SENATE—*Friday, July 31, 1981*

(Legislative day of Wednesday, July 8, 1981)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

Let us pray.

Father God, who *setteth the solitary in families*—Psalms 68: 6—we pray for our families who are often the casualties of the demands of public life. We pray for wives who must often suspend plans indefinitely and simply wait for a word from busy husbands. Help them, when despite their willingness to accept the situation, they experience disappointment and resentment. We pray for children who are unable to understand a father's frequent absence, who have not learned to appreciate the significance of his position, do not think of him as an important leader but simply as an absent parent, feel neglected and sometimes rebellious.

Grant to the good and faithful men and women who work here sensitivity to their loved ones and wisdom and grace to fulfill their private obligations as well as their public duties.

For Jesus' sake. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

THE JOURNAL

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

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

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I might say that today perhaps will be a busy day. I expect that at some point during the day when it is convenient to Senators, I shall ask the Senate to go into executive session to consider the nomination of Rex Lee, to be Solicitor General, on which a rollcall vote has already been ordered.

Mr. President, in addition to that, I expect that at some point today, most likely very soon—not at this moment, however—pursuant to the unanimous-consent order granted on last evening, I will ask the Chair to lay before the Senate the message from the House on the tax bill for the purpose of appointing conferees.

In addition to that, Mr. President, I expect that sometime today we will receive a message from the House in respect to the reconciliation conference report. It will be the intention of the leadership to wait until that is done and to dispose of that issue today.

Mr. President, in respect to the further activities of the Senate today or tomorrow, or Monday or Tuesday, I hope to be able to make a further announcement as soon as certain meetings are held with Senators and with Members of the other body, particularly Chairman ROSTENKOWSKI, relating to the time for the conference on the tax bill and the schedule for its probable disposition.

I assure all Senators, most especially my friend, the minority leader, that I will make a final statement on that subject just as soon as possible. That will be immediately after I am given certain information by the distinguished chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, and the chairman of the Senate Finance Committee (Mr. DOLE).

Mr. ROBERT C. BYRD. Mr. President, I appreciate what the distinguished majority leader has said. I am sure that everyone on this side of the aisle appreciates whatever information the majority leader can give us so that Members on this side can plan their schedules over the weekend and for the early part of next week.

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

I yield to the distinguished chairman of the Senate Finance Committee.

CONFERENCE ON TAX LEGISLATION

Mr. DOLE. Mr. President, we could complete our work in the conference on the tax bill today. I am now advised that those who have the awesome responsibility for drafting that legislation could perhaps finish their work tomorrow, which, under some circumstances, might permit the Senate to finish work on the conference very soon, depending upon the will of the Senate and some Members who may want to examine some of the provisions when it comes back.

I am very optimistic. It would seem to me that we have gone over this, the House-passed version and the Senate-passed version, and I would say that 90 percent of these provisions are identical. There are a number of good provisions that we adopted in the Senate that we want to preserve, but I would hope that if we could start by midafternoon we could complete work on the conference.

I understand the chairman of the House Ways and Means Committee wants to do it very quickly. He will be back in the city within a couple of hours. Then he will call a meeting of myself, the distinguished Senator from Louisiana, Congressman CONABLE, and Secretary Regan. We will go from there to conference.

So there is a good chance, if we can work out some of the problems, which I do not believe will cause much difficulty, we might be able to accommodate many Senators who are calling me, calling the majority leader and the minority leader, and, I assume, Senator LONG, regarding when we can finish.

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

Mr. BAKER. Mr. President, I have no further need for my time under the standing order. I yield the remainder of my time to the distinguished minority leader.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

THE UNITED STATES SENATE

THE EARLY HISTORY OF SENATE COMMITTEES

Mr. ROBERT C. BYRD. Mr. President, when Woodrow Wilson published his study of *Congressional Government* in 1885, he wrote that "it is not far from the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work." At the time that Wilson wrote this study, the Legislative Branch was universally recognized as having taken a superior role over the Executive Branch, which had been presided over by a series of weak presidents since the Civil War. Within the Legislative Branch, Wilson identified the committees as the chief centers of power. "I know not how better to describe our form of government in a single phrase," Wilson wrote, "than by calling it a government by chairmen of the Standing Committees of Congress."[1] These sentiments reflected the conditions of the 1880's, and, as we know, there have been many changes in our political system in subsequent years, such as the growth of the modern presidency, the development of party floor leaders, the various committee reforms, and the spread of subcommittees. I have quoted Wilson's remarks to show the committees at their apogee, when they were the central force in the federal government of the United States. Today, I shall discuss the origins of some of these standing committees, as part of my continuing series of addresses on the history of the Senate.

In my last remarks, concerning the events surrounding the War of 1812, I pointed out that the Senate did not create its standing committee system until 1816, nearly twenty-seven years after the Senate had begun to function. The United States Constitution did not

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

mention or provide for committees in Congress. This does not mean, however, that there were no committees in the earliest years of the Senate, for indeed, committees have operated since the very beginnings of Congress. Let me explain this paradox.

The use of committees in legislative bodies antedated the First Congress. We can find records of joint committees of the House of Lords and the House of Commons in the British Parliament as early as 1340. The first standing committee of Parliament was the Committee on Privileges and Elections, dating back to the reign of the first Queen Elizabeth. The committee system expanded during the time of Oliver Cromwell, and eventually evolved into what has been called "that all-absorbing committee," the British Cabinet. Members of the first Senate had not only the example of parliamentary committees, but also those of the Virginia House of Burgesses and other colonial legislatures, and of the Continental Congress. It was, we may recall, a select committee of Thomas Jefferson, John Adams, and Benjamin Franklin, that drafted the Declaration of Independence. So committees were a fairly common way of doing legislative business.[2]

The House of Representatives, then as now the larger body of Congress, appointed its first standing committee in 1789. Like the first standing committee of Parliament, it was the Committee on Elections. By 1800, the House had five standing committees, and during the next twenty years it added twenty more. This proliferation of standing committees reflected the swelling size of the House, as population grew and new states were added to the Union. In 1800, there were only 106 members of the House. But by 1823, the number of Representatives had climbed to 213.[3] Of course, there were an even larger number of special committees appointed to handle single pieces of legislation. During the Third Congress, from 1793 to 1795, for example, there were some 350 such ad hoc committees in the House.[4]

The Senate, prior to 1816, appointed only three standing committees, all for "housekeeping" rather than legislative purposes. For the most part, the Senate relied on select committees, the first of which was the five-person-committee appointed on April 7, 1789, to draw up the rules of procedure for the Senate. That committee filed its report on April 13 and, as I have explained in earlier remarks, the Senate adopted 19 of the 20 rules it recommended. In those days, the Senate spent much of its time acting as a "Committee of the Whole," a device for controlling the legislation introduced and under discussion. Today, we are accustomed to a rather straightforward way of introducing bills and resolutions whenever the Senate is in session. Rule VII provides for introduction of bills during the Morning Business, and further stipulates that:

Senators having petitions, memorials, bills, or resolutions to present after the morning hour may deliver them in the absence of objection to the Presiding Officer's desk, endorsing upon them their names, and with the approval of the Presiding Officer, they shall be entered on the Journal with the names of the Senators presenting them and in the absence of objection shall be furnished to the official reporter of debates for publication in the *Congressional Record* under the direction of the Secretary of the Senate.[5]

By contrast, a senator in 1789 could introduce a bill only after he had given the Senate one day's notice of his intention to request permission to introduce the bill, and after a majority of senators had voted to give him such permission. According to Roy Swanstrom's dissertation on "The United States Senate, 1789–1801," such permission was usually granted, and in fact unanimous consent was sometimes given to dispense with the one-day waiting period. But from such a rule we can see how the majority could thwart the introduction of any bill it found distasteful or objectionable. For instance, when Senator James Monroe requested permission to introduce a bill repealing an article of the peace treaty with Great Britain, a majority of the Senate denied his request.[6] A more common form of initiating legislation was for a senator to move that a committee be appointed to report a bill to achieve a specific goal.

This method of introducing bills by permission allowed the majority party more control over legislation being deliberated, and it generally meant that most bills would be enacted once the committee reported them, since a majority had approved their introduction in the first place. During the first session of the Senate only five bills were introduced, of which the Senate passed and the President signed four. (At the same time, thirty-three bills were introduced in the House.) In subsequent Congresses, the number of bills increased, as did the number of rejections. With this increasing amount of legislation came a corresponding need for committees. In addition, select committees were appointed in each session of Congress to deal with the individual proposals of the President's annual State of the Union message.

There were several advantages to this system of introducing bills and forming committees. During the debate over granting permission for the introduction of a bill, the Senate's sentiments on the particular issue at hand would become clearer, providing better guidelines for the committee assigned to draft the final bill. When receiving legislation from the House, the entire Senate could participate in the amending process before the bill went to committee to be put in its final revised form. If this process sounds terribly unwieldy, I should point out that during the first session of the First Congress, the Senate had no more than twenty members present and voting at one time—and today several of our committees approach or exceed that size!

This system made the select committees completely responsive to the Senate as a whole. The Senate decided their jurisdiction, and their membership, and could at any time elect another committee to handle the same matter if unsatisfied with the progress of a particular select committee. According to Professor Swanstrom, the Senate more often created committees to handle specific legislation, but at times it gave the committees broad areas to examine. In 1794, the Senate appointed a special five-person committee to report whatever legislation was necessary to promote the national defense. Some committees might be assigned several bills to draft, but they were usually bills revolving around a similar subject, such as military policy, finance, or national commerce.[7]

For the most part, Senate committees consisted of three members for routine business and five members for more important issues. During the First Congress, the largest committee contained eleven members, and this was created to decide the salaries of the President and Vice President (salary issues being as controversial then as they are now). During the first session, the entire membership of the Senate was divided into two large committees, with half on the committee to prepare legislation establishing the Federal Judiciary and the other half on the committee to define punishment of crimes against the United States. These committees obviously contained more members than was usual, but Senator William Maclay's journal tells us that in the case of organizing the Federal Judiciary a smaller subcommittee actually drafted the bill.[8]

Mr. President, today members of the Senate are accustomed to spending their careers as members of just two or three major committees, specializing in certain areas of legislation and gaining sufficient seniority to enable them someday to become committee chairmen. Things were different in the early years of the Senate. With hundreds of committees created during each Congress, it was more difficult to specialize and establish seniority. However, even then, some members did specialize. Reading through the *Annals of Congress*, one notices the same names appearing and reappearing on certain types of committees. For instance, William Maclay served on a great many committees dealing with private claims bills. Professor Swanstrom points out that certain other senators gained the reputation, from their committee service, of being "watchdogs of the Treasury." Merchant Robert Morris was most often a member of those committees dealing with commerce and shipping. Oliver Ellsworth, a framer of the Constitution who later became Chief Justice of the United States, served on practically every committee dealing with judicial matters during his Senate years. Other senators were likely to serve on committees dealing with treaties and foreign affairs. From 1789 to 1797, nineteen separate committees with a total of sixty-eight members considered treaties. Yet, only twenty-four senators filled those sixty-eight positions. The majority Federalist party members predominated on these early foreign relations committees—particularly men

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such as Morris, Ellsworth, Rufus King, and George Cabot.[9]

The reappearance of certain senators on certain types of committees seems logical when we consider that the Senate as a whole elected members of each committee. We may assume that individual senators developed personal reputations for interest and expertise in particular areas that would lead their colleagues to include them on any committee considering a related subject. Other senators developed political prominence, and sufficient reliability, to encourage the members of the majority party to place them on committees where they would be the most effective. There was also a need to balance committee memberships according to regional and economic interests. Western senators, for instance, were generally included on the public lands committees. Northern senators were elected to committees on commerce and manufacturing. And senators from the thirteen original states most likely served on the Revolutionary War pensions and claims committees. Rarely did two senators from the same state serve on the same committee, except in the case of relatively minor private relief bills, or legislation dealing specifically with their home state.[10]

With the great number of special committees appointed each session, the position of committee chairman was not as influential as it became later with the establishment of standing committees. Chairmen were often the senators who introduced the legislation, since they had the most interest in the bill's passage. But, generally, the chairman was the senator who received the most votes in the balloting for committee members. In 1807, Senator John Quincy Adams of Massachusetts noted in his diary that this had become the "ordinary practice." [11] Under this system it was possible for a member of the minority party (the Anti-Federalists and Republicans), to serve as committee chairman, despite the Federalist majority in the Senate. However, senators who opposed the particular piece of legislation under consideration usually were not appointed to the committee assigned to drafting and reporting it. Vice President Thomas Jefferson in the manual of parliamentary practice he compiled while serving as president of the Senate, noted that the Senate's committee selections followed the principle that "the child is not to be put to a nurse that cares not for it." [12]

The chief disadvantage of the ad hoc committee system was that it permitted an unequal workload for senators. During the second session of the First Congress, for instance, Connecticut Senator Oliver Ellsworth, a Federalist, served on thirty-six committees, while the average senator served on only eleven. During the second session of the Congress, Ellsworth was elected to twenty-three committees, while the average assignment was only six committees. Several senators served on no committees at all. One reads the diary of Senator John Quincy Adams with a sense that the man was eternally caught up in the work of one committee or another. One of his entries reads: "The whole of this month I have been so much engaged upon committees and their business that I have been obliged entirely to forego the continuation of any lectures." Adams noted that since all the committees were chosen by ballot, the number of committees a senator serves on was a fair measure of his influence and weight in the Senate. On the other hand, "as much of the labor of business is transacted in committees, an exemption from those which are important is also an exemption from toil, and leaves profitable leisure." [13]

The unequal distribution of committee memberships continued from the Federalist to the Republican Congress, during the years prior to 1816. Dr. Mary Giunta, in her doctoral dissertation on the legislative career of Virginia Senator William Branch Giles, surveyed the committee memberships of senators from the Eighth to the Thirteenth Congresses, from 1803 to 1815. During the Eighth Congress, Georgia Senator Abraham Baldwin, the Republican president pro tempore, served on forty-one committees, or eleven percent of the total number of committees appointed during that Congress. By contrast, the majority of senators served on fewer than fifteen committees. In the Ninth Congress Senator Baldwin was elected to ninety-one committees—think of it, 91 committees, while the majority of his colleagues served on fewer than eighteen. By the Thirteenth Congress, the last before the creation of standing committees, the range had been reduced considerably. Senator Rufus King, a New York Federalist, served on the most committees, nineteen, while the majority of the Senate served on fewer than eight committees.[14]

When the Jeffersonian Republicans won control of the Senate for the first time in 1801, they continued the system of ad hoc committees, although they instituted some changes. Early in the Seventh Congress, Senator John Breckinridge, one of the Jeffersonian floor leaders, gave notice that he would introduce a bill to repeal the Judiciary Act of 1801, the first priority of the new majority and a major request of President Jefferson's State of the Union message. Breckinridge announced that he was prepared to offer his sentiments on the subject" immediately, if his colleagues had no objection. Federalist Senator Uriah Tracy of Connecticut immediately rose to his feet to observe that the custom until then had been for the Senate to refer each portion of the president's annual message to a separate special committee, which would then prepare a report so that "the minds of the House would be drawn more precisely to the points involved in it, than could be expected from a resolution so loose as the present, which could only give rise to verbal discussions." Senator Stevens Mason of Virginia disagreed with Tracy. As the *Annals of Congress* records it: "He believed the mode, now pursued, was perfectly correct and comfortable to a principle adopted this session, that the Senate was to be considered as a committee of the whole on the President's Message, whenever taken up. Nor did he discern the necessity, in a body so select as this, of referring each subject to a select committee." [15]

Thus, while the House continued to refer separate portions of the president's message to separate committees, the Senate took up the message as the Committee of the Whole. The Senate debated Breckinridge's resolution for six days, with some sixteen members speaking, indicating that the new procedure did not hamper debate on the issue. As Alex Lacy, Jr., has written in his doctoral dissertation on "Jefferson and Congress": "It can be said to the credit of the Republicans that during the Jefferson Administrations they never used their majority in either house to shut off debate unless the Federalists were pursuing dilatory tactics." [16]

As I have mentioned in an earlier address, Federalist Senator Jonathan Dayton of New Jersey moved to have the Judiciary Act repeal sent to a select committee to see if some compromise could be reached. The Republicans anticipated a victory, but the vote on Dayton's measure was 15 to 15, and Vice President Aaron Burr, a close friend of Dayton's broke the tie in favor of referring the resolution to committee. In the jockeying to create a favorable committee, Professor Lacy notes, "The Senate broke one of its most rigid customs . . . . It was customary to place the original mover of a measure on any committee considering that measure. Usually, this member would serve as chairman of the committee. Breckinridge missed election to the committee by one vote." The Republicans were saved from embarrassment when an absent senator returned to the capital, giving them sufficient majority to move to discharge the resolution from the select committee. Breckinridge argued against the committee on the grounds that the question was a matter of principle: whether the Judiciary Act should be repealed or not. Questions of principle, said Breckinridge, should be decided by the Senate as a whole: "A committee cannot, and ought not to settle principles. On the floor of this House alone ought principles, furnishing the ground-work of legislation, to be originated and settled. Details only are proper from your select committees." [17]

While the Senate was considering Jefferson's annual message as a Committee of the Whole, it was changing its traditional practice by considering presidential nominations through select committees. At first, only controversial nominations went to committee, and in the first session of the Seventh Congress only eight were so referred. But by the Tenth Congress, the Senate routinely began to refer nominations to committees. In 1801, three committees considered a total of eight nominations, while in 1807 four committees considered several hundred nominations.[18]

Committee meetings in the early years of the Senate bore many similarities to committee meetings today. Committees met before and after but not during sessions of the Senate. Senators could at-

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tend meetings of committees of which they were not members, although of course they could not vote in them. Occasionally, a committee would hear testimony from witnesses, but this was quite rare. For instance, Secretary of State Thomas Jefferson appeared before one Senate committee to discuss President Washington's diplomatic nominations. No transcript of this or any other committee hearing was made at that time, nor indeed would any be made until well into the nineteenth century. Instead it was the official report of the committee which the Senate would use in its deliberation over legislation, nominations, and treaties.[19]

Mr. President, although no transcripts of these early committee meetings were kept, we are fortunate to have some fascinating inside glimpses of committee workings from the diaries of senators. These diaries are all the more important because of the sparseness of the *Annals of Congress*. The *Annals*, a forerunner of our *Congressional Record*, were prepared after-the-fact, from newspaper accounts and other contemporary sources. Let me give a graphic example from the diary of Massachusetts Senator John Quincy Adams, son of President John Adams and himself a future president of the United States. The *Annals of Congress* tell us that on October 27, 1807, President Jefferson sent his annual message to Congress, and that the message was devoted in large part to British naval aggressions against the United States. The next day, Senator Adams moved that a select committee be created to deal with the issues raised in the president's message:

> That so much of the President's Message as relates to the recent outrages committed by British armed vessels within the jurisdiction, and in the waters of the United States, and to the Legislative provisions which may be expedient as resulting from them, be referred to a select committee, with leave to report by bill or otherwise.[20]

On October 30, the Senate appointed a five-person committee composed of Adams, Samuel Smith of Maryland, John Milledge of Georgia, Samuel Mitchell of New York, and Joseph Anderson of Tennessee. However, a few days later, on November 4, we find Senator Stephen Bradley of Vermont introducing a similar resolution calling for the appointment of another select committee:

> *Resolved*, that a committee be appointed to inquire whether any, and, if any, what further and more effectual provisions are necessary in addition to the act, entitled 'An act for the more effective preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction'; with leave to report by bill or otherwise.[21]

On November 9, Bradley's resolution was referred to the already appointed committee of five, but Senator Bradley and Senator Thomas Sumnter of South Carolina were added to the committee. The *Annals* tell us no more until November 24 when Senator Adams reported for the committee its bill relating to British aggressions and harbor defense. On November 26, the Senate debated the bill and "after progress, adjourned." The Senate never voted on the committee's report.[22]

Now, by contrast to this rather thin and uniformative official verson, let me read from the diary of John Quincy Adams concerning the same events:

November 20, 1807. The sub-committee on aggressions met, and /Stephen/ Bradley presented a bill which he has drawn under the vote of the general committee, which I took home with me to examine and modify. I employed the evening in that work; but Mr. /Joseph/ Anderson, who voted against me on the question, requested me this day to renew it—and told me that on further reflection he was convinced my project was the best. Mitchill told me that he voted with Bradley only to keep him in good humor and to pledge him in support of a plan upon the idea that it was his own; and Mr. /John/ Milledge urged me with some anxiety to renew the question upon my selection; which, however, I shall decline.

November 23. Met the sub-committee this morning at ten. Mr. Bradley had two or three additional sections to offer, which, with modifications, were agreed to, as was my bill, and all to be reported to the committee of seven. The Senate then sat . . . Adjourned before *one*. Committee of seven met, discussed the bill of the sub-committee, and, with some alterations, ordered me to report it. I gave it accordingly to the clerks, to be copied by tomorrow morning.

Through the whole of this transaction I have had some difficulty to steer my way. I moved the first resolution, which has issued in this bill, the day after the President's message at the commencement of the session, merely to put the Senate upon some work. For I knew they would otherwise do nothing but what should come from the House. I was obliged to leave it three or four days for consideration, and when the committee was appointed I was made its chairman. But Bradley not happening to be on the committee (though of five) immediately felt his pride piqued, and he determined to take the business out of my hands; so that, some days after, he moved for a new committee, substantially upon the same subject, though varied in form (a practice often used when the chairman of a committee of importance happens to be a federalist), and he took an opportunity to move this resolution when I was not in the House. From the moment it was made I saw its motive and object, but I saw that to attempt resistance against it was vain. So perfectly similar was it to my resolution in substance that it was noticed by a number of members, and he finally professed that he meant its reference to the *same* committee. I then moved the addition of two members to the committee, that he might be one of the number. When the committee met, he opposed the first principle upon which I wished the bill to be formed, and prevailed. He then proposed successively his own measures, most of which were adopted; and eventually I did scarcely any thing more than draw the bill. Even this, however, he has violently contested; and having drawn a mere proviso, upon the same principle in substance as one which I had drawn, and the committee having given the preference to mine, he broke into a passion, and told them he would vote against the whole bill, and would not vote upon any of the subsequent sections. I believe his purpose is to defeat the whole; and he has introduced some sections which he knows will be violently opposed, with the intention that they shall first fail, and then he will fly from the whole with great disgust at the *want of energy* in the Government.

November 26. The bill I had reported was taken up in committee of the whole. Bradley renewed his attack upon the proviso; Mr. /James/ Hillhouse and Mr. /Timothy/ Pickering immediately sided with him, and a debate of two hours ensued upon a few words which he moved to strike out. On the question taken, it was decided the words should stand—fifteen to fourteen. Mr./ John/ Pope than moved to strike out the whole first section, upon which a second debate arose as warm and as long as the first. It was finally closed by a motion to adjourn, which was agreed to. Bradley supported Pope's motion, with a view to have the bill recommitted, with instructions simply to *continue* the act of 3d of March, 1805, and then add *his* new propositions to it. His ultimate object is to defeat the whole bill . . . The majority of the Senate, at the end of this day's debate, obviously wished for delay—procrastination; and I shall not hurry them on—they shall take their own time. The bill itself, as it stands, is no favorite of mine, and I shall not be much concerned at the fate which awaits it.[23]

Mr. President, the diary of John Quincy Adams has obviously left us a far richer account of this incident than did the *Annals of Congress*. The two hour debate on November 26, to which Senator Adams referred, is contained in exactly six lines in the *Annals*, merely noting that the Committee of the Whole took up the second reading of the bill, and that "after progress" the Senate adjourned without voting. Not only does Adams' diary tell us the story behind this debate, but it reveals the apparently common practice to create a second committee as a means of removing an unpopular or minority party chairman.

The increasing business of the committees, particularly in the handling of nominations, the pressing needs of national defense during the War of 1812, and the growing institutional needs of a body that was now over a quarter century old, all pushed the Senate toward the creation of standing committees. Until 1816, as I have mentioned, the Senate had appointed only three standing committees, all of which dealt with housekeeping functions. They were Enrolled Bills in 1789, Engrossed Bills in 1806, and Contingent Expenses in 1807.[24] The latter was proposed by Senator John Quincy Adams to be appointed at the beginning of each session of Congress to audit and control the Senate's contingent expenses.[25] These first three standing committees may be seen as forerunners of the current Senate Committee on Rules and Administration.

By contrast, the House of Representatives had appointed several standing committees, with both housekeeping and legislative functions, during the years prior to 1816. These included Enrolled Bills in 1789, Commerce and Manufactures and Ways and Means in 1795, Public Lands in 1805, Post Office and District of Columbia in 1808, Judiciary and Pensions in 1813, and Expenditures in Executive Departments in 1816. The House acted first because it was the larger body and could not perform as intimately and effectively as a Committee of the Whole, and because its Republican members wanted to establish the House's legislative independence from the Federalist executive departments. The Jeffersonians opposed Treasury Secretary Alexander Hamilton's plan to have legislative proposals referred first to executive

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agencies rather than to congressional committees. During the Republican-controlled Third Congress, from 1793 to 1795, Hamilton resigned as Secretary of the Treasury and the House created its Ways and Means Committee. As Professor George Goodwin has written: "These steps put an end to a tendency that could have moved the country in the direction of British cabinet government."[26]

By the end of the War of 1812, the stage was set for the Senate to consider establishing its own system of standing committees. Meeting in the "Old Brick Capitol"—because the Capitol Building itself was under repair for damages which the British troops had inflicted upon it during the war—members of the Senate were most likely concerned about the permanency, continuity, and stability of governmental processes. Perhaps their struggling with the issues of the war made more members realize the need for specialization over areas of legislation. In addition, from the constant movement of members of the House over to the Senate we may assume that former House members brought with them a preference for standing committee assignments. During the first session of the Fourteenth Congress, meeting in December 1815, the Senate appointed a series of select committees to report on various portions of the President's State of the Union message. However, instead of allowing these select committees to disband after they had completed their immediate work, the Senate utilized the same committees for other business during the session. The select committee on Finance, for example, which dealt with matters of finances and currency in the president's message, also handled the two most important issues of that session of Congress, the Tariff of 1816 and the rechartering of the National Bank.[27]

During the second session of the Fourteenth Congress, meeting in December 1816, Senator Nathan Sanford of New York moved to have the president's annual message broken into its component parts and distributed to select committees for consideration, as was the usual practice. But on December 5, Senator James Barbour of Virginia moved that the Senate instead create eleven standing committees: on Foreign Relations, Ways and Means, Commerce and Manufactures, Military Affairs, the Militia, Naval Affairs, Public Lands, Claims, Judiciary, Post Office and Post Roads, and Pensions. On Tuesday, December 10, 1816, the Senate adopted Barbour's motion. However, it changed the name of Ways and Means to Finance, a title it had used for such select committees in the past. By Friday of that week, the first appointments to standing committees were announced. Five members were appointed to each committee, with the exception of Commerce and Judiciary, each of which began with four members. On that same day, the president's message was referred to the appropriate standing committees, their first official business. Also on that day, five select committees were appointed to consider issues raised by the president's message that did not fall within any of the standing committee's jurisdiction: weights and measures, a national university, roads and canals, the slave trade, and the creation of a new Executive Department.[28]

The appointment of standing committees permitted the Senate to assign long term studies and investigations to committees, in addition to regular legislative duties. For instance, the Commerce Committee's first assignments consisted largely of compiling statistical reports and conducting investigations required by the Senate on harbor improvements, foreign trade, canal construction, and shipping regulations. Standing committees also spent much of their time handling presidential nominations and petitions from citizens.[29]

It is interesting to note that in creating standing committees, members of the majority party did not appropriate all of the chairmanships to themselves. In 1816, Federalist senators served as chairmen of the committees on Commerce and Manufacturers and Military Affairs, and had a majority of members on Finance and Military Affairs.[30] I wonder if we could contemplate such a circumstance today! Since the Senate as a whole elected members of each committee, and the member with the most votes became chairman, this non-partisanship lingered on through the 1830's, when growing party spirit and factionalism finally made majority party leadership of committees the standard rule.

Members of the Senate found the balloting for committee membership at the beginning of each Congress an increasingly unappealing system. There was both an element of humiliation in the possibility of being turned down for a committee position by one's colleagues in the Senate, and also an annoyance with the tedious and time-consuming system of balloting. In 1823, Senators John Eaton and Andrew Jackson of Tennessee pressed for the Senate to elect committee chairmen and then have the chairmen appoint the rest of the committee members. This plan, however, lost to a proposal by Senator Barbour, the original author of the standing committee system, to have the presiding officer—either the vice president or president pro tempore—to appoint committee members. Until 1845, this system, interspersed by attempts to revive the balloting system, set the course for Senate committee memberships.

During the Mexican War, the system was finally changed. By a margin of one vote the Senate removed from the presiding officer the power to appoint committee members. During the debate, Senator Willie Mangum, the Whig minority leader, accused the Democratic caucus of having prepared a "list made out and decided on by a meeting of members of this body belonging to a particular party." This was obviously what had been done, for when the Senate voted for committee chairmen they were selected by a strict party vote. By the following year, it had become the accepted practice for the members of each party, through their respective caucuses, to name their party members to the standing committees.[31]

Mr. President, the standing committee system of the Senate has now been in existence for 165 years. Over those many years the Senate has added to, substituted from, and divided up its standing committees as the national government took on new areas of responsibilities and the Congress attempted to streamline its procedures. There were times, particularly around the turn of this century, when the Senate created standing committees primarily as an excuse to assign office space and staff members to senators from the majority party. For instance, pulling an old *Congressional Directory* off the shelf at random for the year 1904, one could count fifty-five standing committees and another dozen select committees. These standing committees included Revolutionary Claims, which we may assume did little business 125 years after the Revolutionary War had ended. In 1946, the Senate and House both reduced the number of their standing committees sharply through the Legislative Reorganization Act of that year. Most recently, in 1977, the Temporary Select Committee to Study the Senate Committee System, chaired by Senator Adlai Stevenson, recommended the merger of several committees and reorganization of jurisdiction to reduce Senate standing and joint committees from thirty-one to twenty-four.[32] We now have sixteen standing committees, three select committees, one special committee, and four joint committees.

Many of our current committees in the Ninty-Seventh Congress have a heritage dating back to the Fourteenth Congress. The committees on Foreign Relations, Finance, and Judiciary remain the same in name and similar—although greatly expanded—in function. Our Armed Services Committee combines what, in 1816, were the committees on Military Affairs, the Militia, and Naval Affairs. Commerce and Manufactures has become Commerce, Science and Transportation. Functions of the Pensions Committee are now performed by the Veterans Affairs Committee; functions of the Interior and Insular Affairs Committee are divided among the Energy and Natural Resources Committee and Environment and Public Works Committee. Post Office Committee responsibilities are now handled by a subcommittee of the Governmental Affairs Committee.

Mr. President, I have spoken today about the origins of our standing committees. During the course of my remarks in coming weeks I shall have more to say about individual committees and the role they have played in our national political history. In the preparation of these remarks I have found most useful the ten committee histories that various Senate committees have prepared to mark their anniversaries. These are most interesting documents, such as the one I now hold in my hand, The History of the Committee on Finance. I will affix a list of them to the conclusion of my remarks. These histories range quite widely. Some are handsomely illustrated while others are spare and statistical. Most provide information on committee

Footnotes at end of article.

members and chairmen, and on the background of the committee's jurisdiction and responsibilities. A few also include narrative accounts of the committee's past activities. One of the most informative, and a model for such efforts, is the booklet which I a moment ago called attention to, prepared by the Senate Finance Committee during the Ninety-Fifth Congress. The most recent committee history is that of the Rules and Administration Committee, which was ably prepared by Dr. Floyd Riddick, the Senate's Parliamentarian Emeritus. This volume is a handy compendium of the many changes in the Senate rules since 1789.

Some of these committee histories were published as long ago as 1963, and we know that considerable history has occurred since then. I hope that all of the Senate's committees will consider publishing such histories, or updating and expanding volumes that have long since gone out of print. I believe these histories would be most useful for new members in familiarizing themselves with the workings of the committees to which they are assigned, and in appreciating the rich history of this institution. The committee histories also promote the public's understanding of the legislative process. Certainly this would be a worthy undertaking as the United States Senate approaches its two hundredth anniversary in 1989.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a list of Senate committe histories and notes regarding the early history of Senate committees.

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

SENATE COMMITTEE HISTORIES

Committee on Aeronautical and Space Sciences, *Tenth Anniversary, 1958–1968*, S. Doc. 116, 90th Congress, 2nd session (Washington, DC: Government Printing Office, 1968).

Committee on Agriculture and Foresty, *A Brief History of the Committee on Agriculture and Forestry of the United States Senate and Landmark Agricultural Legislation, 1825–1970*, S. Doc. 91–107, 91st Congress, 2nd session (Washington, DC: Government Printing Office, 1970).

Committee on Appropriations, *100th Anniversary, 1867–1967*, S. Doc. 21, 90th Congress, 1st session (Washington, DC: Government Printing Office, 1967).

Committee on Banking and Currency, *50th Anniversary, 1913–1963*, S. Doc. 15, 88th Congress, 1st session (Washington, DC: Government Printing Office, 1963).

Committee on Commerce, *History, Membership, and Jurisdiction of the Senate Committee on Commerce From 1816–1966*, S. Doc. 100, 89th Congress, 2nd session (Washington, DC: Government Printing Office, 1966).

Committee on Commerce, Science, and Transportation, *A Brief History of the Senate Committee on Commerce, Science, and Transportation and its Activities Since 1947*, S. Doc. 95–93, 95th Congress, 2nd session (Washington, DC: Government Printing Office, 1978).

Committee on Finance, *History of the Committee on Finance*, S. Doc. 95–27, 95th Congress, 1st session (Washington, DC: Government Printing Office, 1977).

Committee on Foreign Relations, *160th Anniversary, 1816–1976*, S. Doc. 94–265, 94th Congress, 2nd session (Washington, DC: Government Printing Office, 1976).

Committee on the Judiciary, *History of the Committee on the Judiciary, 1816–1976*, S. Doc. 94–227, 94th Congress, 2nd session (Washington, DC: Government Printing Office, 1976).

Committee on Labor and Public Welfare, *100th Anniversary, 1869–1969*, S. Doc. 108, 90th Congress, 2nd session (Washington, DC: Government Printing Office, 1970).

Committee on Rules and Administration, *History of the Committee on Rules and Administration*, S. Doc. 96–27, 96th Congress, 1st session (Washington, DC: Government Printing Office, 1980).

NOTES TO "EARLY HISTORY OF SENATE COMMITTEES"

[1] Woodrow Wilson, *Congressional Government, A Study in American Politics* (Cleveland: World Publishing Company, 1956, 1885), 69, 82.

[2] Lauros G. McConachie, *Congressional Commitees, A Study of the Origins and Development of Our National and Local Legislative Methods* (New York: Thomas Y. Crowell and Company, 1898) 7–9; and J. Franklin Jameson, "The Origin of the Standing Committee System in American Legislative Bodies," *Annual Report of the American Historical Association*, 1893, Senate Miscellaneous Documents 104, 52nd Congress, 2nd sess.

[3] Noble E. Cunningham, "Congress as an Institution, 1800–1850." Paper delivered at the Project 87 Conference in Washington, February 1981.

[4] Neil MacNeil, *Forge of Democracy, The House of Representatives* (New York: David McKay Company, Inc., 1963), 150.

[5] United States Congress, Senate, *Standing Rules of the Senate*, S. Doc. 97–10, 97th Congress, 1st sess., 1981, Rule VII, part 6.

[6] United States Congress, Senate, Roy Swanstrom, *The United States Senate, 1787–1801, A Dissertation on the First Fourteen Years of the Upper Legislative Body*, S. Doc. 64, 87th Congress, 1st session (Washington, DC: Government Printing Office, 1962), 233.

[7] *Ibid.*, 224–5; *Annals of Congress*, 3rd Congress, 1st sess., 147.

[8] McConachie, *Congressional Committees*, 267; Swanstrom, *United States Senate*, 147.

[9] Swanstrom, *United States Senate*, 226–7; Joseph Ralston Hayden, *The United States Senate and Treaties, 1789–1817* (New York: Macmillan Company, 1920), 171–172.

[10] Swanstrom, *United States Senate*, 227–8; McConachie, *Congressional Committees*, 257.

[11] Charles Francis Adams, ed., *The Memoirs of John Quincy Adams* (Freeport, New York: Books for Libraries Press, 1969, 1874), vol. 1, 482.

[12] United States Congress, House of Representatives, *Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, 96th Congress*, H. Doc. 95–403, 95th Congress, 2nd session (Washington DC: Government Printing Office, 1979), 176.

[13] Adams, *Memoirs of John Quincy Adams*, 329–30, 496.

[14] Mary Giunta, "The Public Life of William Branch Giles, Republican, 1790–1815" (Ph.D. dissertation, Catholic University, 1980), 209–211.

[15] *Annals of Congress*, 7th Congress, 1st sess., 23–24.

[16] Alex B. Lacy, Jr., "Jefferson and Congress: Congressional Method and Politics, 1801–1809" (Ph.D. dissertation, University of Virginia, 1964), 45.

[17] *Annals of Congress*, 7th Congress, 1st sess., 155.

[18] Lacy, "Jefferson and Congress," 105–106.

[19] Swanstrom, *The United States Senate* 232.

[20] *Annals of Congress*, 10th Congress, 1st sess., 19.

[21] *Ibid.*, 21.

[22] *Ibid.*, 39.

[23] Adams, *Memoirs of John Quincy Adams*, 478–481.

[24] George Goodwin, Jr., *The Little Legislatures, Committees of Congress* (Amherst: University of Massachusetts Press, 1970), 12.

[25] *Annals of Congress*, 10th Congress, 1st sess., 21.

[26] Goodwin, *Little Legislatures*, 7.

[27] United States Congress, Senate, Committee on Finance, *History of the Committee on Finance*, S. Doc. 93–9, 93rd Congress, 1st sess., (Washington, DC: Government Printing Office, 1973), 16–17.

[28] *Annals of Congress*, 14th Congress, 2nd sess., 19–20, 32–33.

[29] United States Congress, Senate, Committee on Commerce, *History, Membership and Jurisdiction of the Senate Committee on Commerce From 1816–1966*, S. Doc. 100, 89th Congress, 2nd sess., (Washington, DC: Government Printing Office, 1966), 2.

[30] McConachie, *Congressional Committees*, 275.

[31] *Ibid.*, 276–286.

[32] *Washington Post*, February 5, 1955; Paul Rundquist, "Senate Committee System Reform," Library of Congress, Congressional Research Service Issue Brief, 1977, 95th Congress, 1st sess., S. Res. 4.

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

The PRESIDING OFFICER (Mr. SPECTER). The Senator from Wisconsin is recognized.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, some critics of the Genocide Convention complain about its wording.

Those critics probably are not aware of the three understandings which were recommended by the Committee on Foreign Relations when it presented a favorable report on this treaty to the Senate in 1976. These understandings strengthen and clarify the treaty in three important respects.

The first understanding explains just what it means to "destroy, in whole or in part, a national, ethnical, racial, or religious group as such." The phrase "in whole or in part" in article II of the treaty is understood to mean in such manner as to affect "a substantial part" of the group concerned.

Thus, a single murder would not qualify as genocide. At the other extreme, not every member of a group must be killed before the crime of genocide could be proven to have occurred.

The second understanding also relates to the definition of genocide. The United States construes the words "mental harm" in the list of acts constituting genocide to mean permanent impairment of mental faculties. Thus, we are assured that normal social tensions among groups would not be genocide, while permanent and destructive brainwashing of a substantial part of a group's members would be.

The third and final understanding to be attached to our ratification of the treaty concerns the trial of Americans accused of genocide. The understanding states that each country may bring to trial in its own court system any of its citizens, even for acts committed outside the country's borders. Article VI of the

Genocide Treaty would in no way alter this right to try one's own nationals, and the Legal Committee of the United Nations General Assembly has agreed on the language included in the understanding.

Taken together, these three understandings are an adequate and specific response to perceived problems with the treaty's wording. They clarify the definition of genocide and the role of extradition in the treaty's implementation. No other explanations are needed.

Critics of the wording of the treaty simply have no case. The Genocide Convention's language is perfectly suited for carrying out its purpose—to make genocide a punishable legal wrong as well as an abominable moral wrong.

I strongly urge my colleagues to ratify the Genocide Convention.

Mr. President, yesterday the distinguished chairman of the Foreign Relations Committee told the Senate that he expected to have hearings on the Genocide Treaty in the fall and to report the treaty this year to the floor of the Senate. I think that is most encouraging. Of course, I am delighted to hear this pledge by the chairman of the committee. I look forward eagerly to the ratification of the treaty by the full Senate.

NORTHERN STATES POWER CO. ENERGY COST CONTROL CENTER

Mr. PROXMIRE. Mr. President, I would like to salute the efforts of Northern States Power of Eau Claire, Wis., which has come up with a new approach to energy conservation.

The company has set up an energy cost control center at the London Square Mall in Eau Claire.

It is designed to help people control energy costs by providing them with information on: Time-of-use electric rates, dual fuel heating systems, electric heat storage furnaces, solar water heating, high-efficiency gas furnaces, and home energy use analysis.

Customers can also learn about cost control by calling special phone numbers.

In addition to equipment and literature displays, the center has over 100 tapes on various energy topics as well as a computer which is programed to analyze customer energy use patterns.

This center should make an excellent contribution to solving our greatest energy problem—lack of knowledge. Consumers cannot be expected to make intelligent decisions about energy conservation unless they have the right information. The NSP energy cost control center is the solution.

ORDER DESIGNATING PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, will the minority leader permit me to proceed for 1 minute from the time I yielded to him?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, a moment ago I indicated that at some point, perhaps soon, we would proceed with the business of attempting to appoint conferees on the tax bill.

Mr. President, I now ask unanimous consent that at 12 noon, the other order to the contrary notwithstanding, there be a period for the transaction of routine morning business and that Senators may speak therein.

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

A MESSAGE ON H.R. 4242 SCHEDULED FOR NOON

Mr. BAKER. Mr. President, at 12 o'clock, I shall ask the Chair to lay before the Senate a message from the House on H.R. 4242 and go through the usual procedure, asking that all after the enacting clause be stricken and that in lieu thereof, the language of House Joint Resolution 266, the Senate-passed bill, as amended, be inserted. Assuming that that is done, I shall ask the Chair to appoint conferees on behalf of the Senate.

Mr. President, I make this announcement so that all Senators will be on notice that at 12 o'clock, I shall proceed in that manner.

Mr. President, I thank the distinguished minority leader for yielding for that purpose.

Mr. ROBERT C. BYRD. Mr. President, the distinguished majority leader is welcome.

Does any Senator on my side of the aisle wish some additional time? I have some time under my control, Mr. President.

Mr. KENNEDY. Mr. President, is this on the routine morning business? I imagine that the leader, in his goodness and fairness, would permit extra time if it is necessary to discuss. I am not prepared at this time. The leader has been accommodating and generous. I expect to make some comment on it. I might ask to have 5 minutes.

Mr. BAKER. Mr. President, I certainly would have no objection to that. I have left it open ended just so every Senator would have every opportunity to speak. I would prefer, frankly, to establish a time for Members to speak, but I shall defer to the wishes of the Senator from Massachusetts and the minority leader in that respect.

Mr. President, later, perhaps, we can consider an addendum to the unanimous-consent order with respect to morning business to limit the time that Senators may speak. I shall not do that at this moment, but if the Senator from Massachusetts and the distinguished minority leader will consider that, I would like to do that a little later.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have an order, do I not, for 15 minutes?

The PRESIDING OFFICER. The Senator from West Virginia has a 15-minute order.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that 5 minutes of my 15 minutes be used by Mr. PRYOR and that 10 minutes may be used by Mr. KENNEDY.

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

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

Mr. President, do I have time remaining under the standing order for the two leaders?

The PRESIDING OFFICER. The Senator from West Virginia has 5 minutes remaining under the leadership order, also.

Mr. ROBERT C. BYRD. I yield it back to the majority leader.

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

I yield the time remaining to the distinguished Senator from South Carolina (Mr. THURMOND).

Mr. THURMOND. Mr. President, I thank the able majority leader and the able minority leader.

S. 1554—BAIL REFORM ACT OF 1981

Mr. THURMOND. Mr. President, it is with genuine appreciation that I note that several cosponsors have joined me in introducing legislation to amend the Bail Reform Act of 1966 to permit pretrial detention of certain dangerous offenders, to permit consideration of danger to the community in setting pretrial release conditions, to eliminate surety and money bonds, and to significantly tighten the criteria for postconviction release pending appellate review. These cosponsors are: Senators HATCH, KENNEDY, BAUCUS, BUMPERS, DECONCINI, DENTON, LAXALT, and SPECTER.

The crime problem in this country is reaching epidemic proportions. No person is safe from the criminal elements that continue to thrive in our society. Behind the economy, fear of crime is becoming the No. 1 social issue. One reason, in my opinion, for the continuing growth of crime in America is the practice of releasing arrested defendants back into the community prior to trial and permitting extended delay in executing a sentence pending appellate review of frivolous issues. Too often, those individuals are simply rearrested or found to have committed additional crimes before going to trial on the initial charge or commencing service of sentence. This legislation is intended to address this serious problem in our present criminal justice system.

First, the legislation expands the basis on which a judicial officer may consider and deal with the potential of the defendant to pose a risk to the community if released prior to trial.

Second, the proposal eliminates as such the use of surety bonds and money bail as a method of assuring the presence of a defendant at trial.

Third, it permits, under certain circumstances, the detention pending trial of those offenders the judicial officer believes may not appear at trial or may be a danger to another person or the community.

Fourth, a convicted person sentenced to a term of imprisonment must be de-

tained pending appellate review of the conviction unless the court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the community and that the appeal is not taken for delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

In short, Mr. President, this proposed legislation recognizes the propensity of certain offenders to pose a continuous danger to society and provides measures to minimize the opportunity for committing further offenses as the criminal justice system progresses to final judgment.

BRIEF HISTORY OF BAIL PROVISIONS

The history of bail as a means of allowing an individual his freedom prior to trial goes back to old English law. In early England, there were lists of crimes for which bail could be granted. Usually they were noncapital offenses. In 1689, a Bill of Rights was adopted which provided that "excessive bail ought not to be required." This specific remedy was imposed to curb abuses by judicial officers, but did not imply any right to bail.

Mr. President, contrary to what some people may argue, there is no fundamental right to bail. The courts have continuously distinguished between statutory bail and excessive bail clauses. Excessive bail clauses are limitations on the judiciary, not the legislature. Thus, the definition of bailable offenses has been left to the legislature.

There are three places where bail is provided for in American jurisprudence. The first is the eighth amendment (adopted in 1789), which states:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This provision is modeled also directly after the English version adopted in 1689. It is the basis for limitation on the judiciary when imposing bail or conditions of bail, but the Supreme Court has never ruled that the clause establishes a constitutional right to bail.

The other places where bail is provided for is in chapter 207 of title 18 of the United States Code (18 U.S.C. 3141–3156) and rule 46(a)(1) of the Federal Rules of Criminal Procedure. These provisions reflect the notion of a statutory right to bail in noncapital cases which stems from the Judiciary Act of 1789. This statutory right can, of course, be denied, limited, or modified by the Congress.

Mr. President, there are those who argue that pretrial detention is a form of punishment and, therefore, must be strictly tested against the due process clause of the Constitution. In Bell against Wolfish, the court of appeals for the second circuit concluded that pretrial detainees, protected as they were by the presumption of innocense, retain the "rights afforded unincarcerated individuals," and, therefore, the due process clause required that they be subjected only to those restrictions and privations which inhere in their confinement itself or which are justified by "compelling necessity" of jail administration. The Supreme Court, holding that the ordinary usual incidents of pretrial incarceration are not penal, but regulatory in nature, stated:

The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials; it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrist, indictment, or custody, or from other matters not introduced as proof at trial. . . . But it has no application to a determination of the rights of a pretrial detainee during confinement before this trial has even begun.

* * * * *

. . . Neither respondents nor the courts below question that the Government may permissibly detail a person suspected of committing a crime prior to a formal adjudication of guilt. . . . Nor do they doubt that the Government has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences, or that confinement of such persons pending trial is a legitimate means of furthering that interest. . . .

In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.

* * * * *

This Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may. . . . [*Bell* v. *Wolfish*, 441 U.S. 520 (1979), footnotes omitted.]

Thus, it seems clear that pretrial incarceration for a legitimate state interest—such as assuring appearance at trial, protecting the community, or preventing intimidation of witness—are regulatory in nature and, indeed, may be made effective by measures substantially more restrictive than mere custody under conditions to meet the convenience of the accused.

Mr. President, others have expressed concerns about providing adequate procedural due process safeguards to reflect the importance to be attached to the withholding of liberty pending trial. This legislation would provide all the safeguards necessary to protect the rights of a person who has been arrested and is awaiting trial. For example, sections 3141 and 3142, which are intended to replace existing sections in title 18, provide for due process protections to an individual who has come before an authorized judicial officer for a determination of release or detention prior to trial or other judicial proceedings.

The accused shall have a hearing immediately before a judicial officer. The accused has the right to be represented by counsel in a hearing, to present information and witnesses, be given written findings or a statement of conditions, and to testify in his own behalf. These protections meet whatever requirements the courts have imposed on pretrial proceedings where release or detention may be at issue.

Mr. President, the bill establishes the statutory framework for judicial consideration of and decision on release and detention issues that arise in the course of a Federal criminal case between initial arrest and final judgment. Section 3141 provides that such decisions shall be made pursuant to this chapter—chapter 207 of title 18.

Section 3142 is the central provision dealing with pretrial release, in general, the policy established by this section is that an arrested person should be treated in the least restrictive way pending trial consistent with reasonable assurance that he will appear as required and that he will not endanger the safety of any other person or the community.

A mandatory condition of any release—whether on personal recognizance or otherwise—is that the person not commit a Federal, State, or local crime during the period of release. With the exception of money bond, the court may, as appropriate, impose any other condition reasonably necessary to assure appearance as required and to assure the safety of the community, including the conditions specified in section 3142(c) as follows:

First, remain in the custody of a designated person for supervision;

Second, maintain or actively seek employment;

Third, maintain or start an education program;

Fourth, abide by specific restrictions on personal associations, place of abode, or travel;

Fifth, avoid contact with the victim and witnesses of the alleged offense;

Sixth, report to designated authorities on a regular basis;

Seventh, comply with a specified curfew;

Eighth, refrain from possessing dangerous weapons;

Ninth, refrain from alcohol and drug use;

Tenth, undergo designated medical or psychiatric treatment;

Eleventh, forfeit designated property upon failure to appear as required; and

Twelfth, return to custody for specified hours following release for employment, schooling, or other appropriate purpose.

As noted above, money bond to assure appearance has been eliminated by this bill, but this does not prevent the court from placing in jeopardy the assets of the person as a condition of release—to be seized and forfeited if the person fails to appear as required. Elimination of money bond is a radical departure from current law where a surety or bond can be deposited with the court to assure appearance as required. The use of money bail is not an honest excuse for a judicial officer to avoid locking up an individual.

The use of bail bondsmen to return individuals is also not an honest approach to assuring that a person appear at trial. It is a sham for a judge to impose an extremely high bail as a reason to lock up an individual instead of coming forth with the real reason—the person constitutes a danger to the community.

Subsection (d) is an important provi-

sion that permits detention of a person arrested while free on bail, probation, or parole, for a period of 10 days to permit the appropriate court, probation official, or parole official to take action.

Subsection (e) provides for detention of the arrested person if the judicial officer concludes that no condition or combination of conditions will reasonably assure appearance as required or protect the community and that there is substantial probability that the person committed the offense charged.

As noted above, the proposed measure provides the procedural due process safeguards needed to protect the accused and society. Subsection (f) provides for a hearing to inquire into possible flight and community safety in all cases involving a crime of violence, an offense punishable by life imprisonment or death, and certain narcotic offenses. The Government or the judge may trigger a hearing as they deem appropriate in cases involving a serious risk of flight, a serious risk of obstruction of justice or witness intimidation, or a case where the person arrested has two or more prior convictions involving a crime of violence, an offense punishable by life imprisonment or death, or certain narcotic offenses. The bill is drafted to encourage prompt hearings and prompt disposition. Provision is made for drug addict screening. The accused has, as previously noted, a right to assistance of counsel, to testify, to present witnesses, to cross examine other witnesses who appear, and to present information by proffer or otherwise.

