosis.

The underlying condition is (a) the fact that the growing strength of western Europe s economies in the 1960s and early 1970s never managed to embarrass the Europeans into taking a suitably larger share of the burden of the west's defences off the shoulders of the relatively declining American economy, so that (b), when everybody's economies ran into trouble in the later 1970s, the Europeans were so accustomed to low defence spending that they were desperately reluctant to buy more defence at the cost of less welfare. Their tongues talked of independence from America; their purses preferred continued dependence. The Europeans' faltering 1977 promise to raise defence spending by 3 percent a year was not enough to remove this valid cause of American complaint.

This underlying condition has now been inflamed by the immediate cause of the present problem. The two parts of the alliance have reacted in sharply different ways to the belated discovery that Russia has been piling up its own military strength for the past 15 years, and is willing to use it. The Americans, being the people they still are, have responded with a rearmament programme and a fuzzy cloud of anti-Soviet rhetoric. The Europeans, being the people circumstances have made them, have tended to mutter that the Soviet build-up may not mean what the Americans think it means or, if it does, that the Americans will have to cope with it. The result, in the Gulf and in the nuclear protection of Europe, is that Europe's economically unjustified military dependence on America is growing even more lopsided.

PUSHING EACH OTHER APART

Enter the over-hasty diagnoses. The conclusion hot-heated right-wing Americans draw from all this (including some people in the Reagan administration) is that Europe is defecting from the alliance. That is, at worst, an exaggeration. Mr. Cheysson is right, the ingredients of neutralism are there: a weary reluctance to make hard choices, a flinching away from nuclear problems, a consequent temptation to give Russia most of the benefit of the doubt. These things have eaten deep in Denmark, in Holland, perhaps in Belgium too. But in the big European countries neutralism is still confined to a minority inside the main parties of the left. Even in Britain, the battle for the Labour party is not yet won or lost. With good leadership, Europe's neutralism can be kept in its corner.

The opposite mis-diagnosis, by hot-headed left-wing Europeans, is that Mr. Reagan's America is charging off in pursuit of an ideologically Quixotic foreign policy. This too is hardly borne out by the evidence. Mr. Reagan was supposed to be pro-Israeli, but his administration's first actions in that part of the world have been to discourage an Israeli attack on Syria's missiles in Lebanon and to make a (botched) offer of reconnaissance aircraft to Israel-loathing Saudi Arabia. Mr. Reagan was supposed to be pro-South African, but he has merely offered the South Africans a concession or two on Namibia in the hope of speeding them out of that territory. Even in El Salvador he seems to have recognised that shouting at Russia is not enough to solve the problem. In only one important respect are those raised European eyebrows justified. The Reagan administration has a rearmament programme: but it has yet to reveal whether rearmament is meant to be part of a wider policy, or an end in itself.

The danger facing Mr. Reagan is that these two misdiagnoses will eventually prove each other right. The American, suspecting European betrayal, will veer away into an attempt to do everything themselves. The Europeans, not being sure where America intends to lead, will increasingly decline to follow. The two halves of the alliance are pushing each other apart. It is Mr. Reagan who has to take the lead in stopping this. No European politician—not the beleaguered Mrs. Thatcher, nor the tattered Mr. Schmidt, nor the brand-new President Mitterrand—can do it for him. Only Mr. Reagan has the necessary authority, because only the United States has the necessary reservoir of will. The attempt has to be made at once, before 1981 is out.

FIVE BRIGHT MEN TO START A REFORMATION

The first step is to find a kernel of transatlantic agreement. The best way of doing this is to appoint a small group of intelligent men known to, and trusted by, the main Nato government: say one American, a German, a Briton, a Frenchman (if Mr. Mitterrand is willing) and someone from a smaller Nato country.

These men should be neither current holders of high office, who are too busy, nor retired prime ministers, who will be too preachy. They should not, God forbid, be chosen because they are as acceptable in Copenhagen as in Washington. What they need to be is men who know the subject like the back of their hands, know the people they will be arguing with, and above all know their own minds. Their instructions will be to criss-cross the alliance for a couple of months, and then write a brief report (10,000 words maximum?) which sets out, not some bland consensus of what they have heard in 15 capital cities, but their own view of what needs to be done and what most of the alliance might just be persuaded to do.