In making release decisions under this chapter, subsection (g) provides that the judicial officer shall consider the nature and circumstances of the offense charged, the weight of the evidence against the person, the history and characteristics of the person, and the nature and seriousness of the danger to a person or the community that would be posed by the person's release.

Subsections (h) and (i) delineate a number of matters to be covered by a release order and detention order, respectively, such as including release conditions, advice as to the consequences for violating a release condition, and findings of fact and reasons for the detention. In the event detention is ordered, ample provision is made to insure the accused has every opportunity to consult with counsel and cooperate in his defense.

Section 3143 replaces current 18 U.S.C. 3148 with respect to release after conviction. While current law permits a judge to consider possibility of flight, danger to the community, frivolity of an appeal, and purposeful delay by appeal as grounds for denying postconviction release, it is an almost universal Federal practice to release convicted offenders for months and even years while they seek judicial review of their convictions.

The new section makes it clear that society's interests are paramount in the postconviction situation by providing for detention pending imposition or execution of sentence, unless the court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the community if released; and detention pending appellate review of the conviction, unless the court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the community and determines that the appeal is not taken for delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

Section 3144 deals with release and detention of a material witness and replaces current 18 U.S.C. 3149 without substantive change.

Section 3145 provides for review and appeal of a release or detention order. It replaces current 18 U.S.C. 3147. A release or detention order entered by a magistrate, or by a person other than a judge of a court with original jurisdiction over the offense or a Federal appellate court, may be appealed to the court having original jurisdiction over the offense by the Government as to release and conditions of release and by the defendant as to detention or, if released, as to conditions of release.

Section 3146 replaces current 18 U.S.C. 3150 and makes it a criminal offense for a person released under this chapter to fail to appear as required or to surrender for service of sentence as ordered. A penalty of imprisonment for 5 years and a $5,000 fine is provided if the person was released in connection with a felony charge, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction of an offense. Failure to appear as a material witness or in connection with a misdemeanor charge is punishable by 1 year imprisonment and $1,000 fine. Penalties for failure to appear must run consecutive to any sentence for other offenses. In addition, property of the person designated for forfeiture upon failure to appear may be forfeited to the United States.

Section 2147 is a new provision that provides mandatory prison terms to run consecutive to any other sentence of imprisonment for the commission of a Federal, State, or local offense while released pursuant to this chapter.

Section 3148 is also new. It is designed to put some teeth into the machinery for dealing with released persons who violate some condition of their release, including violation of the mandatory condition not to engage in criminal conduct, by providing procedures for revocation of release, an order of detention, and a prosecution for contempt of court. This provision is intended to provide the statutory basis for swiftly getting individuals off the street who cannot cooperate by complying with reasonable conditions of release and particularly those individuals who may be committing other offenses.

CONCLUSION

Mr. President, this legislation is a major reform of our current Federal bail laws. It addresses fundamental problems faced by Federal judges when trying to decide whether to release or detain a person prior to trial. Conditions of release with penalties for their violation, the elimination of money bail, and an honest appraisal of a person and his possible danger to the community are the principal elements of this legislation. It should be studied closely by my colleagues on both sides of the aisle because I believe it provides a major step in an answer to the crime problems confronting us.

As chairman of the Senate Committee on the Judiciary, I intend to press for early hearings and action on this proposed legislation.

Mr. President, I ask unanimous consent that the bill I am introducing be printed in the RECORD.

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

S. 1554

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 "Bail Reform Act of 1981".

SECTION 1. Sections 3141 through 3151 of title 18, United States Code, are repealed and the following new sections are inserted in lieu thereof;

"§ 3141. Release and detention authority generally

"(a) PENDING TRAIL.—A judicial officer who is authorized to order the arrest of a person pursuant to section 3041 of this title shall order that an arrested person who is brought before him be released or detained, pending judicial proceedings, pursuant to the provision of this chapter.

"(b) PENDING SENTENCE OR APPEAL.—A judicial officer of a court of original jurisdiction over an offense, or a judicial officer of a federal appellate court, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person be released or detained pursuant to the provisions of this chapter.

"§ 3142. Release or detention of a defendant pending trial

"(a) IN GENERAL.—Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

"(1) released on his personal recognizance pursuant to the provisions of subsection (b);

"(2) released on a condition or combination of conditions pursuant to the provisions of subsection (c);

"(3) temporarily detained to permit revocation of conditional release pursuant to the provisions of subsection (d); or

"(4) detained pursuant to the provisions of subsection (e).

"(b) RELEASE ON PERSONAL RECOGNIZANCE.—The judicial officer shall order the pretrial release of the person on his personal recognizance, subject to the condition that the person not commit a federal, State, or local crime during the period of his release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

"(c) RELEASE ON CONDITION.—If the judicial officer determines that the release described in subsection (b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, he shall order the pretrial release of the person—

"(1) subject to the condition, that the person not commit a federal, State, or local crime during the period of release; and

"(2) subject to the least restrictive further condition, or combination of conditions, that he determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

"(A) remain in the custody of a designated person, who agrees to supervise him him and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

"(B) maintain employment, or, if unemployed, actively seek employment;

"(C) maintain or commence an educational program;

"(D) abide by specified restrictions on his personal associations, place of abode, or travel;

"(E) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

"(F) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

"(G) comply with a specified curfew;

"(H) refrain from possessing a firearm, destructive device, or other dangerous weapon;

"(I) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

"(J) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

"(K) forfeit, upon failing to appear as required, such designated property belonging to the person as is reasonably necessary to assure his appearance;

"(L) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

"(M) satisfy any other condition, other than execution of a money bond, that is reasonably necessary to assure appearance of the person as required and to assure the safety of any other person and the community.

The judicial officer may at any time amend his order to impose additional or different conditions of release.

"(d) TEMPORARY DETENTION TO PERMIT REVOCATION OF CONDITIONAL RELEASE.—If the judicial officer determines that—

"(1) the person is, and was at the time the offense was committed, on—

"(A) release pending trial for a felony under Federal, State, or local law; and

"(B) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

"(C) probation or parole for any offense under Federal, State, or local law; and

"(2) no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community;

he shall order the detention of the person, for a period of not more than ten days, and direct the attorney for the government to notify the appropriate court, probation, or parole official. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section.

"(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f), the judicial officer finds that:

"(1) no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community; and

"(2) on the basis of information presented by proffer or otherwise, there is a substantial probability that the person committed the offense for which he has been charged;

he shall order the detention of the person prior to trial.

"(f) DETENTION HEARING.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) will reasonably assure the appearance of the person as required and the safety of any other person and the community—

"(1) in a case that involves—

"(A) a crime of violence;

"(B) an offense for which the maximum sentence is life imprisonment or death; or

"(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 807 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); or

"(2) in any other case, upon motion of the attorney for the government or upon the judge's own motion, that involves—

"(A) a serious risk that the person will flee;

"(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror; or

"(C) any felony committed after the person had been convicted of two or more prior offenses described in paragraph (1), or two or more State or local offenses that would have been offenses described in paragraph (1) if a circumstance giving rise to Federal jurisdiction had existed.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the government may not exceed three days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or on his own motion, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether he is an addict. At the hearing, the person has the right to be represented by counsel, and, if he is financially unable to obtain adequate representation, to have counsel appointed for him. The person shall be afforded an opportunity to testify, to present witnesses on his own behalf, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The person may be detained pending completion of the hearing.

"(g) FACTORS TO BE CONSIDERED.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safey of any other person and the community, take into account the available information concerning—

"(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

"(2) the weight of the evidence against the person;

"(3) the history and characteristics of the person, including—

"(A) his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

"(B) whether, at the time of the current offense or arrest, he was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, State, or local law; and

"(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

"(h) CONTENTS OF RELEASE ORDER.—In a release order issued pursuant to the provisions of subsection (b) or (c), the judicial officer shall—

"(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

"(2) advice the person of—

"(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

"(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

"(C) the provisions of section 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court) and 1510 relating to obstruction of criminal investigation).

"(i) CONTENTS OF DETENTION ORDER.—In a detention order issued pursuant to the provisions of subsection (a), the judge shall—

"(1) include written findings of fact and a written statement of the reasons for the detention;

"(2) direct that the person be committed to the custody of the Attorney General for confinement in a correction facility separate, to the extent practicable, from persons awaiting for serving sentences of being held in custody pending appeal;

"(3) direct that the person be afforded reasonable opportunity for private consultation with his counsel; and

"(4) direct that, on order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding. The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

"§ 3143. Release or detention of a defendant pending sentence or appeal

"(a) RELEASE OR DETENTION PENDING SENTENCE.—The judicial officer shall order that a person who has been found guilty of an offense and who is waiting imposition or execution of sentence, be detained unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pursuant to section 3142(b) or (c). If the judicial officer makes such a finding, he shall order the release of the person in accordance with the provisions of section 3142(b) or (c).

"(b) RELEASE OR DETENTION PENDING APPEAL BY THE DEFENDANT.—The judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

"(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pursuant to section 3142(b) or (c); and

"(2) that the appeal is not taken for purpose of delay and raises a substantial ques-

tion of law or fact likely to result in reversal or an order for a new trial.

If the judicial officer makes such findings, he shall order the release of the person in accordance with the provisions of section 3142(b) or (c).

"(c) RELEASE OR DETENTION PENDING APPEAL BY THE GOVERNMENT.—The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States pursuant to the provisions of section 3731 of this title, in accordance with the provisions of section 3142, unless the defendant is otherwise subject to a release or detention order.

"§ 3144. Release or detention of a material witness

"If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

"§ 3145. Review and appeal of a release or detention order

"(a) REVIEW OF A RELEASE ORDER.—If a person is ordered released by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a federal appellate court—

"(1) the attorney for the government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

"(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

"(b) REVIEW OF A DETENTION ORDER.—If a person is ordered detained by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

"(c) APPEAL FROM A RELEASE OR DETENTION ORDER.—An appeal from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly.

"§ 3146. Penalty for failure to appear

"(a) OFFENSE.—A person is guilty of an offense if, after having been released pursuant to this chapter—

"(1) he fails to appear before a court as required by the conditions of his release; or

"(2) he fails to surrender for service of sentence pursuant to a court order.

"(b) GRADING.—If the person was released—

"(1) in connection with a charge of felony or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction of an offense, he shall be fined not more than $5,000 and imprisoned for not more than five years;

"(2) in connection with a charge of misdemeanor, he shall be fined not more than $1,000 or the maximum provided for such misdemeanor, whichever is less, and imprisoned for not more than one year; or

"(3) for appearance as a material witness, he shall be fined no more than $1,000 or imprisoned for not more than one year or both.

A term of imprisonment imposed pursuant to this section shall be consecutive to the sentence of imprisonment for any other offense.

"(c) DECLARATION OF FORFEITURE.—If a person fails to appear before a court as required, and the person is subject to the release condition set forth in section 3142(c)(2)(K), the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

"§ 3147. Penalty for an offense committed while on release

"A person convicted of a federal, State, or local offense committed while released pursuant to this chapter shall be sentenced, in addition to the sentence prescribed for the offense for which he was on release, to—

"(1) a term of imprisonment of not less than two years and not more than ten years if the offense is a felony; or

"(2) a term of imprisonment of not less than ninety days and not more than one year if the offense is a misdemeanor.

A term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

"§ 3148. Sanctions for violation of a release condition

"(a) AVAILABLE SANCTIONS.—A person who has been released pursuant to the provisions of section 3142, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

"(b) REVOCATION OF RELEASE.—The attorney for the government may initiate a proceeding for revocation of an order of release by filing a motion with the district court. A judicial officer may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before a judicial officer in this district in which his arrest was ordered for a proceeding in accordance with this section. The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer—

"(1) finds that there is clear and convincing evidence that the person has violated a condition of his release; and

"(2) finds that—

"(A) based on the factors set forth in section 3142(g), there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

"(B) the person is unlikely to abide by any condition or combination of conditions of release.

If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, he shall treat the person in accordance with the provisions of section 3142 and may amend the conditions of release accordingly.

"(c) PROSECUTION FOR CONTEMPT.—The judge may commence a prosecution for contempt, pursuant to the provisions of section 401, if the person has violated a condition of his release.

"§ 3149. Applicability to a case removed from a State court

"The provisions of this chapter apply to a criminal case removed to a federal court from a State court.".

(b) Section 3154 of title 18, United States Code, is amended—

(1) in subsection (1), by striking out "and recommend appropriate release conditions for each such person" and inserting in lieu thereof "and, where appropriate, include a recommendation as to whether each such person should be released or detained and, if release is recommended, recommend appropriate conditions of release"; and

(2) in subsection (2), by striking out "section 3146(e) or section 3147" and inserting in lieu thereof "section 3145";

(c) section 3156(a) of title 18, United States Code, is amended—

(1) by striking out "3146" and inserting in lieu thereof "3141";

(2) in paragraph (1)—

(A) by striking out "bail or otherwise" and inserting in lieu thereof "detain or"; and

(B) by deleting "and" at the end thereof;

(3) in paragraph (2) by striking out the period at the end and inserting in lieu thereof "; and";

(4) by adding after paragraph (2) the following new paragraphs:

"(3) The term 'felony' means an offense punishable by a maximum term of imprisonment of more than one year; and

"(4) The term 'crime of violence' means—

"(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."; and

(5) in subsection (b)(1), by striking out "bail or otherwise" and inserting in lieu thereof "detain or";

(d) the item relating to chapter 207 in the analysis of Part II of title 18, United States Code, is amended to read as follows:

"207. Release and detention pending judicial proceedings..... 3141"; and

(e)(1) the caption of chapter 207 is amended to read as follows:

"Chapter 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS"; and

(2) the section analysis for chapter 207 is amended by striking out the items relating to sections 3141 through 3151 and inserting in lieu thereof the following:

"3141. Release and detention authority generally.
"3142. Release or detention of a defendant pending trial.
"3143. Release or detention of a defendant pending sentence or appeal.
"3144. Release or detention of a material witness.
"3145. Review and appeal of a release or detention order.
"3146. Penalty for failure to appear.
"3147. Penalty for an offense committed while on release.
"3148. Sanctions for violation of a release condition.
"3149. Applicability to a case removed from a State court.
"3150. Repealed.
"3151. Repealed.".

SEC. 2. Chapter 203 of title 18, United States Code, is amended as follows:

(a) The last sentence of section 3041 is amended by striking out "determining to hold the prisoner for trial" and inserting in lieu thereof "determining, pursuant to the provisions of section 3142 of this title,

whether to detain or conditionally release the prisoner prior to trial".

(b) The second paragraph of section 3042 is amended by striking out "imprisoned or admitted to bail" and inserting in lieu thereof "detained or conditionally released pursuant to section 3142 of this title".

(c) Section 3043 is repealed.

(d) The following new section is added after section 3061:

"§ 3062. General arrest authority for violation of release conditions

"A law enforcement officer, who is authorized to arrest for an offense committed in his presence, may arrest a person who is released pursuant to chapter 207 if the officer has reasonable grounds to believe that the person is violating, in his presence, a condition imposed on the person pursuant to section 3142(c)(2)(D), (c)(2)(E), (c)(2)(H), (c)(2)(I), or (c)(2)(L), or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to section 3142 (c)(2)(J).".

(e) The section analysis is amended—

(1) by amending the item relating to section 3043 to read as follows:

"3043. Repealed."; and

(2) by adding the following new item after the item relating to section 3061:

"3062. General arrest authority for violation of release conditions.".

SEC. 3. Section 3731 of title 18, United States Code, is amended by adding after the second paragraph the following new paragraph:

"An appeal by the United States shall lie to a court of appeals from a decision or order, entered by a district court of the United States, granting the pretrial release of a person charged with an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.".

SEC. 4. The second paragraph of section 3772 of title 18, United States Code, is amended by striking out "bail" and inserting in lieu thereof "release pending appeal".

SEC. 5. Section 4282 of title 18, United Code, is amended—

(a) by striking out "and not admitted to bail" and substituting "and detained pursuant to chapter 207"; and

(b) by striking out "and unable to make bail".

SEC. 6. Section 636 of title 28, United States Code, is amended by striking out "impose conditions of release under section 3146 of title 18" and inserting in lieu thereof "issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial".

SEC. 7. The Federal Rules of Criminal Procedure are amended as follows:

(a) Rule 5(c) is amended by striking out "shall admit the defendant to bail" and inserting in lieu thereof "shall detain or conditionally release the defendant".

(b) Rule 9(b)(1) is amended by striking out the last sentence.

(c) The second sentence of Rule 15(a) is amended by striking out "committed for failure to give bail to appear to testify at a trial or hearing" and inserting in lieu thereof "detained pursuant to 18 U.S.C. § 3144".

(d) Rule 40(f) is amended to read as follows:

"(f) Release or Detention. If a person was previously detained or conditionally released, pursuant to chapter 207 of title 18, United States Code, in another district where a warrant, information or indictment issued, the federal magistrate shall take into account the decision previously made and the reasons set forth therefor, if any, but will not be bound by that decision. If the federal magistrate amends the release or detention decision or alters the conditions of release, he shall set forth the reasons for his action in writing.".

(e) Rule 46 is amended—

(1) in subsection (a), by striking out "3146, 3148, or 3149" and inserting in lieu thereof "3142 and 3144";

(2) in subdivision (c), by striking out "3148" and inserting in lieu thereof "3143";

(3) by deleting subdivision (d);

(4) by amending subdivision (e)(1) to read as follows:

"(1) DECLARATION.—If there is a breach of the condition set forth in 18 U.S.C. § 3142(c)(2)(K), the district court shall declare the property that is the subject of the condition to be forfeited to the United States.";

(5) by deleting the second and third sentences of subdivision (e)(3);

(6) by deleting "obligors" and "their" in the last sentence of subdivision (e)(3) and substituting "defendant" and "his", respectively;

(7) by amending subdivision (f) to read as follows:

"(f) EXONERATION.—If the forfeiture has been set aside or remitted, the court shall exonerate the defendant of the obligation to forfeit the property and shall release the property to him."; and

(8) by adding the following new subdivision at the end thereof:

"(h) FORFEITURE OF PROPERTY.—Nothing in this Rule or in chapter 207 of title 18, United States Code, shall prevent the court from disposing of any charge by entering an order directing forfeiture of property pursuant to 18 U.S.C. § 3142(c)(2)(K) if the value of the property is an amount that would be an appropriate sentence after conviction of the offense charged and if such forfeiture is authorized by statute or regulation.".

(f) Rule 54(b)(3) is amended by striking out "18 U.S.C. § 3043 and".

SEC. 8. Rule 9(c) of the Federal Rules of Appellate Procedure is amended by striking out "3148" and inserting in lieu thereof "3143".

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

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska (Mr. MURKOWSKI) is recognized.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. Do I have a special order?

The PRESIDING OFFICER. It was the last special order.

Mr. KENNEDY. Mr. President, since the Senator from Alaska is not here, I ask unanimous consent that I may proceed first.

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

Mr. KENNEDY. Mr. President, I am pleased to be able to join Senator THURMOND in introducing the Bail Reform Act of 1981. We will also introduce the Criminal Sentencing Reform Act of 1981, which was reported, without objection, from the Judiciary Committee last year.

Senator THURMOND and I have worked closely together in the criminal law area, and I have respected his fair and balanced approach to reform of the criminal justice system. I am gratified to see the strong bipartisan support behind both these proposals. On the sentencing bill, we are joined by Senators LEAHY, BAUCUS, DECONCINI, LAXALT, HATCH, and SPECTER. On the bail reform bill, we have a slightly different list of cosponsors. We are joined by Senator BUMPERS, who has taken a leadership role in the bail reform area.

Because of the recent dramatic increase in the rate of violent crime, citizens of this Nation are demanding that Congress do more to curb violent crime. I am confident that these bills we are introducing today can meet that challenge and I hope that both will be enacted into law in this Congress.

Of course, neither of these laws alone will solve the very real problem of the most serious crimes committed on the streets of this Nation. But we do have a responsibility to meet the challenge of devising new approaches to the problems of violence. If successful,

If successful, the States will follow our lead. As we consider the comprehensive legislation to reduce the rate of violent crime, revision of bail and sentence laws should have the highest priority.

The Bail Reform Act of 1981 proposes a comprehensive reform of the unsatisfactory two-century-old system of money bail. Under the two key parts of this proposal, money bail will be completely eliminated, and persons accused of crime will be detained in prison prior to trial only if they are a danger to the community or likely to flee before their trial.

Mr. President, our current system of bail is inadequate from the perspective of both the community and the criminal defendant. As written, the bail laws require a judge to release a defendant in noncapital cases prior to trial under those minimal conditions reasonably required to assure his presence at trial. Danger to the community and the protection of society are not factors to be considered under current law in the decision to grant bail.

Over the past 15 years, since the enactment of the Bail Reform Act of 1966, there has been rising public concern that our bail laws are not working. With increasing frequency, persons on bail are being arrested and charged with serious felonies—especially burglary, robbery, larceny, and drug offenses. In Washington, D.C. alone, the rearrest rate has been a startling 22 percent, and the average rate of rearrest hovers around 16 percent.

A recent study by the Lazar Institute commissioned by the Department of Justice made the preliminary finding that rearrested defendants have more extensive prior records than other defendants. They averaged five prior arrests and 2.5 prior convictions—as compared with three arrests and 1.2 prior convictions for other defendants. The public is outraged that these violent repeat offenders, with lengthy records of serious street crime, are put back onto the street to rob and mug again.

Under our present system of bail, it is common knowledge that judges use money bail to detain defendants who they believe, will threaten the community even when there is no indication the defendant will flee. Indeed, the major

reason today for the pretrial detention of defendants is the inability to post bond. A judge knows that the higher the bond, the less likely the defendant will be released from jail prior to trial. Studies show that approximately 65 percent of the persons with bonds of $10,000 or more were jailed for the entire pretrial period. Thus, in practice, we have a system of preventive detention today, but it operates only against the poor.

In the legislation introduced today, we seek to establish a bail system which candidly and openly acknowledges the need to consider safety to the community, and which eliminates the present discrimination against the indigent defendant. Defendants who pose no danger to the community or risk of flight will not be unfairly sent to jail because they cannot afford to pay the cost of bail.

No longer will wealthy drug traffickers be able to meet the money bail requirements, and then flee the jurisdiction. Instead this legislation will permit a judge, in determining whether to release a defendant, to consider both the likelihood of flight and of danger to the community without having to use any subterfuges to reach the legitimate objectives of detaining such persons before trial.

As one who has long been committed to preserving the civil liberties of all our citizens, I firmly believe that this legislation strikes a fair balance between the rights of the accused under the constitution and the rights of the public to be safe in their homes and neighborhoods. It meets the basic goals of law enforcement without infringing unnecessarily on civil liberties. Permitting a judge to consider danger to the community in determining pretrial release does not violate the constitutional presumption of innocence or the constitutional prohibition against excessive bail. The District of Columbia Court of Appeals, in United States against Edwards, recently upheld the constitutionality of the D.C. preventive detention statute. As the court stated—

> Significantly, pretrial detention is closely circumscribed so as not to go beyond the need to protect the safety of the community pending the detainee's trial.

Like the D.C. statute, this legislation establishes careful due process procedures to protect defendants detained prior to trial on the grounds they might flee or pose a danger to the community.

In particular, a defendant cannot be detained prior to trial unless the judge finds: First, by a "substantial probability" that the defendant committed the crime; second, that the defendant will flee or will pose a danger to the community; and third, that there is no other set of conditions which will reasonably insure appearance of the defendant or the safety of the community. Most important, no pretrial detention can be imposed unless a person is accused of dangerous and violent offenses, or unless he has been charged with a felony and has a prior record of violent crime.

Any person detained prior to trial would be tried promptly according to the expedited procedures of the Speedy Trial Act. After the expiration of that time period, the accused must be released on bail.

In making the determination that a person should be detained either because of risk to the community or probability of flight, the judge is required to look at a number of factors, including the circumstances of the offenses, the weight of the evidence against the person, and his prior record of criminal behavior. This list of criteria is derived from the D.C. statute, enacted in 1970, which gives great weight to the prior record of a defendant accused of a violent or serious crime in determining whether there is a substantial likelihood that he will commit another offense while on bail.

A number of important procedural due process rights are afforded the defendant in the pretrial hearing. He is permitted the right to present witnesses and cross-examine witnesses brought against him. A judge must make findings of fact, and the reasons for detention, if imposed, must be stated. A defendant has the right to an appeal of the pretrial detention order.

While this bill is an important first step in achieving bail reform, I have concerns about several provisions in the legislation.

First, the definition of violent crime may be too broad. The legislation defines violent crime in generic terms as an offense which involves the use or threat of physical force against the person or property of another. Other proposals, like the District of Columbia preventive detention statute, list the covered crimes—like rape, robbery, kidnaping, drug trafficking. By specifically listing the crimes, those proposals would limit the use of preventive detention to the most serious offenses.

Second, I am concerned that the bill does not give sufficient weight to the past criminal record of a criminal defendant in determining whether he is likely to be a danger to the community prior to trial. Not surprisingly, the statistics indicate that a defendant is more likely to commit pretrial crimes if he has a past criminal record. For that reason, the District of Columbia preventive detention statute requires that a court find a prior pattern of criminal conduct before he or she can impose preventive detention. We should insure that this legislation is carefully tailored to cover only those defendants most likely to be a danger to the community.

I look forward to extensive hearings which will analyze the procedures in this legislation and welcome any suggestions to improve it.

In sum, Mr. President, I believe that this proposal has the potential to become a historic landmark in the war on crime, and in our ongoing effort to fulfill the great goal of equal justice under law.

This legislation is not a panacea for violent crime in America. Indeed the Federal Government does not have jurisdiction to deal with many of the most serious crimes committed on the streets of the Nation. But, we do have a responsibility to meet the challenge of devising new approaches to the problem of violence. If successful, the States will follow our lead. As we consider comprehensive legislation to reduce the rate of violent crime, revision of the bail laws should have the highest priority.

BAIL REFORM

Mr. HATCH. Mr. President, escalating crime is one of the terrifying realities of our day. Indeed from 1979 to 1980 violent crimes increased at the alarming double-digit rate of 13 percent. Robberies multiplied nationwide at a 20-percent rate, rapes at 9 percent, aggravated assaults at 8 percent, and homicides at 7 percent. With danger to lawful citizens increasing yearly, Federal courts and Federal laws need to recognize more urgently the need to protect neighborhood safety.

Two recent studies conducted in the District of Columbia suggest that present bail procedures have worked to the direct detriment of community security. In the first study, entitled "Pretrial Release and Misconduct in the District of Columbia," 13 percent of felony suspects were apprehended for another crime committed while they were free on bail.[1] In another 1978 study, 65 percent of those released after an arrest for auto theft were taken into custody for another auto theft while out on bail.[2] An older District of Columbia statistical analysis is even more disturbing. According to this 1968 survey of 557 persons indicted for robbery, 70.1 percent of those released prior to trial were rearrested while on bail.[3] Moreover these studies could each be interpreted in light of findings that over 50 percent of criminal activity goes unreported and fewer than 25 percent of reported crimes lead to arrests.[4] Although these studies might suggest the relevancy of community security to a bail proceeding, current law prevents a Federal judge from considering threats to the community when setting conditions for pretrial release.

Under current Federal law, specifically the Bail Reform Act of 1966, the only issue a judge is to consider in determining bail is what condition will reasonably assure that the suspect will appear for trial. By failing to account for potential danger to the community into which the defendant will return when released, Federal bail laws have contributed directly to the rise in criminal activity by releasing suspects to commit other offenses as well as indirectly by augmenting a climate of leniency that has fostered the rampant crime increase.

HISTORY OF BAIL AND DANGER TO COMMUNITY CONSIDERATIONS

The history of bail requirements is a lengthy record of legal standards giving some consideration to society's right to self-defense when weighing conditions for pretrial release. The Statute of Westminster the First of 1275 included a list of violent offenses for which no bail was possible. This reflected an apparent understanding that persons charged with serious felonies pose a greater risk of injury or death to others within the community. This served for

Footnotes at end of article.

more than five centuries as the basic authority for bail.[5] English judges, however, were apparently not fully satisfied that those protections were adequate. They began setting bail for less serious offenses beyond the reach of most offenders. Parliament responded with a provision in the Bill of Right in 1689 that "excessive [bail] ought not to be required."[6] This language became the basis for the Virginia Declaration of Rights which was offered as an amendment to the Constitution verbatim by James Madison in 1789.

Bail laws in the fledgling states carried over the English principle of recognizing the gravity of the offense in determining whether to make bail available to certain classes of dangerous offenders. The pivotal Judiciary Act of 1789 authorized the denial of bail in capital offenses. This same practice was followed in the statutes of the new States. This was particularly significant because six of the States imposed capital punishment for arson, rape, burglary, and robbery, in addition to murder; two other States authorized the death penalty for three of these four violent offenses; other States entrusted formulation of criminal law to the courts under the common law which prescribed capital punishment for most felonies.[7] Bail practice in the new States was fundamentally designed to prevent, at the discretion of the court, suspects in violent crimes from returning to the community in the period between arrest and trial.

Although the Bail Reform Act today still allows the court to detain the accused without bail in capital offenses, the death penalty no longer applies to the breadth of violent offenses it formerly encompassed. Although the definition of capital offenses has changed over the years, the reasons for the retreat from the death penalty are not relevant to the question of detaining a suspect pending trial. Capital punishment has come under attack because its deterrent effect is doubted and rehabilitation of criminals is more trusted. Neither of these factors addresses protection of the community against dangerous conduct by a defendant awaiting trial.

THE EIGHTH AMENDMENT

The eighth amendment, based as it is upon the English law precedents that denied bail to offenders in capital—at that time, violent—crimes, does not guarantee bail to all suspects under all conditions. Instead it explicitly states that bail shall not be excessive, with the implicit message that bail must first be warranted before the excessiveness ban would have any effect at all. To construe the eighth amendment to imply a right to bail in all cases would prohibit any form of pretrial detention. In other words, State laws enacted contemporaneous with the Constitution that permitted denial of bail for capital offenses would have been unconstitutional. Thus, finding an implied universal right to bail in the eighth amendment would run contrary to the historical context in which the Constitution was drafted.

Footnotes at end of article.

In any event, the Supreme Court resolved any questions about a right to bail in Carlson against Landon: [8]

The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept. The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus in criminal cases bail is not compulsory where the punishment may be death. Indeed, the very language of the Amendment fails to say all arrests must be bailable.

Although bail may not be excessive, there is no absolute right to bail. Dangerousness of the defendant is not barred by the Constitution as a consideration in bail proceedings. On the contrary, as previously noted, the absence of a constitutional prohibition in light of the common practice of the time to restrict bail suggests credibly that the framers of the Constitution approved of bail policies to protect the community against recidivists.

THE BAIL REFORM ACT OF 1966

Despite these weighty historical precedents, Congress in 1966 restricted Federal courts' discretion to consider threats to the community when setting pre-trial release conditions. Besides releasing individuals likely to commit other crimes, this leads to several unreasonable contradictions. For instance, the standards a court must use when setting bail may be determined by whether or not the wound inflicted by the prisoner is fatal. As discussed earlier, the court in capital offenses may consider the prospect of risk to the community, but in noncapital offenses may only consider likelihood of flight when setting bail. Therefore, the legal standard used to determine pretrial release conditions may depend on whether the victim in the case is still clinging to life when the defendant is brought before the court to request bail. In other words, the test of law allowing a dangerous suspect to return to the community is more dependent upon the death date of his last victim than considerations of community safety.

Another arbitrary result of the current bail law is that a criminal with a long list of convictions may find it easier to demonstrate that he will appear for trial than a first offender. Former U.S. Attorney for the District of Columbia, Earl J. Silbert, makes this point persuasively:

The utter absurdity of this result is best demonstrated by the argument defense lawyers routinely make and judges too often accept: The defendant should be released because his extensive record of criminal arrests and convictions for serious crimes without any charge of flight is persuasive proof that he appears in court as required. The logical extension of this argument is that the more crimes a defendant has committed, the stronger his argument for release.[9]

Without any consideration of dangerousness allowed by the current Bail Reform Act, a recidivist may actually contend that his lengthy criminal record is good reason for his pretrial release.

The current law also puts judges in a very difficult position. A judge with a sense of duty to protect the innocent probably takes quietly into account a defendant's dangerousness by setting bail beyond his means. This puts the judge in the uncomfortable position of considering in fact matters he must ignore under the law. The "Interim Report of the State of New York Temporary Commission on Revision of the Penal and Criminal Code" commented on this situation in recommending a change of law:

There is little doubt that the average judge will, regardless of the reasons given by him, deny bail to a defendant charged with forcible rape and having an unsavory record of sex crimes, no matter how certain he may be that the defendant will appear in court when required; nor is there any doubt that such practice . . . has the approval of the general public. . . . Upon the premise that in many instances preventive detention is in fact necessary for public protection and will inevitably be practiced even though not specifically authorized, the proposal realistically and implicitly recognizes danger to the community as a valid consideration in the determination of any bail application.[10]

Judges themselves have candidly commented on their policy of disregarding this unworkable law. Judge Tim Murphy formerly on the District of Columbia Court of General Sessions said before a House Committee that:

An unreasonable law has the ultimate effect of forcing those who administer it to ignore it, calloused of the consequences, or else to make extreme rationalizations in circumventing it; this applies to judges. You cannot expect judges to follow the letter of a law that requires them to turn many dangerous criminals loose day after day.[11]

The other side of this dilemma for judges is that a conscientious judge could, within the letter of the law, find himself under popular attack for releasing repeating offenders. Whatever the strict legal test for pre-trial release, however, danger to the community is, and always has been, a major consideration for arriving at the amount of bail. Federal judges should be given the necessary discretion under the law to protect the community by the honest use of preventive detention, and not solely by setting a preposterously high bail figure obstensibly to prevent flight.

COURTS ALREADY PREDICT BEHAVIOR

Changing the Bail Reform Act of 1966 to grant Federal judges the discretion to use the peril a defendant may pose to the neighborhood as a criteria in pretrial release proceedings would remedy each of the problems just discussed. This would involve judges in weighing the potential for future violence based on the defendant's past record. These determinations, however, are not unusual for courts. The Bail Reform Act itself allows a judge to examine the suspect's proclivity for future violence when determining bail in a capital case. Moreover, the same bail law requires the courts to predict the potential for flight by the defendant in all instances of pretrial release. When balancing protection of the public against the first amendment right to hold

a mass demonstration, the courts also must weigh the potential for violence. Thus, projecting potentialities and tendencies in the interest of public safety is not beyond the capability of the courts. The 1966 report of the President's Commission on Crime in the District of Columbia reinforced this principle:

After considering the opposing arguments, the majority concludes that the courts are presently capable of identifying those defendants who pose so great a threat to the community that they should not be released, and that a constitutionally sound statute authorizing detention in certain cases can be drawn.[12]

It is important to recognize that when the court makes a determination about the likelihood of dangerous conduct between arrest and trial, it is not idly gazing into a nonexistent crystal ball, but instead examining a reliable record of past conduct. The current bail act, in effect, blacks out that aspect of the record most relevant to public safety, dangerousness of the defendant, and leaves the court to make its projection based solely on the risk that the suspect will not show for trial. The current law does not prevent courts from predicting, but only withdraws some of the record that would make the forecast reliable.

THE FIFTH AMENDMENT

The fifth amendment forbids any official restraints on liberty without "due process of law." If this were interpreted to mean that no individual could be detained before convicted, law enforcement officers would also be barred from apprehending any suspect to stand trial. Former Attorney General John N. Mitchell makes this point very forcibly:

If such a pretrial presumption of innocence existed as a bar to detention of the dangerous before trial, it would also bar pretrial detention of those charged with capital offenses, those held on money bond and could even be extended to prevent police from arresting persons and taking them into custody on probable cause.[13]

Clearly the fifth amendment cannot be construed as an absolute ban on pretrial detention. The Supreme Court has provided a more reasonable reading of the amendment:

The fact that liberty cannot be inhibited without due process does not mean that it can under no circumstances be inhibited.

The requirements of due process are a function not only of the extent of the governmental restriction imposed, but also of the extent of the necessity for the restriction.[14]

Accordingly, the individual's liberty must be balanced against the society's reasons for restraint. In the case of conditions placed on pretrial liberty, there are two very reasonable explanations for the restriction: To insure the individual will appear to stand trial, and to protect the community. The Bail Act already accommodates the first, but, despite the overwhelming historical, legal, and sociological evidence, disregards the latter. The fifth amendment, however, cannot be construed as a bar to detention on the basis of dangerousness. Already the Supreme Court has upheld various forms of detention as a means of protection.[15]

BAIL REFORM BILL

Senator EDWARD KENNEDY, in an address to the National Governor's Conference on Crime Control, June 1, 1979, perhaps stated the case for a change in current bail laws most succinctly:

Our current bail procedures are not working. In particular, they pose an unnecessary threat to the safety of the community. It is time to recognize that these procedures need substantial revision, within the scope of what is permissible under the Constitution.

The measure that is being introduced today is similar, although not identical, to bail reform provisions that were contained in the proposed criminal code reform measure last year (S. 1722). To summarize briefly, the bill would do the following:

First, it would permit Federal judges to consider the safety of other persons or of the community generally in making pretrial release decisions. The risk of flight is currently the only factor that may be considered by the court (section 3502(b)(c)).

Second, if the court determines that simple pretrial release would not reasonably assure appearance at trial, or that it might endanger the safety of other persons or of the community, it might condition such release in a variety of ways. The list of discretionary release conditions is sharply expanded from present law. In addition, a mandatory release condition is imposed upon every defendant that he not commit a Federal, State, or local crime during the period of his release (section 3502(c)).

Third, if the court determines that no such condition will reasonably assure trial appearance, and the safety of other persons or of the community, and if it determines that there existed a "substantial probability" that the person committed the offense for which he has been charged, it may order the pretrial detention of the accused party (section 3502(e)).

Fourth, only those individuals who have been charged with (or who have a history of) a commission of a crime of violence, espionage, or a drug offense would be subject to possible detention, except upon the specific motion of the court or the U.S. Attorney (section 3502(f)).

Fifth, the presumption would be reversed with respect to whether or not to release a convicted person pending sentence or appeal. Under present law, the court is required to treat such an individual under the identical release standards as a nonconvicted individual, unless it has reason to believe that no condition of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. This presumption would be reversed with the convicted individual subject to release only if the court finds, by clear and convincing evidence, that he is not likely to flee or to pose a danger to any other person or to the community.

In addition, with respect to individuals waiting appeal, the court would be required to find that the appeal was not taken for the purpose of delay and that it raised a substantial question of law or fact likely to result in a reversal or an order for a new trial. (Section 3503).

Sixth, money bond would be abolished as a means for detaining persons whom the courts believe would be likely to flee or to pose a danger to another person or to the community. Instead, the court would be required to consider these factors in setting conditions of release or in detaining a person prior to trial. More honest decisionmaking would be performed by the courts. (Section 3502(b)).

Seventh, new sanctions would be established against those individuals violating their conditions of release. Such individuals would either be subject to summary revocation or release procedures, or to criminal contempt sanctions. (Section 3506).

Eighth, new authority would be granted to law enforcement officers to make arrests of individuals violating certain condition of release.

In conclusion, permit me to restate that amending the Bail Reform Act of 1966 to allow Federal judges to consider whether the suspect would be a menace to public safety if released would remedy the problems we have already discussed. It would provide the courts the discretion to reduce the alarming growth of crime committed by individuals free in the community on bail. It would relieve judges of using the subterfuge of setting an unusually high bail amount to protect the community. It would eliminate several unreasonable legal distinctions, such as making the standard for bail rest on the fatality of the wound inflicted in the case.

Moreover it would honor a tradition reaching back to 1215 of protecting the community against the apprehended in connection with a violent crime. Finally, it would not be repugnant to either the eighth or fifth amendment, indeed using bail conditions to protect the public was not only a practice at the time of the drafting of those amendments but also a course of conduct supported by the Constitution until changed by Congress in 1966.

It is my intention to hold hearings on this measure in the very near future in the Subcommittee on the Constitution. We will consider this and other proposed bail reforms.

FOOTNOTES

[1] J. Roth & F. Wice, "Pretrial Release and Misconduct in the District of Columbia", Institute of Law and Social Research, PROMIS research project No. 16, 1978.

[2] D.C. Bail Agency, "How Does Pretrial Supervision Affect Pretrial Performance?" 1978.

[3] Report of the Judicial Council Committee to Study the Operation of the Bail Reform Act in the District of Columbia 20–21 May 1969.

[4] "President's Commission on Crime in the District of Columbia" Report 596 (1966).

[5] *The Constitution of the United States, Analysis and Interpretation*, Congressional Research Service, 92nd Congress, Second Session, Document 92–82, Lester S. Jayson Supervising Editor. See Page 1247.

[6] Id at 1247.

[7] Mitchell, John N., "Bail Reform and the Constitutionality of Pretrial Detention," 55 Virginia Law Review 1223 at 1128. 1969.

[8] *Carlson* v. *Landon*, 342 U.S. 524 (1952), at 545–6.

[9] Silbert, Earl J., "Pretrial Release of Dangerous Defendants."

[10] Interim Report of the State of New York Temporary Commission on Revision of the Penal and Criminal Code, Part A, Section B (1969).

[11] Hearings on Amendments to the Bail Reform Act Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 91st Congress, 1st Session, at 220–221.

[12] Supra, President's Commission.

[13] Supra, Mitchell, at 1231–2.

[14] *Zemel* v. *Rusk*, 381 U.S. 1, at 14 (1965). (1965).

[15] *Greenwood* v. *U.S.*, 350 U.S. 366 (1956), allows detention of those incompetent to stand trial who may endanger safety. *Minnesota ex rel. Pearson* v. *Probate Court*, 309 U.S. 270 (1940), allowed detention of sexual psychopaths deemed dangerous.

I ask unanimous consent to have several related materials printed in the RECORD.

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

BELL, ATTORNEY GENERAL, ET AL. VERSUS WOLFISH ET AL.

(No. 77–1829.—Argued January 16, 1979—Decided May 14, 1979)

A

The Court of Appeals did not dispute that the Government may permissibly incarcerate a person charged with a crime but not yet convicted to ensure his presence at trial. However, reasoning from the "premise that an individual is to be treated as innocent until proven guilty," the court concluded that pretrial detainees retain the "rights afforded unincarcerated individuals," and that therefore it is not sufficient that the conditions of confinement for pretrial detainees "merely comport with contemporary standards of decency prescribed by the cruel and unusual punishment clause of the eighth amendment." 573 F. 2d, at 124. Rather, the court held, the Due Process Clause requires that pretrial detainees "be subjected to only those 'restrictions and privations' which 'inhere in their confinement itself or which are justified by compelling necessities of jail administration.'" *Ibid.*, quoting *Rhem* v. *Malcolm*, 507 F. 2d, at 336. Under the Court of Appeals' "compelling necessity" standard, "deprivation of the rights of detainees cannot be justified by the cries of fiscal necessity, . . . administrative convenience, . . . or by the cold comfort that conditions in other jails are worse." 573 F. 2d, at 124 (citations omitted). The court acknowledged, however, that it could not "ignore" our admonition in *Procunier* v. *Martinez*, 416 U.S. 396, 405 (1974), that "courts are ill-equipped to deal with the increasingly urgent problems of prison administration," and concluded that it would "not [be] wise for [it] to second-guess the expert administrators on matters on which they are better informed." 573 F. 2d, at 124.[1]

[1] The NAACP Legal Defense and Educational Fund, Inc., as *amicus curiae*, argues that federal courts have inherent authority to correct conditions of pretrial confinement and that the practices at issue in this case violate the Attorney General's alleged duty to provide inmates with "suitable quarters" under 18 U.S.C. § 4042(2). Brief for the NAACP Legal Defense and Educational Fund, Inc., at *Amicus Curiae* 22–46. Neither argument was presented to or passed on by the lower courts; nor have they been urged by either party in this Court. Accordingly, we have no occasion to reach them in this case. *Knetsch* v. *United States*, 364 U.S. 361, 370 (1960).

Our fundamental disagreement with the Court of Appeals is that we fail to find a source in the Constitution for its compelling necessity standard.[2] Both the Court of Appeals and the District Court seem to have relied on the "presumption of innocence" as the source of the detainee's substantive right to be free from conditions of confinement that are not justified by compelling necessity. 573 F. 2d, at 124; 439 F. Supp., at 124; accord, *Campbell* v. *Magruder*, —— U.S. App. D.C. ——, 580 F. 2d 521, 529 (1978); *Detainees of Brooklyn House of Detention* v. *Malcolm*, 520 F. 2d 392, 397 (CA2 1975); *Rhem* v. *Malcolm*, 507 F. 2d 333, 336 (CA2 1974). But see *Feeley* v. *Sampson*, 570 F. 2d 364, 369 n. 4 (CA1 1978); *Hampton* v. *Holmesburg Prison Officials*, 546 F. 2d 1077, 1080 n. 1 (CA3 1976). But the presumption of innocence provides no support for such a rule.

The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials; it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment or custody or from other matters not introduced as proof at trial. *Taylor* v. *Kentucky*, 436 U.S. 478, 585 (1978); see *Estelle* v. *Williams*, 425 U.S. 501 (1976); *In re Winship*, 397 U.S. 358 (1970); 9 J. Wigmore, Evidence § 2511 (3d ed. 1940). It is "an inaccurate, shorthand description of the right of the accused to 'remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effected persuasion . . .' [; an] 'assumption' that is indulged in the absence of contrary evidence." *Taylor* v. *Kentucky*, *supra*, at 483–484, n. 12.

Without question, the presumption of innocence plays an important role in our criminal justice system. "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin* v. *United States*, 156 U.S. 432, 453 (1895). But it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.

The Court of Appeals also relied on what it termed the "indisputable rudiments of due process" in fashioning its compelling necessity test. We do not doubt that the Due Process Clause protects a detainee from certain conditions and restrictions of pretrial detainment See *infra*, at 13–19. Nonetheless, that clause provides no basis for application of a compelling necessity standard to conditions of pretrial confinement that are not alleged to infringe any other, more specific guarantee of the Constitution.

[2] As authority for its compelling necessity test, the court cited three of its prior decisions, *Rhem* v. *Malcolm*, 507 F. 2d 333 (CA2 1974) (*Rhem I*); *Detainees of Brooklyn House of Detention* v. *Malcolm*, 520 F. 2d 392 (CA2 1975), and *Rhem* v. *Malcolm*, 527 F. 2d 1041 (CA2 1975) (*Rhem II*). *Rhem I's* support for the compelling necessity test came from *Brenneman* v. *Madigan*, 343 F. Supp. 128, 142 (ND Cal. 1972), which in turn cited no cases in support of its statement of the relevant test. *Detainees* found support for the compelling necessity standard in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), *Tate* v. *Short*, 401 U.S. 395 (1971), *Williams* v. *Illinois*, 399 U.S. 235 (1970), and *Shelton* v. *Tucker*, 364 U.S. 479 (1960). But *Tate* and *Williams* dealt with equal protection challenges to imprisonment based on inability to pay fines or costs. Similarly, *Shapiro* concerned equal protection challenges to state welfare eligibility requirements found to violate the constitutional right to travel. In *Shelton*, the Court held that a school board policy requiring disclosure of personal associations violated the First and Fourteenth Amendment rights of a teacher. None of these cases support the court's compelling necessity test. Finally, *Rhem II* merely relied on *Rhem I* and *Detainees*.

It is important to focus on what is at issue here. We are not concerned with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails. See *Gerstein* v. *Pugh*, 420 U.S. 103, 114 (1975); *United States* v. *Marion*, 404 U.S. 307, 320 (1971). Neither respondents nor the courts below question that the Government may permissibly detain a person suspected of committing a crime prior to a formal adjudication of guilt. See *Gerstein* v. *Pugh*, *supra*, at 111–114. Nor do they doubt that the Government has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences, or that confinement of such persons pending trial is a legitimate means of furthering that interest. Tr. of Oral Arg. 27; see *Stack* v. *Boyle*, 342 U.S. 1, 4 (1951).[3] Instead, what is at issue when an aspect of pretrial detention that is not alleged to violate any express guarantee of the Constitution is challenged, is the detainee's right to be free from punishment, see *infra*, at 13–14, and his understandable desire to be as comfortable as possible during his confinement, both of which may conceivably coalesce at some point. It seems clear that the Court of Appeals did not rely on the detainee's right to be free from punishment, but even if it had, that right does not warrant adoption of that court's compelling necessity test. See *infra*, at 13–19. And to the extent the court relied on the detainee's desire to be free from discomfort, it suffices to say that this desire simply does not rise to the level of those fundamental liberty interests delineated in cases such as *Roe* v. *Wade*, 410 U.S. 113 (1973); *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972); *Stanley* v. *Illinois*, 405 U.S. 645 (1972); *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).

STATEMENT OF DAVID ROBINSON, JR.

My name is David Robinson, Jr. I am a professor of Law at The George Washington University, Washington, D.C. Most of my experience in the litigation of criminal cases consists of service as both a state and federal prosecuting attorney. My present teaching responsibilities include courses in Criminal Law, Criminal Procedure, Advanced Criminal Procedure, Evidence, and Constitutional Law.

I would like to address myself primarily to the question of the constitutionality of legislation which provides for pretrial detention of dangerous persons.

In other democratic countries explicit permission for detention of persons awaiting trial in criminal cases is given. The legal systems of England, Scotland, France, Norway, Iceland, and Japan approve the practice; I have found no country which does not do so.

Preventive detention is expressly author-

[3] In order to imprison a person prior to trial, the Government must comply with constitutional requirements, *Gerstein* v. *Pugh* 420 U.S., at 114; *Stack* v. *Boyle*, 342 U.S. 1, 5 (1951), and any applicable statutory provisions, *e.g.*, 18 U.S.C. §§ 3146, 3148. Respondents do not allege that the Government failed to comply with the constitutional or statutory requisites to pretrial detention.

The only justification for pretrial detention asserted by the Government is to ensure the detainees' presence at trial. Brief for Petitioners 43. Respondents do not question the legitimacy of this goal. Brief for Respondents 33; Tr. of Oral Arg. 27. We, therefore, have no occasion to consider whether any other governmental objectives may constitutionally justify pretrial detention.

ized by statute and rule in a variety of situations. In capital cases, during appeals from convictions and in civil commitment proceedings and confinement of the mentally ill, bail is commonly denied. The last is a particularly striking example, for under the Ervin Act (78 Stat. 944 (1964)) the only basis for involuntary confinement is preventive detention: a finding that it is likely that the confined person is likely to injure himself or another if released. No provision is made for bail or other conditional release pending adjudication.

In criminal cases preventive confinement prior to trial is common, as every lawyer who engages in practice in the criminal courts knows. But the usual route is the conclusion that a dangerous person is likely to fail to appear in his case, and high bail is accordingly set. Such is the gap between American legal theory and its practice.

A statute explicitly authorizing detention or conditions of release of accused persons in criminal cases because of their dangerousness raises issues under the prohibition of excessive bail of the Eighth Amendment and under the due process requirement of the Fifth Amendment.

Of course, the former does not in its express terms confer a right to bail; it only provides that excessive bail shall not be required. The history of this provision is long, tangled, and obscure, but the prohibition against excessive bail appears to have been drawn from the English Bill of Rights of 1689, which in turn was designed to protect political opponents of the Crown from being jailed in situations where Parliament had established a right to bail. Many serious crimes were not subject to bail at all at that time, and the English Bill of Rights did not seek to alter that practice. The Eighth Amendment was enacted at a time when bail was commonly denied in the Colonies and infant states for serious offenses.

It has rarely been contended that all persons in all cases ought to have an unlimited right to release prior to final adjudication of their guilt. The real problem is to determine under what circumstances such persons should be confined. This involves weighing risks to defendants and to the remainder of society. In other words, a rational approach to the problem is by a due process analysis, whether the problem is formulated in terms of deciding what bail is excessive under the Eighth Amendment or whether it is simply looked upon as a problem of the Fifth Amendment itself.