The next step, when their report is ready, is for President Reagan to call a summit meeting either of the whole alliance or—perhaps better at this stage of the proceedings—of its four or five biggest members (again including France if Mr. Mitterrand is willing). With that 10,000-word report as a starting-point, he would ask his fellow-summiteers to draw up a short list of proposals which would amount to a radical reform of the Atlantic alliance. This would involve some uncomfortable decisions for both the Americans and the Europeans. Here are three suggestions for the reformation programme.

First. The statistics of the Soviet military build-up make it clear that the Americans are right to urge more counter-armament. But the Europeans who are thus being urged to accept more taxes and/or less welfare are entitled to insist that this should be only one component of a wider policy designed to ensure, if humanly possible, that the need to rearm has some limits. The Europeans may be realising that the cheap and easy postwar period is finally over; but they want to be reassured that this is not the start of a pre-war period.

This does not mean resuming the whole range of detente-era negotiations with Russia, most of which either helped Russia or achieved nothing. It probably does mean resuming the Salt nuclear-weapons negotiations. If the Reagan administration could show that, without Salt, the United States would be able to recapture the sort of nuclear superiority it possessed in the 1950s, a lot of Europeans would be relieved to return to the shade of that nuclear umbrella. But if you look at the sort of nuclear weapons that America can build over the next 10 years (and those Russia can build), it seems almost impossible that the easy superiority of the 1950s—when America could hit Russia without being seriously hit back—can be recaptured.

Mr. Jimmy Carter's abortive Salt-2 treaty—which gave Russia at least a theoretical chance of hitting America without being hit back—has to be put right. But if the 1950s cannot come again, next year should see the start of a new Salt negotiation that will ratify something like nuclear equality: a state of mutual nemo me impune lacessit. That will limit the amount of money that has to be spent on new nuclear arms (thereby making more available for non-nuclear ones). It will also keep alive the hope that, one day, a more amenable Russia can be talked to about other things as well.

2. But nuclear equality means that Russia cannot be allowed to have superiority in the non-nuclear weapons which nuclear equality enables it to use. The Europeans have to take a fairer share of the cost of the rearmament programme this calls for. The table on this page shows how unequally the weight now falls on American shoulders. The load has to be redistributed. The rational way of doing this is not an annual squabble about some annual percentage increase in every country's existing defence budget. That merely perpetuates the present imbalance.

The rational way is to sit down and start again from scratch, trying to agree how big an army, navy and air force "the west" would need to defend its territory, and to protect its vital interests outside that territory, if "the west" were a single unit. That should probably include the protection of the west's oil lifeline from the Gulf, since the Americans will not forever go on making a large (even if diminishing) contribution to the defence of Europe itself if the Europeans will make no contribution to the protection of the area from which America now gets only 10% of its oil but western Europe gets 60%. When the total military requirement is known, it should be possible to start making a more sensible allocation of the jobs to be done, and the cost of doing them, among the countries that make up "the west". It would be idle, of course, to expect a share-out of computer-like rationality. But something rather more computer-like than today's higgledy-piggledy Nato should be attempted.

3. If the Europeans are to put up more money for guns, however, they will want a bigger voice in the making of the policies which those guns ultimately serve. To quote the eloquent Mr. Cheysson again: "For pity's sake, let us talk about what we are and what we fight for".

The Reagan administration has promised to consult its allies, but all administrations promise that. A mechanism is needed to make consultation inescapable. One possibility is a series of ad hoc working groups, like the five-country committee (from America, Britain, France, West Germany and Canada) which has been negotiating with South Africa about Namibia. Another idea is a small permanent secretariat, consisting of fairly senior officials from the foreign, defence and economics ministries (and intelligence agencies?) of the four or five main members of the alliance. Such a body would not need to have an office in one particular capital; consultation can be done by electronics nowadays. The details of the mechanism are not difficult to work out. But first it has to be accepted that "consultation" means something more regular and rigorous than today's system of voluntary exchanges between foreign ministries which too often find themselves snapping their fingers and crying, "Ah! I meant to tell you!"

An alliance reformed along these lines would give both parts of it what they chiefly want. The Americans would have a heartier European shoulder behind the military wheel. The Europeans would have a better idea of where the wheel was rolling. Each would mistrust the other less. Let President Reagan address himself to it in the second half of 1981.

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

POSSIBILITY OF AIR TRAVEL DIFFICULTIES

Mr. BAKER. Mr. President, I think the Senate is about ready to stand in recess now. Under the order previously entered, we shall shortly recess until 11 a.m. on Monday next.

I take this opportunity to remind all Senators that there is a distinct possibility of an interruption in air travel over the weekend as a result of a possible strike of the air controllers to begin Sunday night. I urge Senators to take account of that prospect in making their travel plans, especially those plans to return to the city.

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

Mr. BAKER. Yes, I yield, Mr. President.

Mr. MATHIAS. I listened with great care to his warning about travel arrangements and I wish to assure the majority leader that the Senator from Maryland will have minimal difficulty with air travel in his return to the capital on Monday morning.

Mr. BAKER. Mr. President, as usual, the Senator from Maryland has set an example for the rest of us to follow.

However, I do urge Senators to take account of the fact that there may be a controller strike on Monday morning and to try to arrange their travel plans so they may return to the city in time for the beginning of the session of the Senate at 11 a.m. on Monday. If any Senator on this side of the aisle has difficulty in returning to the city, I very much hope that Senator will notify the leadership so we can have a good account of where our Members are and to do the best we can to try to minimize the absentee list.

PROGRAM FOR NEXT WEEK

Mr. BAKER. Mr. President, on Monday at 11 o'clock, after the recognition of the two leaders under the standing order, there is an order for the recognition of the Senator from West Virginia (Mr. ROBERT C. BYRD) and the Senator from Tennessee (Mr. BAKER) for not to exceed 15 minutes each. Following that, there will be a period for the transaction of routine morning business.

DEPARTMENT OF JUSTICE AUTHORIZATIONS

Following that, Mr. President, according to the order previously entered, I believe the Senate will automatically resume consideration of Calendar Order No. 118, the Department of Justice authorization bill. At that time, Mr. President, the Senator from North Carolina will be recognized to resume debate on his amendment No. 96, which is an amendment to his underlying amendment No. 69. I hope that the Senate can complete action on the Department of Justice authorization bill sometime during the day on Monday.

BUDGET RECONCILIATION

On Monday, or perhaps on Tuesday but more probably on Monday, it will be the intention of the leadership on this side to ask unanimous consent or, if necessary, to move to consideration of the budget reconciliation bill, S. 1377, Calendar Order No. 171. There is a statutory time limitation on that bill of 20 hours and all Senators are urged to take account of the several provisions relating to the special nature of a reconciliation bill before the Senate. I expect, Mr. President, that those 20 hours will be consumed, and the Senate will proceed to the passage of the budget reconciliation bill sometime on Thursday or Friday, certainly. In any event, it is my determination to finish the reconciliation bill before we adjourn for the Fourth of July recess.

FARM BILL

Mr. President, it is my hope as well that, after consulting with the minority leader and assuming that a satisfactory arrangement can be made, we can set a time certain for passage on the budget reconciliation bill and then to lay down the farm bill and make it the pending business, at least for opening statements, with the full expectation that the farm bill will still be pending when we return from the Fourth of July recess. Senators will be apprised of the business of the Senate for a reasonable period of time in advance under that arrangement. I shall confer with the minority leader in the course of the day on Monday on these matters. I expect to have a further announcement to make during the day on Monday after these conferences have been undertaken.

RECESS UNTIL MONDAY, JUNE 22, 1981, AT 11 A.M.

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 Monday next.

There being no objection, the Senate, at 2:37 p.m., recessed until Monday, June 22, 1981, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate June 19, 1981:

COUNCIL OF ECONOMIC ADVISERS

Jerry L. Jordan, of New Mexico, to be a member of the Council of Economic Advisers, vice Stephen M. Goldfeld, resigned.