From the standpoint of the defendant, confinement may impair his ability to locate witnesses, consult with counsel, and otherwise contribute to his defense. It also constitutes a limitation on his autonomy and freedom, and it may disrupt his family and vocational life. Occasionally it is asserted that such imprisonment constitutes an infringement of the presumption of innocence. The latter, however, is a hortatory expression properly given to juries to counteract any implication that a criminal charge should lead them to find guilt. Were it otherwise, the presumption of innocence would prohibit the arrest of defendants and would itself be unconstitutional for lack of a rational relation between facts assumed and the fact presumed.

From the standpoint of society, failure to confine is primarily a problem of inability to incapacitate the crime-prone, although it is likely that the deterrent efficacy of the criminal sanction is reduced by considerable delay between apprehension and ability to incarcerate, as is successful prosecution itself.

Limitation on pretrial freedom of those thought to be dangerous should provide opportunity for fair challenge by an accused who asserts that it should not be applied to him. At the same time the procedures prescribed should not be too complex to be utilized in appropriate cases. The National Conference of Commissioners on Uniform State Laws has provided a useful suggestion in Rule 341 of the Uniform Rules of Criminal Procedure, which adds the consideration of "the safety of any person or the community" to the assurance of the appearance of the defendant in setting conditions of release.

While no definitive answers are presently available, it would be odd if our constitutional jurisprudence allowed measures to assure presence in court but no conditions to protect witnesses or other persons. It should also be conceded that the role of the constitutional prophet is more than challenging. Accordingly, I would respectfully submit that the Congress should be reluctant to preclude traditional conditions of pretrial release until it was confident that workable, better alternatives had been substituted. Among the worst advice, I would add, is academic advice.

Pretrial Release of Dangerous Defendants

(By Earl J. Silbert)

Given the enormously complex problems our society is called upon to solve, one would not consider particularly difficult the solution to the problem of pretrial release or detention prior to trial of those arrested and charged with crime. The commonsense legal solution would appear to be the one used by most countries around the world; detention of the minority of defendants who are dangerous or likely to flee and release of the remainder, some with conditions of release, others without. As cynics might expect and as most regret, our bail system does anything but accomplish what is manifestly reasonable and desirable.

In the early days of our republic, felons who were dangerous or potential fugitives were detained prior to trial. This result was accomplished by laws authorizing detention for capital offenses (those punishable by death) and by the fact that the crimes of violence society fears most—murder, rape, robbery, burglary, etc.—were capital offenses. Today there are no capital offenses in the District of Columbia and the issue of the constitutionality of capital punishment is a hotly contested one presently before the Supreme Court.

Regardless of how the Supreme Court resolves this issue, it has nothing to do with human propensities for dangerous conduct between arrest and trial. Those who commit murder, rape, robbery, and burglary are no less dangerous today than two hundred years ago. Since the law authorized their detention when our republic was founded, albeit for a different reason, it makes no sense to deprive judges of the authority to detain them now.

As capital punishment generally became applicable to a smaller range of crimes, most state and local courts solved the problem of release of dangerous defendants or potential fugitives through the device of money bond as the only condition of release, a device that still prevails today. For the dangerous and for potential fugitives, bond is set high enough to preclude release; for the rest, the amount of bond is low. While theoretically, money bond is used only to assure appearance in court, in practice, it is used to detain dangerous defendants.

Exclusive reliance on money bond as the basis for release or detention, however, is an unacceptable approach: it results in the unfair jailing prior to trial of defendants who are neither dangerous or likely to flee but who cannot raise even the low bond set by judges because of their poverty. It was to eliminate this unreasonable discrimination based on financial status that Congress nearly ten years ago enacted the Bail Reform Act. Certainly no one can quarrel with this purpose of the Act, and even the harshest critics of the Act cannot reasonably advocate a return today to money bond as the only basis for release or detention.

The impact of the Bail Act, however, went far beyond this desirable purpose. By imposing a preference for pretrial release on the promise of defendants to return to court, with or without conditions of release, and by prohibiting the use of money bond or any other method to protect the community from dangerous defendants, the Bail Reform Act—at least as implemented in the District of Columbia—has repeatedly resulted in the release into the community of dangerous defendants who had "community ties." The utter absurdity of this result is best demonstrated by the argument defense lawyers routinely make and judges too often accept: the defendant should be released because his extensive record of criminal arrests and convictions for serious crimes without any charge of flight is persuasive proof that he appears in court as required.

The logical extension of this argument is that the more crimes a defendant has committed, the stronger his argument for release. The Bail Reform Act's prohibition of judges considering dangerousness in determining whether or not to release a defendant prior to trial is, from any rational point of view, a fatal flaw, wholly intolerable for any civilized society.

In the years immediately following the enactment of the Bail Reform Act, crime in the District of Columbia increased at an alarming rate. Disturbed by the increase in crime, Congress, in 1970, amended the Bail Reform Act for the District of Columbia to permit (1) detention for five days of defendants on parole or probation from a prior conviction who are charged with a new crime so that the parole board or the courts and probation department can take them into custody and initiate revocation of parole or probation; (2) detention for up to sixty days of defendants who, to obstruct justice, threaten to injure witnesses or jurors; and (3) detention for up to sixty days for limited, particularized classes of defendants charged with certain named offenses. The first two amendments were not controversial; the third was bitterly contested.

The implementation of the provision authorizing pretrial detention of defendants who threaten witnesses or jurors has generally been successful; in cases with supporting evidence, the United States Attorney's Office has requested and judges have granted detention. The implementation of the five-day hold provisions for revocation of parole or probation, however, has not been satisfactory. Despite numerous requests for five-day holds by the United States Attorney's Office in cases involving a serious new charge based on substantial evidence, judges deny a number of the requests and even when granted, revocation of probation or parole, particularly of probation has occurred much too infrequently.

The fears of some opponents that the sixty-day pretrial detention would result in widespread jailing of defendants have not been realized. One reason for this is that the courts have ruled that before pretrial detention on a new charge may be sought, an attempt must be made to revoke parole or probation. The great majority of those whose potential dangerousness can be established most clearly are on parole or probation from a prior criminal conviction.

For example, of those for whom the D.C. Bail Agency has recommended that a pretrial detention hearing be held, nearly three-fourths have been on parole or probation. Second, because of necessary investigation, the preliminary hearing, the grand jury presentation, the many due process procedures granted defendants in criminal cases, and

the huge volume of cases being processed through the courts, the sixty day time limitation is absolutely unrealistic in all but a tiny minority of the simplest cases. Third, a number of both prosecutors and judges alike have erroneously perceived the pretrial detention provisions as imposing virtually insurmountable, complex obstacles.

What then is the solution to the justifiable community concern about the unwarranted pretrial release of dangerous defendants charged with serious crimes?

First, defendants who have been given a chance by being placed on parole or probation and who subsequently are charged with a serious crime based on substantial evidence should have their parole or probation revoked—immediately; the revocation cannot await trial of the new charge since to do so unfairly jeopardizes the safety of the community.

Second, as long as the sale, possession, and use of heroin are unlawful, requiring addicts to commit crime to supply their habits, addicts charged with crime should be detained—for their health as well as the community's safety. To release a robber—or burglar-addict is to release a walking, more often running, crime wave. If addicts released for treatment fail to comply with the testing and treatment requirements—as often occurs in the District—their release must be revoked immediately—as rarely occurs.

Third, it must be recognized that the fact that a defendant has community ties does not mean he will appear in court as required. The existence of more than 600 post-indictment felons who have failed to appear in the District of Columbia courts is proof positive of this. Courts must, accordingly, set stricter conditions of release to assure appearance, including substantial money bonds. Outright release to third party institutional custodians must be tightened inasmuch as a recent report reveals that 32 percent of those released to these custodians are rearrested or fail to appear—itself a crime—a wholly unacceptable result.

Fourth, the bail Reform Act authorizes pretrial detention of defendants charged with capital offenses on grounds of potential dangerousness of flight. When enacted in 1966, first degree murder was a capital offense and therefore was not included in the specified offenses for which pretrial detention was authorized by Congress in 1970. Since there are no longer any capital offenses in the District of Columbia, including first degree murder, it is necessary that the bail law be amended to authorize detention of those charged with this most serious crime, preferably by changing capital offense in the statute to first degree murder.

First, prosecutors and judges have to overcome their erroneous perception of the existing pretrial detention provisions as overly burdensome and strive, within the restrictive confines of the sixty day time limit, to make them work.

None of the above proposals if effectuated will by itself remedy the deficiencies of the bail system. If all are implemented, however, the system will begin to play some part in protecting the community from serious crime. Implementation will, of course, result in increased pretrial confinement. This will increase the responsibility of procecutors and judges to limit detention to those against whom the proof of guilt is substantial.

It is also imperative that they be detained only after a fair hearing and that they have a speedy trial and not languish in jail for extended periods of time because of congested court calendars. It is also vitally important that they not be detained in outdated, overcrowded, unsuitable prison facilities. At long last, the District will have a modern facility; most regrettably, its limited capacity will require continued use of the present century old D.C. jail.

The above proposals are clearly designed to improve the existing bail system. One might reasonably inquire whether more fundamental changes are needed. The answer is extremely difficult. Regardless of the bail system used, tension must necessarily exist between two desirable but completely contradictory goals: limitation of incarceration of those whose guilt for a crime has not been established in court and protection of society from dangerous criminals charged with crime. Rather than confront the problem directly, as most other countries do, we have historically attempted to protect society through detention for capital offenses and money bonds. With the former now severely restricted or non-existent and the latter likely to result in unfair discrimination against the poor, a new approach is necessary. We must face directly the issue of pretrial detention of the dangerous accused.

In any re-evaluation of our bail system, there must be a recognition that dangerousness is a valid consideration for pretrial release or detention. The idea recognized nowhere else, that bail and pretrial detention are justifiably solely to prevent flight, should be discarded. In fact, it is far easier in most cases to predict dangerousness than it is to predict likelihood of flight. Moreover, it must be acknowledged that detaining dangerous defendants prior to trial does not do violence to the presumption of innocence.

Historically, persons charged with murder, rape, robbery and burglary, when they were capital offenses, could be and were detained prior to trial. The presumption of innocence is a doctrine that requires the government at trial to overcome the defendant's "innocence" with proof beyond a reasonable doubt. It does not prevent persons from being arrested on probable cause or judges from detaining dangerous defendants. Once the discussions can calmly focus on these basic principles, a more rational bail system can be developed which balances the conflicting interests of the accused and society.

STATEMENT OF BURTELL M. JEFFERSON

Mr. Chairman, I would like to thank you and the members of the Subcommittee for affording me this opportunity to testify concerning bail reform, an issue which has a very significant impact on the lives of the citizens of the District of Columbia, and all who come to our nation's capital. With me are Robert Deso, my Deputy General Counsel, and Lieutenant Charles Hersey, Supervisor of the Major Violators' Section.

In 1976 and 1977 Chief Cullinane testified on bail reform before the Judiciary Subcommittee of the House of Representatives Committee on the District of Columbia. I am pleased to be here before you today, and I would like to bring you up-to-date on the progress of Operation Doorstop, our local career criminal program. As Chief Cullinane testified last year, Operation Doorstop is a joint effort of our department and the U.S. Attorney's Office, in which a select team of experienced detectives and prosecutors concentrate their efforts on identifying and processing the cases of those recidivists who are considered to be the greatest danger to the community.

I believe that curbing recidivism is a key element in any successful attack on crime. In the past, some persons have been able to commit dozens of felonies with impunity, often while they were on more than one form of pretrial or post conviction release. We have found that the crimes of robbery and burglary have the highest rates of recidivisim, and of course, these are crimes that the public is very much concerned about. Our career criminal program concentrates on robbers and burglars, and fully seventy-three percent of the defendants in Operation Doorstop are charged with robbery and burglary.

The overall rate of recidivisim for the crimes of homicide, rape, robbery, aggravated assault, burglary, larceny, auto theft, and narcotics and weapons offenses in the District of Columbia was twenty-three percent for 1975, twenty-two percent for 1976, and twenty-seven percent for 1977. For robbery the recidivist rates were thirty-one percent, thirty-two percent, and thirty-one percent for 1975, 1976, and 1977. For burglary the recidivist rate was thirty-four percent, twenty-seven percent, and twenty-nine percent for each year.

RECIDIVIST RATE

[In percent]

	1975	1976	1977
Overall	23	22	27
Robbery	31	32	31
Burglary	34	27	29

While the rate of recidivism remains high, the number of reported robberies during the first twelve months of Operation Doorstop decreased by 920 offenses compared to the previous twelve months; a decline of twelve percent. The number of reported burglaries decreased by 479 offenses, a decline of four percent. The overall crime rate decreased by three percent for the same period.

CRIME RATE

	September 1975 to September 1976	September 1976 to September 1977	
		Number	Percent
Robberies	7,651	6,731	−12
Burglaries	12,128	11,649	−4
Crimes	51,272	49,798	−3

While Operation Doorstop is having some statistical impact on crime, especially robbery, it has had a dramatic and unmistakable impact on the careers of those chronic criminals who, before they came into the program, were literally one man crime waves. Over eighty percent of the defendants in Operation Doorstop were on some type of post conviction release at the time of their rearrest; many were on multiple releases. These prior arrests and convictions apparently did little to impede their criminal careers, but once the career criminal unit assumed responsibility for their cases, ninety-three percent were incarcerated pending trial, eighty-eight percent were convicted, and the great majority received stiff prison sentences.

OPERATION DOORSTOP, AUG. 16, 1976 TO DEC. 31, 1977

	Number	Percent
Defendants processed as career criminals	430	
Defendants incarcerated pending case disposition	398	93
Cases with dispositions	284	66
(a) Convicted and sentenced or awaiting sentencing	250	88
(b) Dismissals	24	8
(c) Acquittals	10	4
Defendants charged with robbery	196	45
Defendants charged with burglary	121	28
Defendants on postconviction release at time of arrest	351	82
Defendants on pretrial release at time of arrest	68	16
Defendants having no release status at time of arrest	11	2

Because eighty-two percent of the defendants in Operation Doorstop were on some type of post conviction release at the time of their rearrest, the "five-day hold" provisions of the Bail Reform Act were used to

incarcerate these defendants pending trial. Since only forty-two percent of all recidivisits* rearrested for the crimes of homicide, rape, robbery aggravated assault, burglary, auto theft, narcotics and weapons offenses in 1977 were on some type of post conviction release, the "five-day hold" provisions of the statute do not apply to most recidivists, and of course they would not apply to someone who is not a recidivist.

The quarterly statistics compiled by our Major Violations Unit for the third quarter of 1977 show that the typical recidivist is a 24–27 year old male charged with robbery who was on pretrial release for an arrest within the past seven months for either robbery, another property offense, or a narcotics offense. One fifth of the recidivists were on two or more conditional releases when the rearrest occurred.

I have brought with me our most recent quarterly Recidivist Report, and I ask that it be made part of the record. Copies of the report for the fourth quarter, which contains an annual summary, will be forwarded upon completion of the report.

Mr. Chairman, I believe that the success of Operation Doorstop has shown that the various components of the criminal justice system in the District of Columbia have both the desire and the ability to cooperate creatively and effectively to control crime. Within the limits of existing law and available resources, we have reduced crime, and we have taken some of the most dangerous criminals in our community off the streets. There is no simple answer for crime; it will never be eliminated in our society, and it can only be reduced through a combination of adequate resources, good laws, wise policies and efficient administration of the criminal justice system. I commend the Congress for the interest you have shown, and for the progress that has been made to remedy the deficiencies in the Bail Reform Act. I support those changes in the act which the prosecutor and court consider necessary or useful to give careful scrutiny to each person charged with a dangerous crime, and to detain those persons who cannot be released back into the community without constituting a danger to our citizens.

Mr. Chairman, this completes my statement, and I would be pleased to respond to any questions you or members of the Subcommittee may have.

BELL AND BURGER CALL FOR STIFFER BAIL LAWS

(By Stuart Auerbach)

ATLANTA, February 11.—The nation's two top legal officers—Attorney General Griffin B. Bell and Chief Justice Warren E. Burger—called today for sweeping changes in bail laws to make sure accused criminals aren't freed from custody to commit other crimes while awaiting trial.

"Surely the protection of the public must always be a major factor in a decision to grant bail release," Burger told the American Bar Association here in his 10th annual State of the Judiciary address.

The speech at the ABA's midyear meeting renewed the old argument that judges are forced to put criminals back on the streets.

Burger said studies from the District of Columbia show 28 percent of persons arrested for serious crimes last year had been released from jail while awaiting trial for an earlier serious crime.

Earlier, Bell called bail laws "lax" and said on "Issues and Answers," (ABC, WJLA), "We ought to find out if the release will endanger the public" before letting accused criminals go free.

Both men attacked the 1966 Bail Reform Act, which affects federal courts across the country and all the courts in the District of Columbia. A federal law, it has been widely copied by the states.

Under the law, the only criterion a judge can use in freeing someone accused of a crime is whether he is likely to show up for trial. The likelihood of that person committing another crime while on bail cannot be considered by the judge.

The separate statements by Bell and Burger on the need to change the bail laws are likely to win support from law-and-order factions who have said for years that courts are freeing criminals to roam the streets.

"Law-abiding citizens must be forgiven if they ask whether the release pending trial, sometimes poses an undue threat to the community," said Burger.

The chief justice said it has become increasingly common for a judge to try to clear a criminal calendar by dismissing pending cases when he sentences someone convicted. This leads many citizens to conclude "that habitual criminals can commit two or more crimes for the price of one," said Burger.

The chief justice voiced no recommendations on how bail laws should be changed. But Bell said the law should allow judges the discretion of keeping an accused criminal in jail if they think he will be a danger to a community.

We ought to find out if the release will endanger the public," said Bell. "If it would not, then we can safely let someone out without making him pay a fee. He could be released on his own recognizance."

This, the attorney general said, would keep money from being the sole criterion for getting out of jail—a major reason for passing the Bail Reform Act more than 10 years ago.

INSERT IN PLACE OF CHAPTER 35 OF S. 1722

§ 3501. Release and Detention Authority Generally.

A judge who is authorized to order the arrest of a person shall order the person's release or detention, pending judicial proceedings pursuant to the provisions of this chapter.

§ 3502. Release or Detention of a Defendant Pending Trial.

(a) IN GENERAL.—Upon the appearance before a judge of a person charged with an offense, the judge shall issue an order that, pending trial, the person be—

(1) released on his personal recognizance pursuant to the provisions of subsection (b);

(2) released on a condition or combination of conditions pursuant to the provisions of subsection (c);

(3) temporarily detained to permit revocation of conditional release pursuant to the provisions of subsection (d); or

(4) detained pursuant to the provisions of subsection (e).

(b) RELEASE ON PERSONAL RECOGNIZANCE.—The judge shall order the pretrial release of the person on his personal recognizance, subject to the condition that the person not commit a federal, state, or local crime during the period of his release, unless the judge determines that such release will not reasonably assure the appearance of the person as required or may endanger the safety of any other person or the community.

(c) RELEASE ON CONDITIONS.—If the judge determines that the release described in subsection (b) will not reasonably assure the appearance of the person as required or may endanger the safety of any other person or the community, he shall order the pretrial release of the person—

"(1) subject to the condition that the person not commit a federal, State, or local crime during the period of release; and

"(2) subject to the least restrictive further condition, or combination of conditions, that he determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(A) remain in the custody of a designated person, who agrees to supervise him and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judge that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(B) maintain employment or, if unemployed, actively seek employment;

(C) maintain or commence an educational program;

(D) abide by specified restrictions on his personal associations, place of abode, or travel;

(E) avoid all contact with the alleged victims of the crime and with potential witnesses who may testify concerning the offenses;

(F) report on a regular basis to a designated law enforcement agency, pretrial service agency, or other agency;

(G) comply with a specified curfew;

(H) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(I) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(J) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(K) forfeit, upon failing to appear as required, such designated personal property belonging to the person as is reasonably necessary to assure appearance;

(L) return to custody for specified hours following release for employment, schooling, or other limited purpose; or

(M) satisfy any other condition reasonably necessary to assure appearance of the persons as required and to assure the safety of any other person and the community.

The judge may at any time amend his order to impose additional or different conditions of release.

(d) TEMPORARY DETENTION TO PERMIT REVOCATION OF CONDITIONAL RELEASE.—If the judge determines that—

(1) the person—

(A) is, and was at the time the offense was committed, on release pending trial for a felony under Federal, State or local law; or

(B) is on probation, parole, or other release pending completion of sentence for any offense under federal, State, or local law; and

(2) no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community;

he shall order the detention of the person, for a period of not more than ten days, and direct the attorney for the government to notify the appropriate court, probation, or parole official. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the provisions of subsection (e).

(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f), the judge finds that:

(1) no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community; and

(2) on the basis of information presented by proffer or otherwise, there is a substantial probability that the person committed the offense for which he has been charged;

he shall order the detention of the person prior to trial.

(f) DETENTION HEARING.—The judge shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) will reasonably assure the appearance of the person as re-

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*The department classifies as a recidivist a person who is on some form of pretrial or post conviction release status at the time of rearrest.

quired and the safety of any other person and the community—

(1) in a case involving a crime of violence, espionage, or an offense described in section 1811 (Trafficking in an Opiate), or a Class B or C felony described in section 1802 (Trafficking in Drugs); or

(2) in any other case upon motion of the attorney for the government or upon the judge's own motion.

The hearing shall be held immediately upon the person's first appearance before the judge unless the person, or the attorney for the government, seeks a continuance. Except for good cause shown, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the government may not exceed three days. During a continuance, the person shall be detained, and the judge, on motion of the attorney for the government or on his own motion, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether he is an addict. At the hearing, the person has the right to be represented by counsel, and, if he is financially unable to obtain adequate representation, to have counsel appointed for him. The person shall be afforded an opportunity to testify, to present witnesses on his own behalf, to confront and cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The person may be detained pending completion of the hearing.

(g) FACTORS TO BE CONSIDERED.—The judge shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning:

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) the weight of the evidence against the person; and

(3) the history and characteristics of the person, including—

(A) his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, he was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law.

(4) risk to the community.

(h) CONTENTS OF RELEASE ORDER.—In a release order issued pursuant to the provisions of subsection (b) or (c), the judge shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) the provisions of section 1323 (Tampering with a Witness, Victim, or an Informant).

(i) CONTENTS OF DETENTION ORDER.—In a detention order issued pursuant to the provisions of subsection (e), the judge shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committeed to the custody of the Attorney General for confinement in an official detention facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with his counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the government, the person in charge of the official detention facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judge may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judge determines such release to be necessary for preparation of the person's defense or for another compelling reason.

"§ 3503. Release or Detention of a Defendant Pending Sentence or Appeal.

"(a) RELEASE OR DETENTION PENDING SENTENCE.—The judge shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence, other than a person for whom the applicable guidelines promulgated pursuant to 28 U.S.C. 994 do not recommend a term of imprisonment, be detained unless the judge finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community. If the judge finds that the person is not likely to flee or to pose a danger to the safety of any other person or the community, the person shall be released in accordance with the provisions of section 3502.

"(b) RELEASE OR DETENTION PENDING APPEAL BY THE DEFENDANT.—The judge shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judge finds—

"(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community; and

"(2) that the appeal is not taken for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the judge makes such findings, the person shall be released in accordance with the provisions of section 3502.

"(c) RELEASE OR DETENTION PENDING APPEAL BY THE GOVERNMENT.—The judge shall treat a defendant in a case in which an appeal has been taken by the United States pursuant to the provisions of—

"(1) section 3724 (a) or (b) in accordance with the provisions of section 3502, unless the defendant is otherwise subject to a release or detention order:

"(2) section 3725 in accordance with the provisions of—

"(A) subsection (a) if the person has been sentenced to a term of imprisonment; or

"(B) section 3502 if the person has not been sentenced to a term of imprisonment.

§ 3504. Release or Detention of a Material Witness.

"If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judge may order the arrest of the person and the person shall be treated in accordance with the provisions of section 3502. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a materterial witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

§ 3505. Review and Appeal of a Release or Detention Order.

(a) REVIEW OF A RELEASE ORDER.—If a person is ordered released by a judge of a court other than the court having original jurisdiction over the offense charged or a federal appellate court—

(1) the attorney for the government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) REVIEW OF A DETENTION ORDER.—If a person is ordered detained by a judge of a court other than the court having original jurisdiction over the offense or a federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) APPEAL FROM A RELEASE OR DETENTION ORDER.—An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of sections 3723 (a) and 3724(d). The appeal shall be determined promptly.

"§ 3506. Sanctions for Violation of a Release Condition.

"(a) AVAILABLE SANCTIONS.—A person who has been released pursuant to the provisions of section 3502, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

"(b) REVOCATION OF RELEASE ORDER.—The attorney for the government may initiate a proceeding for revocation of an order of release by filing a motion with the district court. A judge may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before a judge in the district in which his arrest was ordered for a proceeding in accordance with this section. The judge shall enter an order of revocation and detention if, after a hearing, the judge—

"(1) finds that there is clear and convincing evidence that the person has violated a condition of his release; and

"(2) finds that—

"(A) based on the factors set forth in section 3502(g), there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

"(B) the person is unlikely to abide by any condition or combination of conditions of release.

If the judge finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, he shall treat the person in accordance with the provisions of section 3502 and may amend the conditions of release accordingly.

"(c) CONTEMPT.—The judge may impose contempt sanctions, pursuant to section 1331, if the person has violated a condition of his release.

"§ 3507. Discharge of an Arrested but Unconvicted Person.

"A court of the United States may direct the United States marshal for the judicial

district to furnish subsistence and transportation to the place of arrest or to the place of bona fide residence, under regulations promulgated by the Attorney General, to—

"(a) a person arrested for an offense but not charged with an offense in an indictment or information;

"(b) a person charged with an offense in an indictment or information but not convicted; or

"(c) a person held as a material witness; upon the release of such person from official detention.

"§ 3508. Inapplicablity to a Case Removed From a State Court.

"The provisions of this chapter are inapplicable to a case in which the judgment of a State court in a criminal proceeding is before the Supreme Court of the United States for review, and the defendant in such a case may not be released from custody pending such review other than pursuant to the laws of such State.

S. 1555—THE CRIMINAL SENTENCING REFORM ACT OF 1981

Mr. KENNEDY. Mr. President, I am pleased to join Senators THURMOND, LEAHY, BAUCUS, DECONCINI, LAXALT, HATCH, and SPECTER in introducing the Criminal Sentencing Reform Act of 1981. This legislation proposes a comprehensive revision of Federal sentencing procedures, in order to achieve greater certainty in sentencing and to insist on similar sentences for similar offenders.

In 1978, this legislation passed the Senate overwhelmingly as part of the comprehensive Criminal Code reform bill. Last year the sentencing proposal was reported, without objection, out of the Judiciary Committee. This bill has strong support on both sides of the aisle, and it is a big part of our effort to combat violent crime.

Current criminal sentencing procedures are in desperate need of reform. Every day Federal judges mete out an unjustifiably wide range of sentences to offenders convicted of similar crimes. As Judge Marvin Frankel has said:

In the great majority of Federal criminal cases . . . a defendant who comes up for sentencing has no way of knowing or reliably predicting whether he will walk out of the courtroom on probation, or be locked up for a term of years that may consume the rest of his life, or something in between.

One offender may receive a sentence of probation while another—convicted of the very same crime and possessing a comparable criminal history—may be sentenced to a lengthy term of imprisonment.

A study of sentencing practices in the second circuit, for example, demonstrates that even within one judicial circuit, defendants can receive widely disparate sentences for precisely the same crime. The disparities are even more stark when sentences imposed by Federal courts in different districts are compared. In 1979, for example, the average Federal sentence for robbery in Arizona was 16 years, but in the Southern District of Illinois it was 7 years. According to recent studies prepared by the Justice Department, such differences persist throughout the entire Federal system.

These glaring disparities can be traced to the unfettered discretion the law confers on judges and correctional authorities responsible for imposing and implementing sentences. This sweeping discretion flows from the lack of any meaningful statutory guidance or review procedures to which the courts may look.

Unfair sentences are also a result of our outdated parole system. This system is predicated on a theory of rehabilitation that permits the courts and the Parole Commission to determine when to release a prisoner because he is rehabilitated yet most criminal law experts doubt that rehabilitation can be achieved in a prison setting. As Professor Norval Morris of the University of Chicago Law School has shown, parole boards are not able to predict which prisoners are likely to be good "release" risks. Our sentencing laws must be advised to take this widely perceived failure of rehabilitation into account.

Under the present law, the judge sets the term of imprisonment and the parole commission determines when to release the prisoner. Unless a court decides otherwise, the parole commission cannot release a defendant until he has served the statutory minimum term of one third of his sentence. The Parole Commission, therefore, has vast discretion in calculating the point at which a convicted offender should be released. In the case of two offenders sentenced. In prison for similar offenses, one may receive a relatively short term and be released after serving most of the sentence, while the other may be sentenced to a relatively long term but be denied parole indefinitely. Although the Parole Commission has attempted to make Federal sentences fairer by setting parole guidelines, these guidelines have not been sufficient to reduce the vast disparities in actual sentences served for similar offenses.

Our current system of parole is as confusing to the public as it is unfair to the defendant. The public has no way of knowing when a judge has imposed a sentence that will be served in full, or when he has imposed a sentence only a small percentage of which will actually be served. Recently a killer was convicted of a brutal murder in Illinois and was sentenced to 2,600 years in prison. That means the sentence should expire in the year 4579. In fact, the defendant will be eligible for parole in exactly 10 years. Sentences like this breed cynicism and disrespect for the law.

The uncertainty of the criteria for determining release dates has created an environment where prosecutors, judges, and parole officers second-guess one another as to the expiration of a sentence. Prosecutors ask for more severe sentences if they know the parole board has a reputation for leniency. This practice, while understandable, is unfair to the defendant, who may end up with a far longer sentence than he deserves if the parole board membership changes. In short, given a sentencing system which permits virtually unlimited discretion on the part of the courts and the parole officers, there is no certainty that a prisoner will get a fair sentence, or that the public safety will be protected.

The legislation which I have introduced today will provide a complete overhaul of this unworkable and open-ended sentencing process. It has three key parts:

First, it establishes a sentencing commission, an independent commission within the judicial branch that will set comprehensive sentencing guidelines for each category of offense. The Commission is instructed to design guidelines which avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct. The guidelines must also maintain sufficient flexibility to permit the consideration of mitigating or aggravating factors in individual cases. These guidelines will be subject to congressional review.

The Commission is also required to provide longer terms of imprisonment for certain categories of serious offenders: First, those who have a history of two or more prior Federal, State, or local felony convictions; second, those who have committed the offense as part of a pattern of criminal conduct from which a substantial portion of their income was derived; third, those involved in leadership positions in organized crime; and fourth, those who have committed a violent crime while on release pending trial, sentence or appeal for a felony for which they are ultimately convicted.

Second, the legislation sets forth clear standards governing judicial imposition of sentences. It requires the Federal courts to impose sentences within the Commission's guidelines unless there is an aggravating or mitigating circumstance not accounted for in the guidelines. The court must publicly state the reasons for the imposition of a particular sentence. Appeal of the court's sentence is limited. A defendant can appeal only where the sentence is above the maximum set by the Commission guidelines. The Government can appeal only upon approval of the U.S. Attorney General or Solicitor General and only where the sentence is below the minimum set by the Commission.

Third, the legislation eliminates the parole system. The sentence imposed by the judge will be the sentence actually served. A sentence to a term of imprisonment that exceeds 1 year may be adjusted at the end of each year by 36 days for satisfactory compliance with institutional regulations, with no adjustment, or a smaller adjustment, or the sentence for less than satisfactory compliance with the rules. Once this credit has been given by the Bureau of Prisons, it cannot be withdrawn; nor may credit that has been denied later be granted. The prisoner, the public, and corrections officials will be certain at all times how long the prison term will be and of the consequences created by institutional discipline problems.

The Parole Commission will have no jurisdiction over offenders sentenced under the guidelines sentencing system. However, it will remain in existence for 5 years after the sentencing guidelines go into effect to set release dates for

prisoners sentenced under the old system.

This sweeping revision of our sentencing system is long overdue. These proposals have been closely examined in years of hearings by the Judiciary Committee. They have received strong support from Senators on both sides of the aisle. The bill itself is an integral part of the Democratic crime package. The citizens of this Nation are insisting that Congress must do more to curb violent crime. This legislation can help to achieve that goal, and I hope that it will be enacted into law.

Mr. President, I welcome the opportunity to work closely with the chairman of the Committee on the Judiciary, Senator THURMOND, who, with other members of the committee, has had a longstanding interest in the issue of crime. I have had the opportunity to work with him in the past.

Crime is not a partisan issue. It demands the best judgment of all of us on both sides of the aisle.

We understand that these pieces of legislation will not end crime in our society, but they will be important measures in developing a process by which we can have some impact on reducing violence in our society.

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

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

S. 1555

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 "Criminal Sentencing Reform Act of 1981".

SEC. 102. (a) Chapter 227 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"3579. IMPOSITION OF A SENTENCE OF IMPRISONMENT

"(a) The court, in determining the particular sentence to be imposed, shall consider—

"(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

"(2) the need for the sentence imposed—

"(A) to afford adequate deterrence to criminal conduct;

"(B) to protect the public from further crimes of the defendant;

"(C) to reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense; and

"(D) with respect to a sentence other than a sentence to a term of imprisonment, to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

"(3) the kinds of sentences available;

"(4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant and set forth in the guidelines that are issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the defendant is sentenced;

"(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that is in effect on the date the defendant is sentenced; and

"(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

"(b) The court shall impose a sentence of the kind, and within the range, described in subsection (a)(4) unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.

"(c) The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

"(1) is of the kind, and within the range, described in subsection (a)(4), the reason for imposing a sentence at a particular point within the range; or

"(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described.

The clerk of the court shall provide a transcription of the court's statement of reasons to the Probation System, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

"(d) A person who has been sentenced to a term of imprisonment pursuant to this section shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 4167 of this title.

"(e) A prisoner sentenced to a term of imprisonment pursuant to this section shall be released by the Bureau of Prisons on the date of the expiration of his term of imprisonment, less any time credited toward the service of his sentence as provided in section 4167. If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.".

(b) The table of sections for chapter 227 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"3579. Imposition of a Sentence of Imprisonment.".

SEC. 103. (a) Chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3621. IMPOSITION OF A SENTENCE OF FINE

"The court, in determining whether to impose a fine, and, if a fine is to be imposed, in determining the amount of the fine, the time for payment, and the method of payment, shall consider—

"(1) the factors set forth in section 3579 to the extent they are applicable, including, with regard to the characteristics of the defendant under section 3579, the ability of the defendant to pay the fine in view of the defendant's income, earning capacity, and financial resources;

"(2) the nature of the burden that payment of the fine will impose on the defendant, and on any person who is financially dependent upon the defendant;

"(3) any restitution or reparation made by the defendant to the victim of the offense, and any obligation imposed upon the defendant to make such restitution or reparation to the victim of the offense;

"(4) if the defendant is an organization, any measure taken by the organization to discipline its employees or agents responsible for the offense or to insure against a recurrence of such an offense; and

"(5) any other pertinent equitable consideration.".

(b) The table of sections for chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following:

"3621. Imposition of a Sentence of Fine.".

SEC. 104. (a) Chapter 231 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"3657. IMPOSITION OF A SENTENCE OF PROBATION

"The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 3579 to the extent that they are applicable, as well as the need for the sentence imposed to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.".

(b) The table of sections for chapter 231 of title 18, United States Code, is amended by adding at the end thereof the following:

"3657. Imposition of a Sentence of Probation.".

SEC. 105. (a) Chapter 235 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"3472. REVIEW OF SENTENCE.".

"(a) A defendant may file a notice of appeal in the district court for review of an otherwise final sentence imposed for a felony if the sentence includes a greater fine or term of imprisonment than the maximum established in the guidelines, or includes a more limiting condition of probation than the maximum established in the guidelines, that are issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are found by the sentencing court to be applicable to the case, unless—

"(1) the sentence is equal to or less than the sentence recommended or not opposed by the attorney for the Government pursuant to a plea agreement under rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure; or

"(2) the sentence is that provided in an accepted plea agreement pursuant to rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

"(b) The Government may, with the personal approval of the Attorney General or the Solicitor General, file a notice of appeal in the district court for review of an otherwise final sentence imposed for a felony if the sentence includes a lesser fine or term of imprisonment than the minimum established in the guidelines, or includes a less limiting condition of probation than the minimum established in the guidelines, that are issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are found by the sentencing court to be applicable to the case, unless—

"(1) the sentence is equal or greater than the attorney for the Government pursuant to a plea agreement under rule 11(e)(1)(B) of the Federal Rules of Criminal Procedures; or

"(2) the sentence is that provided in an accepted plea agreement pursuant to rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

"(c) If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

"(1) that portion of the record in the case that is designated as pertinent by either of the parties;

"(2) the presentence report; and

"(3) the information submitted during the sentencing proceeding.

"(d) Upon review of the record, the court of appeals shall determine whether the sentence imposed is unreasonable, having regard for—

"(1) the factors to be considered in impos-

ing a sentence, as set forth in section 3579 of this title; and

"(2) the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3579(c).

"(e) If the court of appeals determines that the sentence is—

"(1) unreasonable, it shall state specific reasons for its conclusions and—

"(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), shall set aside the sentence and—

"(i) remand the case for imposition of a lesser sentence;

"(ii) remand the case for further sentencing proceedings; or

"(iii) impose a lesser sentence;

"(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), shall set aside the sentence and—

"(i) remand the case for imposition of a greater sentence;

"(ii) remand the case for further sentencing proceedings; or

"(iii) impose a greater sentence; or

"(2) not unreasonable, it shall affrm the sentence.".

(b) The table of sections for chapter 235 of title 18, United States Code, is amended by adding at the end thereof the following:

"3742. Review of Sentence.".

SEC. 106. A new chapter 58 is added after chapter 57 of title 28, United States Code, to read as follows:

"Chapter 58—UNITED STATES SENTENCING COMMISSION

"Sec.
"991. United States Sentencing Commission; establishment and purpose.
"992. Terms of office; compensation.
"993. Powers and duties of the Chairman.
"994. Duties of the Commission.
"995. Powers of the Commission.
"996. Director and staff.
"997. Annual report.
"998. Definitions.

"§ 991. United States Sentencing Commission; establishment and purpose

"(a) There is established as an independent commission in the judicial branch a United States Sentencing Commission which shall consist of seven voting members and one nonvoting member. The President, after consultation with the Judicial Conference of the United States, shall appoint, by and with the advice and consent of the Senate, four members of the United States Sentencing Commission, one of whom shall be appointed, by and with the advice and consent of the Senate, as the Chairman. Not more than three of the members of the United States Sentencing Commission appointed by the President shall be members of the same political party. The Judicial Conference shall submit to the President, to the Committee on the Judiciary of the Senate, and to the Committee of the Judiciary of the House of Representatives, a list of at least ten judges of the United States whom the Conference considers best qualified to serve on the Commission. The President shall designate three of the judges from the list of recommended judges submitted by the Conference to serve on the Commission. Prior to consulting with, or submitting a list to, the President, the Judicial Conference shall obtain and give consideration to the recommendations of the district judge members of the Judicial Councils of the Federal judicial circuits. The Attorney General, or his designee, shall be an ex officio, nonvoting member of the Commission. The Chairman and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown. The Commission shall have both judicial and nonjudicial members and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the criminal justice process, including one Federal prosecutor and one attorney who regularly represents defendants in federal criminal cases.

"(b) The purposes of the United States Sentencing Commission are to—

"(1) establish sentencing policies and practices for the Federal criminal justice system that—

"(A) assure the meeting of the purposes of sentencing as set forth in section 3579 of title 18, United States Code;

"(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

"(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

'(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective, in meeting the purposes of sentencing as set forth in section 3579 of title 18, United States Code.

"§ 992. Terms of office; compensation

"(a) The voting members of the United States Sentencing Commission shall be designated or appointed for six-year terms, except that the initial terms of the first members of the Commission shall be staggered so that—

"(1) one member designated by the President from the list of recommended judges submitted by the Judicial Conference and the Chairman serve terms of six years;

"(2) one member designated by the President from the list of recommended judges submitted by the Judicial Conference and two members appointed by the President serve terms of four years; and

"(3) two members appointed by the President serve terms of two years.

"(b) No voting member may serve more than two full terms. A voting member designated or appointed to fill a vacancy that occurs before the expiration of the term for which his predecessor was designated or appointed shall be designated or appointed only for the remainder of such term.

"(c) Each voting member of the Commission shall be compensated during the term of office as a member of the Commission at the rate at which judges of the United States courts of appeals are compensated. A Federal judge may serve as a member of the Commission without resigning his appointment as a Federal judge.

"§ 993. Powers and duties of the Chairman

"The Chairman shall—

"(1) call and preside at meetings of the Commission; and

"(2) direct—

"(A) the preparation of requests for appropriations for the Commission; and

"(B) the use of funds made available to the Commission.

"§ 994. Duties of the Commission

"(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of this title and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System—

"(1) guidelines, as described in subsections (b) through (d) and (f) through (m), for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

"(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment; and

"(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment; and

"(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in view of the Commission would further the purposes set forth in section 3579 of title 18, United States Code.

"(b) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.

"(c) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in section 991(b)(1), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities.

"(d) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall take into account the nature and capacity of the penal, correctional, and other facilities and services available in order to assure that the available capacities of such facilities and services will not be exceeded.

"(e) The Commission shall assure that the guidelines will specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—

"(1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions;

"(2) committed the offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income;

"(3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity; or

"(4) committed a crime of violence which constitutes a felony while on release pending trial, sentence, or appeal from a Federal, State, or local felony for which he was ultimately convicted.

"(f) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.

"(c) The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

"(h) The Commission in initially promulgating guidelines for particular categories of cases, shall be guided by the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served, unless the Commission determines that such a length of term of imprisonment does not adequately reflect a basis for sentencing range that is consistent with the purposes of sentencing described in section 3579 of title 18, United States Code.

"(i) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the

Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever it believes such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

"(j) The Commission, at or after the beginning of a regular session of Congress but not later than the first day of May, shall report to the Congress any amendments of the guidelines promulgated pursuant to subsection (a)(1) and a report of the reasons therefor. The amended guidelines shall be transmitted to Congress and shall not take effect until a period of one hundred and eighty days of continuous session of Congress after the Commission reports and transmits them. All laws in conflict with such sentencing ranges, and guidelines for sentencing shall be of no further force or effect after such sentencing ranges and guidelines have taken effect.

"(k) The Commission shall evaluate the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of an incarceration, and shall, by affirmative vote of a majority of the voting members of the Commission, issue a report of its findings to all appropriate courts, the Department of Justice, and the Congress.

"(l) The Commission, within three years of the date of enactment of the Sentencing Reform Act of 1981 and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

"(m) The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendation for legislation that the Commission concludes is warranted by that analysis.

"(n) The provisions of section 553 of title 5, relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to subsections (a) through (m).

"§ 955. Powers of the Commission

"(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

"(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter;

"(2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for grade 18 of the General Schedule day rates (5 U.S.C. 5332);

"(3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chairman;

"(4) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

"(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

"(6) without regard to section 3648 of Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

"(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 655(b));

"(8) request such information, data, and reports from any Federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;

"(9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;

"(10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

"(11) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

"(12) establish a research and development program within the Commission for the purpose of—

"(A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and

"(B) assisting and serving in a consulting capacity to Federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

"(13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;

"(14) publish data concerning the sentencing process;

"(15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences to the factors set forth in section 3579 of title 18, United States Code;

"(16) collect systematically and disseminate information regarding effectiveness of sentences imposed;

"(17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

"(18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

"(19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;

"(20) make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane, and rational sentencing policy;

"(21) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties; and

"(22) perform such other functions as are required to permit Federal courts to meet their responsibilities under section 3579 of title 18, United States Code, and to permit others involved in the Federal criminal justice system to meet their related responsibilities.

"(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a) (1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section, and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b).

"(c) Upon the request of the Commission, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicably extent to the Commission in the execution of its functions.

"(d) A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to section 994(a) through (l), the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

"(e) Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member of any action taken by it.

"§ 996. Director and staff

"(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to him by the Commission.

"(b) The Staff Director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, United States Code, except the following chapters: 81 (Compensation for Work Injuries), 83 (Retirement), 85 (Unemployment Compensation), 87 (Life Insurance), 89 (Health Insurance), and 91 (Conflicts of Interest).

"§ 997. Annual report.

"The Commisison shall report annually to the Judicial Conference of the United States, the Congress, and the President of the United States on the activities of the Commission.

"§ 998. Definitions.

"As used in this chapter—

"(1) 'Commission' means the United States Sentencing Commission;

"(2) 'Commissioner' means a member of the United States Sentencing Commission;

"(3) 'guidelines' means the guidelines promulgated by the Commission pursuant to section 994(a) of this title; and

"(4) 'rules and regulations' means rules and regulations promulgated by the Commission pursuant to section 995 of this title.".

SEC. 107. (a) Chapter 309 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 4167. Credit toward service of sentence for satisfactory behavior

"A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of thirty-six days at the end of each year of his term of imprisonment, beginning after the first year of the term, unless the Bureau of Prisons determines that, during that year,

he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner. If the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such lesser credit as the Bureau determines to be appropriate. The Bureau's determination shall be made within fifteen days after the end of each year of the sentence. Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted.".

(b) The table of sections for chapter 309 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"4167. Credit toward service of sentence for satisfactory behavior.".

SEC. 108. (a) (1) This title shall take effect on the first day of the first calendar month beginning twenty-four months after the date of enactment, except that—

(A) chapter 58 of title 28, United States Code, shall take effect on the date of enactment, and the United States sentencing Commission shall submit the initial sentencing guidelines promulgated pursuant to section 994(a)(1) of title 28 to the Congress within eighteen months of the date of enactment; and

(B) the sentencing guidelines promulgated pursuant to section 994(a)(1) and section 3742 of title 18, United States Code, shall not go into effect until 180 days after the United States Sentencing Commission has submitted the initial set of sentencing guidelines to the Congress pursuant to subparagraph (A), along with a report stating the reasons for the Commission's recommendations.

(2) For the purposes of section 992(a) of title 28, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to paragraph (1)(C).

(b) (1) The following provisions of law in effect on the day before the effective date of this title shall remain in effect for five years after the effective date as to an individual convicted of an offense before the effective date and shall thereafter be deemed repealed:

(A) Chapter 311 of title 18, United States Code.

(B) Chapter 309 of title 18, United States Code.

(2) Notwithstanding the provisions of section 4202 of title 18, United States Code, as in effect on the day before the effective date of this title, the term of office of a Commissioner who is in office on the effective date is extended to the end of the five-year period after the effective date of this title.

(2) The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this title, that is the earliest date that applies to the prisoner under the applicable parole guidelines. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this title.

(4) Notwithstanding the other provisions of the subsection, all laws in effect on the day before the effective date of this title pertaining to an individual who is—

(A) released pursuant to a provision listed in paragraph (1); and

(B) subject to supervision on the day before the expiration of the five-year period following the effective date of this title; or

(C) released on a date set pursuant to paragraph (3); including laws pertaining to terms and conditions of release shall remain in effect as to that individual until the expiration of his sentence, except that the district court shall, in accord with the Federal Rules of Criminal Procedure, determine whether release should be revoked or the conditions of release amended for violation of a condition of release.

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

Mr. KENNEDY. I yield.

Mr. THURMOND. Mr. President, I am pleased to join the distinguished senior Senator from Massachusetts (Mr. KENNEDY) on a bill to reform the sentencing system in Federal criminal cases. This is not an unfamiliar topic to us. The Senator from Massachusetts took the lead a number of years ago to press for sentencing reform both as a part of the Federal criminal code reform bills and as separate legislation.

Indeed, with my strong support, the Senate passed provisions somewhat similar to those presented today in the criminal code measure (S. 1437) in the 95th Congress, January 30, 1978.

The Committee on the Judiciary again approved them as a part of the criminal code bill in the 96th Congress. Unfortunately, we have not been able to complete the legislative process and enact these important reforms into law.

Mr. President, in brief summary, this bill would revamp our Federal sentencing system to insure greater fairness, to eliminate unwarranted sentencing disparity, and to adopt a system under which the defendant would serve the sentence imposed by the judge.

The bill reflects the basic purposes of sentencing—deterrence, protection of the public, just punishment, and rehabilitation of the offender—and would delineate the factors to be considered in determining an appropriate sentence. It provides for the establishment of a sentencing commission charged with the responsibility, among others, to promulgate sentencing guidelines to be used by the trial judge in determining an appropriate sentence for the particular defendant for a specific offense. The judge may depart from the guideline; but if he does, he must explain his reasons for not following the guideline.

The defendant may appeal a sentence above the applicable guideline and the Government may appeal a sentence below the applicable guideline. With respect to imprisonment, the bill would abolish parole and limit "good-time" credit to 10 percent of the sentence so that both the defendant and the public would know at the time of sentencing the term of imprisonment to be served.

Mr. President, this is a broad outline of this bill. I look forward to again working with the Senator from Massachusetts and my other colleagues on the important subject of sentencing reform.

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

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I understand that the distinguished Senator from Alaska (Mr. MURKOWSKI) is not yet ready to avail himself on the time allocated under the special order in his favor, and the Senator from Arkansas is.

Mr. President, I ask unanimous consent that the Senator from Arkansas and the Senator from Alaska switch places on the sequence of special orders for recognition.

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

RECOGNITION OF SENATOR PRYOR

Mr. PRYOR. Mr. President, I deeply appreciate the majority leader making this arrangement for me.

Mr. President, I also understand that Senator BOREN, under a previous order, does have a 15-minute special order, and Senator BOREN is near the Chamber. I understand that Senator BOREN is going to yield 14 minutes of that 15 minutes to me.

Mr. BAKER. Mr. President, I understand, and I ask the distinguished Senator from Arkansas, if I am not in the Chamber, and those arrangements need to be made if he will put the unanimous-consent request.

Mr. BOREN. I shall be glad to, and I appreciate the graciousness of the majority leader.

DOLLARS AND DEFENSE

Mr. PRYOR. Mr. President, I wish to address a dilemma that Congress and the taxpayers face today, which is perhaps the most important problem we shall encounter in the 1980's and the 1990's. It is one that I shall continue to address in coming weeks, September and October, and at the proper time I shall make those suggestions even though they may be meager for some solution as to the issue of spending dollars and national defense. In fact, the dilemma we face today is the expenditure of dollars and national defense. On the one hand, we need to restore fiscal austerity and cut Government spending. And simultaneously, we must maintain a national defense strong enough to protect our citizens at home and our interests throughout the world.

Mr. President, let me say at the outset that I am not a military person. I was never a member of the armed services. I am not a member of the Armed Services Committee in the Senate or of the Appropriations Subcommittee on Defense.

But I share with my colleagues, Mr. President, a firm commitment toward a strong defense for the United States. My unswerving support for the wise and prudent spending of defense dollars is a matter of record. I hope that fact is evident during three terms in the House of Representatives and 2½ years in the U.S. Senate.

My present dismay at the increasing cost of national defense is threefold. It springs, first of all, from an abiding impatience and anger with waste and inefficiency. I grow discouraged at the sight of any governmental system that permits the squandering of tax dollars on projects and programs of questionable value to the public.

A second and more specific frustration results from the series of investigations

I made last year into Government consulting. Over and over, I discovered a shocking and calloused disregard for taxpayers' money. And much of this was in the field of procurement—surely the most vulnerable area in defense spending today.

Even now, after months of investigation, I have been given dramatically inadequate answers to a series of questions: Throughout the Federal Government, for instance, why should $1 in every $7 be spent on the procurement of goods and services? Why should $10 million be spent every day in payment of consultants' fees? Why are 70 to 80 percent of these contracts let without competitive bid? Why does the Department of Defense permit unsolicited proposals from contractors and consultants to become the rule rather than the exception? And, to make an even more frustrating point, how did the Pentagon last year spend $30 billion on procurement goods and services without taking competitive bids?

A third source of weary dismay, Mr. President, is the current shuffling of Federal funds out of social programs and into the Pentagon's pocket. We are not actually cutting the budget, Mr. President, as we would have our constituents believe. We are only shifting it around. We are transferring it to the Pentagon. The columnist William Raspberry pointed out on the 17th of this month that the same people who want to slash all kinds of programs, from student aid to food stamps, want to add $44 billion to defense this year—and comparable extra amounts in the years to come. "The whole question of defense spending," he concludes, "seems to have very little to do with defense."

I could point to numerous examples of projected defense spending and programs of equivalent value. The op-ed page of the New York Times, on Sunday of this week, provided stunning reminders of parallel projects. For instance, two B–1 bombers would cost about $400 million—the same amount it would cost to rebuild a water supply system for the city of Cleveland.

Cost overruns, up to 1981, on the Navy's Trident and the Air Force's F–16 programs came to $33 billion. This same amount of money would rehabilitate or reconstruct one out of every five bridges in the United States. And this figure is for cost overruns only.

Another example: The Navy's F–18 fighter program costs about $34 billion. This would modernize America's machine-tool stock to bring it up to the average level of Japan's. This is not to say we do not need new weapons. It is simply to dramatize the magnitude of these expenditures, and to ask what we ask of every other agency in the Federal Government: Are we getting our money's worth? Also is the Pentagon immune from being asked such a question?

I find today, Mr. President, a general discontent abroad in the land with this avalanche of defense dollars. An important new look by James Fallows, entitled, "National Defense," spells out in detail the wasteful spending that occurs in the Pentagon—spending that goes on without design or purpose, without strategy or long-range planning. It strengthens and justifies our present suspicions that spending decisions in the Pentagon are hodgepodge of uncoordinated and perplexing confusion.

The conclusion of a recent CBS series on defense warned, in this vein, that "you can't buy peace simply by spending more and more on arms." Yet we are about to make the largest peacetime commitment to defense we have ever made—witnout knowing what we are about to buy, and probably without adequate debate or discussion. We are preparing to begin a military build-up unprecedented in our history. And I am afraid that unless we guard against inefficiency we will be throwing money toward the Pentagon without increasing our security. Our first priority must be to have a national defense that is lean and mean.

Mr. President, we need to distinguish between defense spending and spending by the Department of Defense, and a starting point of major importance is the daily management policies of the Pentagon. A review of defense expenditures leaves me troubled about the horrendous waste in defense operations. All those billions spent on procurement will not buy our Nation more security unless managers recognize what they are there for.

The General Accounting Office reported earlier this year, for instance, that at least $1 billion—and possibly $3 billion—could be saved through better handling of supply, personnel, purchases, and overhead costs.

The Defense Department's methods of awarding consulting contracts are sloppy, shabby, and incestuous. It will spend this year more than $70 billion for procurment, or well over 60 percent of all total Federal procurement dollars.

The General Accounting Office recently reviewed 256 contracts at DOD, all selected at random, for management support services valued at about $175 million. They found that despite continuing attention to the use of consulting services, "serious and pervasive" problems continue. In fact, GAO found that contractors were playing a significant role in determining defense contracts, a function any thinking person would assume might be performed by Department personnel.

Not only that, contractors were also performing management functions and having a direct impact on defense strategy and policy. My question is, Mr. President, Who actually sets defense policy for our country—the Pentagon or its consultants or defense contractors? Should those whose purpose it is to please stockholders and set "earnings records" be deciding whether we build a new tank or sell F–16's to Israel or AWACS to the Saudis? We know the answer to that question, so now what do we do about it?

The General Accounting Office found that reliance of the Defense Department on contracts has a snowballing effect. As contractors acquire knowledge of the Department's operations, they literally become assured of subsequent, continuous, sole-source contracts—without competitive bidding. The result is that contractors exercise astonishing influence over the scope and direction of work performed.

When President Eisenhower warned America of a military-industrial complex, he was speaking of an incestuous relationship that could endanger our country. Add to that "closed fraternity" those who are now guiding our defense strategy, propelled by the profit motive, and we easily see we have given birth to our own Frankenstein menace.

For example, an $82,000 sole-source contract was awarded to review Army support requirements for the first 30 days of a theoretical war in Europe. Unquestionably, the Department of Defense should have performed this task because it dealt with critical and sensitive defense requirements. But, enter the "outside contractor." Many of his key employees were former defense personnel and military officers, including a retired lieutenant colonel and lieutenant general. And to make matters worse, a month after the study was completed, in-house personnel were used to prepare a second study almost identical to the first. I ask you, Mr. President, is this not wasteful and incestuous?

Another sole-source contract totaling $80,000 was for—and I quote: "studies of nonpecuniary factors in the Federal approach to pay comparability and the feasibility of monetizing these nonpecuntiary factors for consideration in the pay comparability process. When asked if this was an impossible task, one defense official said, "That's what makes it interesting," Did this study make us sleep better at night? Or improve our defense system in any real way?

I think clearly that answer is negative.

Sole-source or noncompetitive awards were found by GAO to be the rule rather than the exception. In fact—and listen to this figure—82 percent of the contracts reviewed were awarded sole-source without any competition whatsoever. And the fact that 82 percent of these awards were sole source is a sad commentary on the commitment of the Defense Department to cost cutting.

Competition has been shown to save an average of 20 percent on a contract—which represents enough in savings to help keep social security in place, or to make substantial increases in military pay. If we cut sole-source procurement by 20 percent, if we demand competition, Mr. President, we could save some $6 billion a year, or more than $15 million every day.

The General Accounting Office study demonstrates, in addition, a pervasive number of "unsolicited" proposals. About 40 percent of the contracts were not initiated by the Department of Defense at all but, instead, they were suggested by the contractors themselves. And this is where we see that famous old "buddy system" reach its full impact. This may or may not make an award automatically improper, but when so many contracts result from unsolicited proposals, Mr. President, I think we need to raise some questions: Is the competitive process being scuttled at the Pentagon? Have we reached a place in our defense procure-

ment of services where outside profit-driven contractors are allowed to tell the Defense Department what it needs to buy in order to keep our defenses strong? And, most important, does the Defense Department unwittingly forfeit responsibility for the scope and direction of its work?

Another area that GAO investigated was the so-called "revolving door" contracts.

The involvement of former Defense Department employees—both civilian and military—in contracts with the Department is extensive. In fact, 51 percent of those contracts reviewed showed that former employees are at top management levels. The concerns, Mr. President, are very clear, but the question remains: Do former top-level officials use their influence to secure contracts for their own benefit? Is the Department of Defense adequately training its own people, or does it depend upon private industry for instruction? Finally, Mr. President, how objective is the work done by former employees in the areas of professional involvement?

Let me offer just another example of my concern with the revolving door contract. A contract at the Defense Department was awarded not too long ago for $294,000 to "survey drug and alcohol abuse within the military services." Because of a misunderstanding between DOD and the contractor, the contract was expanded, increasing the cost by $175,000. DOD officials simply acknowledged the in-house capability existed to perform the study, but because of past congressional criticism the decision was made to obtain an objective assessment from the outside.

The contract was given to a firm whose vice president was a former Director of Research in the Office of Drug Abuse within the Office of the Assistant Secretary of Defense.

An important new book, written by Gordon Adams and published last month by the Council on Economic Priorities, underlines the full extent of exchanges between the Pentagon and private contractors in procuring goods and services.

This book further shows that in the field of independent research and development—and in its bid and proposal programs—the Defense Department yearly reimburses independent contractors for about $1 billion. Virtually all of these private concerns employ a significant number of former Pentagon employees. And between 1970 and 1979 more than 1,600 employees in eight companies were hired directly from Pentagon ranks.

Last August, one of the most distinguished Americans and public servants of our time, Adm. Hyman Rickover, testified before the Governmental Affairs Committee. He made comments about the spending of taxpayer dollars on consultants and contractors and the effect of that spending as it directly relates to national defense. Here, in part is what he said:

> The use of consultants often impedes, rather than facilitates action by government agencies . . . . Contracts for studies frequently waste the time of agency personnel who often must educate the so-called experts doing the study, assist them in gathering the data, and then respond to their reports and recommendations—which often defy common sense.

The American people, in my opinion, owe Admiral Rickover a debt of gratitude for acting as a watchdog over Pentagon spending and unnecessary and excessive profiteering. Jack Anderson recently pointed out in a column only this week that Admiral Rickover "has few friends in the military-industrial complex," and he details examples of excessive profits gained by private companies at, of course, the taxpayer's expense. If President Reagan is now being urged by some Navy officials to remove Admiral Rickover, as Jack Anderson suggests, let me urge him not only to keep Admiral Rickover on board, but to give him encouragement and support in controlling defense costs. We need him now more than ever—as we are being asked to spend $1.5 trillion on defense over the next 5 years.

Without question the Department of Defense spends more money for procurement than all other Government agencies and departments combined. We understand that and we know that that is an absolute necessity. And recognizing the magnitude of the spending that is about to occur in the "name of defense," in the name of a stronger America, I think one question must be asked: Will the inundating of the Pentagon with these new billions of dollars improve our readiness to defend this Nation? That is the issue, Mr. President. That is the basic mission of the Department of Defense and the various branches of the armed services. A layman would naturally assume that an increase in defense spending would thus increase this country's ability to defend itself and maintain the security of its people. This is not the case.

The present increase in defense spending may largely be lost in bureaucratic waste and mismanagement, in turf battles, and in unprecendented profits for the defense contractors supplying everything from advanced weapons systems to Army fatigues and bars of soap in the PX.

We are about to experience and we are on the eve of cost overruns caused by defense contractors and sloppy bidding procedures at the Pentagon that will make those on the Trident and C–5A look pale by comparison. Defense contractors are swarming the Capitol, licking their chops, buying full-page ads in major newspapers and publications, urging us to spend, spend, spend, and telling the people of this country how far we are behind the Russians and how we need to catch up and the way to do it is to spend. Is their real motive our national defense—or their own profit?

Ten years ago a cost overrun of $1 million would have aroused front-page headlines. But now, such overruns add up to billions of dollars and occur so frequently that unless a scandal is associated it is not considered newsworthy. Have we grown so accustomed to waste in the Pentagon that we no longer see it? Or do we no longer care about it? The pollster Lou Harris recently found that over 70 percent of the people of America want to spend more for defense—but also over 65 percent said that much of it and many of those dollars will be wasted.

There is today, Mr. President, an apparent military mania gripping both the Congress and the country. It is manifest in a frenzy to spend unlimited amounts of money on weapons and on the trappings of defense. I only wish that we might somehow turn these same energies away from spending and toward an equally vigorous determination to spend efficiently. Those who today are puzzled by our lack of defense spending might do well to become equally angered by waste in the system we are being asked to support.

The defense contracting industry itself is a phenomenon. In the last 20 years the industry has refined itself to a point where for many military components only one supplier remains.

Because of increasing complexity in technology, our years of doling out contracts to the majors, many small efficient firms have disappeared or been absorbed by the better equipped giants. The result has been that the contractors now have the upper hand, and they use it when bargaining with the Government. Many of these contractors have a "take it or leave it" attitude that results in costs to the taxpayer that stagger the imagination. Excess profits, delays, and cost overruns become the accepted rather than the rare and unusual.

Even where overreaching by the contractor is absent, bureaucratic waste and mismanagement are present. Studies purchased at a cost of million thousands lie unused, collecting dust on the shelf. Disallowed expenses discovered upon audit are forgotten or forgiven. The list of abuses and wastes of money—taxpayers' money—has an almost infinite number of variations.

Mr. President, what have we done in the Congress to see that our defense dollars hit the target? What actions have we taken in Congress to prove to Americans that we are watching and scrutinizing those dollars, to guarantee that they are not simply sent over to the Pentagon—but are actually invested in our national defense?

Sad to say, we have done nothing. In fact, two recent developments have played right into the hands of defense contractors. First, in 1979 we abolished one of the few remaining checks on abusive defense contracting. We took the unwise course of doing away with the Renegotiation Board, a small body empowered with authority to hold the line on excessive contracts. Naturally, the defense lobby, in tandem with the Pentagon, annihilated one of the few advocates the taxpayer had in curtailing sloppiness and excess profits of defense contracting.

Second, only a few weeks ago I heard testimony from the highest Pentagon officials who expressed "concern" about the establishment of an independent Inspector General's office to oversee contracts fraud, waste, and corruption in the Defense Department. "What we need is someone like an Assistant Secretary of Defense for Review and Oversight," one of these officials testified, "a person

responsible to the Secretary himself." The implication was crystal clear: Give us a new office, under our control, but do not let it become independent. In other words, Mr. President, "business as usual."

I want to refer to the words of William Howard Taft IV, General Counsel to the Department of Defense, in his testimony before the Governmental Affairs Committee on June 18, 1981:

> Those provisions which establish the independence of the Inspector General in the Department of Defense are completely inconsistent with the hierarcical commander, subordinate relationship that is at the heart of any military organization and is embodied in the chain of command.

This attitude pervades the Pentagon today. And because of it, the Pentagon is in effect a Holy Across the River City, untouchable and sanctified.

Only when that sense of omnipotence is pierced will America have a justified confidence in our efforts to truly "make America strong."

A report released only this month shows that travel expenses by employees and contractors in Defense are higher than any other Government agency. During fiscal year 1980 there were more than 600,000 trips to "information meetings," over a million-and-a-half trips to training sessions, and some 300,000 "conference trips." The grand total of vouchers in the Defense Department was over 8 million trips. These are dollars we appropriate to defend our country. And does anyone believe our defense posture is stronger after witnessing this massive abuse?

Today's spending decisions are critically important to our survival because of the long-range plans and obligations they include. An effective defense is our highest priority, but the wise path is one where plans have been thought through, where turf battles in the Pentagon are met with disapproval and disdain. Only then can we justify these astronomical increases in spending, because only then will the increase in spending increase readiness and our ability to defend ourselves.

Mr. President, when we come back from our recess in early September I will again on three or four issues relative to defense procurement discuss the record at the Pentagon, and I will demonstrate what I believe, Mr. President, to be a pervasive problem that this Nation is not aware of at this time.

In addition to that, I will also most humbly and most respectfully submit some ideas, some constructive solutions, when the authorizing and appropriating legislation for the Defense Department is before the Senate.

Mr. President, in conclusion I ask unanimous consent to have printed in the RECORD several articles from which I have quoted.

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

IS THE BEST DEFENSE A GOOD DEFENSE?

(By William Raspberry)

It's easy enough to argue about the social programs being axed by the Reagan administration. You know how you feel about Neighborhood Legan Services, school lunches and energy assistance.

It's not much harder to form an opinion on the president's tax proposals. Either you are for helping the rich—confident that the benefits will trickle down—or you're not.

It's the defense expenditures that defy rational discussion. The same Reagan people who want to slash all kinds of programs, from student aid to food stamps, want to add $44 billion to defense this year and comparable extra amounts in years to come.

But there is no way for a layman to look at those brain-numbing figures and reach any useful conclusion. You can be for Head Start, or against Head Start, or provisionally for Head Start, depending on whether you think the program is useful, affordable and an appropriate concern of the federal government. The pattern doesn't work for matters of defense. No rational American can be against national defense, not even provisionally. No cost is too high to pay if the alternative is nuclear annihilation.

The troublesome thing about defense budgets—and not just Reagan's—is that no one can be sure what the money goes for, or whether the expenditures buy anything worth their cost.

It's easy to say yes to the notion that we ought to be stronger than the Soviets; hard to know whether MX missiles or B1 bombers make sense. You cannot judge defense outlays the way you judge proposals for, say, guaranteed annual income. You cannot speak intelligently of giving the military the hardware it needs without knowing just what it needs it for, or how it serves the national interest. It's not even possible to demonstrate that the countless trillions we've spent on defense since World War II have been well spent, except to point out that, so far, we haven't been attacked. Which is the way the old folk used to prove the efficacy of asafetida bags worn around the neck as a polio preventive: the kid hasn't got polio, has he?

The easiest thing is to do what most Americans have been doing: accede to the demands for incomprehensible new weapons systems, the best that American technology can dream up, even when you doubt that they will ever be used.

Think about the refinements in nuclear weaponry since the relatively crude little A-bombs were dropped on Hiroshima and Nagasaki. Whole generations of improvements have come and passed into obsolescence without ever having been used. We get so wrapped up in questions like JFK's alleged missile gap that we forget that, gap or no gap, we've never used the missiles. The odds seem overwhelming that we never will.

And even if, through some tragic error, we found ourselves using them, the questions remain: What's wrong with the old ones our leaders used to tell us were capable of wiping out the entire energy population, just as the enemy's were capable of wiping us out? Will the clever new missiles wipe them out more effectively? Kill them a hundred times instead of a mere dozen?

Incidentally, the administration tells us we've got another missile gap. The Russians have 2,010 ICBMs, and we've only got 2,000—a fact that means nothing unless you also consider that we have twice the number of metropolitan areas as the Soviet Union.

The experts say these things aren't the issue. The issue is deterrence: military credibility. If we stop developing new weapons, if we stop impoverishing ourselves with defense appropriations, the Soviets will read it as a sign of weakness and loss of military will. The Soviet experts say the same thing as they spend themselves into bankruptcy. We both are obliged to remain strong—and not just strong but stronger than each other—because everybody knows that weakness invites aggression.

But does it? Does all the stockpiling of ever-more sophisticated weapons really make us safer from enemy attack? Was Iraq safer because it was believed to be developing nuclear capability? If the Israelis are to be believed, the attack on Baghdad came precisely because Iraq was thought to be getting stronger.

The whole question of defense spending seems to have very little to do with defense. Since no one in authority really expects war on a global scale anymore—for the simple reason that everybody understands that such a war would be unwinnable by either side—both U.S. and Soviet militarists have reduced military preparedness to a board game, a sort of missile-rattling Monopoly played with real dollars and rubles.

The point, if you think of it this way, is not what the money buys but how freely it is spent. Both sides dream up new and nightmarish weapons, not because they expect to use them, but because each new zillion-dollar outlay moves one side or the other temporarily ahead in the game.

Is it naive to hope that somebody—perhaps us—will decide that the game is silly and simply refuse to play anymore? And if it happened, would anyone (aside from those involved in the manufacture of armaments) feel less safe?

[From the Washington Post, July 28, 1981]

AN OLD SEA DOG FACES BEACHING FOR CRANKINESS

(By Jack Anderson)

President Reagan doesn't know what to do about Adm. Hyman Rickover, the angry old sea dog who, at 81, is seeking to remain on active duty.

Exasperated admirals have complained to the White House that the four-star curmudgeon has become so cantankerous in his old age that the Navy would dearly like to get rid of him. They have filled the ears of presidential aides with tales of Rickover's alleged senility and pettiness.

Indeed, these details will be chronicled in a forthcoming biography which a wrathful Rickover allegedly is trying to keep out of Navy libraries.

But there is another reason that the admirals don't like Rickover. The Navy is preparing to carve out its share of the $1.5 trillion pie Reagan has promised the Pentagon over the next five years, and Rickover has been a bristling foe of overspending and profiteering. He has few friends in the military-industrial complex.

In an April letter to Rep. Samuel S. Stratton (D-N.Y.), Rickover has charged anew that Pentagon rules fail to safeguard the taxpayers. He offered these examples:

The Boston-Based Cabot Corp., which supplies a cobalt alloy used in naval reactor valves, refused at first to submit cost and pricing data and offered the government only "a catalogue price." After the firm finally provided the information, Rickover charged, "review of the data by the government disclosed that the profit quoted by the contractor was 66 percent of the estimated cost."

U.S. Steel, the company that manufactures high-pressure air flasks for the Trident submarine, "has been able to insist on a profit between 27 percent and 38 percent of estimated costs," the admiral wrote.

The Niagara Falls-based Carborundum Co., the only supplier of some materials needed to fabricate reactor cores, "has historically demanded a profit of 25 percent," according to Rickover.

Newport News Shipbuilding negotiated a contract insuring a profit of 10 percent of the company's estimated cost of overhauling nuclear submarines. Yet, the admiral's analysis of six overhauls claimed the company reaped an average of 17.6 percent profit on costs and "profits" on individual contracts have ranged from 15 to as high as 21 percent."

The companies under fire from Rickover challenged his conclusions. They claimed that his profit figures neglected to include federal and state tax assessments. A spokesman for Newport News Shipbuilding said the company "has no knowledge of how Adm. Rickover arrived at the figures. . . . They apparently were carefully selected samples out of a large mix to support his claim that defense contractors are making too high a profit."

Will the president fire the venerable Rickover? White House sources told my associate Tony Capaccio that Reagan wants to honor the old salt, perhaps with an award or an honorary position, and then ease him gracefully into retirement.

[From the New York Times, July 26, 1981]

LOOTING THE MEANS OF PRODUCTION

(By Seymour Melman)

SOUTH WELLFLEET, MASS.—"America in Ruins" is both the title and forecast of a 1981 report by the Council of State Planning Agencies, an organization of the planning and policy staffs of the nation's governors. The Council finds major deterioration in parts of the country's infrastructure—that is, vital services such as clean water, reliable transportation, efficient ports, and competent waste disposal, which are indispensable underpinnings for an industrial system. The report finds—as any traveler on United States railroads knows—that "the maintenance of public facilities essential to national economic renewal has been deferred."

Simultaneously, the means of production of United States industry have been deteriorating.

Production incompetence, now endemic, is spreading fast, not only in the well-publicized case of automobile firms but also in the following industries: steel, machine tools, radio and television manufacturing, railroad equipment, precision optics, fine cameras, men's shoes, flatware, hi-fi electronics, etc., etc., etc.

As private and public managers become better at making money without making economically useful goods, a new issue finally will have to be confronted: Will American industry reach a condition of "no return," making the achievement of industrial renewal problematic?

The way that an economy uses its capital—its production resources—is a crucial determinant of its productivity and economic well-being.

By 1977, for every $100 of new (producers') fixed capital formation, the United States applied $46 to the military economy. In Japan, the ratio was $3.70 for the military. The concentration of Japan's capital on productive economic growth goes far to explain the current success of that country's industry, where productivity grew 6.2 percent in 1980. By contrast, with the United States' aging machinery stock, the average output per person in manufacturing industry decreased 0.5 percent in 1980.

The United States has "achieved" its present state of industrial deterioration by assigning to the military economy large quantities of machinery, tools, engineers, energy, raw materials, skilled labor, and managers—resources identified everywhere as the "fixed and working capital" that is vital for production.

Since a modern military budget is used to purchase such resources, it is, effectively, a capital fund. A large ratio of military to civilian capital formation drains the civilian economy. The viability of the United States as an industrial society is threatened by the concentration of capital in a fund that yields no product useful for consumption or for further production. This looting of the means of production on behalf of the military economy can only be accelerated as a consequence of the unprecedented size of the war budgets advocated by the Reagan Administration.

The vital resources that constitute a nation's capital fund cannot be enlarged by waving a budgetary wand. Neither can manufacturing facilities be multiplied by ever richer subsidies to the managers of military industry. Basic machinery, skilled labor, engineers and scientists—all are finite in number and difficult to increase.

The concentration of capital on the military portends sharply diminished opportunity for a productive livelihood for most Americans. Clearly, a choice must be made as to where these resources will be used.

The accompanying list of trade-offs illustrates the kinds of choices that the Reagan Administration and the Congress are now making with their budget and tax plans, intended or not.

The following are principal sources of these data: military-program and unit costs, and cost changes (overruns), the Department of Defense: "SAR Program Acquisition Cost Summary (Unclassified)," Dec. 31, 1980, and related reports, and "Procurement Programs (P–1)", March 10, 1981; and news media reports. The civilian capital-cost data range from reported prices (machine tools, buses, trolleys) and reported Federal budget items to informed estimates of industrial-research and project costs and of costs of public works. Economic and engineering estimates are from Representative Les Aspin (Congressional Record, April 27, 1981), Prof. John E. Ullmann of Hofstra University; Mark Hipp, a Columbia University doctoral candidate; the Council on Economic Pirorities, the city of San Diego, and the California Public Policy Center.

Seven percent of the military outlays from fiscal 1981 to 1986 equals $100 billion equals the cost of rehabilitating the United States' steel industry so that it is again the most efficient in the world.

The cost overrun, to 1981, on the Navy's Aegis-cruiser program equals $8.4 billion equals the comprehensive research and development effort needed to produce 80- to 100-mile-per-gallon cars.

The cost overrun, to 1981, on the Navy's current submarine, frigate, and destroyer programs equals $42 billion equals for California, a 10-year investment to spur solar energy for space-, water-, and industrial-process heating; this would involve 376,000 new jobs and lead to vast fuel savings.

Sixty-three percent of the cost overruns, to 1981, on 50 current major weapons systems equals $110 billion equals the 20-year cost of solar devices and energy-conservation equipment in commercial buildings, saving 3.7 million barrels of oil per day.

The cruise-missile programs equals $11 billion equals the cost of bringing the annual rate of investment in public works to the 1965 level.

Two B–1 bombers equals $400 million equals the cost of rebuilding Cleveland's water-supply system.

Cost overruns, to 1981, on the Navy's Trident and the Air Force's F–16 programs equals $33 billion equals the cost of rehabilitating or reconstructing one out of five United States bridges.

The Navy's F–18 fighter program equals $34 billion equals the cost of modernizing America's machine-tool stock to bring it to the average level of Japan's.

Seventy-five percent of the cost overrun, to 1981, on the Navy's 5-inch guided-projectile program equals $263 million equals President's Reagan's proposed fiscal 1981 and 1982 cuts in the Northeast rail-corridor improvement programs, and in the alcohol-fuels development program.

Two nuclear-powered aircraft carriers equals $5.8 billion equals the cost of converting 77 oil-using power plants to coal, saving 350,000 barrels of oil per day.

Eighty-eight percent of the cost overrun, to 1981, of the Navy's Tomahawk cruise missile equals $444 million equals President Reagan's proposed fiscal 1981 and 1982 cuts in the Federal solar-energy budget.

Three Army AH–64 helicopters equals $82 million equals 100 top-quality, energy-efficient electric trolleys (made in West Germany).

One F–15A airplane equals $29 million equals the cost of training 200 engineers to design and produce electric trolleys in the United States.

46 Army heavy (XM–1) tanks equals $120 million equals 500 top-quality city buses (West German-made).

The cost overrun, to 1981, on Navy frigates (FFG–7) equals $5 billion equals the minimum additional annual investment needed to prevent water pollution in the United States from exceeding present standards.

The cost of unjustified noncombat Pentagon aircraft equals $6.8 billion equals six years of capital investment that is needed to rehabilitate New York City transit.

The cost overrun, to 1981, on the Army's heavy-tank (XM–1) program equals $13 billion equals the shortfall of capital needed for maintaining water supplies of 150 United States cities for the next 20 years.

The MX missile system, first cost equals $34 billion equals the cost of a comprehensive 10-year energy-efficiency effort to save 25 percent to 50 percent of United States oil imports.

Reactivating two World War II mothballed battleships equals $376 million equals President Reagan's fiscal 1981 and fiscal 1982 cut in energy-conservation investment.

The cost overrun, to 1981, on the Navy's F–18 aircraft program equals $26.4 billion equals the cost of electrifying 55,000 miles of mainline railroads, and the cost of new locomotives.

The fiscal 1981 nuclear-weapons funding, adding to more than 20,000 on hand equals $5.06 billion equals eight years of capital costs for rehabilitating New York City's sewers.

The cost of excessive, nonstandardized military aircraft service equipment equals $300 million equals President Reagan's fiscal 1981 and fiscal 1982 reduction in capital grants for mass transit..

The cost overrun, to 1981, of the Army's UH–60A helicopter program equals $4.7 billion equals the annual capital investment for restoring New York City's roads, bridges, aqueducts, subways and buses.

One nuclear (SSN–688) attack submarine equals $582 million equals the cost of 100 miles of electrified rail right-of-way.

Ten B–1 bombers equals $2 billion equals the cost of dredging six Gulf Coast and Atlantic Coast harbors to handle 150,000-ton cargo vessels.

One A–6E Intruder (attack plane) equals $23 million equals the annual cost of a staff of 200 to plan mutual reversal of the arms race, and conversion of the military economy to a civilian economy.

(The following occurred during the remarks by Mr. PRYOR):

The PRESIDING OFFICER (Mr. STEVENS). The time of the Senator has expired.

Mr. PRYOR. Mr. President, the distinguished Senator from Oklahoma (Mr. BOREN), under the previous order, does have a special order. He has graciously consented to yield me some of his time.

Mr. BOREN. Mr. President, I will yield 14 minutes of my time to my colleague from Arkansas, reserving only 1 minute at the end.

Mr. PRYOR. Mr. President, I appreciate the Senator from Oklahoma yielding. The Senator can tug me on my coattail if I do go over 14 minutes.

The PRESIDING OFFICER. Under

the previous order, the next Senator to be recognized will be the Senator from Michigan. The Senator from Alaska is here. He had a previous order that was not initiated. The order was that the Senator from Alaska. (Mr. MURKOWSKI) and then the Senator from Michigan (Mr. LEVIN) and then the Senator from Oklahoma (Mr. BOREN) would be recognized.

Mr. BAKER. Mr. President, I came into the Chamber late. I apologize for that. Do I understand that there is a question of the appropriateness for the recognition of the Senator from Oklahoma so that he might yield a portion of his time to the Senator from Arkansas?

The PRESIDING OFFICER. It would take unanimous consent to do so.

Mr. BAKER. Mr. President, I put that unanimous-consent request at this time.

May I say, before the Chair rules, that at 12 o'clock I would like to proceed to the matter of appointing conferees on the tax bill. Would the Senator from Arkansas be agreeable to interrupting at that point or would there be a convenient stopping place then so we could do that?

Mr. PRYOR. The Senator from Arkansas would be glad to yield at that point, but I am wondering if I could reserve the opportunity at the proper time to continue with this very eloquent message that I am presenting.

Mr. BAKER. Yes. I am sure it is eloquent and I look forward, if not hearing it, certainly to read it.

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

Mr. PRYOR. Mr. President, because it is 3 minutes to 12, may I pose a unanimous-consent request that we do another little reversal here and ask unanimous consent that Senator BOREN's special order that he has just yielded me 14 minutes from, that we might yield him 1 or 2 minutes of his special order to proceed at this time?

Mr. BAKER. I am happy for the Senator to make that request.

Mr. PRYOR. I do make such request.

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

Mr. BAKER. If the Senator would yield to me for one more moment, and I guess we will be up to 12 o'clock with this.

Would the minority leader be in a position now to hear a request from me with respect to the length of time Senators may speak during the morning business period?

Mr. ROBERT C. BYRD. Mr. President, may I say that I would have to object on the part of a Senator or Senators.

Mr. BAKER. I thank the Senator. Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

HIGH INTEREST RATES

Mr. BOREN. Mr. President, this is one of the final opportunities, if not the last opportunity, I will have before the long August recess to come to the floor and express my great concern over the problems being caused by continued high interest rates in this country.

Mr. President, over the past several weeks as I have spoken each day about this problem, I have repeatedly emphasized two broad areas—one, the effects of high interest rates on specific segments of our domestic economy and second, the implications that the U.S. economy carries for the economies of other nations in the world.

An editorial in this morning's Wall Street Journal makes the point again that U.S. economic activity influences and is influenced by, the economies of other countries. Most particularly this is true of the interrelated economies of the United States, England, France, Germany, and Japan.

On the domestic level I have spoken about the collision course that the economic policies of this administration has created. An analysis of the Reagan program is contained in an article on the business and finance page of the Washington Post this morning. It basically says that the Congress has put President Reagan's entire economic program in place and that his administration must now assume responsibility for properly implementing it and that it will be held accountable for the outcome.

I would add one additional part to that equation. Mr. President if the Reagan administration and the Federal Reserve Board do not move quickly to reduce the level of interest rates, the Reagan program cannot work. In other words, supply-side economics is doomed before it begins unless action is taken to reduce interest rates. You simply cannot have a policy that is designed to encourage savings and investment and at the same time maintain an interest rate level that makes that investment impossible to pursue. To that extent I agree with the Post article's conclusion—that if these conditions do not change—the economy will fail to improve.

Mr. President, no amount of tax cuts or spending cuts enacted by this Congress or reductions in Government regulations can overcome the basic flaw I have outlined in the Reagan economic program and so the fourth element that simply must be present in the Reagan program, in addition to the tax cut and in addition to the spending cut and in addition to regulatory reform, must be the reduction of interest rates.

At the same time, Mr. President, we cannot become so buried in statistics and immersed in theory that we lose sight of the human tragedy being played out across this country because of escalating interest rates, I have, from time to time, given personal examples of the effects these interest rates are having on our people in agriculture, homebuilding, the automobile businesses and other small businesses. Today I would like to give another. Namely I want to discuss the effects of high interest rates on the most unfortunate members of our society and those least able to defend themselves—I speak of the children of this country who live in children's homes.

Many children's homes are forced to borrow capital in the form of commercial loans or borrow from their endowment funds. The most common reason for this is that Federal funds are often delayed, through no fault of the agencies. According to the Child's Welfare League of America, 1 of 13 national organizations joined together as a task force on grants and contracts, a delay of 3 to 9 months is more the rule rather than the exception. Fifty-six percent of these subgrant-related costly delays were financed with loans from endowment funds or savings, and 17 percent were financed through commercial loans; and $117,382 was lost last year from only 125 agencies in the form of interest paid on commercial loans and this is but a small representation of the entire problem. Every time an agency is forced to borrow money in the form of a commercial loan, the interest they pay on these loans will never be recovered.

Unlike a business or profit-oriented organization, they can never realize this capital. The money that they pay on these loans could be used for the care of these children or for improvements to the agency. The evidence seems clear that the problem is serious and the effects are severe and detrimental to the children and the institutions. For example: At an unreasonably high interest rate of 18 percent, the Turley Children's Home in Oklahoma has a loan of $200,000 and the Oklahoma United Methodist Home has a loan of $50,000. Combined, these two organizations will lose around $45,000 this year because of these high interest rates. Each of these institutions will pay an amount of money that may seem small to this Government but which could greatly affect the operations of these homes.

Mr. President, as representatives of the people of this country, how can we allow the present policy of high interest rates to continue? It is up to this elected body to decide whether the children of this country, along with many others, should continue to suffer because of high interest rates.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

Mr. BAKER. Mr. President, will the Senator yield to me for a brief moment?

Mr. MURKOWSKI. I yield.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, will the Senator permit me to say that in his absence it was necessary to gain a time certain for the appointment of conferees on the tax bill. We are going to do that at 12 o'clock, which is 1 minute from now. I understand the Senator from Alaska has a special order. I wonder if he can forbear asking for recognition under that special order until we tend to this matter.

Mr. MURKOWSKI. I am happy to do so.

Mr. BAKER. I thank the Senator.

Mr. President, is the Senate ready to proceed on the previous matter?

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business.

Mr. BAKER. Mr. President, this period for the transaction of routine morning business is to provide an opportunity to proceed with the appointment of conferees for the conference with the House on the tax bill, as I indicated earlier.

I see that the distinguished chairman of the Finance Committee is now in the Chamber. I believe those who are interested in this are present as well.

I am prepared to proceed if they are prepared to proceed.

Mr. METZENBAUM. We are prepared.

ECONOMIC RECOVERY TAX ACT OF 1981

Mr. BAKER. Mr. President, I move that the Senate proceed to the considereration of H.R. 4242.

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

The assistant legislative clerk read as follows:

A bill (H.R. 4242) to amend the Internal Revenue Code of 1954 to encourage economic growth through reductions in individual income tax rates, the expensing of depreciable property, incentives for small businesses, and incentives for savings, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

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

MOTION TO STRIKE AND INSERT LANGUAGE OF HOUSE JOINT RESOLUTION 266

Mr. BAKER. Mr. President, I move that all after the enacting clause be stricken; that in lieu thereof the language of House Joint Resolution 266, as amended, be inserted.

Will the Chair withhold for just a moment?

Mr. President, I am advised that we are not prepared at this moment to proceed to that point. I withdraw the request and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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.

Mr. BAKER. Mr. President, I wish to restate the motion I was about to make.

I now move that all after the enacting clause be stricken; that in lieu thereof the language of House Joint Resolution 266, as amended, be inserted.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, I object only for the purpose of preserving my right to object. I want to ask the majority leader a question.

Is it his intent to act in this manner and to subsequently appoint conferees? The Senator certainly has no intent of asking the Senate to accept the House bill?

Mr. BAKER. I do not. It is my purpose to proceed, first, to the unanimous-consent request that the Senator from Colorado will offer which the Senator from Ohio is aware of, I believe.

Mr. METZENBAUM. That is correct.

Mr. BAKER. And after that, that we proceed to insist on the amendments, request a conference with the House on the disagreeing votes, and ask the Chair to appoint conferees.

Mr. METZENBAUM. And that motion is a debatable motion with the second motion?

Mr. BAKER. Yes.

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Without objection, it is so ordered.

UP AMENDMENT NO. 345

(Purpose: Conforming amendment to unprinted amendment No. 320 of H.J. Res. 266)

Mr. ARMSTRONG. Mr. President, I send an amendment to the desk and ask unanimous consent that it be considered and unanimous consent that it be adopted.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, he asked unanimous consent that it be adopted before we even hear the reading of the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) proposes an unprinted amendment numbered 345:

On line 9 of unprinted amendment numbered 320, delete "1980" and insert "1981".

The PRESIDING OFFICER. There is a unanimous consent request by the Senator from Colorado that this amendment be agreed to.

Mr. ARMSTRONG. Mr. President, this is a technical amendment. It is noncontroversial. It is in the amendment relating to the Continental Employees' ESOP. We inadvertently cited the year 1980 rather than the year 1981. The purpose and effect of this amendment is simply to correct that error.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered. The amendment is agreed to.

So the amendment (UP No. 345) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 4242) was passed.

The PRESIDING OFFICER. The majority leader is recognized.

MOTION THAT SENATE INSIST ON ITS AMENDMENTS, REQUEST A CONFERENCE, AND THAT CONFEREES BE APPOINTED

Mr. BAKER. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint conferees.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, I ask unanimous consent that it be in order to move to reconsider the vote by which the bill was passed. I will in no way interfere with the right of the Senator from Ohio to debate my last request. I ask unanimous consent that it be in order to do that. I request that it be in order to make that motion at this time.

The PRESIDING OFFICER. Is there objection to the request of the majority leader to make a motion to reconsider the vote? Without objection, it is so ordered.

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

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

The motion to lay on the table was agreed to.

Mr. BAKER. Now, Mr. President, I thank the Senator from Ohio for permitting me to interrupt.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to address myself to the issue concerning the appointment of the conferees. I want to make it clear to the Members of the Senate I have no objection to the conferees being appointed, nor do I rise with any purpose in mind of delaying the action of the Senate or the Congress in bringing this matter to a conclusion. Rather, I rise to make clear how some of us feel on the question of the bills pending between the House and the Senate at the moment.

I was one of those who voted for the Senate tax bill, and I did so with reservation. But I did so feeling that the President have his way in this instance. Some came to a contrary conclusion. I respect their point of view, and I respect it well because it certainly was not a great bill and is not a great bill.

That bill had $20 billion in special tax breaks for the oil industry. Nobody questions the fact that there really was no reason to change the windfall profit tax, as has been done by the Finance Committee.

It was just put into place a year or two ago. Now we are undoing that which has been done. But there is one thing about the oil industry: No matter what you do for them, they want more. And their avarice and greed for the last dollar available from the Nation's economy cannot be satisfied until they have it all.

Just yesterday, Mr. President, we saw in the paper that Mobil is offering $105 a share for Conoco: the second largest company in the country trying to buy up the ninth largest company. They are absolutely overwhelmed with extra cash. What they do not have in cash, they are

going out into the marketplace to borrow. So nobody can say that the oil industry needs relief.

What we have here, as indicated in the chart behind us, is that in this present bill, there is $14.2 billion in a 50-percent tax reduction plan; there is $5.7 billion in a $2,500 annual tax credit for royalty owners.

And, unfortunately, I cannot give the figure as to the additional amount involved by the Senator from Texas having to do with tight sands. When it went over to the House, the House started to move to buy up some votes. But their efforts were of a modest degree. Then the President said, we want this bill and whatever we have to pay the oil industry in order to buy the votes, we will pay it.

So we find that in the House, they added another $26 billion between now and 1990 for the oil industry.

Elimination of the phasedown of the oil depletion allowance. This Congress fought for years to bring down the oil depletion allowance. Finally, in 1978, it was resolved. But no, they are not satisfied with that. It is a question of stopping the phasedown from 22 to 15 percent, and cut it off at 22 percent. That means that the rest of the taxpayers of this country will wind up picking up the burden that the oil companies will not pick up—$12.9 billion.

Then $6.5 billion more from elimination of the tax on independent stripper wells, and $6.7 billion in barrels exemption for royalty owners, and that is a variable figure.

Mr. President, I think it is important that we talk about how the Congress and how the administrations, both the past one and the present one, have treated the oil industry. We have done so much for them that it is almost unbelievable.

In April of 1979, President Carter granted the oil industry its biggest wish—phased decontrol of domestic crude oil prices. How much did that cost us? At the time of the announcement, the Department of Energy claimed that between April of 1979 and September of 1981, when price controls were scheduled to expire, the total cost to consumers would come to $17 billion. But the House Commerce Subcommittee on Oversight and Investigation disagrees. According to the subcommittee, when all the bills have been paid, the cost of just 2 years of decontrol to the consumers of this country will come to a staggering total of $53.4 billion—more than $70 million a day.

Let us remember, Mr. President, that figure is for 2 years only. In 1979, the Congressional Budget Office high-cost estimate, which appears today to be conservative, put the 6-year cost of decontrol between 1979 and 1985 at an astounding $210 billion.

Mr. President, these numbers are mind-boggling. They are beyond comprehension.

During last year's campaign, President Reagan tried to convey a sense of what such figures mean by describing mile-high stacks of $1 bills. But there are other ways to visualize this sum of money.

On June 30, 1980, the four social security trust funds contained a total of just under $48 billion, $5 billion less than the 2-year cost of decontrol alone. And we hear that there just is not enough money to preserve the minimum benefit. But there is plenty of money to take care of the oil companies. Let the American consumer pay, but forget about the senior citizens of the country.

Or let us look at it in some other way, Mr. President. It would cost $34 billion to bring the Nation's stock of machine tools up to the level of Japan's. For less than $6 billion, we can convert 350 oil-burning powerplants to coal, save 350,000 barrels of oil a day, and keep our money and our jobs here in America—less than $6 billion.

For a mere pittance, for merely $400 million, less than 6 days' cost of decontrol, my home city of Cleveland could replace its antiquated water system.

So we are talking about a lot of money, Mr. President, money that does not go for modernizing industry, for saving energy, or for providing our senior citizens with what is rightfully theirs, and we are talking only about the vast transfer of wealth that is taking place today because of decontrol.

But, Mr. President, we hear that the oil companies need money. They have told us that time and again. They have come to us with their bleeding-heart stories and told us that they need money to explore. They have cried on our shoulders and told us they needed money to develop. And they brought the violins out in order to convince us that they needed the money to produce.

They also need money, Mr. President, to buy department stores, coal mines, almond orchards, newspapers, container companies, fast-food outlets, and at one point, they even attempted to buy Ringling Brothers, Barnum & Bailey Circus. Maybe they should have, because they have made a circus out of the oil industry for the American people.

Let us not forget, Mr. President, their urgent need to buy each other. Consider the ad I mentioned just a moment ago, the full-page ad in yesterday's Washington Post to Conoco shareholders. I ask unanimous consent that that ad be printed in the RECORD, Mr. President.

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

TO CONOCO SHAREHOLDERS

A great deal of confusion, inaccurate information and misunderstanding has emerged as a by-product of the bidding for Conoco. The purpose of this message is to try to clarify the situation to enable you, the Conoco shareholder, to make a judgment which suits your best interests. Much of the current confusion concerns three issues—comparisons of the relative values of the three tender offers, unwarranted antitrust allegations about a Mobil-Conoco merger and the bias exhibited by the Conoco management in favor of DuPont and against Mobil.

I. The comparative dollar values of the Mobil, Seagram and DuPont offers demonstrate that the Mobil offer is superior.

These comparisons as of July 28 are shown on the following chart:

Mobil: cash—$105 per share for slightly more than 50 percent of shares outstanding.

DuPont: cash—$95 per share for 45 percent of shares outstanding.

Seagram: cash—$92 per share for approximately 51 percent of shares outstanding.

Mobil: securities—$85 per share for approximately 49 percent in Mobil securities in a later merger transaction.

DuPont: securities—Approximately $77 per share for 55 percent in DuPont common stock (based on 7/27 DuPont closing price of $45.50).

Seagram: securities—None. Remaining 49 percent would continue outstanding.

Mobil: total value—$8.180 billion.

DuPont: total value—$7.335 billion.

Seagram: total value—There is no way to calculate a comparable total value for Seagram, which is bidding only for 51 percent.

To be proposed, as announced, to DuPont Board of Directors on July 29.

As can be seen from the above comparisons, the Mobil offer is superior to both DuPonts and Seagram's offers. Specifically:

Mobil's offer of $105 cash per share for slightly more than 50 percent of Conoco is superior to the Seagram's offer of $92 cash per share for 51 percent and DuPont's offer of $95 cash per share for 45 percent of Conoco's outstanding shares.

The Mobil securities to be exchanged in the merger with Conoco for the remaining shares of Conoco are intended to have a value substantially equivalent to $85 per share of Conoco. This value is greater than the current market value of approximately $77 in DuPont common stock which is proposed to be exchanged for 55 percent of Conoco's outstanding shares pursuant to the DuPont offer. Seagram proposes to acquire only 51 percent.

Mobil's average price, assuming completion of the merger, of $95 per share is superior to DuPont's offer, assuming completion of its merger, of about $85 per share. An average price for Seagram cannot be calculated because it is seeking only 51 percent of Conoco's outstanding shares.

The total value of the Mobil offer and follow-on merger at about $8.180 billion is superior to DuPont's total offer of $7.335 billion. There is no way to calculate a comparable total value for the Seagram offer because it is bidding only for 51 percent.

II. The Antitrust Issue.

Conoco has attempted to bias the bidding for its shares in favor of DuPont by bringing an antitrust action against Mobil and by making irresponsible statements concerning possible antitrust problems resulting from a Mobil-Conoco merger. In our opinion, these actions by Conoco are intended to confuse the Conoco shareholder by raising the unwarranted specter of protracted antitrust litigation. While this may serve the interests of the Conoco management, we are firmly convinced it does not serve the best interests of the Conoco shareholders.

In response to these actions, Mobil has filed a counterclaim seeking, among other relief, to enjoin Conoco or DuPont from further misleading Conoco shareholders about Mobil's tender offer and to cause Conoco management to cease wasting corporate assets by bringing frivolous suits.

Mobil believes that its acquisition of Conoco clearly does not violate antitrust laws. As we have said before, we believe that Mobil is free to acquire and operate all of Conoco's businesses. If there is any doubt about this conclusion, and we believe there is none, it would have to relate only to inconsequential portions of Conoco's U.S. marketing operations in the West. Were it necessary to speed the closing of its offer, Mobil would agree to dispose of certain assets in these areas rather than delay the purchase of Conoco shares.

Mobil strongly believes no Conoco shareholder should forgo the benefit of our offer because of exaggerated and uniformed antitrust concerns featured in the media, which may be inspired in part by Conoco and the other bidders.

III. The biased actions by the Conoco management against Mobil and in favor of DuPont have not served the best interest of the Conoco shareholder.

Conoco has done everything possible to favor DuPont over all other bidders; has given DuPont an option to purchase 15.9 million shares at $87.50 per share as an alleged inducement to make its merger offer, and has raised the false specter of antitrust in an attempt to downgrade the value of the Mobil offer.

Mobil believes that the grant to DuPont of an option to purchase 15.9 million shares of Conoco stock for $87.50 was unnecessary, contrary to the best interests of Conoco shareholders, and illegal. Mobil has sued to declare that option invalid.

If the DuPont option were valid, it could permit DuPont to acquire control of Conoco even if a majority of existing Conoco shareholders had tendered to Mobil. We believe this would constitute an evasion of Delaware law by disenfranchising a majority of Conoco shareholders. Conoco and DuPont did not adequately disclose to the Conoco shareholders this aspect of the option or their intention with respect to it.

These and other actions show that the Conoco management for its own reasons is trying to convince Conoco shareholders to accept an offer inferior to Mobil's. We urge you to weigh these actions when you consider advice rendered by the Conoco management.

Conclusion:

Mobil's offer is the best offer. The claim of violation of the antitrust laws is unfounded. In any event, it should not delay the closing of the transaction. If Conoco shareholders are given a free and fair opportunity to choose between the Mobil offer and the DuPont offer, we are convinced they will choose the Mobil offer. But you must act now. We urge you to tender your shares to Mobil today.

YOU MUST ACT NOW

We strongly recommend that you contact your broker or financial advisor to get objective advice as soon as possible. Prompt action is required to make sure that you get the best price for your stock.

If you have tendered stock to Seagram or DuPont, you should act to withdraw those tenders immediately so that you will be able to tender to Mobil in time to get the best price from Mobil.

Stock tendered to Seagram cannot be withdrawn after July 31. Unless withdrawn it could not be tendered to Mobil.

Stock tendered to DuPont cannot be withdrawn after August 4. Unless withdrawn it could not be tendered to Mobil.

The sooner you tender to Mobil the more likely you are to receive $105 per share for more of your shares.

Your best chance of maximizing the price you receive for your Conoco stock is to tender to Mobil.

Mr. METZENBAUM. Seagram's is offering $92 a share; DuPont weighs in at $95. But Mobil—they have all the money in the world. They are offering $105 for more than 50 percent of the outstanding share and $85 in Mobil securities for the rest. That is an offer of $8.18 billion.

As a matter of fact, Mr. President, I think I just read in the paper the antitrust implications of that acquisition of Mobil, as related by the President of an oil company, not by an antitrust lawyer. The mobil ad says, "You must act now" or you will be stuck with $85 rather than $105.

Mr. President, will that expenditure bring this Nation one drop of oil? It will not.

I submit, Mr. President, that buying Conoco is not the kind of oil exploration some of us thought we would get from decontrol.

But decontrol is not all we have done for this favored industry.

Oil already enjoys more favorable tax treatment than any other industry in this country.

The foreign tax credit, for example, is worth about $2 billion a year—and the Treasury Department has allowed the industry to count as taxes what are clearly royalty payments to countries like Saudi Arabia.

No other industry in America is given the same treatment as is the oil industry with respect to the writeoff of intangible drilling costs or the writeoff in the first year of their upfront expenses. But the oil company gets that preference against the rest of American industry. That is despite the fact that, last year, 40 percent of the total profits of American industry went into the coffers of the oil companies, and the rest of American industry had only 60 percent left for itself.

Independents save another 1.7 billion in taxes through oil depletion allowances.

Those three items alone, Mr. President, amount to an annual gift of $5.2 billion to an industry already awash in profit—$5.2 billion a year. Year after year $5.2 billion that could reduce the deficit; $5.2 billion that other businesses and hard-working men and women have got to buy.

But it is not enough for the oil industry. They want more and more and more.

The Senate bill shaves down the windfall profit tax from 30 percent to 15 percent by 1985. How much? The Joint Tax Committee estimates the cost at $14.2 billion over the next decade.

In that same period, the $2,500 per year tax credit for royalty owners will cost $5.7 billion.

Is that enough? Are they satisfied?

No—the industry wants it all.

They want the House bill—another $26 billion.

They want immediate decontrol of natural gas—more and more and more. You cannot satisfy the oil industry until they own all of America.

They also want to be excused from having to pay back to the people of this country billions in alleged illegal overcharges. And the Economic Regulatory Administration has identified more than $13 billion in potential overcharge violations.

The oil companies of this country have answered the old question of what to give to someone who has everything.

To them, the answer is "more."

More—always more.

There is never an end to it.

I say to my friends across the aisle and to the Reagan administration that unless you start to say, "No," the insatiable demands of the oil companies will destroy everything you are trying to accomplish. Unless this body learns to say, "No," the oil industry will be back here time and time again, seeking a paltry few billion here and a few billion there. And every time, they will say what they always say: "Give us this, and we will bring in a million barrels a day extra."

I recall when Exxon Corp. came before the Antitrust Subcommittee of this body and said they wanted to acquire Reliance Electric and use their billions for that purpose, because Reliance had a new motor, and that new motor could be developed by Reliance Electric and, as a consequence, we would save a million barrels of oil a day.