IN THE AIR FORCE

Lt. Gen. William H. Ginn, Jr., U.S. Air Force (age 52), for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 8962.

The following-named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert W. Bazley, [redacted] FR, U.S. Air Force.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 19, 1981:

DEPARTMENT OF EDUCATION

Vincent E. Reed, of the District of Columbia, to be Assistant Secretary for Elementary and Secondary Education, Department of Education, vice Thomas Kendall Minter, resigned.

William C. Clohan, Jr., of West Virginia, to be Under Secretary of Education, vice Steven A. Minter, resigned.

DEPARTMENT OF STATE

Thomas O. Enders, of Connecticut, a Foreign Service officer of the class of Career Minister, to be an Assistant Secretary of State, vice William Garton Bowdler, resigned.

SMALL BUSINESS ADMINISTRATION

Paul Robert Boucher, of Virginia, to be Inspector General, Small Business Administration (reappointment).

DEPARTMENT OF ENERGY

Shelby Templeton Brewer, of Maryland, to be an Assistant Secretary of Energy (Nuclear Energy), vice George W. Cunningham, resigned.

DEPARTMENT OF THE INTERIOR

Daniel N. Miller, Jr., of Wyoming, to be an Assistant Secretary of the Interior, vice Joan Mariarenee Davenport.

FEDERAL MARITIME COMMISSION

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

DEPARTMENT OF STATE

Ernest Henry Preeg, of Virginia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Haiti.

DEPARTMENT OF EDUCATION

Kent Lloyd, of California, to be Deputy Under Secretary for Management, Department of Education, vice John B. Gabusi.

DEPARTMENT OF STATE

Theodore E. Cummings of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Austria.

DEPARTMENT OF EDUCATION

Robert Melvin Worthington, of Utah, to be Assistant Secretary for Vocational and Adult Education, Department of Education, Vice Daniel B. Taylor, resigned.

DEPARTMENT OF STATE

Robert Sherwood Dillon, of Virginia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lebanon.

Charles H. Price II, of Missouri, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Belgium.

Maxwell M. Rabb, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Italy.

DEPARTMENT OF ENERGY

J. Erich Evered, of Nevada, to be Administrator of the Energy Information Administration, vice Lincoln E. Moses, resigned.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

DEPARTMENT OF THE TREASURY

Ann Dore McLaughlin, of the District of Columbia, to be an Assistant Secretary of the Treasury, vice Joseph Laitin, resigned.

Peter J. Wallison, of New York, to be General Counsel for the Department of the Treasury, vice Robert H. Mundheim, resigned.

IN THE 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. Sinclair Lewis Melner, xxx-xx-x... xxx... U.S. Army.

IN THE AIR FORCE

General Bryce Poe II, U.S. Air Force (age 56), for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 8962.

The following-named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be general

Lt. Gen. James P. Mullins xxx-xx-xxxx FR, U.S. Air Force.

IN THE 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. Nathaniel Ross Thompson, Jr., xxx-xx-xxxx U.S. Army.

NUCLEAR REGULATORY COMMISSION

Nunzio J. Palladino, of Pennsylvania, to be a member of the Nuclear Regulatory Commission for the term of 5 years expiring June 30, 1986, vice Joseph Mallam Hendrie, term expiring.

TENNESSEE VALLEY AUTHORITY

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, vice Robert N. Clement, term expired.

IN THE AIR FORCE

Air Force nominations beginning Irving Freedman, to be lieutenant colonel, and ending James W. Fischer, to be lieutenant colonel, which nomination were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 9, 1981.

Air Force nominations beginning David C. Billow, to be lieutenant colonel, and ending Calvin M. Ichinose, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 9, 1981.

IN THE NAVY

Navy nominations beginning Ronald J. Abler, to be commander, and ending Mabel L. Wallis, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 9, 1981.

Navy nominations beginning Bruce R. Dailey, to be ensign, and ending Robert T. Dufort, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 9, 1981.