A year later, they came back, after they had acquired Reliance Electric, and said, "Sorry, old fellows, the motor doesn't work." But they had Reliance Electric under their wing.

Mr. President, during the past 8 years the price of domestic crude oil has increased 1,200 percent, from $3 a barrel to $36 a barrel. With every increase, we heard the same refrain: Production will go up—a million barrels a day.

But it has not happened.

According to EIA, lower 48 State production has declined steadily over the past 8 years. Even when we factor in Alaska, production has declined each year by more than 100,000 barrels a day.

Will that decline continue?

EIA says yes. Their forecast is that domestic petroleum production will decline to 5.8 million barrels a day by 1990; 8 years ago, our production was over 9 million barrels a day.

Exxon recently published a study entitled "Energy Outlook 1980-2000." That study states:

> Domestic oil production peaked in the early 1970s and is declining. This decline has been slowed by the advent of north slope oil. . . . Nonetheless, supply from existing reserves is projected to decline to 3.8 million barrels per day in 2000.

Production has steadily declined, Mr. President. But the same cannot be said of oil company profits.

Look at the annual profits of the 20 largest oil companies. According to the Energy Information Administration's financial reporting system—which, I might add is scheduled for extinction in the 1982 Reagan budget—the 20 largest oil companies alone earned profits totaling $22.5 billion in 1979. In 1980 their profits reached $29.6 billion.

And that is just the 20 largest. We are not including 1 penny from companies the size of Kerr-McGee, Southland Royalty, Murphy, or American Petrofina.

Mr. President, we have allowed the oil companies to collect OPEC prices from the consumers of this country.

We have given those companies tax breaks enjoyed by no other industry.

We have seen them awash in profit, frantically looking around for ways to spend money.

And yet, we hear it again: The oil companies need more.

The House and Senate have been bidding against each other to deliver for the oil companies, but I do not blame the House, because what has really occurred is that the administration has made up the package. The administration has said, "How much do we have to give the oil companies in order to get the votes to pass the bill in the House that we want?"

Mr. President, that is an outrage. Let them bid on the basis of social security

benefits, on food stamps, on help for kids who want to go to college, on help for meals on wheels, on help for many other programs that have been cut back mercilessly in this Congress—help for the families who cannot buy homes; help for the businessmen who cannot pay the interest on their inventories. Nobody is bidding over there to help these programs.

No, Mr. President, all we can think about is the oil companies of this country.

And I say it is time to call a halt.

Mr. President, I say to those who will be the Senate conferees: "You have done a good job in getting this bill through the Senate. You have worked effectively. You have come through with a very large margin. You have done well for the oil companies. You have given them $20 billion. But don't come back with the extra $26 billion that the House has seen fit to give to the oil companies."

The American people will not tolerate that. I do not believe the U.S. Senate will tolerate that. I know that a certain number of us on this side feel that the American people are entitled to know the facts along this line. We hope they can bring this issue to a conclusion. Bring us back a bill without the extra money for the oil companies, and this matter will be resolved in short order. Bring us back a bill with the extra $26 billion in it for the oil companies, and this Senator believes that the people of the country should be apprised of what is happening, before the Senate has an opportunity to vote on it.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. KENNEDY. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I commend the Senator from Ohio for his remarks this afternoon.

As the members of the conference are appointed to adjust the differences between the House and the Senate bills, I believe it is important at this time to restate the strong feelings that I have—and that obviously the Senator from Ohio and a number of others have—about the tax benefits the major oil companies are going to receive.

I do not believe there is any question that during the past few weeks, the major focus and attention of the American people has been on the general tax cuts of the administration and the general tax debate in the Senate of the United States.

There has been very little attention or examination given to the details of this legislation.

Mr. President, the Senator from Ohio has pointed out that there has been a bidding war in the House of Representatives which resulted in $26 billion in tax relief for the oil companies of this country. I think it is appropriate to point out that the Reagan administration did not request any change, any adjustment, in the tax program for the major oil and gas industries in their original tax recommendations.

I quite frankly think that we are doing the President and the Republican administration a great favor, because if we accept the Senate positions we are going to save some $26 billion in tax revenues that can be directed toward the deficit and move us toward a balanced budget in a much quicker and more orderly fashion. So I think we are doing the President a favor by serving notice to that conference that if there is any significant or substantial change over the Senate position there are Members on this side who are prepared to debate and discuss this issue until the American people have a full awareness and understanding of what is exactly included in this proposal.

I say it is time to end the bidding war. There should be no more J. R. Ewing amendments in the Senate or in this Congress.

The parents of this country who have small children are going to find out that there is a reduction of immunization funding under the administration's proposal before Congress—a program which costs just a few million dollars. That program will not be fully funded to meet the really important health care needs of the children of this Nation.

Middle-income people are going to find out that their children will not be able to qualify for student loans, which have been a program which has offered hope and opportunity to millions of young people in this country, because this administration did not seek enough resources or funding for the student loan program.

Millions of elderly people are going to find that they are going to have a lesser life because the administration could not find the billion or so dollars necessary per year to continue the commitment of this Nation to those who receive social security benefits.

The cost of these programs is about $3 billion a year. The administration could not find the $3 billion just for those particular programs. But it could find $46 billion for an industry that Merrill Lynch says is the most profitable industry in this country. They can find $46 billion for that one industry but at the same time they are reducing the immunization program for children, student loan program, social security, and school lunch programs.

Mr. Stockman says we are going to cut school lunch programs by a half because it is helping middle-income families, but they have $46 billion in that House bill to help the most lucrative profitable industries in this country.

That is a message I do not think is understood here in the United States of America. But it will be a message that I will be sure the American people understand if a conference report which increases by any significant or substantial amount the tax benefit and privilege of the major oil industry is reported to the Senate.

Mr. President, enough is enough for the oil industry. It is an industry which the House bill shows, can be accurately described as an industry of greed, for it demands profits which are unjustified and unwarranted and benefits which no other industry receives or is entitled to in this country.

And that is going to be an issue which as far as this Senator is concerned will be debated and discussed as long as the rules of the Senate permit it or until the people of this Nation understand it.

A final point that I would like to make, Mr. President, is that each year Business Week surveys corporate profits. It found that nonoil companies increased their profits by an average of only 11 percent between 1978 and 1980; oil companies increased their profits by 117 percent, 12 times more than nonoil. And still they are asking for this $46 billion windfall.

Mr. President, I yield.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. RIEGLE. Mr. President, reserving the right to object. Before I speak to the issue that is before us, the oil question, I wish to alert the other side that when the bill comes over today from the House of Representatives to restore the minimum benefit under social security it will be my intention to ask that that bill be held at the desk and that the Senate take it up today and we face it and vote on it as the House of Representatives is doing. I think it is essential that we do that.

I know that requires unanimous consent and there may be some on the other side of the aisle who would move to object to my request, but I would ask them to not object, that we have the chance to vote on this issue. It is an issue of critical importance to the country, the senior citizens in the country, and especially the 3 million people who depend on the minimum benefit and do not know what their status is.

The President goes on television one night and says everyone under social security is going to be protected and then lo and behold, the President's party has acted in a way to do away with the minimum benefit under social security, and it is being eliminated in the reconciliation bill that will be coming over here today.

So I think it is essential that we have an opportunity to vote on it and to keep the President's promise on television the other night.

And so I hope to talk to the chairman of the Finance Committee in due course about how we might work out an opportunity to have some time to discuss this later when this particular issue arrives when I will make that request that that legislation be held at the desk.

Having said that, I now turn to the oil issue, and I commend the Senator from Ohio for his leadership today and for his leadership over a period of years in dealing with this problem. I agree with what he has said here today, that this $46 billion gift to the oil industry in this country is one of the worst examples of special interest greed in the history of this country.

It is plain and simple that the Reagan administration is the captive of the oil industry in America.

The $26 billion add-on in the House of Representatives for the oil industry is wrong, it is unjustified, and that add-on

should be defeated, should be taken out of the bill. I support the efforts of the Senator from Ohio and others here who have spoken and will speak to try to delete that gift, that $26 billion gift, in addition to the $20 billion already in the Senate bill that otherwise will be given to this particular industry.

I would say that I think the sponsors of this giveaway, this $46 billion giveaway, really ought to be ashamed of themselves because they know, as we all know, that this Government of ours is going to have to go out and borrow this money in order to give to the oil companies. It is not as if we have this money, it is not as if the budget of the United States is in surplus. We are running a deficit, and so what those who support this giveaway to the oil companies are asking, they are saying, "Go borrow this money, go borrow, raise the Federal debt, pay that extra interest so we can turn around and give that money to the oil industry in this country."

There is not a person in America who does not understand the fact that the oil industry does not need this money. They have got so much money now they do not know how to spend it. In fact, as has been pointed out, they are spending it now trying to gobble up each other.

So the notion of putting this country deeper into debt and borrowing that money to give it to the oil companies is really outrageous. As I say, I think people who come in here and make that assertion really ought to be ashamed of themselves.

We have got other needs for that money. Restoring the minimum benefit under social security is one of those needs. The cutbacks in other domestic programs that are vital—home heating assistance to elderly people in this country is a case in point—these are the areas of critical need facing our country.

Reindustrializing the industrial base of America, rebuilding our auto and steel plants and the other basic supplier industries, that is where we are capital-short. If we are going to have money targeted to a special purpose, let us do it where we are building something and where we are insuring our future and providing jobs for our people.

But to turn around and to give this money to the oil industry is absolutely an unjustified proposal.

There is not a scrap of justification for this kind of a giveaway at this point. I believe when the American people find out what has happened here, when they find out that they are being obligated and their children are being obligated, and their children's children are being obligated to go out and borrow an extra $26 billion to add to the national debt to give to the oil companies on top of the $20 billion already in the Senate bill, I think they are going to be up in arms. and they have a right to be.

So I hope that the Republicans here, who are basically the ones who have supported this and pushed it into the bill, the Reagan administration, would reconsider and would understand that there is no way that one can argue for fiscal responsibility and, at the same time, come in here with this kind of an unjustified giveaway to the oil companies. The two things just do not square. They cannot square down at OMB and they cannot square here in the Senate Chamber.

So I say again to the Senator from Ohio, who has led this fight and continues to lead this fight, that what he says here today is very important for the country to understand.

I want to stand with him, as I know other colleagues do, in the effort to try to get rid of this windfall gain that is built in here, this special interest greed. I think this is the most excessive form we have ever seen here in this Chamber.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, and I do not intend to object, I would just like to thank the Senator from Michigan on his effective, strong remarks and comments.

I yield the floor to the Senator from Rhode Island.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object——

Mr. PELL. Mr. President, I reserve the right to object.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I thank the Senator from Ohio for giving me this opportunity to speak, and I congratulate him and the Senator from Massachusetts for the leadership they are showing in bringing to the attention of our Senate and the conferees the importance of standing as firmly as they possibly can to hold for the Senate version of the tax bill, particularly when it comes to the excessive break for the oil industry.

In this regard one could say that a reduction in taxes could help an area like mine because it would mean a reduction in costs of producing or selling the product. In my State three-quarters of the fuel that is consumed is oil, and one could say if taxes were less on that oil we would pay less for it. But that is a fallacious argument because, in fact, the price of oil is not set by the cost of production plus the taxes. The price of oil is set by OPEC, and therefore what we are dealing with here is a windfall, a break for the oil industry which I think is excessive.

I think the extra $26 billion that the House provides for the next 10 years could better be used to go into the general revenues and in replacing some of the human cuts that have been taken or, most wonderful of all, to perhaps more quickly balance the budget and keep it balanced.

The PRESIDING OFFICER. Is there objection to the majority leader's request?

Mr. EAGLETON. Mr. President, reserving the right to object, I rise to speak out against an issue that concerns me greatly. I am appalled at the provisions contained in both the House and Senate tax bills that give even greater bounty to the oil industry.

While the Senate-passed version of the tax bill gives one of the Nation's richest industries a substantial tax break, the Conable-Hance substitute passed by the House gives the industry a tax break of twice that magnitude over the next 10 years.

Provisions in the Senate bill pertaining to tax treatment of newly discovered oil and tax treatment of royalty owners yield the industry an additional $20 billion in revenue over the next 10 years. Estimates of the impact of the Conable-Hance provisions will give the industry an additional $26 billion tax break over and beyond the Senate bill over the same period. Both the House and Senate bills offer the same provisions for new oil, but the House version gives twice as large a tax break to royalty owners.

Furthermore, the unlimited exemption for stripper oil allowed by the Conable-Hance bill racks up an additional $6.5 billion revenue gain for the industry. The same bill continues the percentage depletion deduction at 22 percent of gross income, instead of phasing it down to 15 percent as provided for by previous legislation as passed by the Congress in 1975, which gives the industry another $13 billion.

While the House is more than generous to an industry that ranked first in earnings per shareholder from September 1979 to September 1980 according to a Business Week survey on corporate profitability, the Senate is not without parallel in attempting to grant this industry additional concessions. Maybe the most significant vote in this whole tax debate was one that the Republicans won, but decided to put away for another time. That was the Dole-Domenici amendment, which would have phased out the windfall tax on newly discovered oil, as well as the tax on incremental tertiary and heavy oil—$41 billion right into the pockets of the oil companies.

The Republicans pushed this to a test vote and found that they had a majority for it—49 to 47. Now, they draw it back, I guess because it was too much even for them on top of the $20 billion already contained in the bill for the oil industry. But, rest assured, this issue will be before the Senate again. There is not a doubt in my mind. This administration is going to keep pushing until every dollar of the windfall tax is returned to the oil companies. They need the money. It is not cheap to buy out other oil companies or copper companies.

Revenues from the windfall profits tax, as it was originally construed, were pledged to finance the creation of a synthetic fuels industry, to enhance mass transit systems, and to protect the poor and the elderly from skyrocketing energy costs. However, this tax proposal would dismiss these pledges. Instead of investing the profits of decontrol for the common good, we are returning them to the oil companies for the benefit of a wealthy few.

As I mentioned before, we are doing this at a time when Mobil Oil, which has more money than it knows what to do with, is engaged in a bidding war for Conoco. Mobil's current efforts to obtain a loan of $6 billion—which it probably will be able to obtain and afford with ease—mean that there is that much less credit available for the rest of business to borrow. That particularly hits small busi-

nesses hard. As high interest rates persist, fewer and fewer business borrowers will have the wherewithal to secure loans, and only those with top-rated credit—namely, the oil companies with their huge credit lines—will be able to borrow. To heap huge tax breaks on top of all this makes a mockery of any and all commitments made by this administration to a fair and equitable tax bill.

At the same time, we have taken action on a budget bill that has fundamentally altered the economic and social fabric of this Nation by acting like a reverse Robin Hood—we are taking from the poor and giving to the rich. In the course of deliberations on the reconciliation bill, this Congress has committed itself to the following actions:

To 3,000,000 social security recipients receiving the $122 minimum payment—some of the oldest and poorest of our Nation—we have said we no longer can afford to provide you with this minimum payment.

To 1,000,000 recipients of food stamps, again, some of the oldest and poorest of our Nation, we have said we no longer can afford to provide you food stamps and to 1,000,000 other recipients, we have said we must cut your benefits.

To thousands, maybe millions of people receiving the absolute minimum of medical care under medicaid, we have said we must cut back or altogether eliminate even the most elemental and basic medical care.

To 837,000 college students receiving student loans, we have said you will no longer be eligible for student loans.

To 800,000 poor children in elementary schools, we have said we can no longer provide that extra help necessary to overcome economic or social disadvantages.

Mr. President, how is it that we can effortlessly "sock it" to the poor, "sock it" to the needy, "sock it" to the elderly, and "sock it" to the youth of our country and, at the same time, give away billions to those good old boys from Mobil?

Think of what we could do not only with the $20 billion that the Senate has bestowed upon the oil companies, but also the $26 billion that the House has added on top of the $20 billion?

For example, would it not help the elderly of this Nation if we put the $46 billion—that is the Senate's $20 billion and the House's additional $26 billion—what if we put that $46 billion into the social security trust fund? It would not only help the elderly of the country, it would help the President and the Congress in coping with our dilemma on social security.

Mr. President, there used to be an old radio show called "Can You Top This?" In the recent, disgraceful "bidding war" on the tax bill, we have had a form of "Can You Top This?" with respect to the oil industry. For the oil industry, enough is never enough.

In the name of commonsense and fundamental decency, I submit that we draw the line at the already indefensible $20 billion giveaway already perpetuated in the Senate bill.

The PRESIDING OFFICER. Is there objection to the majority leader's request?

Mr. SARBANES. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I want to commend the Senator from Ohio and other colleagues of mine who have taken the floor with respect to this unanimous-consent request to request the conference and to appoint conferees to make very clear to the seven Members of this body who will be the conferees the depth and intensity of the feeling on the part of many Members of the Senate with respect to the issue of whether the conference will add to the Senate bill further concessions, reductions, and giveaways to the oil industry. As the Senator from Missouri said, "enough is enough."

The fact of the matter is the additional $26 billion in tax breaks for the oil industry contained in the House bill is enough to solve the short-term financing problem of the social security system. The cash flow problem which that system will face in the mid-1980's is less than the amount of money contained in the additional tax concessions to the oil industry contained in the House bill. And it is very important, I think, to underscore that, because there is a move afoot to cut the benefits for social security recipients far, far in excess of anything that is necessary to maintain the integrity of the trust funds.

The fact of the matter is that interfund borrowing amongst the three trust funds in the social security system would have solved the short-term problem. That amendment, offered by the Senator from New York and the Senator from Tennessee was rejected on the floor of this body in the course of considering the tax bill.

It would be absolutely unconscionable for the conferees to agree to further concessions with respect to the oil industry and, at the same time, have rejected the opportunity to solve the problem of the social security system without the massive cut in benefits which the administration is proposing; cuts which the American people have not yet begun to fully appreciate; cuts which would make retirement at age 62 virtually an impossibility for all Americans. The administration's proposal would place the social security benefit level at age 62 below the poverty level. It would totally destroy the integration of the social security retirement system with the private pension retirement systems which exist in this country.

In many plants across the country, particularly on assembly lines, workers are permitted to retire after 30 years if they are above the age of 55. At that point, they receive a private pension which continues at a certain level until age 62, when it drops and the social security pension kicks in thereby keeping total retirement benefits at the above existing levels. The administration's proposal by Secretary Schweiker and Budget Director Stockman would preclude workers who have been on those assembly lines for more than 30 years and in their late 50's or early 60's from retiring. It would totally undercut the integration of the social security retirement system with the private pension system which has been established in so many industrial plants in this country.

The administration came in with a proposal to cut $88 billion in social security benefits in order to overcome a short-term cash flow problem, which, by their own predictions of how the economy would function, amounts to $5 billion to $10 billion. It is important to appreciate that—an $88 billion cut in benefits to address a short-term cash flow problem, which, by their own estimates as to economic performance, would amount to $5 billion to $10 billion.

And to come now with a tax bill which would add potentially another $26 billion for the oil industry, when we confront this situation on the social security system, is unconscionable.

So, Mr. President, I wish to underscore to the conferees, as they prepare to go to the conference on this tax bill, again the depth and the intensity and the extent of the feeling on the part of many Members of this body with respect to this very important issue.

I trust that the conferees, as they participate in this conference, will fully recognize the strong view held by many of us in this body.

The PRESIDING OFFICER. Is there objection?

SEVERAL SENATORS. Objection.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I would like to join with my colleagues who have been expressing their deep concern over the upcoming conference with the House of Representatives with regard to the windfall profit tax. Much has already been said about what the effect of this could be to consumers and to small businesses all across this country. My strong conviction is that our conferees from this body will enter into that conference and support the Senate provisions.

I certainly oppose the tax reductions contained in both the Senate and the House versions of the tax bill with regard to oil. But what we have done in the Senate is certainly far more palatable than what has occurred in the House bill. The figures are well known.

The reduction of revenues by $20 billion as a result of what was enacted here in this body is bad enough. But to have, as we would have with the adoption of the House language, a loss of some $40 billion to $50 billion over the next 10 years will make any hopes we have of reducing the rate of inflation and getting a handle on our ability to control deficits virtually impossible.

The distinguished Senator from Ohio, Senator METZENBAUM, the distinguished Senator from Massachusetts, Senator KENNEDY, Senator SARBANES, and others, have articulated extremely well on what the impact of this could mean to people all across this country.

The President, as every Member of this body will recall, decontrolled oil prices when he came into office in January. As a result of that, we saw heating oil and gasoline prices take another leap forward. Additional billions of dollars flowed from the strained purses of American

consumers into treasuries of the oil industry. The windfall profit tax, which was enacted only 2 years ago, was an attempt to return a portion of those dollars to the public Treasury so that the Government might ease the burden on low- and moderate-income families and promote the development of alternative sources of energy.

That is the idea. That is how it was sold. It was not just an effort to clamp down on the oil industry but to try to bring in some needed revenues for vital programs to assist those in desperate need in this country.

There have certainly been no lack of incentives for the oil industry to search for new oil, as is evidenced by the recent information with regard to the availability of oil drilling equipment. You have to get in line today to acquire that kind of equipment. There is tremendous incentive out there to go after this vitally needed energy resource.

The windfall profit tax has already provided generous treatment to newly discovered oil and oil produced through innovative techniques in hard to get at places. Further reductions in this tax will simply reduce the Government's ability to promote conservation and renewable energy sources. It would further reduce our ability to assist those hard-pressed families attempting to meet heating bills that have doubled in the past 2 years.

I should point out that we have seen some abatement in price as a result of the glut that has occurred in the international market. But I think everyone recognizes that that may be a very short-lived situation and that we may find in a matter of weeks or months that the OPEC cartel has regained its strength despite the divisions that occur in it today. We may find that cartel flexing its muscles one more time. When they do, of course, those people who depend upon those vital energy resources from overseas are going to be hard pressed again and we could again see an escalation in the price of these energy resources.

Certainly, the Senate reductions in the windfall profit tax, the $20 billion, should be more than ample to satisfy those who sincerely believe that greater incentives are needed to promote the more expensive oil recovery techniques. The giveaway of additional billions, the additional $20 billion or $30 billion as included in the House bill, would only pad the profits of what is already the Nation's most profitable industry.

I am sure the point has been made earlier that at a time when we are trying to figure out how to preserve and maintain a social security system, where a few billions of dollars are needed, to find ourselves giving away anywhere from $20 billion to $50 billion in revenues hardly makes sense to anyone in this country regardless of their political affiliation or ideology. That makes no sense whatsoever.

I recognize the delicate nature of a conference, that it is not necessarily wise procedure to overly instruct conferees when they have to deal in the delicate, fragile matters of working out differences that exist between the two bodies. Certainly, the distinguished Senator from Kansas, the chairman of the Finance Committee, has been through that any number of times. As a matter of procedural policy I do not like to hobble the ability of conferees to deal intelligently with complicated matters.

My point in standing here today and reserving the right to object is merely to express the opinion of one Member of this body, that we should do what traditionally is done by both Houses. That is, to uphold the position of the Senate or uphold the position of the House. In this case I urge the conferees to uphold the Senate provision, which I feel is a far wiser way to proceed. Even though I had difficulty with the Senate bill and did not support it, I think it is a vastly superior bill to what was adopted in the House. In the last analysis, we must protect people who are watching and waiting with great anticipation over what sort of an economic program we are going to have for this country.

My own opinion is that we would have been wiser to proceed with the approach suggested by the distinguished junior Senator from South Carolina, Senator HOLLINGS. He proposed a less aggressive, less excessive tax bill, that would have given us a real chance at balancing the budget in the outyears. I think that is going to be impossible to do, given the magnitude of this tax bill.

I am not an expert, and I would not claim to be, in overall economic matters. But there seems to me to be a direct relationship between Federal deficits and the present high interest rates and ultimately the rate of inflation. If we have any real hope of satisfying and dealing with the problems of inflation, we have to deal with high interest rates and we have to recognize that unless we get deficits at a manageable level it is going to be impossible.

Both in terms of the needs of middle-income families and families in the lower income brackets, as well as the overall economic program, it becomes that much more important that we adhere to the Senate provisions of the tax bill.

I would urge that our conferees stick with that position during the conference.

Mr. DOLE. Mr. President, reserving the right to object, there may be one additional antioil Senator who wants to speak. Some make their career out of attacking the oil industry. I am not certain how many jobs that industry creates in America, but it is a profitmaking venture. I am a little at a loss to understand what the concern is if they are concerned about money going to major oil companies. The major oil companies do not get $1 more under the House bill than they did under the Senate bill. All those charts back there reflect money going to the mom and pop operations, the independents, the small royalty owners. I am at a loss.

They talk about Conoco and Mobil and everybody is writing like mad because we are attacking the major oil companies. It is the understanding of this Senator that in the Senate provision on the lowering of the tax on new oil down to 15 percent it is the same as in the House, and all the other provisions with reference to oil affect independents or royalty owners. So, there is not one additional dollar in the House bill going to major oil companies than there is in the Senate bill.

Many of the Members who have been speaking voted for the Senate bill, though they had reservations about that section.

I just say, Mr. President, that it is somewhat confusing. As a conferee, I am confused. I do not know what to do now. I fairly well understood that there was something wrong until I went into it and saw all this money going to the small independents who are out there, trying to make a living, put a few people to work. But the 5-year revenue loss is $13.2 billion. $1.2 billion of that, over 5 years, goes to majors. That is the identical provision we had in our bill, the same identical provision; $7.6 billion of that figure in the House bill goes to royalty owners. That is the retired farmer or his wife or somebody receiving social security and a little royalty check; $7.6 billion under the House bill as compared to about $3.2 billion in the Senate bill.

Mr. President, I suggest that we are going to do the best we can in the conference. I do appreciate the fact that we were not instructed. I would have been somewhat surprised if there had been a motion to instruct conferees, because I think we have been fair in our treatment of everybody in the Senate.

If, in fact, we are after the major oil companies, then we have the wrong chart up. We are waving around these ads in the paper about Mobil and talking about Conoco. They do not operate in my State. I do not think they operate in the State of the Senator from Ohio. We have little oil wells. The average well in my State produces less than 3 barrels a day. Are we after these people? Are we after the 3-barrel-a-day wells in Kansas, Ohio, and Michigan?

Some of the other Senators do not have a drop of oil in their States, so they can stand up and condemn the oil industry, except when they get cold. Then they wonder what happened to all the oil, what is wrong with OPEC countries, why do American companies not produce more?

Mr. President, it seems to this Senator it is another case of trying to have it both ways. If we want more reliance on the OPEC countries, we just keep taxing and taxing the small independents, who go out and look for 90 percent of the oil. Ninety percent of exploration is done by independents, not the major oil companies.

For some reason, Mr. President, because oil is so popular with the press and the liberals know how to hit the nerve when they talk about oil, it is a good story, because the press does not know how to talk about the oil industry, either. If they did, they would write about it.

We are talking about a vital industry as far as this company's economy is concerned, as far as our defense is concerned, and as far as keeping America warm is concerned or keeping it cold or

running the industrial plants in Michigan, Ohio, or Massachusetts. I do not understand this constant condemnation of an important domestic industry, the independent oil industry.

Mr. President, maybe I am suspect. I come from a State—I do not have any oil income, never had any oil income. I guess I did have a little bit several years ago, but then the well went dry before I could recover my costs. But I am an oil man, I guess, because I once thought I could make a little profit.

I learned that not every well produces. I thought you just put a hole in the ground and oil came out. But I learned that about 9 out of 10 are dry and it costs a lot of money to raise oil in some States, in California and Texas and in some of the tight formations.

So I hope the press, and I do not say this in a general way, but some who write and run—or run and write, whichever—would just take a look at the industry. Take a look at the independents. That is whom they want to punish. The Senators have all made their speeches, all gone on to greater things since they left the floor. They have attacked the oil industry and all the men and women who work in that industry. All the taxes that industry pays have not been mentioned. What are the arguments that have been presented? They are attacking Conoco, Mobil, and Exxon. They do not get a dime out of the House bill. Not a dime goes to the major oil companies any more than we had in the Senate bill. That was $1.2 billion.

I suggest that if we want to argue and want to make headlines, we ought to do it with the facts. I do not quarrel with anybody who wants to make a little ink back in Ohio, Massachusetts, or Michigan. Even we engage in that from time to time. But if we want to attack the major companies, let us put up another chart, or if we want to attack the independents, the little 2- or 3-barrel producers in the State of Kansas. We produce 56 million barrels of oil a year in Kansas. That is not very much. That is about 1 week's imports. I think it may be equivalent to what may be produced in West Virginia. Maybe we produce a little more.

But let us train our fire on the right target. We are going to try to make some accommodations—not to the Senator from Ohio, but because we understand the problem. I have said it before and I say it publicly, I have appreciated the Senator's support. I have referred to him respectfully as "commissioner" from time to time, because we have cleared every amendment with the commissioner. That does not bother the Senator from Kansas.

It is not because the Senator from Ohio does not trust this Senator or the Senator from Louisiana. We have saved a little money with that process and we appreciate that. But I would not want anybody to go away thinking that we are about to give away all this money to major oil companies when they do not get $1 more in the House bill than they got in the Senate bill, which was voted for by many who have been up speaking against that proposition.

Mr. METZENBAUM. Reserving the right to object, Mr. President, it is my understanding that the Senator from West Virginia wishes to be heard at this point. In his behalf, I reserve the right to object and yield the floor to him.

Mr. RANDOLPH. I thank my colleague. I want to comment on what the Senator from Kansas (Mr. DOLE), charged with this legislation, has just said about the fact that those in the oil business and the gas business very often drill dry holes.

My remarks are applicable to the small independent oil and gas producers.

Independent producers are without a doubt this Nation's "explorers"—over 11,000 little companies that do over 90 percent of the exploratory drilling in the United States.

At a very early age I was an active participant in this industry. I helped my father in his efforts as an independent producer when he owned the MCF Gas Co. and was myself secretary/treasurer of the Randolph Oil & Gas Co.

Citizens of our State have been making money in the oil and gas business since the first actual production of crude oil in 1860 and of natural gas in 1885. Since then oil and gas has been discovered in 49 of our 55 counties, natural gas and oil rank as our second and third principal mineral products, and in 1979 total value of gas and oil produced in West Virginia was near $200 million. Our industry also employs 3,800 people in the State.

Mr. President, at the age of 20 I was secretary-treasurer of the Randolph Oil & Gas Co. My father was president. The company went bankrupt and I still have the certificates today. I look at them and think of those days when we were drilling in West Virginia and not able always to find the oil and gas that we had hoped for.

West Virginians made a tremendous contribution to the drilling of oil and gas wells in Kansas and Oklahoma and Texas. Had it not been for those men who were drilling for oil and gas in West Virginia, with the expertise that they had gained, not always by finding gushers, they may not have been able to go into the Southwest, as the record shows, and actually do the drilling that had been so important to the petroleum industry in those two States.

One of those individuals was Micheal L. Benedum. He took the risks and chances necessary to assure this Nation adequately developed its precious oil and gas supplies. His pioneering spirit was expressed well in an article which appeared in a 1955 issue, Success Unlimited. The title of that article, "I Kept Right On Going," was inspired by the attitudes of M. L. Benedum, who if asked what he felt was the best oil field he ever brought in, would probably exclaim, "The next one." He was also given to statements such as:

> I've had no ulcers because I've had confidence, faith and patience to carry me through. If half-way up an obstacle I'd meet a streak of bad luck, I kept right on going 'til I was over the top.

His optimism rang through his every word as he said, That is part of the game. You can't expect to find deposits of oil everywhere you look. If you did, there wouldn't be any fun wildcatting.

Mike Benedum's recipe for success is compellingly put: the first step to success, he explains, is to be doing what you like. Then work. He says:

> Work yourself, drive yourself, make sacrifices, or you'll never achieve anything worthwhile.

As a young man, I worked in the oilfields of West Virginia and I went through the valleys and over the hills as we attempted to find oil and gas. On one occasion in a certain section, we drilled seven dry holes, one after the other. In fact, about 19,000 dry holes have been drilled in West Virginia since inception of the oil and gas industry there. That is 20 percent of all the wells ever drilled in the State.

My father also was always an optimist and hoped for that time when there might be a well which would come in and which would compensate for the losses that we had on other wells. But, really, the reason for my mentioning the matter in this colloquy between the able Senators from Ohio and Kansas is to indicate that, in West Virginia, we are a State where oil and gas wells are being drilled now, as they were in the twenties and thirties and through all these years. Our companies, the independents, those that work in what we call the stripper well industry, are very involved and are well supported by the royalty owners who have the confidence to invest in their operations.

Whatever we do, we must be careful, to differentiate between the so-called "big boys" in any industry, and those that are in a lower scale in the operation of that industry.

I refer once again to West Virginia: We have been a State of independents in the oil and gas industry. It is an industry that continues. A total of 95 percent of our oil wells are stripper wells—those producing less than 10 barrels per day.

I believe we drilled 1,474 wells in our State last year.

Drilling in West Virginia is a lower risk proposition than in some other areas of the country because such activity is close to already known production. Although yield is not as great consider this: While only 66 percent of wells in Texas come in with sufficient quantities of hydrocarbons to make them viable, better than 90 percent of all holes dug in West Virginia are producers. These wells are close to the factories in our Eastern industrialized centers and do much to retain gas reliant industry and thus jobs in our State which otherwise relocate to the Southwest. Gas pipelines already thread all of Appalachian and newly discovered oil can usually be trucked only short distances to refineries.

We are now witnessing significant advances in petroleum geology, new advanced recovery techniques, new producing areas surrounding the Eastern Overthrust Belt, and the drilling equip-

ment industries capability to now produce two rigs a day.

The U.S. Geological Survey has indicated only one-fiftieth of the gas reserves in Appalachia have been tapped. and on a national basis only 2 percent of the domestic rock containing oil and gas has been drilled to date. Much of these potential fuel reserves will have to be recovered through unconventional gas sources or secondary and tertiary oil recovery techniques.

Future oil development could center more and more on the use of secondary and tertiary recovery techniques to increase flow where economical from our low yield producing wells.

Secondary gas and water injection on average can recover from 10 to 30 percent of oil left in place by conventional recovery means. The other two-thirds of so-called unrecoverable oil in reservoirs can now be extracted either by introducing fluids that mix with oil in rock pores—moving it and cleaning it out—or, using thermal methods. Tertiary techniques, as you know, can include liquid petroleum, carbon dioxide, and surfactant chemical injection, along with fireflooding and high-pressure steam injection. The use of these techniques could provide ways by which 50 to 80 percent of the oil remaining in some fields could be recovered.

Although independents around the country are encountering challenges in leases and assembling drilling prospects, getting enough rigs, and sometimes meeting Government reporting requirements, I am excited for the industry because of the strong demand for good prospects and a continued growing interest from investor groups. In West Virginia, drilling was up 33.4 percent in 1980 compared to a year before with the leading State centers being Buchannon, Clarksburg, Parkersburg, and Charleston.

Drilling for oil and gas in West Virginia has been going on for 121 years. To date, approximately 103,000 wells have been developed.

Even though we do not find those tremendous volumes of gas or those great pockets of oil, we continue as people who, in a sense, like to take a chance, like to be entrepreneurs, in searching and questing for that which is helpful in the mobility of a nation that is on wheels and wings.

The energy legislation we enacted in the 95th and 96th sessions of Congress will be sufficient to handle most subsequent energy shifts, because the policy established does not assume our new or revitalized sources will be cheaper, more abundant, or cleaner than the energy it replaces. It is now almost 8 years since OPEC embargoed oil shipments to the United States. Until then our energy policy was basically use as much as you want and pay as little as possible.

With the higher prices and uncertain supply the embargo brought, and the Iran-Iraq war reemphasizing the danger of depending on the Persian Gulf region for energy, Congress for the first time, put the framework for an energy policy in place. It has not been easy. Throughout the legislative process we wrestled with new realities, and the old ones we chose to ignore in the past. We debated energy and national security, the role energy would play in a modern industrial economy, the effect of accelerated depletion of domestic resources, the relative environmental impacts and hazards of our energy sources, changes in social structure, and shifts in regional economic and political power new energy relationships would bring.

The goal of the finalized legislation is simple—reduce dependence on imported oil by cutting energy use through conservation, stepping up domestic energy production, and developing new fuel sources for the future.

Mr. MOYNIHAN. Mr. President, reserving the right to object, I take this occasion to address a query to the distinguished chairman of the committee, who will now proceed to conference on the tax measure. It is with respect to a matter that I know concerns him as it does me—the so-called commodity tax straddle legislation.

The distinguished chairman has written to the chairman of the Committee on Ways and Means to assert the judgment of this body that the measure we have proposed is a better one, a more equitable one than the House proposal in that it does not allow a certain group of individuals a different tax situation than others. The Secretary of the Treasury described the Ways and Means proposal as a measure that outrageously exempts a group of 2,500 wealthy individuals; and President Reagan, in these very Halls, described it in the same terms. Then—unexpectedly—it turned up in the administration's tax bill.

Can we expect, as I know we can, that the chairman will press the Senate position in the commodity straddles tax matter?

Mr. DOLE. I say to the Senator from New York that I thank him for his leadership in this area. He is correct: We will make every effort to maintain the Senate position. So far as I am concerned, that is the best position of the two proposals, clearly.

So far as this Senator knows, the conferees have not yet been appointed, but there will be seven Senators in the conference. I believe all seven voted for the Senate position in the committee and reaffirmed that support in voting on Wednesday, in effect, on the bill. So my answer is, "Yes."

Mr. MOYNIHAN. I thank the chairman.

Will he find the opportunity to call attention to the editorial in the Chicago Tribune—a newspaper not unversed in these matters—which takes very much the Senate view on commodity tax straddles?

I hope also that he will press the point that our legislation invites capital into commodity markets. Curiously, the measure on the House side does the opposite. By making it possible to offset losses only against gains in the markets, it raises the risk to investors to a point that would not be feasible for many. Our legislation invites capital and invites activity. We thought that is what they want.

Mr. DOLE. With reference to the editorial, I intend to have copies available for any conferee who would like to review it during our proceedings.

I say to the Senator from New York that it is our hope that we can go to conference soon.

Mr. MOYNIHAN. If I stop talking.

Mr. DOLE. That is not intended.

Perhaps we can go to conference around 3 o'clock and complete work on the conference today.

As the Senator knows, there are not too many areas of disagreement. The straddle is one, and that may take some time.

Mr. MOYNIHAN. I thank the chairman.

Mr. President, the conferees have two choices as to how to proceed. They have before them an industry proposal, under which outside investors could not use commodities as a tax shelter, but professional commodity traders could continue to do so. This is what Senator DOLE once referred to as a proposal to get "those dentists and doctors and others who are avoiding tax, only don't bother us."

The alternatives is the so-called mark-to-market approach. No one disputes that this approach would put an end to this tax abuse by everyone. The Finance Committee voted for it 18 to 2.

The lobbying has been intense. Members have been told that professional traders perform a useful social function when they invest in commodities. Which is surely true. But does it follow that Congress ought to reward them with special tax benefits? Jerome Kurtz, the former IRS Commissioner, had a good answer for this. He told the Finance Committee:

> I would suggest that when this Committee meets and decides how to hand out tax exemptions on the basis of contributions to society, there will be a very long line ahead of commodity dealers.

The argument has been made that the Senate's mark-to-market approach will not work or is not fair. The Finance Committee heard this, also.

We were told that our failure to allow tax avoidance by commodity traders would reduce liquidity in the markets, and make the markets less efficient. Yet, the markets operated perfectly well before they were being used as tax shelters. Indeed, there are economists who say that the markets will be less efficient if we do not stop the tax straddling, because tax straddling may distort farm prices.

We were told that it is unfair to tax an individual on his profits up to December 31, even though he has not closed out his futures contracts. That is because his profits are "unrealized." Yet, this is fiction. A commodity investor realizes his profits every day as gains are credited to his account. He earns cash that may be withdrawn. The tax section of the New York State Bar Association sees nothing unfair or inconsistent about the Finance Committee's bill, and fully supports it.

Finally, we were told that the mark-to-market approach will not work. Let me repeat what Martin Ginsberg, a very distinguished professor of tax law, said about this to the Finance Committee. He

said he has watched a great many debates about closing tax loopholes, and continued:

Mr. Chairman, it is great fun for an academic to attend a hearing on tax shelter transactions. This morning, no one defends the abusive tax avoidances use of commodities.

But you know, at hearings, no one ever defends the abusive tax avoidance of anything. Everyone at tax shelter hearings turns out to be highly public spirited, without fail. This is evidenced by an intense desire to prevent the destruction of the Republic from the assured and horrendous side effects of whatever tax change is going to be made.

But, in the end, we really have to make some of these tax changes or the Republic will be in a great deal more difficulty, simply because the tax system falls into disrepute.

Mr. President, I say to the chairman of our committee, with the greatest respect, that I concede that he would want a compact group of persons to be conferees on this matter; but this is not a small measure we will adopt today, or will be adopting soon.

I had hoped that the conferees would reflect a wider geographical and ideological—if I may use that term—range than they do. If I am not mistaken, there will be no Member from the Northeastern part of the Nation on the conference committee. There will be no one from the Middle West part of the Nation on the conference committee. On the minority side, the kind of regional balance which we have sought to address—because these are necessarily regional questions in a large country—will not be present.

I can imagine that the chairman feels that the decision made in the House earlier in this Congress about the balance of the committee was unfortunate; the allocation of seats with respect to the majority and the minority may have been unfortunate. Even so, not to put too fine a point on it, the Northeast and the Middle West of this Nation are still part of the Union and are not going to be part of this conference, so far as the Senate is concerned. I wish it had been otherwise, but I understand that elections have their consequences. I learn that as I become older.

Mr. DOLE. We will have seven conferees. There could have been more Senate conferees, but there are only eight House conferees.

Mr. MOYNIHAN. Are there only eight House conferees?

Mr. DOLE. Yes; five and three.

Mr. MOYNIHAN. In that context, I feel that I have to withdraw my remarks, even though I believe that what I said is not wrong. If a more numerous body seeks only eight——

Mr. DOLE. I would be happy to take the Senator's proxy with me and use it wisely.

[Laughter.]

Mr. MOYNIHAN. The Senator knows that he takes with him the high and enduring regard of the Senator from New York.

Mr. METZENBAUM. Mr. President, reserving the right to object—and I do not intend to object, nor do I intend to speak for more than a couple of minutes. I would like to respond to my friend from Kansas, with whom I have had the privilege of working in connection with this entire matter. We have not been in major disagreement, and we have worked well together, and I appreciate his many courtesies.

I acknowledge the fact that the extra House dollars do not affect the majors, but the independents are not exactly little league. The majors are taken care of pretty well by the $14.2 billion and the 50-percent tax reduction on new oil production. That is already in the Senate bill, and the Senator from Kansas is correct in stating that many of the majors are affected by that part of the bill.

The independents, many of whom do billions of dollars and certainly hundreds of millions of dollars of business, are also part of the oil industry and have an impact upon our economy.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of nine of the major independents, showing their volumes as well as their profits.

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

Company	1980 revenues (millions)	1980 net profits (millions)	1980 profits compared with 1979 (percent)	1980 revenues compared with 1979 (percent)
Superior	$2,497.7	$312.3	+55.9	+38.0
Texas Oil & Gas	1,267.1	152.2	+27.0	+42.0
Louisiana Land & Exploration	1,075.8	180.2	+6.6	+31.7
Mitchell	626.0	94.8	+64.0	+11.4
Houston Oil & Mineral	383.0	71.4	+27.0	+18.0
Southland Royalty Co	363.8	62.3	+42.0	+14.0
MESA	328.3	95.2	+30.0	−67.0
General American Oil of Texas	273.4	54.4	+42.0	+.6.0
POGO Producing Co	220.4	54.0	+38.0	+29.0

Source: Business Week, Mar. 16, 1981.

Mr. METZENBAUM. Mr. President, I will quote what has been said by some of the independents:

Amerex Oil: "Fiscal year 1980 was an extraordinary year."

Callahan Petroleum: "1980 was the best year in the history of the corporation."

Apache Oil: "Record earnings."

As the distinguished Senator from Massachusetts pointed out, Merrill Lynch stated that in 1980 oil exploration and production are more profitable than any other segment of American industry. And that is what the independents do—explore and produce.

It is a fact that the phasedown of the oil depletion allowance which involves about $13 billion does affect these large independents such as Louisiana Land and Exploration with I understand something in the approximate area of $1 billion of business. It affects people like the Hunts. We know the Hunts. Mr. Hun' was recently quoted as saying that he does not know how he could possibly live on less than $1 million a week income. That is his quote, not mine.

I say we are talking about an overall problem of the oil industry. We are talking about depletion allowances where 75 percent of the people who will gain by this $12.9 billion have earnings in excess of $50,000 a year.

I think we have gone far enough in treating not only the majors, but the independents, the royalty owners, the strippers, the whole industry. They are doing well under the laws as they presently exist. They will do quite well under the Senate bill, but that is enough, and I do hope the conference will see fit not to go any further than the bottom line of the Senate bill.

Mr. President, I have no further objections.

● Mr. LEAHY. Mr. President, in the House version of the Economic Recovery Tax Act of 1981, there are provisions which amount to a $16 billion giveaway to an oil industry that is already awash in cash. I must strenuously object to these proposals.

The provisions would reduce the windfall profit tax on all newly discovered oil over the 1982–86 period, exempt stripper oil of independent producers from the windfall profit tax and retain the oil depletion allowance at 22 percent. This major reduction in oil industry taxes comes at a time when a multibillion dollar bidding war rages between industry giants for control of Conoco.

Mr. President, the Windfall Profit Tax Act signed into law last year represents a workable compromise between oil producing and oil consuming States. It is simply outrageous that these provisions—drafted in a mood of escalating partisan bidding in the House—would ruin this compromise.

These provisions are bad economic policy and even worse energy policy, Mr. President, while we ask the Nation's elderly poor to give up $122 per month, we are bequeathing the oil industry a $16 billion gift. I simply cannot support this action and would not be prepared to vote on a tax bill right away if the tax conferees accept these provisions.●

THE TAX BILL—IT COULD BE BETTER

Mr. PELL. Mr. President, the tax bill passed by the Senate is a poor bill, with many flaws, but it is better than the alternative which faced us in the Senate of having no tax reduction bill at all.

American workers, families and businesses deserve a tax cut to compensate for inflation-caused "bracket-creep" and social security tax increases. Accordingly, I voted for the tax cut bill in the Senate, despite its flaws, because voting against it would be a vote to leave the tax system exactly the way it is now.

I want to make clear, however, my strong reservations about this tax bill.

I believe the overall total tax cuts provided by this bill are too large and could pose a serious danger of continued budget deficits and continued inflation.

The tax cuts for individuals provided in this this bill are tilted too heavily in favor of the well-off, while shortchanging the average American family with an income of less than $50,000.

The bill provides some badly needed tax reductions for business and incentives for saving and investment, but it does too little for small business while providing billions of dollars of totally unjustified tax giveaways to the oil industry.

During the past 2 weeks a series of amendments have been offered in the Senate to improve this tax bill, to make

it fiscally sounder and to make it fairer to the average American.

I voted for amendments that would have given a greater share of the tax cuts to the average American family.

I voted for amendments that would have reduced the overall size of the tax reductions with the objective of reducing the Federal budget deficit and getting inflation under control.

All of these amendments, and many more that were offered to improve this tax reduction bill, were defeated here in the Senate, often on party-line votes.

As a result this tax reduction bill is far from perfect. It is clear, however, after dozens of rollcall votes that this is the best tax reduction bill that it will be possible to achieve in the Senate this year. Indeed, it is the only tax reduction bill that we have an opportunity to vote for in the Senate, and I voted for it with the reservations I have noted.

There are, I would note, some provisions of this tax reduction bill that are much needed and commendable. They include a reform of depreciation for business, relief from the marriage tax penalty, and a new tax exclusion for savings interest that should make home financing more affordable. And the cuts in individual income tax rates, while not distributed fairly, will give at least some relief to workers from increased social security taxes and inflation-caused bracket creep.

I am pleased also that the bill includes an amendment, which I cosponsored to provide home heating tax credits to families that have been hard hit by skyrocketing home heating oil costs.

It is my hope that some of the shortcomings in this bill will be corrected when the House and Senate conferees meet to resolve the differences between the two versions of the tax bill. I hope that the conferees will produce a tax bill that I can support more enthusiastically than the bill passed by the Senate.

DIRECT EXPENSING: AN IMPORTANT PART OF THE TAX BILL

Mr. SASSER. Mr. President, the Finance Committee tax bill that the Senate passed Wednesday contains a direct expensing, or first-year writeoff, provision that addresses the very serious problem that small businesses have in raising investment capital.

Unfortunately, an important amendment to increase the value of this provision on a party-line vote. This amendment was offered by the distinguished Senator from Montana (Mr. BAUCUS) and I am proud to say that I supported this worthwhile attempt to make the tax bill more beneficial to small businesses.

Direct expensing, or first-year writeoffs, enable a business taxpayer to deduct the cost of capital expenditures in 1 year. Under current law such an investment must be written off over a period of years.

The primary advantage of expenses is that an investment in a new piece of equipment, for example, can be recovered immediately. The small business person does not have to wait for years to recoup the investment. This advantage gives the small business the impetus to make investments that improve its productivity and its competitiveness.

This edge is desperately needed by the Nation's small businesses because it is virtually impossible for the small enterprise to accumulate capital for investment in the ways that larger businesses are able to do. Due to the greater risks involved with the new or smaller business, the lack of adequate collateral and the higher cost of making smaller loans, the small business is often shunned by banks and other credit suppliers. When they are able to obtain borrowed funds, it is often at the rate of 2 percentage points over the prime rate. The prime rate often is a ceiling on the rates that their larger competitors pay.

In addition to borrowing, larger firms often sell issues of stock to raise equity capital. Once a prime source of funds for small business, this method has all but disappeared.

Another method of capital formation is by way of accumulated earnings. This implies simply holding on to enough of the profits of the business to make the needed investments. This, too, is extremely difficult for the small firm because its profit margins are usually very thin.

These capital formation problems that small businesses face are especially alarming when the critical role of small business in the Nation's economy is realized. Small business accounts for almost 57 percent of all business receipts and 39 percent of the gross national product. It provides 58 percent of total U.S. business employment.

Its tremendous impact on employment has been further illustrated by the research done on job creation. Several studies show that small firms are responsible for well over one-half of all the new jobs created in our economy. Small businesses are also responsible for one-half of new products and processes that make us more productive. Firms of less than 100 employees producer 24 percent of such innovations.

So the need, Mr. President, that small business has for assistance in capital formation is clear. The Finance Committee has very wisely addressed this pressing problem. It is not without high regard for the committee and its efforts with regard to this issue, that I supported the Baucus amendment. The committee held hearings on the issue of small business capital formation and worked hard to include in its bill incentives to assist small business and help make it even more of an asset to our economy than it has been in the past. The committee chose direct expensing as one of these methods. The committee included a direct expensing amendment in the tax cut bill that it reported to the Senate last September.

Last year, however, the committee bill's direct expensing provision contained a ceiling of $25,000 in capital expenditures that could be written off in the year of purchase. The bill before us today contains a phased-in ceiling of $10,000.

Again, I applaud the initiative of the Finance Committee, but feel that our commitment to the small entrepreneur demands that we increase the worth of the direct expensing provision to the level of the committee's bill of last year. This $25,000 in expensing, which will be phased in in 1986, is sorely needed by the small business community.

Mr. President, direct expensing is not a new concept to me. The Tennessee delegates to the White House Conference on Small Business first talked to me in 1979 about their interest in the concept. At that time they were working through the conference process to come up with the priority recommendations that the delegates would make to the Congress and the President. They were convinced of the value of expensing to small business.

So successful were their efforts in gaging the potential support for direct expensing that when the idea came to a vote among their fellow conference delegates from across the country, the idea was approved overwhelmingly. In fact expensing was the second highest priority ranking behind income tax rate reductions.

Soon after this endorsement, I was the first in Congress to introduce a small business direct expensing bill. I have worked toward its passage ever since, reintroducing my expensing bill, S. 171, in the 97th Congress.

Mr. President, the need for assisting small business with its capital formation problems is clear. The endorsement by small business representatives of the concept of direct expensing is clear. The Senate Finance Committee wisely acted on this issue last year and again this year by including expensing in its tax bills.

The amendment proposed by the Senator from Montana (Mr. BAUCUS) would merely have increased the benefit of the committee's expensing provision to the level that the committee itself endorsed in its bill of last year. The committee ordered that bill reported by a vote of 19 to 1.

Mr. President, again I applaud the Finance Committee for including a direct expensing provision in the tax bill. But, at the same time, I regret that the amendment to increase the value of the provision from $10,000 to $25,000 per year did not pass.

I urge the distinguished chairman and the ranking minority member of the Finance Committee to do all that they can in the conference committee on the tax bills to increase the allowed level of direct expensing.

I pledge to continue my efforts to solve the many problems that our productive small business sector faces by working to realine Government tax, credit and regulatory policies. Without such changes, we risk losing the very valuable contributions that small business makes to our economy.

OIL TAX PROVISIONS OF THE HOUSE TAX BILL

Mr. MITCHELL. Mr. President, several provisions in the tax bill passed by the House of Representatives represent a 180-degree turn from the purpose of the tax cut.

The tax bill is intended to form part of the fundamental economic recovery program. It is designed to provide relief

to wage earners. It is intended to lower the rate of taxes on investment and savings income, so that Americans who are fortunate enough to be able to invest and save their money will have the incentive of a greater return to do so.

It is intended to give our industry a chance to rebuild its capital base, so that it may purchase the equipment and machinery needed to modernize outdated plants, to install cost-effective processes, to regain its productive potential.

That was, in my mind, the purpose of the tax bill. That purpose guided me in voting on the Senate bill and the various amendments offered to it.

During work in the Finance Committee, in response to some concerns that the windfall profit tax may have imposed too heavy a burden on smaller royalty holders, the committee inserted in its measure an increase in the credit for royalty holders from $1,000 to $2,500 per year. That was designed to help those royalty owners whose incomes from oil holdings were not large and for whom the windfall profits tax acted less as a recapture of huge profits than as a penalty on modest income. So that tax credit was expanded, as I have explained. A similar provision is in the House bill.

At the same time, in response to concerns about the tax rate on so-called "new" oil—that is to say, on any well producing after 1978—the Senate dropped the level of the windfall tax from 30 to 15 percent. That was meant to respond to concerns that the tax was an onerous burden on domestic production that could not be warranted at a time when we are seeking to maximize domestic energy production and limit reliance on expensive and unreliable OPEC oil. That provision—the halving of the tax on new oil—was not a cheap way to help in domestic production. I disagreed with it as did other Senators. But it stayed in the Senate bill. A similar provision is in the House bill.

Set against the relatively minor expenditures for alternative energy—and the cuts that were taken in those expenditures in the name of helping hold down the budget—halving the tax was a substantial cost for the added production we have been assured it will give us.

If the domestic production promised comes through, the cost may be worthwhile in terms of securing ourselves against supply interruptions and price gougings of the kind we have endured for the past 7 years.

Yet, it is by no means a cheap method of encouraging additional production.

And even during the Senate debate we faced a proposal, not merely to maintain a lowered tax rate on new oil, but to completely eliminate the windfall profit tax on new oil. The Senate wisely refused to accept that suggestion.

At a time when we allegedly cannot afford the modest cost of $43 million for solar heating and cooling research, to give billions for the production of a diminishing resource would have been unconscionable.

Yet the House of Representatives undertook such a giveaway. It would give some $16 billion to the oil companies in lowered taxes over the next 5 years. The Senate rejected a similar proposal during the tax debate. The Senate must now serve notice that it will not accept this massive giveaway in the final conference version of the bill either.

No study undertaken since the 1973 embargo has concluded anything other than that oil is a finite and diminishing resource. No other conclusion has been reached, and I venture to suggest that this is because no other conclusion is feasible.

Oil resources may well last into the next century—as the Saudi reserves are said to be able to do—but that oil will grow increasingly scarce, increasingly hard to find, increasingly expensive to produce, and increasingly hazardous to the environment in the process of production.

The oil companies are the first to assure us that the costs of exploration, the costs of deep drilling, the costs of recovery are all going through the roof.

Yet we cannot afford the costs of technology for renewable energy sources, which will not diminish, will not be finite, because we are so anxious to plow more money back into the increasingly costly job of producing more oil from a constantly declining total reserve.

It is absolutely unclear to me on what basis the House made these tax reductions. Is it a theory that unless this lowered tax provides the incentive to explore, oil companies will cease to explore and recover oil?

At a time when every drilling rig in the Nation is working full time, when various oil companies report in their annual reports to shareholders that drill rig scarcity is the only constraint on their expanded exploration, surely the notion of "incentives" is inappropriate.

Is it a theory that the revenues recovered after payment of the windfall profit tax are so low as to represent the imminent demise of this industry? The Department of Energy has advised that the 16 major companies producing oil last year spent only 44 percent of their revenues on the petroleum industry. The remainder was spent on nonoil business interests, on acquisitions, on building up assets in the form of securities and cash, and on shareholders' dividends.

Prominent financial analysts have remarked, with one voice, that the oil industry today is clearly the most profitable and most attractive investment opportunity in the country. No other industry is awash in the sea of cash that is drowning the oil industry.

One of the goals of the tax bill, in fact, reflects that fact. We have passed a bill to help other industries develop a cash flow sufficient to improve their operations. We are doing everything in our power to help smaller firms overcome the incredible interest costs that cause their operations to run at a loss. We are doing everything we responsibly can, in fact, to make certain that investment capital becomes more plentiful throughout the economy.

One of the causes of the capital shortage is, of course, the incredible drain of national resources that has been caused by the 1979 doubling of oil prices. Companies of all sizes have found their energy costs soaring and have reduced their investments in other areas to compensate.

But energy costs do not just soar: They are ultimately paid and, ultimately, one or another sector receives that money. In the case of energy, the recipients of this massive interindustry transfer of dollars have been the major oil companies and the entire industry.

That fact alone helps account for both the shortage of investment capital throughout the remainder of the economy and for the incredible cash reserves that oil companies have been able to accumulate.

Yet we are faced with the prospect that the final form of the tax bill will give this sector a further infusion of $16 billion over the next 5 years.

I have not made the obvious case that the minimum social security benefit—to take just one essential program which has been cut to save money—could be more than financed for the cost of this amendment. That case has been made by others.

But I would draw the attention—and the memory of the Senate—back to the basis on which the windfall profit bill was enacted. It was not intended to punish the oil companies. That is a canard which has achieved its greatest publicity through repetition by the oil companies themselves.

It was enacted to help reduce the massive inter-industry transfer of dollars which was inevitable as the result of the phasing in of decontrol. It was designed to help provide the income to the Government with which other sectors of the economy—business as well as individuals—could be helped to overcome the dislocation of such a massive energy price increase.

It was intended to defray the direct costs to the poor of the price increase. But equally important, it was designed to help encourage conservation by homeowners and industry by giving them the tax incentives they needed to reduce their energy consumption.

Well, in practice, neither the scope nor the breadth of assistance that was intended has ever actually eventuated. A modest amendment offered by Senator KENNEDY to provide a maximum of $2 to $3 billion in increased conservation tax benefits was rejected, as being an inappropriate and overly costly item.

Yet this massive giveaway is deemed not too costly. It is an essential production incentive to an industry which has seen record-high profits and record-high net income in the last 2 years.

I would suggest that conserving energy for small businesses represents at least as much a way of providing economic growth as giving Sohio the chance to buy another Kennecott Copper, or Exxon the chance to purchase another Reliance Electric.

The fact is that it is simply unfair to American working people who have been paying these massive price increases for energy to give them a very modest tax break—a tax break that will be eaten up by inflation and social security payroll

tax increases within a couple of years—and then to give a needless and huge tax break to this profitable industry for oil it is selling at a worldwide artificially administered price.

No amount of free market rhetoric can hide the fact that the returns on oil production do not represent a realistic connection between the costs of production in each case: They are in fact the proceeds of an administered price.

The Senate bill already forgives a substantial portion of the windfall tax bill. To accede to the vastly larger giveaway contemplated in the House bill would be a betrayal of the American people who have been promised a tax measure based on their needs—not on the preferences of big oil.

If the Senate wants to make good on its rhetorical concern for the integrity of the budget process, for the need to treat all taxpayers similarly, for the need to hold down deficits and to tailor tax breaks to needed purposes—not to preferences—then it will hold fast against any effort to bring these House-passed provisions into the final form of the bill.

Mr. CRANSTON. Mr. President, I voted for the Senate tax bill because, in balance, its good points outweigh the bad and because it is preferable to the House bill—our only other alternative at the moment.

The Senate bill has some very, very bad features—an inequitable 3-year reduction in personal income taxes that is both inflationary and unfair to the vast majority of working Americans.

I, along with many other Democrats, voted against those provisions. We lost every time. I, along with many other Democrats, voted to amend the tax provisions to make them fairer and less risky to the economy. We lost every time.

Such a substantial reduction in our tax base when we plan such a huge increase in defense spending will keep both the deficit and interest rates running at damagingly high levels.

On the other hand, the bill has some very, very good features—incentives to increase productivity and fight inflation by encouraging savings and investments. I argued and worked for many of those provisions for many years:

Elimination of the 70-percent maximum tax on investment income;

Tax credits for increased research and development efforts;

Incentive stock options for managers and employees of high technology companies;

Increases the exemption from estate taxes to encourage preservation of family farms and small businesses and to provide adjustments in estate and gift taxes for inflation; and

Liberalization of rules restricting the use of individual retirement accounts.

I favor yet additional incentives to encourage individual savings. But overall the Senate tax bill reflects most of the incentives I have believed for a long time were necessary to put our economy to greater productivity and to lower the rate of inflation.

I opposed an individual income tax cut at this time because I felt that an across-the-board tax cut would be inflationary and would not lead to as much saving and investment as would better targeted tax cuts. I voted for every amendment to the bill which I thought would promote the overall objective of countering inflation and increasing productivity.

I continue to believe that we are running a great risk by voting such substantial reductions in our tax base at a time when we plan to increase spending for defense and are likely to run very high deficits. This combination of more spending for defense and soaring deficits can only force a continuation of high interest rates. If interests rates continue to be high there may be no economic recovery at all but a continued slide downward.

In all, there is more good in the Senate bill than bad, in my judgment. If we can stimulate business productivity enough we may be able to offset the inflationary aspects of Kemp-Roth.

But should the conferees for the Senate bring back a bill which contains objectionable provisions from the House-passed bill—in particular if the conferees report to the Senate a bill containing anything like an additional $20 billion in tax relief from the windfall profit tax—I will oppose the conference report as being unacceptable.

THE CHILES SENSE OF THE SENATE AMENDMENT TO THE TAX BILL

Mr. ARMSTRONG. Mr. President, it has long been my custom that when in doubt to vote no. This practice has served me well over and over again, as I have simply found that if you do not understand something, you should not vote for it until you do reach a point of understanding. A day or two ago, somehow I failed to abide by that longstanding policy and joined 99 other Members of the Senate in voting in a historic vote, 100 to 0, in favor of a Chiles sense of the Senate amendment to the tax bill.

I just want to say to my colleagues that I regret having done so. Had I realized fully the import of the Chiles amendment, I would have voted against it, had I been the only Senator to do so.

I refer to the provision of that amendment which says:

> It is therefore the sense of the Senate that: . . . b) the Board of Governors of the Federal Reserve System should exercise its regulatory powers to require that loans be made for productive economic purposes, rather than to enable large firms to acquire smaller firms and to assure that sufficient credit is available to protect the viability of thrift institutions without wholesale mergers or takeovers; . . .

This sentiment was expressed so casually and really without the full understanding of Members of the Senate and certainly without extensive debate.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ARMSTRONG. Will the Senator yield me 1 more minute?

Mr. DOMENICI. I yield 1 additional minute to the Senator.

Mr. ARMSTRONG. This sense of the Senate resolution may be worthy. It may be a good idea. I personally have some doubt about it. I just want to say that I think it was not considered with the care that such a sweeping decision merits and, at least on behalf of one Senator, I would like to have the RECORD reflect that a wiser judgment on my part would have been to vote no. I hope that the board of governors will not treat more seriously than it deserves this sense of the Senate resolution. Indeed, it would be my hope that the conferees would remove it from the conference report.

Mr. HOLLINGS. I yield 5 minutes to the distinguished Senator from Florida.

Mr. CHILES. I thank the distinguished minority manager for yielding.

I just want to say to my good friend from Colorado that I am very sorry that he did not read that resolution before he voted on it, because if he had disagreements with it, I would have liked to have heard them at that time.

I want him to know that I did not treat that in a casual manner at all. I considered it to be one of the most important things that the Senate spoke to on that bill. It was the first 100 to 0 vote, I understand, that the Senate has ever made.

But, be that as it may, I would hope that no Senator would vote for that if he did not want to and did not feel we we ought to be doing something about interest rates and that we ought to be doing something about loans and money being available for big business but not being available for the farmer and not being available for the small businessman for him to be able to survive.

I do not want to take a lot more time at this time. But I just did want to say that it was certainly not something that I treated casually or in a cavalier manner.

Mr. SARBANES. Will the Senator from Florida yield?

Mr. CHILES. I yield.

Mr. SARBANES. I simply want to underscore what the Senator from Florida has said. There were many Members of the Senate who thought that the section just referred to, which apparently the Senator from Colorado did not fully address, was the most important part of the resolution. We are very much aware of its import and very strongly supportive of it, so I certainly do not think it is accurate to suggest that for many, many Senators that they acted on that resolution, and particularly on that part of the resolution, out of ignorance. They were very much aware of it and supportive of it and supportive of the efforts the Senator from Florida has made with respect to the incredibly high interest rates we are confronting and what thev are doing to large parts of our economy.

Mr. BOREN. Will the Senator yield?

Mr. CHILES. I yield to the Senator from Oklahoma.

Mr. BOREN. Mr. President, I just want to add my comments to those of the Senator from Maryland. I think there were very many of us who thought long and hard about the wording of that amendment, the wording of the sense of the Senate provision. This is a matter about which I certainly feel strongly. It is a matter which I have been speaking on each day on the Senate floor, trying to call attention of my colleagues to the nature of the very serious problem we face.

I commend the Senator from Florida for offering the amendment. I certainly, for one, voted for it with not only a full understanding of it but if I could have said "yea" even more loudly, I would have, because it would have more reflected the strength with which I made my affirmative vote.

Mr. NUNN. Will the Senator yield?

Mr. CHILES. Yes.

Mr. NUNN. Mr. President, I want to join in supporting what the Senator from Florida said. I understand the Senator from Colorado's view on this. I know that many times we do not all read every resolution that comes through here. But that was a very important resolution. I hope the conferees will keep that resolution in the bill. I think it is a very important expression, a unanimous expression of sentiment of the Senate about what is happening to interest rates.

Frankly, I know the Senator from Colorado is certainly a supply-side believer. I am a believer in supply-side economics up to a point. But I do not believe the President's program, his economic program and his tax cuts, are going to work as long as we have these kinds of interest rates. If interest rates do not come down, the very heart of the President's economic program is not, in my view, going to work.

I do not know small businesses that can go out and borrow money, even with liberalized depreciation schedules, and pay back at 20-, 21-, and 22-percent prime rates. I know the big companies can borrow money at less than that. One of the things that this amendment expressed very strongly was the sentiment that while average people could not borrow money at rates they could pay back for homes and automobiles, we have some of the biggest corporations in America going out and sucking up $25 to $30 billion of credit. And this is bound to increase the pressure on interest rates.

The PRESIDING OFFICER. The time the Senator yielded has expired. Does the Senator yield more time?

Mr. NUNN. I yield the floor.

Mr. HOLLINGS. Mr. President, I yield 5 minutes to the distinguished Senator from Wisconsin.

Mr. PELL. Mr. President, the $20 billion in tax reductions that would be provided to the oil industry by the Senate tax reduction bill are excessive, extravagant and unjustified.

But the tax breaks that would be provided to the oil industry by the tax reduction bill approved by the House of Representatives are much, much worse. The $46 billion in oil industry tax breaks in that bill can only be described as grossly excessive, totally extravagant and completely unjustified.

I join my collegaues in urging that the Senate, in its conference with the House of Representatives, stand firmly and resolutely by the Senate bill and reject the huge tax windfall proposed by the House bill.

Businesses and families in my own State of Rhode Island are heavily dependent on oil for energy. Indeed about three-fourths of the total energy consumed in Rhode Island is in the form of oil.

It might be argued that an area so heavily dependent on oil should favor reduced taxes on the oil industry because lower taxes would lower the costs of the oil industry and consumers might benefit from lower price. That argument is to- -y fallacious, because as we all know the price of oil to the consumer is not based on the actual costs of production including taxes. The price of oil is established by the OPEC nations who simply charge as much as they think they can get away with—and the same price applies to oil produced by our own oil companies here in the United States.

So lower oil industry taxes provide no benefit to oil consumers, and the tax reductions provided by the pending bills are simply windfalls to an oil industry that already has more money than it can use productively in exploring or developing new oil sources.

The American people and our economy would be far better served if the billions of dollars now slated for tax windfalls for the oil industry were used instead to finance some of the human services, including education and health care, that are being slashed under the administration's economic program. Best of all, in my view, would be to take the billions of dollars in oil industry tax breaks, and let those funds flow into the Treasury to help eliminate the continued Federal Government budget deficits that threaten us with continued inflation.

I hope very much that the Senate conferees on the tax bill will draw the line at the generosity in the Senate bill and reject the $46 billion extravagance of the House tax reduction bill.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I understand the minority leader will be in the Chamber shortly. I believe we are ready to proceed with the disposition of the motion which I made.

While we await his arrival, 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. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

H.R. 4242—MOTION THAT SENATE INSIST ON ITS AMENDMENTS, REQUEST A CONFERENCE, AND THAT CONFEREES BE APPOINTED

Mr. BAKER. Mr. President, is there a motion pending before the Senate?

The PRESIDING OFFICER. The request of the Senator from Tennessee is the pending question.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate may temporarily lay aside that request to accommodate the Senator from Iowa to make a statement, after which the motion previously made by me will recur as the pending business before the Senate.

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

The Senator from Iowa.

HIGH INTEREST RATES

Mr. GRASSLEY. Mr. President, the recent economic summit conference in Canada covered a number of subjects, but none was so important as the continuation of high interest rate levels in the United States. All of us lament the mess we have gotten ourselves into, but it would be wrong to conclude from this that we have any easy way out.

The conventional wisdom is that high interest rates accompany the winding down of inflation. But we have to have noticed by this time that high inflation rates themselves beget high interest rates. There is no way we can have double-digit inflation and expect lenders to accept less than double-digit returns on their money. So it might be better to say that interest rates are not going to show really dramatic declines until inflation has already started down. That certainly seems to be what is happening now.

At this point, we seem to have very high real interest rates, that is, interest rates adjusted for inflation are very high. Economists in the administration confess themselves at least a little confused by the situation, and the records of meetings of the Federal Open Market Committee at the Federal Reserve reflect the same kind of groping for an explanation of what is happening.

Without making any claims to special knowledge or expertise, I want to offer a possible explanation that I do not think has been noticed yet.

I believe it is at least possible that the present high interest rates—especially when adjusted for inflation—are due to uncertainty in the money and bond markets over what direction the Federal Reserve will go in the future.

We are all aware that a stable, consistent monetary policy emphasizing gradual reductions in the rate of growth of the money supply is one of the four legs of President Reagan's economic recovery program. It is also the leg that is most nearly independent of the electoral tide that swept the country last November. So there can be a real question about whether the Federal Reserve will, in fact, go along with the President and the Congress in implementing its part of the economic program.

In the past, the Federal Reserve has certainly not been noted for its consistency. In October 1979, a great change in the Federal Reserve was announced, and it was claimed that thenceforth there would be much more emphasis on the rate at which money was created, and a closer hewing to announced targets. What actually happened was a wild swing in both interest rates and monetary growth. The Federal Reserve met its annual target a year later, but many experts thought it was a stroke of luck.

We know now that the Federal Reserve changed some things, but most importantly it left in place some of the operating tools that have contributed in the past to unstable policy results.

I am not going to go into a long academic discussion here, but I can report that it is the settled view of a large part of the economics profession that has studied the question that the lagged reserve accounting of the Federal Reserve makes it very difficult to have anything but very great short-term instability in money and interest rates.

In addition to the instability caused on a strictly functional level, because of purely technical considerations, the Federal Reserve has been guilty in the past of stop-and-go policy formulation. The Federal Reserve always seems to have one eye on inflation and the other on the gross national product. When prices are leaping upward, the Federal Reserve has decided to clamp down and the result has been a credit crunch and a recession. When business is bad, the Federal Reserve has started dumping reserves into the banks and after a while business does indeed pick up, but eventually those extra reserves means extra money in excess of production and so it means ultimately more inflation. And then the cycle starts over again.

The Federal Reserve has two eyes, but always seems blind in one of them, never having the perspective to understand that it—like so many others—has a poor ability to forecast the economy. Being unable to say where things are going, it is inherently unable to change policy to head off the business cycle. It cannot consciously and deliberately affect something that is hidden from it.

But this has never stopped the Federal Reserve from trying, and so we have gone from boom to bust to boom and so on and on. And as the Federal Reserve has contributed to instability instead of dampening it, the measures it tries to take are accordingly magnified, so the instability is accelerated.

The only answer to this vicious circle is to break out of it by resolutely refusing to chase the business cycle, acknowledging ignorance that cannot be helped, and sticking to a stable and completely predictable set of policy actions that at least assure good long-term results. This is exactly what President Reagan has proposed, it is exactly what the Federal Reserve should do, but it is a complete reversal from the past and there is no assurance that the Federal Reserve will follow the suggestion with anything but lipservice.

The result is that the policy instability of the past may well continue, in addition to technical instabilities. The money and bond markets can be excused if they think they have not had enough evidence yet of stability to bet on having it in the future.

The very fact that the Federal Reserve still refuses to take the relatively simple step of going back to contemporaneous reserve accounting and ending its dependence on an obviously flawed tool is probably taken as evidence by the market that the Federal Reserve really is not intent on mending its ways, and there is little reason to think that a stable monetary policy is forthcoming.

It is my suggestion that this expected instability is itself keeping interest rates up. So far as I can see, it is the one thing that can explain the extraordinarily high level of real interest rates that have already been adjusted for inflation rates. The markets are uncertain of what the Federal Reserve is going to do, and that uncertainty builds another premium into interest rates.

The solution to this problem is actually fairly straightforward, though the details are no doubt cumbersome to arrange. The Federal Reserve should rid itself of its faulty tools, in particular lagged reserve accounting, and it should announce in very concrete terms exactly what it is going to do at the Federal open market desk, aiming at a moderate growth in the monetary base that is the basis of all the money numbers and which is well within the ability of the Federal Reserve to control to a much closer tolerance than has actually been the case in the last decade.

I firmly believe that doing these two things would cause an immediate reduction in market interest rates though, of course, a much more substantial reduction will only come with actual continuing reductions in inflation. But it is at least something that can be done fairly quickly and with no cost other than reduction of bureaucratic makework.

I think we have every right to expect action like this as a response to the country's expressed demand for a change of ways in Washington.

THE GREAT AMERICAN FLAG

Mr. GRASSLEY. Mr. President, the current issue of Nation's Business magazine contains an inspiring story about the creation of "The Great American Flag"—a story all Americans will be proud to read because it describes the kinds of things that made this Nation great; perseverance in the face of adversity and defeat, dedication to an ideal larger than self and, as author Julian Morrison writes, unblushing patriotism.

I think all of us owe a debt of gratitude to the man who originated the concept of this huge flag, Len Silverfine; to the chief organizers of the project, Paul P. Woolard, president of Revlon Cosmetics & Fragrances, and Edmund T. Pratt, Jr., board chairman of Pfizer; and to the many, many men and women, and their companies, who carried it out.

My special thanks to the editors of Nation's Business for publishing this outstanding story.

Mr. President, I ask unanimous consent to have printed in the RECORD the story to which I have made reference.

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

REACHING FOR THE STARS WITH OLD GLORY

(By Julian Morrison)

It's a product of private initiative and inventiveness, of unblushing patriotism. And of perseverance after heartbreak. It's the Great American Flag—the biggest flag in the entire world.

Into it have gone the efforts of some of the top minds in commerce and industry, advertising and academe. Old soldiers and young children have given money to it. Seamstresses, ironworkers, dye makers, weavers, secretaries and truck drivers have worked on it.

It started out as a small idea in a small New England town five years ago. Len Silverfine, an ex-New York City advertising man who was lecturing on marketing at Montreal's McGill University and living in Warren, Vt., began wondering what he might contribute to the town's bicentennial parade. He was thinking in terms of something he could pull behind his pickup truck. Nothing spectacular, just something pleasing and patriotic and maybe a bit unusual.

The flag turned out to be more than a bit unusual. A lot more. It quickly passed pickup-class size, outgrew Warren and swept beyond New England.

Silverfine assembled a small group of volunteers and made a 71,000-square-foot flag of nylon taffeta. And since Silverfine's idea by then was to make the flag America's 200th birthday greeting to the world, the only place to unfurl it was the great bridge that vaults the Narrows, the entrance to New York Harbor.

Putting the flag on the 2-mile-long Verrazano-Narrows Bridge—the flag was stretched over cables—ended in disaster. The 3,000 pounds of red, white and blue fabric ripped to shreds with an avalanche of sound on a flawless June morning just six days before the Tall Ships sailed into New York. A mere 7-knot breeze had done in the Great American Flag.

Or had it? Before sunset Silverfine was back thinking, dreaming, planning. Object: A new version of the flag that would not be a tragically temporary feature of the bridge, a flag that would be around for a long, long time. Silverfine went looking for help.

He found Paul P. Woolard, president of Revlon Cosmetics & Fragrances, U.S.A., a man who categorically rejects the word can't. After conversations with Silverfine, Woolard began working with him on a campaign to raise funds and attract volunteers to produce the new flag and put it on the bridge. The flag would be unfurled on all national holidays and on special occasions.

Then Woolard recruited Edmund T. Pratt, Jr., board chairman of Pfizer. Pratt listened to Woolard's reasons for involving themselves and their energies in an affair that had absolutely nothing to do with either company. He signed on immediately.

Says Woolard, "Ed Pratt and I have a lot in common. We think the timing is very right to stand up and salute the flag in some unusual but appropriate fashion and to be proud of the flag, corny as that may sound."

Pratt, whose company has been part of New York for more than 130 years, felt he and Pfizer owed the city a certain debt. "We wanted to help restore some of the luster to the Big Apple, and I just thought this was an exciting thing," he says.

"I'm committed to focusing on the pluses about our country. We've had a defeatist complex in the country and the city here, more than Americans like to have, and I think a few things, such as this flag, that remind us of the greatness of this land are worth doing."

The talent hunt next found Fred Fortess, director of textile and apparel research at the Philadelphia College of Textiles and Science. Fortess joined the spontaneous chorus of "you've got to be kidding" that invariably greeted Silverfine's pitch. Then he went to work.

Fortess soon had a committee of textile experts going full blast: Edward Kubu of Allied Corporation; Norman Vandervoort of Belding Corticelli Thread Company; J. Donald Keen, Robert Stultz and Gilbert Bell of Celanese Fibers Marketing Company; Peter Kennedy and Gary L. English of Du Pont; Robert Leonard of Milliken & Company; and John Skoufis of Sandoz Colors & Chemicals.

Key to the committee's work was Herbert

Rothman, senior partner of Weidlinger Associates and one of the engineers who designed the Verrazano-Narrows Bridge. His role was to ensure that the committee's flag would be compatible with their creation. You don't attempt to casually attach what amounts to the world's biggest sail to just anybody's bridge. The rigging had to be exactly right, ready to raise and lower the flag when needed. In addition, permanent housing to store the flag had to be built on the bridge.

The fabric chosen by the committee is something you may have around your house. It's the stuff lawn mower grasscatcher bags are made of: Lots of air gets through, but the grass stays inside.

Rothman insisted on strength of a minimum of 100 pounds per linear inch for the fabric and the seams, and the committee came up with a knit polyester weighing 13½ ounces per square yard. It allows passage of more than 200 cubic feet of air per minute through every square foot of the huge flag—"a very necessary property," says Fortess, "if the flag is exposed to winds up to 40 miles per hour" that could sweep through the Narrows. The knit of the cloth also allows it to stretch 50 percent in one direction "to permit some ballooning so the flag will have the appearance of billowing."

Then came the matter of dyes and a dyeing system to produce reds and blues that matched the official flag color standards. And the committee had to select the proper thread, seam design, reinforcing tapes and rigging connections. The tapes turned out to be automobile seat belt material.

There remained the ultimate question: Who was going to sew this gargantuan banner?

Don Keen of Celanese suggested Anchor Industries of Evansville, Ind., as much, he said, "for the spirit of their people" as for their ability to carry out unusual tasks.

"Like the sling we made for a guy who wanted to raise his sunken yacht," explains Anchor Vice President Eric Soelter, who welcomed the challenge (although he admits to initial disbelief, the same as everybody else). The flag thrilled Anchor's employes as much as it did Soelter and the company's president, John Daus, Jr.

Suddenly they were drowning in more than 11,000 linear yards of 50-inch-wide fabric knit by Milliken from 12,000 pounds of Allied Corporation's polyester filament yarn. And out of that ocean of cloth they were being asked to stitch a flag 210 feet by 411 feet—larger even than the original because Silverfine wanted this flag to symbolize the American tradition of doing things bigger and better. It would be more than 86,000 square feet, the size of two football fields. With the webbing and the rigging grommets in place, it would weigh approximately 7 tons. And the Anchor people loved it.

Soelter says, "You really became emotionally involved when you saw the reaction it got—everyone was asking, 'When is it my turn to sew?' 'When can I work on it?' It was just tremendous. Everybody wanted to be involved."

They had their hands full. "The seams were 411 feet long, so we rigged up a stand and put the sewing machine on wheels, and rather than pull the fabric through the machine, we pulled the machine through the fabric."

Another problem: "When you do something like this, you have to plan every step and then check and doublecheck yourself because it's so big, you can't actually see whether you have the stars in the right places or the right number of stripes," Soelter says. "It's like a puzzle.

"We inspected every inch of every seam, but the floor area of the factory was only 5 percent of the flag's area, so we got 60 or 70 people in a long line and pleated the flag back and forth across the floor until we'd inspected all of it."

At one point Soelter had 300 T-shirts printed with the slogan, "Anchor Team—Great American Flag," and passed them out to the employees. On one recent day he spotted three employees wearing theirs in the plant, even though the flag had been completed in March of last year.

This is the heart of America, he says, "and these are the kinds of people who built this country. An opportunity to make a contribution like this comes along only once in a lifetime, and I think these people realized it. The excitement it generated, not only in the plant but also in the community, was something to see."

That same excitement had earlier infused the committee, Soelter remembers. "Here were people with a high degree of technical knowledge from different companies that compete with each other in the open marketplace. But when it came to a project like this, they worked as a team."

The original target date for raising the new flag on the bridge was July 4, 1980. That goal wasn't met because the complex rigging to raise and lower the banner had not been built. "I thought we'd be swamped with contributions from the people." Silverfine says, "but the press portrayed it as just a big flag, not as the symbol of this country's greatness it's meant to be. And the money just didn't come in."

The flag, folded up inside a Fruehauf trailer, has been hauled by a Preston Trucking Company tractor to a score of cities and sometimes been unfurled—on the ground—in the attempt to get constributions. aLst month backers again displayed their masterpiece in Central Park in hopes of collecting funds to construct the rigging. The project was also plugged on national TV.

But hundreds of thousands of dollars are still needed.

Woolard insists, "Nobody—is in this thing for commerical reasons. Revlon got involved because somebody had to, and it's up to the corporations in this country that think the way we do to become involved and provide the rest of the money for the project. But we'd love it if thousands of individuals gave a dollar apiece." [Contributions may be sent to the Great American Flag Fund, Inc., 767 Fifth Avenue, 49th Floor, New York, N.Y. 10022.]

He sums up, "The cause is right. It's just the time to say we're proud of our country, whatever difficulties we may be going through. It's time to say we're proud of America."

Mr. GRASSLEY. 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.

H.R. 4242—MOTION THAT SENATE INSIST ON ITS AMENDMENTS, REQUEST A CONFERENCE, AND THAT CONFEREES BE APPOINTED

Mr. BAKER. Mr. President, I ask unanimous consent that we may temporarily lay aside the pending motion so that the Senator from Washington can be recognized to make a statement, after which the motion made by the Senator from Tennessee will recur as the pending business.

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

SOCIAL SECURITY

Mr. JACKSON. Mr. President, my mailbags have been full in recent weeks with letters and telegrams from folks back home who are outraged and confused by all the talk here in the Nation's capital of benefit cuts—and even bankruptcy—in social security.

They do not know who or what to believe anymore.

One day they hear David Stockman, head of the Office of Management and Budget, say the Nation faces the "most devastating bankruptcy in history" next fall unless we slash social security. I might add, he goes so far as to predict it will occur the day after the November 1982 election, a rather odd coincidence I assume.

And then this week, President Reagan himself goes on national television to assure Americans there will be no cuts affecting persons now receiving social security.

I wish the President would take a close look at some of the proposals Mr. Stockman has sent to Congress.

PROPOSED CUTS IN SOCIAL SECURITY

Mr. Stockman wants to:

Eliminate the minimum benefit payment of $122 per month reducing benefits to more than 1.3 million Americans now receiving social security;

Delay until October next year's cost-of-living increase affecting each and every one of the 36 million Americans now receiving social security;

Phase out survivors' benefits for young people affecting almost 1 million Americans now receiving social security.

Mr. Stockman's hardest cuts, however, affect Americans in their 50's and those nearing retirement who have planned for many years on the social security benefits they have earned:

Anyone retiring before age 65 would receive substantially less than they were promised. Today, persons retiring at age 62 receive on the average about 33 percent of recent earnings. Under Mr. Stockman's plan, they could count on just 19 percent. No one retiring at 62 would get a benefit even equal to the poverty level. Most early retirees leave work because of poor health or job elimination.

Disability benefits would be reduced by one-third and a "Catch-22" clause—that Congress had the wisdom to eliminate several years ago—would be reinstituted. It works like this: Persons with progressive diseases, such as MS, would be ineligible for disability in the early stages of their illness even though they might actually be unable to hold a job. By the time they qualify for disability based on the illness, they are denied it under the "recent employment" test. Right now the test is tough—the Social Security Administration denies 70 percent of disability applications—and a large majority of those denied never return to work.

It is my hope that private industry will recognize the impact of Mr. Stockman's cuts on them. Most private pension plans in this country are based upon beneficiaries receiving a total dollar amount

that assumes a certain portion paid by social security. Should social security benefits be slashed, it would result either in a lower standard of living among beneficiaries or an increased cost to private pension plans that could run into the billions of dollars.

I strongly oppose the extreme changes in social security proposed by the administration. Social security benefits are far from generous now.

I know of no one taking vacation trips to Hawaii or otherwise living high on social security alone. I do know of widows who receive $122 per month and can hardly put food on the table and who are terrified that their income will be cut still further.

Even the average benefit this year paid to retired workers is just $373 per month. For elderly widows it is less, $348, and for disabled workers the amount is about $410.

ADMINISTRATION IS PESSIMISTIC

The fact is that the administration's extreme changes far exceed what is necessary to resolve current social security problems.

Mr. Stockman says his cuts are based upon the assumption there will be a shortfall in social security of between $11 and $111 billion. I would suggest an individual who prides himself on fiscal precision could be more specific than "give or take $100 billion."

Based on those figures, the administration wants to cut $82 billion over the next 5 years, arguing that the extra money, amounting to as much as $70 billion, could be used to build up trust fund reserves.

Mr. Stockman's dire predictions of insolvency are overly pessimistic, inflammatory and insensitive.

"Political terrorism," is how my friend and colleague from New York, Senator MOYNIHAN, characterizes the administration's tactics.

What many of us believe is that Mr. Stockman is using social security to aid in the budget-balancing act and to provide leeway for a general tax cut. I support reducing Federal spending and cutting taxes, but this simply is bookkeeping shenanigans that will not produce an extra penny for those purposes.

In effect, the administration thumbs its nose at the 36 million Americans entitled to social security benefits.

Fortunately, cooler heads have prevailed. The Senate is on record, 96 to 0, in opposition to any proposal that "precipitously and unfairly penalizes early retirees" or reduces benefits more than "necessary to achieve a financially sound system."

SOCIAL SECURITY PROBLEMS IN PERSPECTIVE

There are problems facing social security in the near future, but there is no calamity.

The problems are twofold and they are related:

The immediate one is that old age and survivors insurance (OASI) is running low and could be insolvent in 1984 under the current budget proposal. Social security's other funds, disability insurance (DI) and hospital insurance (HI), also known as medicare, actually are strong and building up cash reserves.

Moreover, because prices have increased faster than wages in recent years, and because we have had a period of relatively high unemployment, payments into social security have not kept up with costs. Benefit payments have increased through cost-of-living allowances.

MODEST STEPS NEEDED TO CORRECT DEFICIENCIES

The problems are short term and manageable. And there are sensible, rational ideas to deal with them.

Using the Congressional Budget Office economic projections, and the cuts included in the budget now under consideration, social security can be protected without any action other than interfund borrowing. There is nothing radical about this suggestion. Allocation of social security taxes among the three funds is based upon actuarial projections of the cost of each program. There is nothing sacred about the division scheme.

There also are a number of proposals to help the system during periods of large scale unemployment or exceptionally high inflation, including one to finance part of the cost with general revenues. Another possibility is to fund some of medicare hospital benefits with general revenues.

These modest steps will take care of the immediate problems and protect social security.

There may be long-term problems beginning in the next century when the post-World War II "baby boom" begins to retire and we must be prepared to manage its impact on the system.

Social security is one of America's great success stories. It has lifted Americans from economic hardship and provided a measure of comfort and security to older Americans.

Social security must continue to be among our Nation's highest priorities.

It should be moved above the political fray and not be subject to the mercy of changing administrations and budget policies.

Social security is the promise of one generation of Americans to another. It is a promise that must not be broken.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator from Pennsylvania be recognized under the same circumstances and under the same conditions.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Pennsylvania.

THE SUIT AGAINST AMERICAN TELEPHONE & TELEGRAPH CO.

Mr. SPECTER. Mr. President, I thank the majority leader for allowing me this opportunity.

I rise to voice opposition to the Government's move to delay the suit against American Telephone & Telegraph Co., pending possible action by the Congress on the proposed telecommunications bill. I base my position on the extensive testimony I have heard as I have chaired some of the proceedings in the Judiciary Committee and my knowledge of the procedural status of the case.

The suggestion has been made by the Justice Department that the litigation should be delayed for some 11 months, and that request was denied by the trial judge, and there has been a report that the suit would be discontinued if the telecommunications bill were to be enacted.

Based on what I have seen in the hearings thus far, it is very problematical when or, if at all, the telecommunications bill will be enacted, and it is problematical as to whether that bill will answer the questions which are raised in the pending litigation.

I believe this lawsuit is broad enough—it involves telephone service to virtually every American in one form or another—so that the litigation with its importance ought to move to conclusion in the Federal court and then the Congress in its deliberate turn can decide what to do about the proposed legislation.

Certainly, the assertions which have been made that litigation must be concluded before the Congress can focus on the bill are, I think, without any merit.

I am strongly opposed to the Government's move to delay the suit against American Telephone & Telegraph Co., pending possible action by Congress on the proposed telecommunications bill, S. 898. I base my position on the extensive testimony I have heard on the proposed bill and my knowledge of the procedural status of the litigation.

At the request of the chairman of the Judiciary Committee, I have presided over several hearings on monopolization and competition in the telecommunications industry. The bill and the record in the A.T. & T. case raise enormously complex issues. Speaking for myself, I would be very interested to know the trial judge's findings of fact as one set of factors against which to evaluate the appropriate legislative action.

I am not suggesting that Congress defer or await the conclusion of the litigation, but it may be enormously helpful for us to know what the trial judge will find. I believe that congressional action and judicial action should continue along their individual courses without either waiting on the other.

I certainly do not believe that the litigation should be suspended or abandoned based on what Congress may or may not do. It may well be that Congress will not legislate on the subject for far longer than the 11-month delay which the Government has sought or for the time which would be required to have an adjudication by the trial court or, for that matter, review by the appellate courts. In addition, the legislation enacted may not conclusively resolve all of the issues raised in the lawsuit.

The litigation has obviously been enormously expensive for the Government and its taxpayers. Similarly, many companies in the field have gone to enormous expense to participate in the Government's case and likely deferred their own litigation relying on the outcome of this suit. We should now have the benefit of the conclusion of the litigation.

Accordingly, I strongly feel that the prosecution should be vigorously and expeditiously pursued.

Within the past 48 hours there have been significant developments in the

Government's handling of its antitrust case against A.T. & T., developments that raise serious concerns for Congress and all Americans.

At noon on Wednesday of this week, the Government and attorneys representing A.T. & T. and other parts of the Bell System approached the judge hearing the case to ask that the trial be postponed almost 1 year, until June 30, 1982. Offered as the basis for the requested delay was the conclusion "that there is no realistic possibility of moving S. 898, the Telecommunications Competition and Deregulation Act of 1981 through the Congress unless, in some sense, the Government's suit against A.T. & T. is put on ice." When pressed by the court, Assistant Attorney General Baxter stated:

> If the legislation passes with the amendments that have been worked out, it would then be the Administration's intention to discontinue the litigation.

Before the day was out, the judge denied the request to recess the trial proceedings for 11 months. The court observed:

> It would be inappropriate for the Court to suspend this lawsuit, which has been pending for seven years, in the middle of a trial, which is now scheduled to end by December of this year, simply because such suspension may have a political impact in other forums.

I am strongly opposed to the request for delay and the implication that the requested delay is a precursor to the Government's abandoning this action. I communicated my position to Assistant Attorney General Baxter by letter yesterday. I now rise to elaborate on my position and to further the debate and public airing that these developments demand.

Mindful of our obligations to the Senate and the people of this country, the distinguished chairman of the Committee on the Judiciary has expeditiously scheduled a hearing on this matter for Thursday, August 6, 1981. Having chaired more than 3 days of hearings of the Judiciary Committee on monopolization and competition in the telecommunications industry, I am very much concerned that developments which may significantly affect the allocation of resources within the telecommunications industry not go unexamined. As we become increasingly dependent on the prompt and accurate transmission of information, it is essential that the Government do all it can to facilitate the growth of healthy and vigorous competition in this industry as our best guarantee of innovative and economical products and services.

One of my principal concerns, which extends beyond even the vast importance of the Government's expansive effort to restructure the Bell System through its litigation against A.T. & T., is that principles of the separation of powers not be sacrificed and that no branch of our Government intrude upon the province of another.

I am concerned, as Judge Greene was apparently concerned, that the judiciary not withhold the exercise of judicial power on matters properly before a court in order to have some predicted impact on congressional action. It is a court's duty to decide cases within its jurisdiction. To ask a court to tailor its deliberations in order to affect a political result is inappropriate. Just as the judicially created doctrine that courts should abstain from deciding "political questions" is a recognition of the necessity to accommodate the other branches so, too, the other branches must respect the courts' duty and competence to decide cases and controversies properly before them.

What the request for postponement ignores is the complementary nature of the judicial and congressional proceedings. The Telecommunications Competition and Deregulation Act of 1981, S. 898, recognizes the inappropriateness of seeking to forestall the judicial proceedings. Section 404 of the bill, disclaims any intent "to affect the applicability of the antitrust laws of the United States or any defenses or remedies (including structural remedies) available thereunder" or to express "in any manner any sense of the Congress with regard to any pending or future litigation or defenses and remedies relating to such litigation to which any person affected by this Act may be a party."

Indeed, at the very same moment that Judge Greene was considering the motion for postponement, John Shenefield, the former Associate Attorney General and Assistant Attorney General of the Antitrust Division was testifying before the Judiciary Committee that legislative and litigative efforts should proceed simutaneously. His statement concluded:

> [T]he government's case against AT&T must continue to conclusion so that we have the benefit of the court's determinations concerning the structure of the Bell system. This dual approach legislative deregulation and adjudication will promote the most balanced planning for the future of the Nation's communications industry, because it will draw on the court's assessment of past conduct and Congress' prescriptions for future policy. With an industry this crucial, we can afford to do no less.

I share the belief that Congress and the courts are cooperative and complementary rather than competing branches of Government. I was dismaved to learn that anyone thinks putting the case "on ice" will somehow speed passage of S. 898 and that the case is viewed as an impediment to congressional action—a "complication that gets in the way of getting anything done," as it was called by A.T. & T.'s general counsel.

I, for one, would be very interested in the trial court's fact findings. After personally experiencing 2½ years of pretrial proceedings and hearing perhaps as much as 9 months of testimony, the trial judge will be in a unique position to make factual findings and offer a definitive history and description of competitive practices in the telecommunications industry.

I have great respect for the judicial process and for the validity of the results of the administration of justice after a fair opportunity to be heard. While I do not believe that final action by the Congress need await the outcome of the trial this winter, as a member of the Judiciary Committee and the Senate, I in no way consider its pendency and proceedings an impediment to legislative action. On the contrary, such proceedings are likely to be helpful in providing additional, relevant information that can be considered by the Congress. It is to convey these views that I wrote the assistant attorney general.

On Wednesday the parties sought to rationalize their request for delay by arguing as if the court's granting a year's continuance would resolve jurisdictional disputes between committees of the Congress. The logic of that argument escapes me entirely. If there is to be a jurisdictional dispute over the antitrust implications of S. 898, and I sincerely hope that there will not be any concerted effort to deny the Judiciary Committee its proper role in the consideration of this bill, I do not see how the abatement of the Government's lawsuit against A.T. & T. could be expected to play a role in its resolution.

Indeed, if ongoing litigation were a factor, the renewed proceedings to modify the 1956 consent decree and the numerous private antitrust suits pending against the Bell System around the county would vitiate any impact that might be anticipated from the postponement in the case pending before Judge Greene. Accordingly, it is hard to understand how a halt in proceedings in United States against American Telephone & Telegraph Co. can be justified on this ground.

The request for an 11-month postponement pending legislation is premised upon speculation about the legislative process. In the brief time I have been a member of this body I have learned that the legislative process is just that, a process. Its timing and ultimate result defy precise prediction. Courts must fulfill their responsibility to decide cases and resolve controversies expeditiously, fairly and in accordance with the law. They cannot and should not be asked to decide them in light of what the law might become. On Wednesday, the parties asked the court to hold the half-completed trial in abeyance for almost a year while, as Judge Greene described it, "somebody thinks about what they will do if the Congress passes a statute."

It is the duty of the Justice Department to enforce the antitrust law as enacted by Congress unless and until the Congress decides to change the law. Any further delay of this action after 7 years of vigorous prosecution in both Republican and Democratic administrations must be justified in terms of the public's interest. The motion made on Wednesday is grossly inconsistent with the interests of the American people who depend upon the operation of three coequal branches of Government.

At this point, I ask unanimous consent that Judge Greene's order of July 29, 1981, and the transcript of the chambers conference, in which the motion for a postponement was discussed, be made a part of the record.

There being no objection, the material

was ordered to be printed in the RECORD, as follows:

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 74–1698

United States of America, plaintiff, v. American Telephone and Telegraph Company; Western Electric Company, Inc.; and Bell Telephone Laboratories, Inc., defendants

Order

The parties have requested that the trial of this case, which is scheduled to resume on August 3, 1981, be recessed instead until June 30, 1982.

In the course of a chambers conference, attorneys for the parties provided reasons for this request, all of them essentially relating to the pendency of legislation in the Congress and the obstacle that this action may present to the enactment of such legislation. For the reasons articulated by this Court during the Conference,[1] the request for a recess is denied.

In the event that legislation is enacted which exempts the subject matter of this lawsuit from the anti-trust laws or otherwise moots this action, the Court will of course terminate the proceedings. Similarly, if a consent decree between the parties meeting the criteria of the Clayton Act (15 U.S.C. § 16) is presented to the Court, such decree will be entered and enforced. However, it would be inappropriate for the Court to suspend this lawsuit which has been pending for seven years, in the middle of a trial which is now scheduled to end by December of this year, simply because such suspension may have a political impact in other forums.

Trial will resume on August 3, 1981, at 10:30 a.m.

HAROLD H. GREEN,
U.S. District Judge.

Dated: July 29, 1981.

IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 74–1698

United States of America, plaintiff, v. American Telephone and Telegraph Company; Western Electric Company, Inc.; and Bell Telephone Laboratories, Inc., defendants.

Transcript of proceedings

U.S. COURTHOUSE,
Washington, D.C.,
Wednesday, July 29, 1981.

The above-entitled matter came on for hearing at 12:05 o'clock, p.m. before the Honorable Harold H. Green, in chambers.

Appearances: (Appearing on behalf of the plaintiff:) William Baxter, Esq.; and (appearing on behalf of the defendants:) Howard Trienens, Esq., George L. Saunders, Jr., Esq., and Jim G. Kilpatric, Esq.

Regis Griffey, official court reporter.

Proceedings

Mr. BAXTER. I am William Baxter, Assistant Attorney General.

Mr. TRIENENS. Howard Trienens for defendants.

The COURT. That is Mr. Kilpatric and Mr. Saunders.

Yes, sir.

Mr. BAXTER. Your Honor, we are here to ask you to continue the case until June 30th, 1982. I am urging the motion on you. I can assure you that I am speaking not just for the Antitrust Division of the Department of Justice, but for the Administration and the President.

The Administration has concluded that there is no realistic possibility of moving the legislation, which is now usually known as S–898, a very comprehensive deregulation of the telecommunications industry through the Congress unless, in some sense, this case is put on ice.

I was, myself, rather difficult to convince of that point, not because I do, myself, have any particular expertise about Congress, which I certainly do not, but because I did not view S–898 as an adequate substitute for the relief we were seeking in the case.

In the last several weeks we have worked out an amendment to S–898, which addresses itself to what I viewed as a primary weakness in that legislation. We have checked it out with the Bell Company and the Administration is wholly in support of it, and that enabled us to come to you today with complete agreement, I think, throughout the Administration and ask you to do that.

The case, should it resume next June, we would hope it would resume with adequate notice to everyone, of course, in its present posture, with a timetable that was consistent with the present timetable, simply going forward from the point at which it now is.

The COURT. I am not sure I understand that.

What does all of that mean? You mean the legislation is going to be passed before then? Then the case will not go foward, or the case will go forward in June or—

Mr. BAXTER. If the legislation passes with the amendments that have been worked out, it would be the Administration's intention to discontinue the litigation.

The COURT. Is there anything more you wish to add to that rather summary-cryptic communication?

Mr. BAXTER. There is really nothing else I would like to add, Your Honor, although I would be happy to make it less summary and less cryptic at any particular point you would care to explore.

The COURT. Well, I obviously have to think about it, but the case has been pending for seven years.

We have gone through the—we have heard the government's evidence. We are ready to proceed to hear the defendants' evidence starting next Monday.

If the Congress passes legislation that moots the case in some way or other, that is one thing, but the mere fact that legislation may be pending, that may or may not be enacted, doesn't seem to be a very good basis for truncating a case and recessing it for—what are you talking about?—a year.

Mr. BAXTER. Eleven months.

The COURT. Well, I have to think about it. But I can tell you right now that my immediate reaction is that that is not a good idea.

Now, if the case can be settled, if there is going to be a consent decree, these are all matters that are provided for under the statutes, under the Clayton Act and everything else, but simply to hold a trial in abeyance for 11 months while somebody thinks about what they will do if the Congress passes a statute strikes me as a rather unusual motion.

Mr. BAXTER. It is an unusual motion.

The COURT. While I am not opposed to either unusual or innovative matters, this—well, I haven't made up my mind. Obviously, I have to think about it, but I don't regard it as a very constructive proposal.

Mr. BAXTER. Yes, Your Honor.

The COURT. Mr. Trienens?

Mr. TRIENENS: Well, I did not understand your last characterization. I thought Mr. Baxter had said earlier that if the legislation passed, then we will think about it. If the legislation passed in the form that the Administration has approved it, that that would provide the relief they seek, and the case would be dropped.

That wasn't the contingency. The reason we support this, and we do support it, is that we favor legislation, not because of this case, but because—so we win the case, which we know we will, so we win the case.

We have a computer tool hung up in the District of Columbia Circuit. We have the consent decree in New Jersey. We have all sorts of legal uncertainties. Questions about how should the Bell System be restructured.

Everybody knows with the competition that it ought to be restructured. I think Congress ought to decide it. We think this case—I had a personal experience last summer where this case got in the way of it. It went through the House Committee with every bipartisan vote on the bill, because of the pendency of the case the Judiciary Committee took it.

Nothing happened, and the pendency of this case does in fact, as Mr. Baxter said, get in the way of resolving the structure of this industry through legislation, and it isn't just this case.

It is, as I say, if it is dismissed, if you dismiss it on the motion that is pending, or if you dismiss it at the close of the case we still have all of the other problems.

I think the legislation—all we are doing is having a rapidly moving technological market, changing very fast. Everything is hung up with no answer.

The COURT. I don't understand the Congress. If you think legislation is the appropriate way to go, all of you think that that is the appropriate way to go, why Congress can't pass legislation regardless of what happens here.

Mr. TRIENENS. Your logic is impeccable. There is no question about it. The tensions, the jurisdictions between the two Committees, the Judiciary Committee and the other committee. It is just a complication that gets in the way of getting anything done. It shouldn't be.

I agree, thoroughly, but it does.

The Court. Well, I am sorry the judicial process is a complication, but I can say just like Mr. Saunders "I am just a simple country boy". I don't know about these kinds of high political matters.

All I know is that there is a case before me. We heard the first half of it. We are ready to hear the second half of it on Monday.

The motion to dismiss is pending, the 553-page motion has been filed.

Mr. SAUNDERS. We call that motion "the great whale."

The COURT. Great whale, great weight in every way and to say, to hold everything in suspension for 11 months——

Mr. BAXTER. There is no doubt that it is unusual, Your Honor, but certainly it is the Administration's view as Mr. Trienens has already suggested that the present situation with the industry, which will continue even after this case is decided, however it is decided, would be the uncertainties about the consent decree, the role of the FCC which is causing a great deal of uncertainty throughout the industry as needlessly increasing capital costs throughout the industry.

It has everybody sitting on the edge of their chairs not knowing whether AT&T is going to be in certain lines of business or not.

This case, itself, even if it is resolved, as I expect it will be, the timetable that you have set up, and you certainly made us stick to it so far, will be with us for a very long period of time when one contemplates the inevitable appeals process and that legislation is really essential to get any kind of certainty in the industry from which the private companies, by no means AT&T are able to move forward with investments and market developments.

As I said, it is their conviction and on which I rely very, very little by way of views that the process can simply not be made to go through Congress, because of the jurisdictional conflicts between the Congress, committees and the judiciary committees on both the House and Senate side unless this case is removed as an overhang.

The COURT. Well, with all due respect that

[1] A transcript of the chambers conference is on file with the Clerk of the Court.

really is not a proper consideration for the Court.

Whatever the Congress wishes to do they are perfectly competent and able to do it. They can pass legislation, quickly, or slowly, whatever way they wish, but to say that we have to hold a case in abeyance for a year, because otherwise some committee on the Congress will not agree to having legislation passed, I just think it is a peculiar motion.

I don't want to make a decision right here and now, but to the extent that, you know, you are coming in and you want my reaction, I suppose, my reaction to this peculiar motion.

Now, that is not my business if Congress wants to pass legislation to restructure the communications industry. Part of that involves the issues involved in this case, obviously. I have nothing to do with that, and I will do whatever I am told, but to say I am supposed to hold up the trial in the middle of it, after seven years, after having heard four months of testimony and we are now practically in relative terms, hear the end of it, because in the next 11 months somebody may do something, and this may remove an obstacle to their doing something, it strikes me as peculiar.

Mr. TRIENENS. Peculiar, true. There is another peculiar side of it, though, and you devote your energies, energies of the judiciary and parties and knowing if the bill passes the plaintiff said, "Well, that is what I wanted and bye-bye lawsuit," that is peculiar, too, but that is reality.

The COURT. All I can do is sit here. I didn't file the lawsuit. I didn't pursue the lawsuit since September or November, whenever it was, 1974. I wasn't even on this court at that time.

The case came here. The case was pursued by the Department of Justice. The Department of Justice and the Administration have seen fit not to dismiss it. It is here. I have heard four months of testimony. We have had two and a half years of pretrial maneuverings, and I am ready to proceed.

Now, I am also ready to have the parties settle it. Don't misunderstand me. I am not eager to take this masochistic punishment of being here every day and absorbing a great deal of technical, economic and legal information, day after day, even as much as I like the lawyers in the case.

Mr. SAUNDERS. I thought you were enjoying it, Judge.

The COURT. To an extent. To an extent.

It seems to me I have an obligation to the judicial process, and to say that the judicial process ought to be suspended, because of the pendency of this lawsuit may cause somebody on some committee, one or the other Houses of Congress some concern in terms of passing legislation, I would say I am not going to make a judgment just like that on the basis of what has been said here, but it does not strike me as a very reasonable approach, at least from my point of view.

Mr. TRIENENS. To the extent, Your Honor referred several times to the possibility of settlement or a consent decree. That is not what we are talking about here.

For one reason is that the things that the legislation does, which balanced—I am not going to argue what parts I don't like and what parts I like. It is a balance.

Congress would attempt to achieve something, which we in agreeing on can't do. Changes, jurisdiction of communications, regulations, and deregulation. This is not something we can settle.

We can't say, "Let's take that statute and embrace it in a consent decree," even if we agree to it, it doesn't lend itself to that. The Court has the power to do some of those things, some of them. The problem is whether you really want the Court to be in a regulatory consent decree and this is even if we agree on each comma, we could bring to you in the form of a consent decree.

The COURT. I understand. I didn't mean to imply anything to the contrary. I just thought if there were a consent decree or some sort of stipulation, agreement, I can understand all of that but I find it difficult to understand that because somebody may want to do something, and because this lawsuit may be an obstacle to that, and somebody's mind is on the political process somewhere else, therefore we ought to suspend the trial for 11 months—I suppose nothing is impossible, but I don't want to characterize it any differently than what I said.

It strikes me as peculiar. Not that, as I say, not that I enjoy trying this case day after day, because it is not that easy. It is pretty hard, and pretty hard to absorb all of these things that Mr. Saunders keeps bringing up to me, day after day, but that is what I am supposed to do and I am not supposed to watch what some Congressional committee for a political reason may or may not want to do, and tail it as litigation.

Mr. SAUNDERS. Judge, I have been on the outside of what has been going on over there, because I am just a simple country boy trial lawyer.

There is an aspect of this thing, as I understand it, and Mr. Baxter can correct me if I am wrong.

It does disturb me as a trial lawyer. You may recall when the government started this case, filed pretrial brief, they said they wanted an divestiture of Western Electric. Then when they put in their evidence, they said, "no." They didn't want that, and Your Honor commented on it in court.

They said they wanted a divestiture of the exchange network. Now, as I understand the legislation that is pending, and the amendment, it reflects a decision by the President of the United States that he doesn't want that.

The COURT. He doesn't want——

Mr. SAUNDERS. The exchange divestiture. Thats what he wants is an arrangement that will test the purchasing practices of Western Electric by forcing them to buy out, sell outside the Bell System both to the independents and overseas and to gauge their ability, to constrain their ability to sell within the Bell System, to see how well they do outside.

That is my understanding of this amendment.

Now, you know in the broad sense that is no different than—it is just a legislative proposal to the extent that this reflects a decision by the President that he doesn't want the divestiture, that he—either of Western or of the operating exchange units, that what he wants is an FCC administered regulation and test of Western's strength in the market.

We may be in a situation in which the President has decided that he doesn't want any relief, that an antitrust court can or ought to be given that is my problem, and if I am wrong, I would like to be enlightened.

The COURT. Well, without really going into that in detail it seems to me that there is a perfectly acceptable procedure for that. The Clayton Act provides for a consent decree, which would embody what you suggest the Administration wants, and then a determination can be made whether or not that is in the public interest, but to simply keep everything in abeyance——

Mr. SAUNDERS. I know.

The COURT. —while nothing is going on, because of—it sort of boggles the mind as to what these various balls that are in the air—and, again, as I said earlier, I am not really involved in that, any of that.

I am trying a lawsuit that was brought to me by somebody else, and I am willing to try it. I was willing—I continued it for six weeks at the beginning, because somebody said that they were going to settle it. I was prefectly happy with that, because there are a lot of other things I would rather do than try this lawsuit day after day and here we are again ready to resume and we are not even talking about a brief continuance to settle it, but we are talking about an 11-month continuance for the reason that something may happen in the meantime and some political—in the best sense of the word—interest may consider the fact that this case is not going on, to be of some weight in the equation, and I don't really think that that is a proper role for the judicial process.

I don't think so.

Now, I will certainly think about it between now and Monday, and I take it this is an application for a recess in the trial for 11 months, and I am not going to commit myself to that right this minute, and I will, although I am supposed to go out of town this afternoon, I will either go or not go, and I suppose I can think about it somewhere else, too.

But at least my initial reaction is that that is not my problem.

Mr. BAXTER. I certainly understand your reaction, Your Honor. I hope that you will go on your trip. I would hate to think that we deterred that.

The COURT. Actually it is not a pleasure trip, either. It has to do with antitrust law. I am supposed to give a lecture on handling of antitrust cases at the University of Michigan, among a great number of other federal judges, who have some experience in it, who really have more experience than I do.

But, anyway, that is where I am supposed to go.

Mr. BAXTER. I hope it will seem less unusual to you as the weekend wears on.

Mr. TRIENENS. Just describe them your typical run-of-the-mill antitrust case.

The COURT. That is it, exactly just like this one.

Mr. BAXTER. May we regard the motion as submitted, Your Honor.

The COURT. Yes.

Mr. TRIENENS. Thank you very much for hearing us.

The COURT. Thank you very much. Good to see you again. Thank you, Mr. Baxter. Mr. Saunders.

(Whereupon, the hearing concluded at 12:20 p.m.)

PROF. ALEXANDER LERNER: NOW TRAGICALLY WIDOWED AND WAITING STILL

Mr. SPECTER. Mr. President, 2 weeks ago, at the age of 65, Judith Lerner died of a heart attack in Moscow. She left not only inspiration to all those who admired her tireless efforts on behalf of Soviet refuseniks. Judith Lerner left behind her husband, Prof. Alexander Lerner, the internationally eminent Soviet cyberneticist who, for the last decade, has been refused permission to emigrate from the Soviet Union.

Professor Lerner, formerly vice president of the International Federation of Cybernetics, was the first high-level scientist from Moscow to apply for a visa. As a result of his attempts to leave the Soviet Union and live in Israel, Professor Lerner and his family have been totally cut off from Soviet society and from the normal existence they had known previously. Professor Lerner's son Vladimir lost his job as a systems analyst, and his daughter was forced to terminate her studies as a mathematician.

Professor Lerner himself was dismissed from all his scholarly and academic positions, lost his respected stature in the scientific community, and was, thus, denied the opportunity to continue making his contribution to the world scientific

community. His emigration application has been continually rejected by Soviet authorities on the specious reasoning that he possessed "state secrets," although it would be hard to imagine what secrets would still remain secret 10 years later.

Professor Lerner's personal life has been ridden with tragedy. His wife's parents and his own two little daughters, aged three and four, were killed by the Nazis during World War II. His surviving daughter, who received permission to leave the Soviet Union in 1973, is living in Israel. Separated from her and his two grandchildren—one of whom he has never seen—Professor Lerner now faces a grief and sadness made more acute by the death of his wife, Judith.

At age 65, Prof. Alexander Lerner lives alone and in despair. He fears for his son, still in Moscow, who has also been denied an exit visa. He is separated from his daughter and grandchildren. His brilliant career has been destroyed. Accusations of espionage and treason, as well as threats of arrest and imprisonment, are frequent. Last year Professor Lerner underwent two major abdominal surgical operations.

Yet in the decade since his initial refusal, Dr. Lerner has passionately devoted himself to the cause of the emigration movement and to maintaining the scientific expertise of Soviet Jewish scientists who, like Professor Lerner, have been refused exit permission and have been denied contact with the Soviet scientific world. (He has also become an expert artist.)

When asked last October what message he wanted to send the signatories of the Helsinki Final Act, Professor Lerner said:

> What I think is the most important problem for the Jewish emigration movement in the USSR is the fulfillment of the promises given.

If United States/Soviet relations are ever to be what they were, the Soviet Government must realize that implementation of the provisions of the Helsinki agreement, particularly its human rights and emigration provisions, forms an integral part of our bilateral relations.

Professor Lerner's case is particularly heart rending—this important man, who has devoted so much of his life to society and the betterment of mankind, has been condemned to a spiritless life as a second-class citizen simply because he chose to live his life in Israel.

By granting Prof. Alexander Lerner and his son—now alone without wife and mother to sustain them—the chance to join their only family in Israel, the Soviet Government could effortlessly act to implement several important provisions of the Helsinki agreement and to make one family whole and fulfilled again.

ORDER OF BUSINESS

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

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

Will the Senator suspend so that we might receive a message from the President of the United States?

Mr. BAKER. Mr. President, before that, I ask unanimous consent that after the Senate receives the message from the President of the United States, the motion by the Senator from Tennessee recur as the pending business before the Senate.

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

(The message from the President submitting certain nominations is printed at the end of today's Senate proceedings.)

H.R. 4242—MOTION THAT SENATE INSIST ON ITS AMENDMENTS, REQUEST A CONFERENCE, AND THAT CONFEREES BE APPOINTED

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

Mr. RIEGLE. Reserving my right——

Mr. BAKER. Mr. President, this is on the tax bill, to appoint conferees. The conferees have to go to conference.

Mr. RIEGLE. What is the intention of the Senator from Tennessee on taking up the reconciliation bill?

Mr. BAKER. As soon as we have the conference report. I am advised the House intends to act some time toward the middle of the afternoon, maybe 3:30 or 4 o'clock. As soon as the conference report on reconciliation reaches the Senate, I intend to lay that measure before the Senate. I can assure the Senator from Michigan, I will let him know in advance of the time I intend to take that action.

Mr. RIEGLE. Mr. President, I will reserve my objection now and only indicate that it will be my intention at that later time, when we move on the reconciliation bill, to ask unanimous consent that the minimum benefit social security bill be held at the desk.

Mr. BAKER. Mr. President, I thank the Senator from Michigan for making that statement, and I thank him for informing me of that intention at this time. I am grateful he will not ask any further delay in the appointment of conferees on the tax bill.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee. Without objection——

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I think on a motion the Chair ought to always put the question. If the majority leader asks unanimous consent on a matter, I think that is quite a different thing. Senators can object or reserve their rights to object, or do nothing. But on a motion, I think the question ought to be put. We can have a voice vote. "Those in favor say aye; opposed, no. The ayes appear to have it. The ayes have it."

We seem to be continuing to present motions as unanimous-consent requests.

This is not in criticism of the Chair. I think the Parliamentarian ought to help the Chair in these situations. I want the Parliamentarian to know that when these most controversial issues arise, there are some people on the floor who should be very careful of their rights. I am sure the majority leader will help protect the minority rights in every way he can, but he cannot if the Chair says, "Without objection, it is so ordered," because that is done. Then, unless the Chair gives us an opportunity to reserve our rights, which he has been doing, a Senator is at the mercy of the Chair.

I would hope that the Chair would put the question on a motion. This is not said in criticism of the present occupant of the Chair. I have been watching this go on for quite a while. I would hope we would proceed in that fashion, if the distinguished majority leader will agree.

Mr. BAKER. Mr. President, I will agree the moment we get this out of the way.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BAKER. I thank the Chair. I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I said in jest a moment ago I would agree with the minority leader as soon as this matter was disposed of, which was an unanticipated expression of my desire to get this done so that the conferees could go to conference.

Of course, the minority leader is correct, and I would urge that when a motion is made, that the question be put.

Mr. ROBERT C. BYRD. It is not a matter that I would insist on in all matters, but where we have a situation as we do now before the Senate, where a Senator may want to be recognized, he may not have heard the Chair. That would be what I am referring to.

I hope that the Chair will proceed to put the motion. I know that is correct.

I thank the Chair.

Mr. BAKER. Mr. President, a part of my motion was that the Chair appoint conferees. Is the Chair in a position to do that at this time?

The motion was agreed to and the Chair appointed Mr. DOLE, Mr. PACKWOOD, Mr. ROTH, Mr. DANFORTH, Mr. LONG, Mr. HARRY F. BYRD, JR., and Mr. BENTSEN conferees on the part of the Senate.

RESUMPTION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business before the Senate is conducting morning business.

Mr. INOUYE. Mr. President, will the majority leader yield for a question?

Mr. BAKER. Yes, I yield.

Mr. INOUYE. Can the majority leader advise the Senate as to the schedule we can expect on this day?

Mr. BAKER. Mr. President, I wish I could, I say to my friend from Hawaii. At about this moment, I understand, the distinguished Republican leader of the House and perhaps the Speaker are conferring on what their intentions are in respect to meeting today or Monday or Tuesday. As soon as we get some indication of what they intend to do and we have some indication of how long it will take these tax conferees and we get some indication of when the reconciliation conference report will reach the Senate, I shall be in a position to make a further statement. I hope to be able to do that by 2 o'clock. I shall try to do it just as soon as possible.

Mr. FORD. Mr. President.

Mr. BAKER. Mr. President, I yield the floor. We are in morning business, are we not?

The PRESIDING OFFICER. The Senator is correct.

The Senator from Kentucky is recognized.

SURFACE MINING—ABANDONED MINE RECLAMATION FUND

Mr. FORD. Mr. President, full implementation of the Surface Mining and Reclamation Act of 1977 has been fraught with many problems. Not the least of these has been the delays and the consequences of delay.

State money for abandoned mine reclamation may be in danger because of timetable slippages, particularly because of past slowness at the Federal level and lawsuits that have stayed State program submissions.

Mr. President, I have been satisfied with reassurances I have received from Interior Department officials from the Secretary on down. However, I have a certain foreboding about OMB's possible role in the disposition of this money.

If the States are deprived of their 50 percent of collections after a 3-year period, this will mean literally hundreds of millions of dollars will be available to be spent for other programs.

This is part and parcel of the policy problems that face this administration, just as it has the previous administration. If dedicated money can be shifted by OMB for other purposes than that for which it is dedicated, then not only the department that administers the program, but also the Congress, is taken out of policymaking.

If this happens with the abandoned mine reclamation money, I intend to lead an attempt to open up the law and I do not really think too many of us desire this to happen at this time. The reclamation fund arrangement is an integral part of the law and without it we would not have enacted the law.

Mr. President, at his July 24 nomination hearing, I addressed a series of questions voicing my concern to J. Robinson West, now Assistant Secretary, Policy, Budget and Administration, Department of the Interior.

For the first time, after several months of effort, I received written responses to my concerns. For this, I am most appreciative. I am satisfied that the Department intends to do everything possible to see that all States receive their rightful 50-percent share for past years, a total allocation of $240,554,204.80 for 1978, 1979, and 1980.

Mr. President, I ask unanimous consent that my questions to Mr. West and his written response be printed in the RECORD at this point.

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

QUESTIONS AND ANSWERS

Mr. West, you and I have discussed the matter of the Abandoned Mine Reclamation Fund. I know this is not your direct responsibility, however, how the money from this fund is budgeted is vital. It will determine whether major states choose to assume primacy or choose to have the program revert back to the Federal Government because of loss of funds.

I'm going to pose a series of questions relating to the fund. These are essentially the same questions I posed to Dick Harris at his nomination hearing. You may not be in a position to answer them, but I would appreciate a written reply for the record.

ABANDONED MINE RECLAMATION FUND

1. Mr. West, the Surface Mining and Reclamation Act establishes the Abandoned Mine Reclamation Fund. Section 401(a) creates a trust fund on the books of the Treasury for payments to the states for reclamation, but only after the state has an approved program.

Fifty percent of the reclamation fees collected in any state shall be allocated to that state pursuant to an approved program.

I realize that the "trust fund" is not a pure one. First, grants are subject to appropriation but without fiscal year limitations. Secondly, and more important to my point, Section 402(g)(2) provides: that if funds *allocated* have not been expended within three years after their *allocation*, they shall be available for expenditure in any *eligible area* as determined by the Secretary.

The previous Administration by regulation provided that the funds in trust for a state lapsed if not expended within three years after collection. This is now under review.

How do you interpret "allocated" in light of the fact that (g)(2) states that fifty percent shall be allocated under an *approved* program?

Does the 3 years run from collection or from the time of allocation under an approved program?

2. Can you furnish the Committee a complete listing by state and by year of collection of the fifty percent money? And how much each state stands to lose if the 3 years from time of collection is enforced?

I feel that this issue is crucial to primacy. If a state loses a substantial amount of its reclamation fee money, it could well opt not to accept primacy.

3. There has been some discussion by state officials, Kentucky included, that the trust money is being used for general expenses. How do you interpret expenditure by the Secretary in any eligible area? As a conferee I understand it to mean any area eligible for reclamation not any expenditure eligible under law for other purposes.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 24, 1981.

Hon. WENDELL H. FORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FORD: Enclosed are answers to the questions you raised this morning regarding the Abandoned Mine Reclamation Fund.

As you may know, the Department is in the preliminary stages of revising its regulations on this matter. While I have attempted to state the Department's positions on various points, these positions are tentative and subject to change during rule-making.

I appreciated the opportunity to discuss this matter with you yesterday. If I can be of further assistance, please do not hesitate to contact me.

Respectfully,

J. ROBINSON WEST,
Assistant Secretary-Designate,
Policy, Budget and Administration.

QUESTION REGARDING THE ALLOCATION OF RECLAMATION FEE RECEIPTS TO THE STATES

Q. How do you interpret "allocated" in light of the fact that (g)(2) states that fifty percent shall be allocated under an *approved* program? Does the three years run from collection or from the time of allocation under an approved program?

A. The section you are referring to in the first part of this question states in relevant part:

"Fifty per centum of the funds collected annually in any State or Indian reservation shall be allocated to that State or Indian reservation by the Secretary *pursuant to* any approved abandoned mine reclamation program to accomplish the purposes of this title." (emphasis added)

OSM has interpreted "pursuant to" to mean "consistent with" an approved reclamation program, not "following the approval of" such a program.

The fees collected in any fiscal year by OSM are allocated to the States on September 30 of that fiscal year, and this date begins the three-year period established in the proviso to Sec. 401(g)(2). Thus fees collected during FY 1978 that have not been expended (i.e., encumbered) by a State prior to October 1, 1981, "shall be available for expenditure in any eligible area as determined by the Secretary."

As you are aware, OSM has been working with the States to clarify the Department's policy regarding the use of moneys that have not been expended within three years. The effort to develop a mutually satisfactory policy statement is ongoing. Tentatively, OSM's rules will be revised to provide that amounts allocated to a State but not expended within three years will be reallocated to the State as long as the State has made reasonable efforts to expend the funds but has been prevented from doing so because of unavoidable delays in program approval.

Q. Can you furnish the Committee a complete listing by State and by year of collection of the fifty percent money? And how much each State stands to lose if the three years from time of collection is enforced?

A. The attached tables show the amount collected in each year in each State, as well as the amount allocated to each State.

As mentioned above, it is the Department's policy, tentatively, that no State will lose its allocated funds as long as it has made a reasonable effort to expend the funds but has been unable to do so because of unavoidable delays in program approval.

Q. How do you interpret expenditure by the Secretary in any *eligible area?* As a con-

feree I understand it to mean any area eligible for reclamation not any expenditure eligible under law for other purposes.

A. Moneys in the fund will be expended only for purposes authorized in Title IV.

APPENDIX A

ABANDONED MINE RECLAMATION FUND—FISCAL YEAR 1978

States/tribes	Total revenues [1]	Allocations to States or tribes [2]
Alabama	$2,643,499.01	$1,321,749.51
Alaska	196,454.10	98,222.55
Arkansas	75,859.80	37,929.90
Colorado	2,483,731.26	1,241,865.63
Georgia	10,061.16	
Illinois	6,656,436,13	3,328,218.07
Indiana	4,798,096,12	2,399,048.06
Iowa	87,160.67	43,580.34
Kansas	363,865.85	181,932.93
Kentucky	20,385,019.62	20,192,509.81
Maryland	500,230.20	250,115.10
Missouri	1,051,748.96	525,874.48
Montana	5,374,401.91	2,687,200.96
New Mexico	1,084,868.93	542,434.47
North Dakota	915,060.64	457,530.32
Ohio	7,500,967.18	3,750,483.59
Oklahoma	1,266,432.93	633,216.47
Pennsylvania	12,323,124.60	6,161,562.30
Tennessee	1,636,494.30	818,247.15
Texas	1,157,651.23	578,825.62
Utah	768,151.39	384,075.70
Virginia	4,505,809.24	2,252,904.62
Washington	1,329,457.68	
West Virginia	9,710,503.59	4,855,251.80
Wyoming	13,846,429.52	6,923,214.76
Crow Tribe	1,177,263.15	588,631.58
Hopi Tribe	243,705.71	121,852.86
Navajo Tribe	3,336,585.74	1,668,297.87
Total	105,429,061.62	52,044,771.45

[1] Includes fees and interest.
[2] Under sec. 402(g)(2), Congress must appropriate funds and State reclamation plans must be approved by OSM before allocations can be made available to States as grants-in-aid.

APPENDIX B

ABANDONED MINE RECLAMATION FUND—FISCAL YEAR 1979

States/tribes	Total revenues [1]	Allocations to States or tribes
Alabama	$5,761,848.54	$2.880,924.27
Alaska	255,589.43	127,794.72
Arkansas	127,827.33	63,913.67
Colorado	4,464,179.35	2,232,089.68
Georgia	7,787.10	
Illinois	14,795,666.99	7,397,833.50
Indiana	9,426,032.04	4,713,016.02
Iowa	144,779.75	72,389.88
Kansas	304,517.18	152,258.59
Kentucky	31,177,345.41	15,588,672.71
Maryland	793,270.28	396,635.14
Missouri	2,377,721.03	1,188,860.52
Montana	10,827,453.47	5,413,726.74
New Mexico	5,787,763.49	2,893,881.75
North Dakota	1,260,367.83	630,183.92
Ohio	11,911,196.19	5,955.598.10
Oklahoma	1,805,947.65	902,973.83
Pennsylvania	22,949,563.02	11,474,781.51
Tennessee	2,048,049.15	1,024,024.58
Texas	2,295,433.50	1,147,716.75
Utah	1,371,423.85	785,711.93
Virginia	5,933,957.06	2,966,978.53
Washington	1,603,547.40	
West Virginia	19,578,398.31	9,789,199.16
Wyoming	21,516,123.11	10,758,061.56
Crow Tribe	1,633,389.90	816,694.90
Hopi Tribe	391,676.94	195,838.47
Navajo Tribe	4,809,880.74	2,404,940.37
Total	185,560,735.94	91,974,700.80

[1] Includes fees and interest.

APPENDIX C

ABANDONED MINE RECLAMATION FUND—FISCAL YEAR 1980

State/tribes	Total revenues [1]	Allocations to States or tribes
Alabama	$6,551,239.74	$3,275,619.87
Alaska	246,338.73	323,168.36
Arkansas	77,489.59	38,744.79
Colorado	5,039,074.93	2,519,537.01
Georgia	4,968.84	
Illinois	15,262,582.81	7,631,291.40
Indiana	10,126,631.91	5,063,315.95
Iowa	222,551.54	111,275.77
Kansas	274,611.85	137,305.92
Kentucky	34,643,491.67	17,321,745.83
Maryland	827,871.18	413,935.59
Missouri	1,987,968.84	93,984.42
Montana	7,386,924.08	3,693,462.04
New Mexico	(1,956,308.30)	[2] (978,154.15)
North Dakota	1,637,868.74	818,934.37
Ohio	11,891,976.59	5,945,988.29
Oklahoma	1,742,666.29	871,333.14
Pennsylvania	22,601,028.86	11,302,014.43
Tennessee	2,423,628.36	1,211,814.18
Texas	2,641,749.08	1,320,874.54
Utah	1,840,970.79	920,485.39
Virginia	6,623,443.71	3,311,721.85
Washington	1,789,006.10	
West Virginia	21,212,109.99	10,606,054.99
Wyoming	30,300,248.54	15,150,124.27
Crow Tribe	972,225.65	486,112.82
Hopi Tribe	588,725.82	294,362.91
Navajo Tribe	7,899,354.31	[2] 3,949,677.15
U.S. total	194,863,439.34	95,534,732.13

[1] Includes fees and interest.
[2] New Mexico was overstated by $4,418,560.22 in prior years and Navajo Tribe was understated $1,100,136.02. Adjustment was mainly due to memorandum submitted by Pittsburgh and Midway Coal and an error in reporting the Navajo Tribe share in both the New Mexico-Public and Navajo Tribe totals and double counting. The New Mexico and Navajo adjustment is based on the best information available at the time of the allocations. Final resolution of the stated amounts will be dependent on additional documentation and the results of congressional consideration of sec. 710 legislation.

APPENDIX D

ABANDONED MINE RECLAMATION FUND—CUMULATIVE TOTALS FOR FISCAL YEARS 1978, 1979, AND 1980

States/tribes	Total revenues [1]	Allocations to States or tribes
Alabama	$14,956,587.29	$7,478,293.64
Alaska	698,373.27	349,186.63
Arkansas	281,176.72	140,588.36
Colorado	11,986,984.64	5,993,492.32
Georgia	22,817.10	
Illinois	36,714,685.93	18,357,342.96
Indiana	24,350,760.07	12,175,380.03
Iowa	454,491.96	227,245.98
Kansas	942,994.88	471,497.44
Kentucky	86,205,856.70	43,102,928.35
Maryland	2,121,371.66	1,060,685.83
Missouri	5,417,438.83	2,708,719.41
Montana	23,588,779.46	11,794,389.73
New Mexico	4,916,324.12	2,458,162.06
North Dakota	3,813,297.21	1,906,648.60
Ohio	31,301,139.96	15,652,069.98
Oklahoma	4,815,046.87	2,407,523.43
Pennsylvania	57,876,716.48	28,938,358.24
Tennessee	6,108,171.81	3,054,085.90
Texas	6,094,833.81	3,047,416.90
Utah	4,180,546.03	2,090,273.01
Virginia	17,063,210.01	8,531,605.00
Washington	4,722,011.18	
West Virginia	50,501,011.89	25,250,505.94
Wyoming	65,662,801.17	32,831,400.58
Crow Tribe	3,782,878.60	1,891,439.30
Hopi Tribe	1,224,108.47	612,054.23
Navajo Tribe	16,015,820.79	8,022,910.95
Total	485,853,236.90	240,554,204.80

[1] Includes fees and interest.

MILITARY PAY BILLS

Mr. JEPSEN. Mr. President, it has come to my attention that unnecessary and irresponsible pressure is being applied by the Office of the Secretary of Defense concerning the pending congressional actions on the military pay bills. Only in a forum of open debate on the floors of the Senate and House of Representatives can the relative merits of a targeted pay adjustment as adopted by the Senate Armed Services Committee vice an across-the-board as proposed by the House Committee on Armed Services be debated. Mr. Weinberger, Secretary of Defense, has fixed opinions on this issue; while well known, I point one that they are not totally consistent with the professional and personal views of the rest of the military leadership. I recommend that those who would hinder and possibly obstruct the Congress from its mission to resolve this issue refrain from what could be interpreted as lobbying in direct contravention with the public law.

MAJ. GEN. EVAN L. HULTMAN, A GREAT IOWAN

Mr. JEPSEN. Mr. President, today I take great pleasure in honoring a fellow Iowan who has contributed much to his country. Maj. Gen. Evan L. Hultman, USAR, of Waterloo, Iowa, has recently been elected to the distinguished position of president of the 128,000-member Reserve Officers Association of the United States. General Hultman has given long and dedicated service to his country, State, and community. He is an outstanding leader and his career has been one of great achievement.

Evan Hultman was born July 15, 1925, in Albia, Iowa. He graduated summa cum laude from the University of Iowa with a bachelor of arts degree in political science in 1949. He received his juris doctor degree in law, cum laude, also from that university in 1952.

The general has had a distinguished civilian career. Admitted to the general practice of law in Waterloo in 1952, he did civil and criminal trial work and actual pleading of appeal cases before the Iowa and U.S. Supreme Courts. He was twice elected and served as the attorney general of the State of Iowa and also completed two terms as U.S. attorney in Iowa. General Hultman was twice appointed general legal counsel, U.S. Junior Chamber of Commerce and was elected and served two terms as Black Hawk County attorney.

A former President of the Iowa Federal Bar Association, he also was elected as National Vice President of the Federal Bar Association in 1980. Evan Hultman currently is a practicing trial attorney whose clients include a major industrial city in Iowa.

His military career has been equally illustrious. He entered military service in 1943 as a private in the infantry and rose to captain before his discharge in 1948. After leaving active duty, he joined the U.S. Army Reserve in 1947.

General Hultman served in a variety of assignments with the 410th Infantry Regiment, including Battalion Intelligence Officer, Assistant Operations Officer, Headquarters Commandant, Battalion Executive Officer, and Battalion Commander. He left the regiment in 1959 to become Division Judge Advocate with the 103d Infantry Division until 1964, when he was assigned to the 5040 USAR School as an instructor. In 1973 he became the commanding officer of

the 450th Military Intelligence Detachment (Strategic).

In 1974, he was assigned as the Deputy Assistant to the Judge Advocate General for Reserve Affairs at Headquarters Department of the Army, and in 1975 was promoted to brigadier general in the Army Reserve. He assumed command of the 103d Support Brigade in 1976. His unit then was selected by Department of the Army in competition with other Support Brigades to be the only Army Reserve Corps Support Command (COSCOM). After serving as deputy commander of the COSCOM from 1977 to 1979, he was selected as commanding general in 1979 and promoted to major general.

The general has completed numerous military schools, including the Army Command and General Staff College, the Industrial College of the Armed Forces, and the Judge Advocate General School.

Among his awards and decorations are the Meritorious Service Medal with Oak Leaf Cluster; Army Commendation Medal; Army Good Conduct Medal; World War II Victory Medal; American Theatre Ribbon; World War II Occupation Ribbon; Armed Forces Reserve Medal; Asiatic-Pacific Theatre Ribbon; and the Army Reserve Component Achievement Medal.

The general has been an activist in civic affairs throughout his adult life. He served as National Legislative Committeeman of United Cerebral Palsy, chairman of the Iowa Heart Fund, and was three times council president of the Boy Scouts of America. He was awarded the Silver Beaver and the Silver Antelope for this service. Additionally, he is a past president of the Waterloo Junior Chamber of Commerce and vice president of the Iowa Junior Chamber of Commerce.

Evan Hultman also has served ROA in a variety of capacities. He was twice appointed National Resolutions Chairman, is a past president of the Iowa Department, past chairman of the Army Affairs Committee, and National Committeeman. In 1980 he was elected as vice president, Army.

General Hultman is a truly outstanding Iowan and American. His dedicated and meritorious service to his community, State, and country has proven him highly worthy of his newly elected position as president of the prestigious Reserve Officers Association.

It indeed gives me pleasure to extend my congratulations and my thanks to Evan Hultman for his many years of dedicated service. His has been a life of accomplishment and the Senator from Iowa takes pride in honoring him today.

THE CATTLE INDUSTRY

Mr. JEPSEN. Mr. President, it is no secret that cattlemen around the country are going through a difficult period. Cost of production and land prices continue to rise while prices received continue to fall.

Many producers are asking what the administration can do to help keep them them solvent and, I believe, Mr. Gerald Pearson has some of the best ideas I have seen. Mr. Pearson is the chief operating officer of Spencer Beef Division in Iowa and was one of the founders of Spencer Foods in 1952. He now serves as chairman, president, and chief executive officer of the corporation.

Mr. President, I would like my colleagues to be aware of Mr. Pearson's ideas and I ask unanimous consent that an article he wrote about the cattle industry which was published in the National Provisioner be printed in the RECORD.

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

ACTION IS NEEDED TO SAVE CATTLE INDUSTRY

(By Gerald L. (Bud) Pearson)

Supreme optimism has been a common trait among cattlemen throughout the century and, in my 35 years in the beef business, I have found this optimism well warranted—until now.

Since 1946, per capita consumption of beef has more than doubled from 60 lbs. to 120 lbs. That factor, along with population growth in the United States, raised cattle slaughter from 18,881,000 head annually in 1946 to 42,654,000 in 1976. Cattlemen from the cow/calf operator to the cattle feeder prospered during this tremendous growth period.

A closer look reveals that the majority of the cornbelt farmers who have prospered and acquired attractive equities and larger land-holdings were in the cattle business. Cattlemen expected to lose money feeding cattle in two or three out of seven years, but they also knew that if they stayed in the business and did a good job of managing, they would make substantial profits over the years.

The cattleman was king and the envy of most everyone in agriculture, and the gamble of feeding cattle added to the excitement and romance of the business. The cattle cycle always took care of the cattleman with the staying power, never failing to return the business to profitability.

But never is a long time, and it is now becoming apparent that the cattle cycle, in conjunction with other factors, is working against the cattle industry. As a result, it is highly likely that we will see five loss years in the seven-year period of 1979 through 1985 for most segments of the cattle industry, instead of profits. With two and one-half years of that period behind us, showing some good times for the cow/calf operator and only a few good months for some cattle feeders, we are still looking at many dark days ahead for the cattle industry.

To survive this period, we have to inject same realism into our thinking and figure how best to cope with the fact that beef consumption will decrease. We simply cannot profitably market the supply of beef that is currently being produced or will be produced in the next few years without some major adjustments or actions taking place. We must determine how to best manage a mature or declining industry. Shakespeare or someone once said, "If we live in hope, we shall die in despair." Nothing could apply better to the cattle industry today. Hope will not do it, action is needed.

Two culprits are contributing heavily to the profitability problems in the cattle business—high interest rates and inflation. They have a compounding effect. Because of sustained losses most cattlemen have depleted much of their capital and therefore have to borrow more than at any previous time and at record high rates. Land values of cattlemen have increased enough to maintain their net worth and give them a borrowing base, but the total interest cost of raising a steer from conception to consumption at current rates is far beyond what can be absorbed and still produce beef at a profit.

Assuming that the mother cow is worth $700, one could have almost $150 in interest charges in the production cost of the calf from the time it was conceived until it was weaned. The feeder who takes the calf from that point to slaughter will realize another $100 in interest costs in financing the calf purchase and a portion of the feed costs. So, in total, cattlemen are looking at $250 in possible interest costs in producing a market-ready steer, or well over 20 cents per pound of live weight. Carrying it further, this equates to almost 35 cents per pound of carcass weight and approximately 75 cents per pound on the retail price.

Added to this dilemma is the shrinking amount of discretionary dollars in the consumer budget. Because of inflation, the consumer has fewer dollars left over after buying the necessities, and beef suffers first because of its price. But, merely saying that high interest rates and inflation are the only causes of current financial losses in the cattle industry, we are overlooking what is most likely our biggest problem—the shrinking desirability of beef in the eyes of the consumer.

A great majority of consumers in recent surveys have stated that they are reducing their beef purchases. This is much more a perceived notion than an actuality as all the beef that is produced is eaten, and per capita consumption is simply the amount of beef produced plus imports divided by the U.S. population. Actually the consumer will be eating more beef per capita in 1981, 1982 and most likely 1983 and 1984 than in the past two years. The fed cattle, cows, calves and yearlings are already in the system to produce more beef. The price the consumer is willing to pay for that beef is the key to how much beef will be produced and consumed in 1985 and beyond. Unless the price paid will return a profit to the producer, he will cut back production until there is a profit.

The industry profitability problem today can be traced to one factor—the consumer is spending less than 2.2 percent of disposable income for beef instead of the historical 2.6 percent. Each .1 percent of the DPI times $3 per cwt. would amount to $130 per head, and that would cure about all the profitability problems that exist in the cattle industry today. But when most everyone in cattle production is struggling just to survive, it is difficult to find the dollars needed for beef promotion. Unless the whole industry is willing to spend a lot more than it has been spending for beef promotion, it will be practically impossible to regain beef's desirability position.

Chicken and pork have not made inroads into beef consumption without huge sums of money having been spent promoting these products. Three poultry companies spend $5,500,000 annually just in the city of New York to promote their product. That's three times more than is spent nationwide by the beef industry. The National Pork Producer's Council spends four times as much as the cattle industry on promotion. Considering that the consumer dollars spent for beef are more than four times greater than the dollars spent for pork and about eight times greater than that spent for chicken, it is not surprising that beef is losing ground.

The Beeferendum, which was voted down by the cattle industry in 1980, would have raised $30- to $40,000,000 annually. It is conceivable that the economic cost to the beef industry for failure to adopt the Beeferendum is more like $400,000,000 annually.

The cattle industry has to find the funds and then spend them in the best possible way to get its story to the consuming public. We have to take action in responding to the message the consumer is giving us—that leaner beef is desired. We must update our beef grading system so that the producer can deliver lean, palatable beef at a competitive price with other protein sources.

Beyond that, we have not touched the possibilities of what we can do with the total story of cattle and beef. For instance, does the public know that the faithful cow is the world's best converter of solar energy and harvests grass just like a combine harvests grain?

Look at what others are doing with the "romance" of cattle—Merrill Lynch, the No. 1 broker, is spending millions in ads featuring the bull. Marlboro, the No. 1 cigarette maker, spends close to $100,000,000 with its cowboy ads. Western wear, particularly cowboy boots, is setting sales records.

Should cattle raising continue to be unprofitable, we will undoubtedly see many millions of acres of marginal land being plowed up and subjected to severe erosion. Much of this land will then become worthless in less than 50 years because of topsoil loss. Only grass can maintain the precious topsoil on much of our land and preserve it for future generations. Just as the Arabs are depleting their resources by pumping oil as fast as they can, we will be depleting our resources if we plow up grazing land.

The ability of the new administration to solve our economic problems will have a lot to do with the return of profitability to the cattle industry. . . . the real future success of the beef industry depends on our ability to establish priorities and then come to an agreement on what the solutions are and what the price will be. The pertinent priorities as I see them are:

All segments of the industry must do everything possible to expedite the proposed grade change.

Cattlemen should start breeding cattle that will produce ideal carcasses for the new grade, i.e., larger frames and less fat covering.

Get emergency funds from producers and packers to immediately start promoting the good qualities of cattle and beef with a well designed, well aimed public relations program which tells the honest story of cattle and beef.

Utilize risk management tools to capitalize on volatile markets which are here to stay.

The price of no action could well be the demise of one of America's greatest historical industries. If you don't believe it can happen, take a lesson from the lamb industry. It did happen to them—it can happen to us, too.

HEALTH WARNING LABELS ON ALCOHOLIC BEVERAGES

Mr. JEPSEN. Mr. President, I speak in support of the efforts of Senator THURMOND and Senator HATCH to make Americans aware of the hazards of alcohol consumption through the use of alcohol warning labels.

As you are aware, the Senate passed a comparable bill last year in the form of an amendment to S. 440. Because the House-passed bill did not include the Thurmond language, the House-Senate conference committee agreed on compromise language which required that a special report be compiled by two Federal agencies informing Congress, and thus the American people, of the risks surrounding alcohol abuse.

Two State legislatures, Kansas and Utah, have already approved measures to implement the use of warning labels. My own State of Iowa is currently considering similar legislation. Mr. President, I believe that this idea has great deal of support in the U.S. Senate as well.

The warning label would read as follows:

Consumption of Alcoholic Beverages may cause serious birth defects; alcohol can also create dependency or addiction, impair driving ability or may cause other serious health hazards.

If enacted, this warning will apply only to alcoholic beverages with an alcoholic content of 24 percent or more. In this proposed legislation only liquor, not beer or wine, will be required to carry this warning. I intend to offer an amendment to this bill which would extend these warnings to include beer and wine.

According to preliminary reports from the U.S. Department of Commerce, Americans spent a record $43.7 billion in 1979 for beer, wine, and distilled spirits. This means that U.S. spending on alcoholic beverages averaged out to be an incredible $5 million per hour.

Estimates indicate that excessive use of alcohol costs our society between $25 and $40 billion annually. This includes the costs of lost labor productivity, health costs, highway accidents, criminal prosecutions, treatment of abusers, and welfare assistance.

Alcohol abuse accounts for 40 percent of all criminal arrests, and alcohol patients or victims fill one of every four general hospital beds. The number of alcoholics, a large percentage of which are young people still in high school, increases by 200,000 every year.

Earlier this month, the Acting Surgeon General, on the basis of a recent report, advised pregnant women not to drink alcoholic beverages, even in small amounts because of the potential health risks to the fetus.

Despite these statistics, many people question the effectiveness of warning labels on alcoholic beverages and express concern about the cost of putting warning labels on liquor bottles. The price is considerably less than 1 cent per label.

As for the effectiveness, no studies have been made. Since the warnings by the Surgeon General appeared on cigarette packages, however, there has been a marked decline in the number of cigarette smokers and a growing public awareness of the problems surrounding cigarette smoking.

Obviously warning labels will not eliminate the problem of alcoholism, but they may save lives by providing a climate which expresses concern over one of society's most serious health problems. This idea is certainly worth a try.

REFERRAL OF NOMINATION—DEPUTY DIRECTOR OF THE ACTION AGENCY

Mr. BAKER. Mr. President, I believe the minority leader has approved this request.

As in executive session, I ask unanimous consent that the nomination of Winifred Ann Pizzano, to be Deputy Director of the ACTION agency be referred to the Committee on Foreign Relations for not to exceed 15 days.

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

Mr. BAKER. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business?

Mr. HARRY F. BYRD, JR. Yes, Mr. President.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

(The remarks of Mr. HARRY F. BYRD, JR., in connection with the submission of a resolution, are printed later in today's RECORD.)

CONCLUSION OF MORNING BUSINESS

Mr. MURKOWSKI addressed the Chair.

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

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, what is the status of the special order situation?

The PRESIDING OFFICER. The Senator from Alaska.

Mr. BAKER. I say to the Chair that I am a contributor to the confusion, and I readily confess that.

I asked the Senator from Arkansas to suspend so that we could perform on the special order to proceed at 12 o'clock to consideration of the matter at hand, the tax bill conference. Frankly, I do not know now what status we are in.

I offer my profound apology to the Senator from Alaska, because I believe we have imposed on him to the extent of 2½ hours.

Can the Chair advise me of the special order situation?

The PRESIDING OFFICER. The Chair inquired whether there was further morning business. If the statement of the Senator from Alaska is to be in morning business——

Mr. BAKER. I understand that in seeking recognition, the Senator from Alaska does not intend to speak in morning business.

Do I correctly assume that morning business is closed?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Then, what is the status of the special order situation?

The PRESIDING OFFICER. The next special order was for the Senator from Alaska (Mr. MURKOWSKI), on the first special order.

Mr. BAKER. Has the special order time for the Senator from Arkansas expired?

The PRESIDING OFFICER. The Senator from Arkansas was given 10 minutes by the Senator from West Virginia, which was to be the last special order.

Mr. PRYOR. If I am not mistaken—if I may beg the indulgence of the majority leader—the distinguished Senator from Oklahoma was recognized for a special order; and I believe he yielded me 14 minutes of his remaining time on that special order.

Inasmuch as I have been here most of the day on this matter, I wou'd be very happy to yield to the distinguished Senator from Alaska and to continue my statement later.

Mr. BAKER. Will the Senator do that? I understand that the Senator from Alaska has a 5-minute speech to make. He has been here about 2½ hours.

Mr. PRYOR. I am proud to yield to the distiguished Senator from Alaska.

Mr. MURKOWSKI. I thank the majority leader and the Senator from Arkansas for allowing me to proceed.

S. 1562—THE ARCTIC RESEARCH AND POLICY ACT OF 1981

Mr. MURKOWSKI. Mr. President, several months ago I stood before my Senate colleagues and stressed the need for a national commitment to Arctic science research. The United States is currently without a balanced and well-conceived Arctic research policy—a shortcoming which is detrimental to our quest for greater energy independence, harmful to important national security interests, and potentially damaging to a delicate Arctic environment and a unique indigenous culture. Today, I, along with the senior Senators from Alaska and Washington (Mr. STEVENS and Mr. JACKSON) am introducing legislation which we believe to be an important first step to help correct years of neglect and misdirected effort.

As tensions in and around the oil-exporting Middle East nations continue to increase, our vulnerability to a major disruption of crude oil imports remains painfully clear. The realization of this fact, the leveling-off of domestic energy demand, and increasing energy production from Arctic oil fields have helped to alleviate some of our dependence on expensive and unreliable sources of foreign oil. At the same time, our dependence on the energy resources of Alaska's North Slope is increasing. The major portion of America's new found energy resources will come from areas in Alaska north of the Arctic Circle. Alaskan oil—carried through the Trans-Alaskan oil pipeline—currently represents 16 percent of our Nation's domestic crude oil supply.

Some experts predict that half of all future U.S. domestic oil supplies will one day come from Alaska and its offshore fields. Increased development initiatives and billions of dollars in capital outlays will make this development possible. The Alaska Natural Gas Transportation System, a $30-plus billion project, will one day supply a significant percentage of our Nation's natural gas needs. Increased onshore and offshore energy exploration and development will be attempted in remote and forbidding areas where is has never been tried before.

Despite our increasing dependence on Arctic energy resources and the high stakes involved with their development, we are currently without the scientific knowledge and practical expertise necessary to develop these resources in a wise and conscientious manner. This new energy development will be accompanied by new technology, environmental disruption, and a wide variety of currently unanticipated problems that we are not equipped to deal with at the present time.

Clearly, a variety of scientific activity will have to be undertaken by and on behalf of a wide variety of private, Federal, and local interests. It is important to note that a good deal of Arctic research is already currently underway. However, the research sponsored by the Federal Government, private industry, State agencies, and independent scientific organizations has been fragmented or redundant in the past, and Federal research efforts have never had the benefit of a guiding policy. Duplication, inefficiency, and misdirected research efforts have often resulted as a consequence.

In light of our national dependency on the energy resources of the Arctic, I believe there exists a national responsibility to undertake the scientific research which is still needed to develop these resources wisely and without delay. The legislation we are introducing today is designed to help meet that responsibility.

Mr. President, our national interest in the Arctic does not end with the development of its energy resources. The Alaskan Arctic represents our only common border with the Soviet Union. That fact, along with our increasing dependence on the energy and mineral resources of the area, underscores the strategic importance of the Arctic.

Our own national security demands that we become better aware of the effect of unique Arctic conditions on our military capabilities in the area. It is my sincere belief that the strategic importance of the Arctic will soon rival that of the Persian Gulf. I fear the Soviets have come to realize this fact—they have undertaken a large coordinated Arctic research effort involving an estimated 20,000 scientists.

We, on the other hand, are less knowledgeable than we should be about phenomena unique to polar regions which affect the radio communications crucial to military operations. Little is known of seaborne movements in the Arctic, whether on the surface of the seas or in submarines beneath the waters and ice of the Arctic Ocean. Clearly, our national defense requires a more complete understanding of the Arctic and its effects on our military capabilities.

Mr. President, the Arctic is destined to become a site of increased activity—whether it be in the pursuit of increased energy independence or enhanced national security. Sadly, we are not fully aware of the best means to minimize the effects of this increasing activity on the unique Arctic environment. Pollution control requires an entirely different approach in the Arctic as compared with moderate climates. Transportation, waste disposal, and other potential disruptive activities associated with Arctic operations are still being tested and developed. As you would expect, a wide variety of scientific research still remains to be undertaken in this area, and without this legislation, we are still without the means to pursue that research.

Finally, Mr. President, the irreversible disruptions which could affect the unique culture of Eskimo people as a result of this activity trouble me greatly. The Eskimo people that reside in the Alaska Arctic should be allowed the opportunity to pursue their traditional culture—a culture which is utterly dependent upon the fragile Arctic ecosystem. The wide variety of wildlife, marine mammals, birds and fish, as well as the complex plant life of the tundra are highly sensitive and subject to damage unless properly protected during resource development. If we fail in our stewardship of the Arctic environment, the Eskimo culture could be irreversibly altered or lost.

Mr. President, for these reasons, I believe it is absolutely essential that Congress articulate our national commitment toward Arctic scientific research. It is essential that a mechanism be adopted which will lead to the creation and implementation of an Arctic science policy that will upgrade and help coordinate the scientific initiatives which are so critical to our Nation. It is good economics, and it is good government to adopt the approach specified in this legislation to address the issue of Arctic science policy. The costs, by any measure, are insignificant. The danger of failing to do what is proper and prudent carries large costs in terms of the delay, needless litigation, and expensive development efforts that fail for lack of the required information.

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. 1562

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 "Arctic Research and Policy Act of 1981".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the Alaskan Arctic, onshore and offshore, contains vital energy resources which can reduce our dependence on foreign oil and improve our trade balance;

(2) the Arctic represents our only common border with the Soviet Union and is critical to our national defense;

(3) the Alaskan Arctic provides essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the nation and which are essential to the subsistence culture of Alaska Natives;

(4) the pace and scale of developmental activities and resource development projects in the Arctic—the United States, Canada, and the Soviet Union—is accelerating in response to the resource needs of the Arctic-rim nations;

(5) resource development projects that are either currently underway in or proposed for the Alaskan Arctic include—

(A) offshore petroleum development in the Beaufort Sea;

(B) the Alaska natural gas transportation system;

(C) a proposed natural gas liquids pipeline;

(D) scheduled lease sales onshore in the National Pertoleum Reserve—Alaska;

(E) exploration of the Arctic National Wildlife Range;

(F) development of icebreaking tankers to move oil from offshore areas to the United States;

(G) other Arctic-rim countries and Japan; and

(H) proposed development of Arctic coal reserves;

(6) Arctic research to date has been fragmented and has been accorded far too low a priority, whether measured in terms of energy resources, wildlife habitat, or national security;

(7) there is a need to better organize the Federal effort in Arctic research and coordinate this effort with ongoing State programs, university projects, and efforts by private industry and indigenous native communities; and

(8) a coordinated Arctic research policy is critical to our national defense, to the timely development of essential natural resources in the Arctic, and to the responsible management of fish and wildlife resources.

(b) It is the purpose of this Act to recognize the importance of the Arctic to our national security and to our economic well-being, and to ensure that needless delay, unnecessary conflict and significant economic losses that could result from the absence of an adequate Arctic research program do not occur. Therefore, the objectives of this Act are to—

(1) direct the administration of a coordinated Arctic research policy in which important basic and applied research issues will be addressed in a timely fashion;

(2) provide an information system through which the results of nonproprietary Arctic research carried out by Federal and State governments, universities, and the private sector are made accessible to the public in order to prevent inadvertent duplication of research;

(3) make the results of such research available to private industry, State governments, and local communities that are also conducting research on or are impacted by Arctic development;

(4) foster international cooperation among Arctic-rim nations, where appropriate, in the development and exchange of scientific information and technology;

(5) accelerate, where appropriate, the pace of basic and applied Arctic research so that needed resource development can take place on a timely basis and in accordance with national needs;

(6) establish the means for providing the financial support necessary to conduct needed applied and basic research; and

(7) establish an institutional framework to assure the achievement of these objectives.

ARCTIC RESEARCH COUNCIL

SEC. 3. (a) There is established the Arctic Research Council (hereinafter referred to as the "Council") which shall be composed of the Secretary of the Interior, who shall serve as the Chairman of the Council, the Secretary of Defense and the Secretary of Commerce. The Governor of the State of Alaska may serve as an ex officio member of the Council. The Administrator of the National Oceanic and Atmospheric Administration, the Director of the Smithsonian Institution and the Director of the National Science Foundation may attend meetings of the Council as observers.

(b) The Chairman of the Council shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council.

DUTIES OF COUNCIL

SEC. 4. The Council shall coordinate a comprehensive Arctic research policy. To carry out this function, the Council shall—

(1) establish a clearinghouse for all Arctic research that has been conducted by the Federal Government. Each executive department or agency of the Federal Government shall provide annually to the Council copies of all studies or reports completed by that department or agency, or on its behalf, related to research on the Arctic. The Council shall compile a comprehensive list and index to all such studies and reports, and shall, to the extent permitted by Federal law, make the studies and reports, as well as the index thereto, available to the public;

(2) request each executive department or agency of the Federal Government to keep the Council currently informed of all ongoing studies, reports, or research projects undertaken by that department or agency, or on its behalf, concerning Arctic research;

(3) establish, on an annual basis, after soliciting the views of affected Federal agencies, the State of Alaska, the native community and private industry, priorities for research activities based on national needs and ongoing activities;

(4) direct each executive department or agency of the Federal Government to prepare a report, within 6 months of the date of enactment of this Act, which contains—

(A) a list of all responsibilities or activities of the respective department or agency that may impact the Arctic environment or the residents of the North Slope of Alaska; and

(B) a description of the steps, including research, that the department or agency has taken or is planning to take to ensure that its activities or the activities of others for which it is responsible are undertaken in a manner that minimizes, to the maximum extent practicable, any adverse impacts on the Arctic environment and residents;

(5) determine, upon the completion of the study mandated in section 1007 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3147), whether the Naval Arctic Research Laboratory should be maintained to house and coordinate substantive research projects or for such other purposes as the Council deems appropriate. If the Council determines that the Naval Arctic Research Laboratory should be maintained, the Council—

(A) may delegate to or contract with any Federal department or agency, the State of Alaska, the North Slope Borough, or the State of Alaska university system to administer the activities of the Naval Arctic Research Laboratory; and

(B) shall permit any Federal department or agency, the State of Alaska, the North Slope Borough, public and private schools and universities, and the private sector to utilize the facilities of the Laboratory, provided that each user of the facilities shall pay to the Council all costs reasonably associated with its use of those facilities;

(6) manage the Arctic Research Fund established pursuant to section 6 of this Act;

(7) coordinate, after consultation with the Secretary of State and in conjunction with his offices, exchanges of information about the Arctic on an international basis; and

(8) report to Congress annually on the activities pursued by the Council.

ADVISORY COMMITTEE

SEC. 5. The Chairman of the Council shall establish an advisory committee comprised of—

(1) scientists with credentials in Arctic research;

(2) representatives of private enterprise active in the Arctic; and

(3) representatives of Native residents of the North Slope of Alaska;

whose views shall be sought and considered in the establishment of priorities for Arctic research activities.

ARCTIC RESEARCH FUND

SEC. 6. (a)(1) There is established an Arctic Research Fund into which there shall be paid 1 percent of all revenues received by the Federal Government from disposition by sale or lease of any interest in the Outer Continental Shelf located off the coast of the North Slope of Alaska and in lands on the North Slope of Alaska. The Arctic Research Fund shall support the activities of the Arctic Research Council and, if the Council determines that the Naval Arctic Research Laboratory should be maintained, the operating and maintenance costs of and the research activities conducted at the Naval Arctic Research Laboratory.

(2) No more than $25,000,000 shall be paid into the Arctic Research Fund in any 1 year and the total amount of money in the fund at any one time shall not exceed $50,000,000.

(b)(1) With regard to those Arctic research projects identified by an executive department or agency pursuant to section 4(2) of this Act and the responsibilities identified by an executive department or agency pursuant to section 4(4) of this Act, the respective executive department or agency shall maintain the responsibility to fund the projects it has so identified.

(2) If an executive department or agency administers a permitting program for exploration or development activities or transportation of energy resources, that department or agency shall, where authorized by other Federal law, require the applicant to conduct or fund specific Arctic research as is necessary to assure that the activity is accomplished in a manner designed to minimize its impact on the Arctic environment and the Native people of the North Slope of Alaska.

(c) Pending the accrual of funds in the Arctic Research Fund to a level sufficient to support the Arctic research mission established by this Act and the operating and maintenance costs at the Naval Arctic Research Laboratory, the Secretary of Defense shall provide the funding necessary to maintain the Naval Arctic Research Laboratory, unless the Council determines pursuant to section 4(5) of this Act that the Laboratory should no longer be maintained. Such funds shall be forthcoming from the various services based in Alaska and such other discretionary funds that the Secretary of Defense has available without regard to restrictions in previous authorization or appropriations Acts.

DEFINITION; NONAPPLICABILITY OF THE NATIONAL ENVIRONMENTAL POLICY ACT

SEC. 7. (a) For purposes of this Act, "North Slope of Alaska" means all United States territory, offshore and onshore, north of 68 degrees north latitude.

(b) The National Environmental Policy Act of 1969 (83 Stat. 852) shall not be construed, in whole or in part, as requiring the preparation or submission of an environmental impact statement by the Arctic Research Council or the Secretary of Defense for any activities conducted pursuant to the provisions of this Act.

Mr. STEVENS. Mr. President, I am pleased to join my good friend, Senator MURKOWSKI, to cosponsor this measure to establish an Arctic research policy at the national level. As some of you are aware, there is a great need to promote and consolidate Arctic research programs. Tremendous natural resources lie in the Arctic and the pace of the exploration activity that is planned over the next decade is a sizable one.

I feel that the national focus in the past has been on antarctic—rather than Arctic research—although our real national interests are certainly more substantial in the Arctic. Both in the area of national defense and basic resource capability, the Arctic will provide a sizable share of our future development efforts. I feel there are significant effects on the Alaskan Native community that also need to be assessed, and there is

a need to share technical information with a large number of small business concerns that operate in the Arctic environment.

I see this bill introduced by my good friend as an effective means to take that first step to establish consolidated national direction for Arctic research. I urge your careful consideration of this measure and hope that the Senate will be able to take prompt action on it.

Mr. MURKOWSKI. Mr. President, I very much appreciate the accommodation by the Senator from Arkansas.

ORDER OF BUSINESS

Mr. PRYOR. Mr. President, I express my thanks to the majority leader for working this time in for me and I do ask unanimous consent that my remarks appear in the RECORD as spoken without interruption or I should say intervening causes.

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

Mr. PRYOR. Mr. President, I wish to assure my colleagues this is not a filibuster. It is simply a minimarathon that I am engaging in for a little while this afternoon to tell our colleagues and the taxpaying citizens out there about how the Defense Department is spending some of our tax dollars.

Mr. President, as I continue I was in discussion relative to a contract awarded at DOD for $294,000 to survey drug and alcohol abuse within the military services.

(Mr. PRYOR's complete remarks are printed earlier in today's RECORD.)

RECOGNITION OF SENATOR LEVIN

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

Mr. LEVIN. Mr. President, would the Chair alert me when I have used 7½ minutes of my special order?

The PRESIDING OFFICER. The Chair will do so.

Mr. LEVIN. I thank the Chair.

ARMS CONTROL IMPLICATIONS OF IMPORTANT NATIONAL SECURITY POLICY DECISIONS

Mr. LEVIN. Mr. President, I want to take this moment to express my strong concern over inadequate consideration being given by the new administration to the arms control implications of important national security policy decisions.

The failure to adequately consider how these policy choices will affect present and future arms control agreements and efforts threatens our national security.

For instance, recent testimony before both the Armed Services Committee and the Foreign Relations Committee clearly indicates that chief foreign policy and arms control officials of the new administration are not being consulted on the most important defense and arms control decision this country may ever have to make, the selection of the MX missile basing mode.

And testimony before the Armed Services Committee demonstrated that arms control considerations were apparently not addressed when the administration decided to sell sophisticated airborne warning and control—AWACS—aircraft to Saudi Arabia.

We all know there are foreign policy and arms control implications of the MX basing mode, in general, Mr. President. Our NATO allies have connected it with their willingness to accept modernization of our theater nuclear forces in Europe. That connection may or may not be unwise, but it nevertheless exists.

We know that without a SALT II agreement limiting the expansion of Soviet missile warheads there are strong doubts whether the multiple protective structure basing modes being evaluated for the MX could be effective in protecting the survivability of our land-based missiles.

We know that some of the deployment proposals for the MX involve abrogating the anti-ballistic-missile treaty and protocol, an action which could have great disadvantages for our defense because Soviet ABM systems, if deployed as a result of our abrogation, could seriously weaken the effectiveness of our own missiles.

And our European allies would question our commitment to continuing the arms control process if we are to tamper with the ABM treaty, since they view it correctly as the one concrete achievement from years of international arms control efforts.

But has this administration asked its chief arms control official about these issues as it decides an MX deployment scheme? No, it has not. Let me read the exchange I had a few days ago with Eugene V. Rostow, the President's choice to head the Arms Control and Disarmament Agency:

Senator LEVIN. Have you made known to the Secretary of Defense and the President the implications for arms control of those various modes so that when they look at the MX basing questions they can have the arms control inputs from you?

Mr. ROSTOW. Well, not yet.

Senator LEVIN. Shouldn't the Secretary have those implications in front of him when he is making his decision?

Mr. ROSTOW. That is the Secretary's choice. He has got enough complications now.

Senator LEVIN. You have not been asked for those?

Mr. ROSTOW. No. I have not participated in that process.

Similarly, Mr. Richard Perle, the administration's nominee to be Assistant Secretary of Defense for International Security Affairs, a top foreign policy post in the Pentagon, early this week told the Foreign Relations Committee that he has not been centrally involved in the MX basing deliberations.

The sale of AWACS aircraft to Saudi Arabia raises serious arms control concerns from a regional perspective, Mr. President. This is important in and of itself, but it also is important because the region of the world involved—the Middle East/Persian Gulf—is the most volatile and tense geographic area in the world today.

Conflict within that region threatens not only economic catastrophe for many nations in Europe and North and South America, but it ultimately could lead to a nuclear confrontation between the United States and the Soviet Union.

The United States should not be contributing to altering the present military balance in the region in any way, and it certainly should have adequately considered the arms control implications of this before it agreed to this sale.

Did the administration ask its top arms control official about these implications of the AWACS sale? No. These excerpts from our Armed Services Committee hearing with Mr. Rostow, are convincing evidence of this. Let me read them:

Senator EXON asked Mr. Rostow the following questions:

What is your position, your official position and your personal position, and certainly indicate, if you can, if there is a conflict between them, on the proposed sale of the AWACS aircraft to Saudi Arabia?

Mr. ROSTOW. I have not completed our studies of that. I shall have to make a statement on that subject, I presume, somewhere down the line fairly soon, and I have read some of the preliminary documents, but I have reached no conclusion as yet.

Senator EXON. Has the Administration contacted you about your views on this?

Mr. ROSTOW. No.

Senator EXON. Would it have been proper for them to do so?

Mr. ROSTOW. Not yet.

I then asked Mr. Rostow the following questions:

Senator Exon asked you whether or not you had been asked your views relative to the AWACS sale, and you said no, and he asked you whether or not you thought it was approporiate, if I remember his question correctly, and you said no, and now my question is why would it not be appropriate for you to be asked your views on AWACS, first, and on the arms control implications of the MX basing mode, second?

Mr. ROSTOW. Well, I suppose it is a possible procedure, but the Director of the Arms Control Agency is not normally a participant in every Defense decision, or even in every defense aid decision.

I then asked:

Well, but my heavens, why should the Secretary of Defense make those recommendations without the benefit of your input?

Mr. ROSTOW. Well, I think the Secretary of Defense has—I believe he has a right under the statutes and under the customs of the United States to make defense recommendations, and I do not propose to barge in on him.

Mr. President, I think there can be no question that foreign policy and arms control implications must be considered in any national defense decision. Arms control is not a substitute for military programs. It should complement them, it can support them, in ways which are beneficial to our overall national security.

This administration ignores its duty to protect the American people when it does not recognize this.

This situation must change in the near future, Mr. President, if this administration is to responsibly discharge the obligations it was elected to assume last November.

Mr. President, I thank the Chair and I yield the remainder of my time to Senator EXON.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. I thank the Chair and I thank my friend and colleague from Michigan.

Mr. BAKER. Mr. President, will the Senator permit me to interrupt him for one brief moment?

Mr. EXON. I am happy to yield to the distinguished majority leader.

DEPARTMENT OF JUSTICE AUTHORIZATION BILL

Mr. BAKER. I thank the Senator from Nebraska.

Mr. President, a parliamentary inquiry: At the conclusion of the last special order, would the Department of Justice authorization bill recur as the pending business before the Senate?

The PRESIDING OFFICER. It would.

Mr. BAKER. Mr. President, I ask unanimous consent that the Department of Justice authorization bill not be laid before the Senate during this calendar day as the pending business.

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

Mr. BAKER. Mr. President, I thank the Chair and I apologize to the Senator from Nebraska. I appreciate his willingness to permit me to make that request at this time.

ARMS CONTROL

Mr. EXON. I thank my friend from Tennessee, the distinguished majority leader.

Mr. President, I rise today to join my able colleague from Michigan in discussing a subject that has received insufficient attention from this administration. The Senator from Michigan and this Senator do not completely agree on all matters affecting our defense buildup, but we are in complete agreement on the need to actively pursue arms control agreements.

Senator LEVIN has already cataloged for the Senate the questions posed to, and the responses given by, Mr. Eugene Rostow, the Director of the Arms Control and Disarmament Agency, with regard to the lack of consultation with his Agency by the Reagan administration—in particular, with regard to important proposals for foreign military sales and U.S. strategic weapons.

Mr. President, I was surprised, indeed, when, in response to my question of this important person with regard to arms control, he said that he had not even been consulted by the administration to date with regard to the basic mode of the MX.

Now, I think we all should understand that where and how and if or ever the MX is deployed, it will have to have the direct relationship to this Nation and those that we wish to get together with to at least start talking about some type of arms control.

Mr. President, the administration says that its entire arms control policy is still under review. Even if one does not quarrel with this premise and fact of life, I find it unacceptable that the normal processes of intergovernmental consultation on such matters have been bypassed. It would seem to this Senator that if the top officials of the administration have not even begun talking about specifics 7 months into their term and 9 months since the election on arms control and what we are going to do about it, then someone is dragging their arms control negotiation feet.

Arms control impact statements are annual statements required by law. Yet the world does not stop between the issuing of these statements each winter. The proposed sale of the AWACS aircraft to Saudi Arabia and the Townes Commission on Reports on AMX Basing have been and will be off-cycle decisions in the middle of the year. But that does not mean that Arms Control and Disarmament Agency should have no role to play, but simply issue their impact statement after the administration has made its decisions.

I think that most, to understand this issue, would have to agree that that basically is wrong.

The Arms Control and Disarmament Agency's primary function is to advise the President on the arms control implications of his actions—not just the issue after-the-fact justification for decisions already made. It is no sign of weakness for the President and the executive branch to receive this input along with that of the State and Defense Departments. On the contrary, it is only prudent.

I salute my colleague from Michigan in bringing this issue before the Senate. This administration must get serious about arms control, in addition to its already stated commitment, with which I agree, to increase defense spending and foreign military sales—because they all play a part in our own national security.

There is no reason, Mr. President, that if we build upon our defense and ask our military allies to do likewise, that we do not simultaneously begin serious consultation among our allies and with the Soviet Union at the earliest possible date. Such action might prove fruitless, and it is possible that the Soviets would not be reasonable and/or responsive. Talking about arms reduction, the only real chance any country has to at least deescalate the maddening arms race now in full swing is certainly not a sign of weakness but, to the contrary, it is a sign of optimistic strength, in the opinion of this Senator.

Mr. President, that concludes my remarks on this subject. In the balance of the time remaining to me, I would appreciate the opportunity to take up another subject. I will ask how much time is remaining.

The PRESIDING OFFICER. Two minutes remain.

Mr. EXON. I thank the Chair.

MILITARY MANPOWER

Mr. EXON. Mr. President, I was advised a few moments ago by the distinguished Senator from Iowa, the chairman of the Manpower Subcommittee of the Armed Services Committee, of which I happen to be ranking member, that the office of the Secretary of Defense has been making calls around, indeed they have been suggesting, to individuals on both sides of the Hill that delays be placed upon the consideration of the manpower bill reported by our subcommittee and by the full Armed Services Committee.

It seems to me, Mr. President, this is once again unfair, untimely, interference by the executive branch in the deliberations of our two bodies on this tremendously important matter.

I do not quite appreciate the fact that the Secretary of Defense, or those working very closely with him, is attempting to torpedo the carefully constructed manpower increase bill that we are putting forward.

I know that there are others who have differences of opinion, and that it what this is all about. But I think for the Secretary of Defense at this time to begin interferring with the deliberations of the U.S. Senate and the House of Representatives is not only untimely, but indicates to this Senator that the Department of Defense probably does not fully understand the very difficult problems that we have in the immediate future with regard to the manpower of all of our Armed Services.

I yield any remaining time to the Senator from Michigan, if he has further comment.

Mr. LEVIN. Mr. President, in the few seconds remaining, I thank my friend from Nebraska for his strong statements and his kind remarks. I commend him for a forceful statement.

UNANIMOUS CONSENT AGREEMENT—LEE NOMINATION AND RECONCILIATION CONFERENCE REPORTS

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I indicated earlier today at the beginning of the session at some point during the day I would ask the Senate to go into executive session for the purpose of considering the nomination of Rex E. Lee, of Utah, to be Solicitor General of the United States. I am prepared to do that at this time, Mr. President. Before I do so, Mr. President, I would like to propound a unanimous-consent request.

I expect that before very long the Senate will receive a message from the House of Representatives on the reconciliation conference report. That is, of course, a privileged matter. But to make sure that we can proceed to its consideration deliberately and without difficulty, I ask unanimous consent that when we proceed, if we proceed, to the consideration of the Rex Lee nomination to be Solicitor General in executive session, that any time during the consideration of that nomination it would be in order on my motion to lay aside temporarily the nomination and proceed to to the consideration of the reconciliation conference report, when it is available; that upon the disposition of that conference report the Senate immediately return to executive session for the purpose of completing action on the Rex Lee nomination. That is the request, Mr. President.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BAKER. I thank the Chair.

Now, Mr. President, I do now ask unanimous consent that the Senate go into executive session for the purpose of considering the nomination of Rex E. Lee, of Utah, to be Solicitor General of the United States.

Mr. LEAHY. Reserving the right to object, Mr. President, and I shall not object, I have a couple of housekeeping chores that will take me about 3 to 4 minutes. I was wondering if there was some way that that time could be accommodated.

Mr. BAKER. Yes, Mr. President, I am willing to do that now, if the Senator wishes.

The request has been granted, has it not, in respect to the first request, the authority to set aside the nomination?

The PRESIDING OFFICER (Mr. WARNER). The majority leader is correct.

Mr. BAKER. I withdraw temporarily my second request to accommodate the Senator from Vermont.

Mr. LEAHY. I have no objection to the Senator proceeding.

Mr. BAKER. I think the Senator ought to go ahead with his matter.

Mr. LEAHY. I appreciate the helpfulness of the majority leader.

STAFF RETURNS TO VERMONT DURING RECESSES

Mr. LEAHY. Mr. President, 4 years ago, I announced on the floor of the U.S. Senate that I was going to conduct an experiment. I announced I would send my entire Washington staff up to Vermont for the August recess to meet and talk with Vermonters so that my staff could get a firsthand account of how the Federal Government affected their lives. It was a firsthand chance to ask my constituents how things could be improved and what was important to them, be it of local and State, National, or international significance.

My idea for this experiment came from my own personal feeling and awareness that grew with each one of my more than 100 trips back to Vermont during my first 2 years. I found that, on many occasions, not surprisingly, people in Vermont thought differently from what the Washington "experts" and media reported to be the public consensus. They often had viable ideas that Washington "experts" had not even considered.

I found my trips back to Vermont to be so valuable that I decided to see how it would affect my staff. Well, that first August 1977 staff trip was so successful that I sent the staff back up two more times during my first term.

Because it is so valuable, I found it worked well to have the staff go back. We have done this now several times, Mr. President, over the period of years during the recesses, the August recesses especially but sometimes during the winter recesses when it gets down to 35 below zero in Vermont. It has worked very well.

For many of them it was a sacrifice for they were away from their families and had additional living expenses while traveling around the State. There were also long working hours, but they and I felt that this effort was important.

Not only did my staff experience the same renewal of commitment and determination that I did, but much of my work during my first term in the Senate grew out of those trips—preserving prime farm land, "Put-It-To-Congress," the Rural Policy Act, rural health clinics, the Vermont forest management demonstration, and economic revitalization.

We found that, not only was Vermont on the cutting edge of many emerging national domestic issues, but that Vermonters were already dealing with and finding solutions to many of these problems rather than just standing around talking about them. I believe it was this action, the ability to try out and to experiment with ideas, that we so often just see on two-dimensional pieces of paper in Washington, that make these trips back home so valuable.

Well, today I am announcing the first August trip of my second term. This weekend half of my Washington staff leaves to spend a week in Vermont, followed by the other half next week. The two groups will overlap 1 day, at which time I will meet with the entire staff from both my Vermont and Washington offices, and we will all have the opportunity to meet and talk as one.

The rest of the time, the Washington staff will travel around the State, often together with members of my Vermont staff, to visit with folks and to see, and hear, themselves, what the people think—how they think we should shape and mold our lives.

My staff will be visiting municipal utilities that are developing lowhead hydro, businessmen who are experiencing true entrepreneural spirit in developing, marketing and selling energy technologies. They will listen to providers of health care, men and women who are working together to maintain the specialness of Vermont's towns while creating new jobs and retail businesses.

These staff trips have proven successful in the past. And I think there is a need for the staff trip this summer more than ever before for a variety of reasons.

I shall spend the time with them wherever they go, doing everything from dealing with business people to environmentalists to alternative energy technologies. I think that is going to be well worthwhile because, first, and perhaps most importantly, the role of television has taken on a new level of involvement in the political process. More than 95 percent of all American households have televisions in their homes. While television has been an obvious fact of life for some 30 years now, its use this spring in conveying what was happening here in Washington was unprecedented.

Not only were people "out there" affected, we here in Washington were affected by what was reported by the "experts" to be the public consensus.

Second, the action in Congress of these last several weeks has resulted in monumental changes that we have not yet begun to fathom.

We have been targeted by the special interests, pressured by single-issue groups and had our arms twisted by professional lobbyists.

Mr. President, the time has come for me and my staff to go home once again and listen to Vermonters.

To my good friend from Tennessee, the majority leader, I assure him that I shall slip back into town at his call if he needs me at some point during that period. But, Mr. President, I assure him that with all due respect to the two leaders, who are both here, both of whom are two of my closest friends, I shall not miss them at that time. I shall be a lot happier to be in Vermont.

Mr. BAKER. Mr. President, I can tell my friend from Vermont—and indeed he is my friend—that not only do I hear him but I understand him. I understand the tug of his State; indeed, I feel that tug from my own. I am going to return to Tennessee and have opportunities to travel among the citizens of that State and enjoy some of the opportunities that I hope we have to rest and relax. I wish the Senator well in his similar pursuit.

Mr. LEAHY. I thank the majority leader.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering the nomination of Rex E. Lee of Utah to be Solicitor General of the United States.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I shall object on behalf of a Senator or Senators.

The PRESIDING OFFICER. Objection is heard.

Mr. BAKER. Mr. President, I thank the minority leader. Indeed, he advised me in advance, I wish the record to show, that it would be necessary to make that objection on behalf of a Senator or Senators. I express my gratitude to him for the courtesy he showed in this instance and that he always does.

In that case, Mr. President, it is my responsibility, I think, to move—and I do now move—that the Senate go into executive session for the purpose of considering the nomination of Rex E. Lee. Calendar Order No. 305 on today's Executive Calendar

Mr. ROBERT C. BYRD. Mr. President, that is a nondebatable motion, but I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. ROBERT C. BYRD. Does the distinguished majority leader maintain that it is in order to move to go into executive session to take up a nomination on the Executive Calendar that is not the first nominee on the calendar?

Mr. BAKER. Mr. President, the minority leader, who is an absolute oracle on the procedure of the Senate—indeed, who has laid the predicate for many of the precedents of the Senate in his own right and during his tenure as majority leader—understands and recalls. I regret to say, how many times I, as minority leader, took the contrary position and asserted as stoutly as I knew how that it was not in order to move to the consideration of a particular item on the Ex-

ecutive Calendar which was not the first item. But the minority leader will recall as well that he prevailed in those cases and established the precedent of the Senate to the contrary of my assertions. Now, Mr. President, in this present incarnation as majority leader, I see with blinding clarity the wisdom of his earlier action and the error of my previous ways.

Mr. MATHIAS. Will the majority leader yield on that point?

Mr. BAKER. Yes, Mr. President.

Mr. MATHIAS. It is just to observe as so many have observed before me that those who live by the sword die by the sword.

Mr. BAKER. Mr. President, it is my contention, as I believe it has been on previous occasions the contention of the distinguished minority leader, that it is in order to move to the consideration of a nomination on the calendar that is not the first nomination in sequence on that calendar.

Mr. ROBERT C. BYRD. Mr. President, may I take a moment to respond to the majority leader?

The PRESIDING OFFICER. The minority leader is recognized.

Mr. ROBERT C. BYRD. I think it is preeminently appropriate that the majority leader's motion be in order, that he move to take up a particular nomination on the Executive Calendar. I thought it was right when I was majority leader; I think it is right now that Mr. BAKER is doing a very able job as majority leader, so I am willing to let the matter rest there.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to and the Senate proceeded to the consideration of executive business.

DEPARTMENT OF JUSTICE

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate the nomination designated previously.

The PRESIDING OFFICER. The nomination will be stated.

The legislative clerk read the nomination of Rex E. Lee, of Utah, to be Solicitor General of the United States.

Mr. BAKER. Mr. President, may I inquire of the minority leader if it is possible to arrange a time agreement for the consideration of this nomination?

Mr. ROBERT C. BYRD. Mr. President, it is not possible at this time. I shall have to canvass further my side of the aisle At the moment, I must reluctantly say no.

Mr. BAKER. I thank the minority leader.

Mr. President, I yield the floor.

Mr. MATHIAS. Mr. President, Dean Rex E. Lee comes to the position of Solicitor General with eminent qualifications. He graduated first in his class from University of Chicago School of Law; he was the Assistant Attorney General of the Department of Justice Civil Division during the Ford administration; he is the dean of the J. Reuben Clark School of Law at Brigham Young University. He has received glowing professional praise from his past and present colleagues.

However, Dean Lee has been a very vocal opponent of the equal rights amendment. Careful review of his book on this subject, and his testimony before the Senate Judiciary Committee, has revealed to me that I have a very basic disagreement with Dean Lee on both the need for and the potential effect of the ERA. Dean Lee does not believe that the ERA is an appropriate vehicle for the achievement of equal rights for women.

Mr. President, I do believe that ERA is the appropriate vehicle for the achievement of equal rights for women.

The pro-ERA groups in this country believe that Dean Lee's opposition to the equal rights amendment is tantamount to being against true equality for men and women under law. That is what they believe. These groups, and many individuals across the country, have gotten in touch with my office to protest this nomination. I have not taken this protest lightly.

I also take notice of the fact that Dean Lee has given his unqualified assurance—and, Mr. President, I repeat that and I note that that is a direct quotation from Dean Lee—his "unqualified assurance" that he supports equality for all Americans, and that, should he be confirmed as our next Solicitor General, he will devote his energy and demonstrable talents as an advocate for all Americans, without discrimination of any kind by race, by color, by religion, or by sex. Mr. President, I accept those assurance and I shall support his nomination.

Mr. KENNEDY. Mr. President, I have given a great deal of thought to the nomination of Mr. Rex Lee for the important position of Solicitor General of the United States. I think that all of us in the Senate have a very keen awareness of the importance of this position in the formulation of national policy. It has been suggested that a solicitor general is a tenth member of the Supreme Court, and as I look back over my term in the Senate, I have seen firsthand the enormous influence that solicitor generals have had.

A solicitor general has an important voice in the determination of which cases will be brought to the Supreme Court of the United States. As the principal advocate of the Justice Department, he makes important decisions as to the presentation of issues before the Supreme Court.

Therefore, I believe that anyone who is going to serve in that important position should be sensitive to the basic and fundamental concerns of the people of this Nation.

It is inconceivable that we would vote for an individual to be solicitor general who is not fully committed to the elimination of racial discrimination, prejudice, and bigotry in this country. So, too, I believe it is important that we establish a clear standard against the confirmation of any individual not fully committed to the elimination of discrimination, bigotry, and prejudice based on sex.

I know that Mr. Lee has come here well recommended by our colleagues, Senator HATCH and Senator GARN, and by Wayne Owens, a former Congressman who has been a close personal friend of mine and in whom I have great confidence. During the course of hearings before the Senate Judiciary Committee, I had the opportunity to meet Mr. Lee, and I agree with my colleagues that he is a man of high integrity.

Yet, I can not support his nomination, because I believe he does not demonstrate adequate sensitivity to the problems which women face in this society. This is an issue of enormous importance. Time and again, in many different sections of this country. I have seen the injustices and the lost opportunities that exist in this society because of the failure to assure women the full protections of the law.

I respect Mr. Lee's opposition to the equal rights amendment. I took the opportunity over the July Fourth recess to read carefully his book on the ERA. I also studied closely the record of the law school where he was dean on the issue of the progress made on women's rights.

During the hearings, I was very much encouraged by my own personal exchange with Mr. Lee and his responsiveness on this issue. I hope that this hearing was also helpful to Mr. Lee in terms of his understanding of the concerns of women.

Nonetheless, I cannot in good conscience find that he has the sensitivity to women's issues which a solicitor general must have.

Mr. Lee says he believes in equal rights for women. But he cannot have a sufficient commitment if he is the leader of the opposition to the equal rights amendment, which I believe, is essential to the full attainment of those rights.

Mr. President, there have been those on the Senate Judiciary Committee, as well as other Members of this body, who claim we are setting a single-issue standard in opposing this nominee. I have strongly opposed the establishment of a single-issue standard, whether for a nominee to the Federal judiciary or a Cabinet official or even for elective office in this country.

We are a country of many different interests. We pride ourselves on a sense of pluralism. Whether we are talking about elective office, appointive office, or service on the judiciary, I believe it would be unfair to the individual and to the country if we were to establish a single-issue veto for any individual.

Having said that, I also feel that the failure of Mr. Lee to demonstrate his sensitivity on the issue of equal rights for women is not a single issue, because it is a majority issue. The majority of the people of this country are women.

The equal rights amendment, I believe, is critical to the elimination of barriers for women in our society who have been discriminated against since the early days of the Republic.

Mr. Lee has been an unyielding opponent of the equal rights amendment, not only in the preparation and development of his book, but also. in his continued lectures around the country. While I respect Mr. Lee's intellectual reservation that the ERA is not the appropriate way to achieve full rights for women in our society, he has not. to my satisfaction, ever demonstration by ac-

tion his personal commitment and sensitivity to equal opportunities for women. That may be an unfair judgment. I do not believe it is. I hope I will be proved wrong. But it is the conclusion I have reached after thoroughly examining his record.

Mr. President, Mr. Lee is a man with many admirable qualifications. However, given his past record, I cannot support his nomination. I voted against him in the Judiciary Committee, and I urge my colleagues in the Senate to oppose his nomination today.

Mr. METZENBAUM. Mr. President, I will vote against the nomination of Rex Lee to be the next Solicitor General of the United States, and I believe that my colleagues in the Senate are entitled to some explanation with respect to my reasons for this vote.

I agree with the distinguished Senator from Massachusetts that it is not a question of Mr. Lee's technical qualifications, because I believe everyone will agree that he is an able lawyer and he is well qualified to represent the United States in court. What I question, frankly, is his commitment and sensitivity to the advancement of equal rights and equal justice.

In Mr. Lee's nomination, we have a special kind of situation. He is even in a position different from that of a number of the judiciary. He is in the position of being hired as the attorney for the United States. As the Solicitor General, I believe we have a right to concern ourselves as to whether he would have anything less than full enthusiasm in connection with being an advocate in the Supreme Court.

His work in opposition to the equal rights amendment demonstrates a total lack of sympathy for and understanding of the need to guarantee equal rights for women under the Constitution.

During his tenure as the first and only dean of the Brigham Young University, he demonstrated no—and I emphasize "no," none, nothing—serious commitment at all to the advancement of women in his profession, either through admissions to the law school or through faculty appointments.

During his association with the Mountain States Legal Fund he actively participated in decisions to bring suits seeking to gain control of public resources for the benefit of private interests; and he participated in decisions to oppose efforts to secure equal rights for women and minorities.

I ask unanimous consent to have printed in the RECORD statements in opposition to the nomination of Mr. Lee from the National Education Association, the National Organization for Women, and the League of Women Voters.

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

STATEMENT OF THE NATIONAL EDUCATION ASSOCIATION ON THE NOMINATION OF REX E. LEE

THE NOMINATION OF SOLICITOR GENERAL-DESIGNATE REX E. LEE

The National Education Association, representing more than 1.7 million public school employees nationwide, has strong reservations over the nomination of Rex E. Lee to be Solicitor General of the United States.

The NEA is deeply concerned that Mr. Lee would not be able to override his expressed biases about the lives of one-half of America's population and treat the office of Solicitor General with the evenhandedness necessary to make sound judgments. We respectfully request that Mr. Lee's recent book[1] (which is generally unavailable at bookstores) be entered into the official record of this hearing.

FUNCTION OF THE SOLICITOR GENERAL

The office of Solicitor General is uniquely important to the enforcement of law. The fact that the United States Supreme Court grants certiorari in about 80 percent of the cases brought by the Solicitor General compared to roughly five percent for other attorneys demonstrates the sweeping respect provided the Solicitor General by the Justices of the U.S. Supreme Court. The Solicitor General's ability to intervene on behalf of the federal government in any case before the U.S. Supreme Court which has constitutional impact and the credibility traditionally assigned by the Court to that office's amici curiae exemplify the power and stature of the office.

Additionally, the Solicitor General has the authority to determine which cases to pursue and which to drop. The Solicitor General may concede error of the federal government and settle cases without adjudication. The choice of Solicitor General is critical to the legal and constitutional framework of the United States of America.

THE SOLICITOR GENERAL-DESIGNATE AND WOMEN'S RIGHTS

Mr. Lee is an outspoken opponent of the Equal Rights Amendment. His book, "A Lawyer Looks at the Equal Rights Amendment," demonstrates an unyielding opposition to the concept of guaranteeing equal rights for women under the Constitution. His entire book emphasizes a bias which is stated repeatedly and is summarized in this quote:

"Neither for this generation nor for those that will follow is it in our national interest to cut off debate on that issue by making unconstitutional government's power to prefer women."

The statement is astonishing and appalling. The corollary is that government has the power to prefer men. To NEA, government preference of one sex over the other, simply on the basis of sex, is completely unacceptable as the policy of this nation. Yet it is clearly Mr. Lee's bias.

The Equal Rights Amendment would provide the constitutional means to eradicate at least official governmental implementation of this bias and it is before the people for ratification. It is possible that issues surrounding ERA rescission and extension would come before Mr. Lee if he were confirmed as Solicitor General.

Mr. Lee states further the ERA is potentially a massive change while what is needed is government flexibility to deal with equality of women.

"Regardless of where we were ten years ago, or thirty years ago, or a hundred years ago, today we are at the fine-tuning stage. The need is for careful case-by-case examination of whether and to what extent men and women should be treated differently. A constitutional amendment, very simply, is not a fine-tuning instrument. It has more the qualities of a sledgehammer."

NEA disagrees. If equal treatment of American citizens depends upon flexibility, or to put it another way, governmental whim, there is no guarantee of equal rights for all persons—or for any—in the United States.

[1] *A Lawyer Looks at the Equal Rights Amendment*, Brigham Young University Press, Provo, Utah 1980.

CONCLUSION

Since Mr. Lee has chosen to take a strong public stand in opposition to the Equal Rights Amendment which will come before him if confirmed, he has effectively disqualified himself as Solicitor General and we respectfully ask that he withdraw himself from consideration. If he declines we urge the Committee to recommend disapproval of the nomination.

STATEMENT OF ELEANOR SMEAL

My name is Eleanor Smeal, and I am President of the National Organization for Women (NOW). As President of NOW, I represent 140,000 members nationwide. We are the largest membership organization in the United States dedicated to advancing the legal, economic, social, and political rights of women. We appreciate the opportunity to appear before the Committee today to express our opposition to the Administration's designee for Solicitor General of the United States: Dean Rex Lee of the Brigham Young University Law School.

Because NOW is regularly engaged in litigation in support of its goals of equal rights and opportunities for women, we are particularly aware of the importance of the office to which Dean Lee has been nominated. Other than a Justice of the Supreme Court, no one person has (or is capable of having) as great an impact upon the development of constitutional and federal law as is the Solicitor General. This is so because the Solicitor General is totally responsible for the conduct of litigation (and the establishment of litigation policy) of the United States before the Supreme Court. Indeed, the office of the Solicitor General is so highly respected by the members of the Court that it grants certiorari in 80 percent of all cases which the Solicitor General brings before it. Moreover, the Solicitor General's views are frequently requested by the Court in non-governmental cases raising constitutional and federal issues. The authority and responsibility of the Solicitor General are not limited to practice before the Supreme Court. All appeals filed by the United States (and by most of its agencies) must be approved expressly by him.

Because his authority is so pervasive, the Solicitor General is in a uniquely powerful position to influence the body of law concerning women's rights. NOW is seriously concerned that the nomination of Dean Lee will ultimately result in the substantial undermining of the progress for which we have fought so hard over the past decade. We believe that Dean Lee has demonstrated a significant bias (or extreme insensitivity to) equal rights for women. Our opposition is based principally on three factors: (1) Dean Lee's close association with the Mountain States Legal Foundation and its goals; (2) his record as dean of the Brigham Young University Law School, vis-a-vis women and minorities; and (3) his ill-conceived opposition to the Equal Rights Amendment.

Until his resignation last month (following announcement of his nomination), Dean Lee had been an active member of the Board of Litigation of the Mountain States Legal Foundation (MSLF).

The MSLF, which is a part of a network of organizations affiliated with the National Center for the Public Interest, acts as a "public interest" law firm espousing the economic views and political concerns of its large corporate contributors. Contributors include the Exxon Corporation, Adolf Coors Corporation, ASARCO, Inc., Phelps Dodge Corporation, and several utilities. Its former chairman, Joseph Coors, expressed the MSLF's mandate as being one designed to "meet the challenges made by the extreme environmentalists, no-growth advocates, and excessive government."

In keeping with its restricted view of the world, the great bulk of MSLF litigation (all of which Dean Lee has voted upon) seeks to gain control of public resources for the benefit of private interests and opposes the equal rights of women and minorities. Its position on issues important to women is demonstrated by the following:

The MSLF has sought to cripple Title IX by opposing the most effective means of its enforcement, the withholding of federal funds to institutions that will not promise to abide by its requirement of equality.

The MSLF has (in *Delio* v. *The University of Colorado Law School*) opposed all affirmative action and quota systems as being unconstitutional irrespective of prior discriminatory practice or the need to remedy them.

An MSLF affiliated foundation has opposed as unconstitutional EPA contract set-asides for women-owned businesses.

The most revealing position which the MSLF has taken is, of course, its challenge to Congress's 1978 extension of the time period for ratification of the Equal Rights Amendment and its support of the Idaho Legislature's attempted rescission of its ratification of the Amendment (*Idaho et. al.*, v. *Freeman et. al.*).

Organizations such as the Mountain States Legal Foundation do not litigate in a vacuum. They approach litigation with an overall strategy and purpose in mind. I am on the Board of such a foundation (the NOW Legal Defense and Education Fund), and this is how we choose our cases. When one looks at the MSLF's challenge to the ERA in the context of its other litigation and general philosophy of opposing women's rights, one can only conclude that the ERA litigation is far more than an abstract question dealing with amendatory procedure.

It is simply an overt attempt to frustrate the desires of millions of American women to obtain recognition of their equal rights in the fundamental governing document of our nation. Dean Lee's continued participation in the activities of the MSLF speaks volumes as to his lack of concern with or commitment to the rights of women. We cannot seriously expect from Dean Lee a commitment any different in substance or kind than that he has demonstrated through participation in the affairs of the MSLF.

As I have previously noted, the MSLF's major objective is to further the interests of its corporate contributors in opposing legitimate government activities in the enforcement of federal statutes and regulations. Dean Lee has not only identified himself with this organization and its affiliates, but, as a member of its Board of Litigation since its inception, has also worked to shape its anti-government policies. No one questions his right to do so as a lawyer and as a private citizen.

But, it is another matter to approve of his appointment to an office which has discretion to enforce the very statutes, regulations, and policies which he opposed and which remain the law of the land. It is a legitimate inquiry for this Committee to determine whether these circumstances render Rex Lee unfit to serve as Solicitor General.

We understand that Rex Lee has offered to rescue himself from several matters including the ERA ratification period case. However, he has not offered to withdraw from the large number of other cases in which the MSLF and its affiliates are involved.

Recusal, in any event, is not the solution since the ultimate responsibility for Supreme Court litigation is vested in the Solicitor General; all others in that office are subordinate and are under his direction and control. The propriety of Lee's participation in numerous cases stemming from his association with the MSLF will continue to arise. In this situation, recusal is not the solution; what is required is this Committee's disapproval.

Dean Lee's performance as the first and only dean of the Brigham Young University Law School also concerns us greatly. During his tenure he demonstrated no serious commitment to (or concern with) the development or advancement of women in his own profession. The percentage of women enrolled at his school appears to be the lowest in the nation, a mere 16 percent (73 women in a student body of 456 according to the law school admissions office). This rate is less than half the national average (33 percent). Only one woman is a member of the Brigham Young Law School faculty, 4 percent of the total. This figure contrasts poorly with the national average of 10 percent.

The record clearly shows that Dean Lee did little to recruit, provide support, or create an atmosphere conducive to women's participation in the Brigham Young University Law School. Dean Lee's writings further underscore our concern. In his book, "A Lawyer Looks At the Equal Rights Amendment," Lee seeks to give the impression that, notwithstanding his strong opposition to ERA, he actually favors equal rights for women but prefers to promote that objective through application of the equal protection clause of the 14th Amendment. Lee's judgment in this respect is so patently in error that it can only mask an actual bias against women's rights.

Lee asserts that he does not oppose the objectives of the ERA but fears that a separate amendment will create confusion and extensive litigation. Every major piece of legislation is productive of litigation and requires interpretation and application. Such a prospect has never been regarded as a sound reason for rejecting legislation, let alone a constitutional amendment.

Dean Lee's argument that women should rely upon the equal protection clause rather than the ERA cannot be equated with support for equal rights. Lee recognizes that gender, as a classification subject to judicial scrutiny, is only a recent development and that the concept of equal rights for women had been rejected through most of our constitutional history. *Reed* v. *Reed*, 404 U.S. 71 (1971); *Frontiero* v. *Richardson*, 411 U.S. 677 (1973); *Craig* v. *Boren*, 429 U.S. 190 (1976).

Since these decisions were rendered, the advancement of woman's rights has *not* been a matter of steady progress. Rather there has been virtual checkerboard of results and standards of review. Frequently, the results of woman's rights litigation are determined only by the vagaries of a particular group of judges or a narrow set of circumstances. On more than one occasion, the rights of women have failed to advance or have been set back.

In contrast to the uncertainty of standards applicable to sex discrimination issues under the Fourteenth Amendment, racial discrimination cases are decided generally on the basis of a single standard and receive the most stringent judicial review.

Surely, Dean Lee should have recognized that the ERA offers a far more consistent and predictable result than the patchwork of standards dealing with sex discrimination under the Fourteenth Amendment.

He should also have recognized that, regardless of ERA, litigation in the eighties on the issue of equal rights will be quite extensive. If litigation is not in the context of the ERA, it will be litigated under the vague standards applicable to the Fourteenth Amendment with its varying degrees of scrutiny and uncertainty of results. For these reasons there is good cause to question Lee's professed support for equal rights.

The testimony submitted on behalf of several women's legal rights group carefully analyzes Dean Lee's book on the ERA and points out its significant errors and distortions. We fully agree with these views. At first glance, his book appears to present a serious study. It is, however, by no means an objective appraisal. It is, in essence, a mass of error, omission, and distortion unworthy of a candidate for the position of Solicitor General of the United States.

Lee claims that adoption of the ERA may lead to the invalidation of rape laws or the promotion of homosexuality. His purpose in raising these matters is not to enlighten but rather to frighten and intimidate. Lee supports his views by relying almost exclusively upon the statements of hostile witnesses at Congressional hearings and the rejected views of opponents. He utterly disregards and ignores the clear and definitive legislative history contained in the Committee Reports.

One example of this distortion is Lee's discussion of the effect of the ERA on homosexual rights. While NOW opposes discrimination on the basis of sexual preference, the legislative history clearly states that ERA does not address this issue. In his book Lee relies upon a student law review note published subsequent to passage. The clear thrust of the debate on the Senate floor, however, was exactly to the contrary of the position he sought to support:

"The Equal Rights Amendment would not prohibit a State from saying that the institution of marriage would be prohibited to men partners. It would not prohibit a State from saying the institution of marriage would be prohibited from two women partners. All it says is that if a State legislature makes a judgment that it is wrong for a man to marry a man, then it must say it is wrong for a woman to marry a woman—or if a State says it is wrong for a woman to marry a woman, then it must say that it is wrong for a man to marry a man."

If Lee's statement about the implications of the ERA on homosexual rights were correct, Title VII of the Civil Rights Act of 1964 would prohibit discrimination in employment because of sexual preference. Laws prohibiting discrimination in housing and credit because of sex would also prohibit discrimination because of sexual preference. To our knowledge, no one has made such a claim; certainly, no court has reached this conclusion. Indeed, no court has ever interpreted a state ERA as requiring such results.

A second example of Lee's distortion is his suggestion that adoption of the ERA would invalidate rape laws. This claim is clearly controverted in the Committee Reports. As Senator Bayh noted:

"The Amendment will not invalidate laws which punish rape, for such laws are designed to protect women in a way they are uniformly distinct from men . . . that is one area in which I have agreement with the scholars who wrote that article when they said that rape laws would continue to be valid after the ratification of the equal rights amendment."

In our view, this selective approach to the use of legislative history not only demonstrates a lack of scholarship but, more importantly, evidences a basic hostility to the attainment of equal rights.

Dean Lee's discussion in his book of the application of the minimum wage laws to women requires special mention. He suggests that the principal beneficiaries of minimum wage laws are the more highly skilled workers because the only advantage that a "marginal unskilled" worker has is her willingness to work for less money. Lee then criticizes the minimum wage laws because they take away that so-called "advantage" of the "right" to work for less.

The minimum wage for all employees is the first step towards equality of economic opportunity. Indeed this principal has been a fundamental tenet of the economic system for almost 50 years. The current wage issues

facing the courts—such as the issue of comparable worth—have gone far beyond this basic principal. When one considers this development, Dean Lee's questioning of the need for minimum wage laws for women is extremely disquieting. It further discloses a fundamental bias against women's rights.

CONCLUSION

Dean Lee's record discloses a fundamental commitment to large corporate interests and an opposition to government's enforcement of statutes and regulations designed to serve the public interest. Most significantly—and despite his assertions to the contrary—this record also discloses an insensitivity to the advancement of women's rights. For these reasons, Dean Lee should not be confirmed as Solicitor General.

EQUAL RIGHTS FOR WOMEN

For nearly one hundred years American Women fought for the right to vote which was finally granted by passage of the 19th Amendment in 1920.

Since 1923 American Women have worked to extend full rights to female citizens through passage of the 27th Amendment which simply states:

"Equality of rights under law shall not be denied or abridged by the United States or any state on account of sex."

The Congress of the United States approved this amendment by substantial votes in the early 1970s. Since then thirty-five states, representing over 75 percent of the population of the country have ratified the amendment. 61 percent of the people of the United States support ratification of ERA (Yankelovich Poll, Time Magazine June 1, 1981).

The Equal Rights Amendment is supported because it is needed. Women have been, and continue to be discriminated against.

Full time working women earn 59 cents to every $1.00 men earn.

Women college graduates earn less than male high school drop outs.

Women, who constitute 70 percent of the teachers in our elementary and secondary schools, are 19 times less likely to be promoted to principal than male teachers.

Women on social security receive little more, on the average, than half of what men receive.

Until recently, and only because of the women's movement has there been a change, women found admission to professional schools unlikely except for the very few.

The right to credit, equal employment opportunities, equal pay, fair distribution of property on the dissolution of a marriage, etc. are rights only recently recognized, and in the case of property distribution it is the passage of State ERAs which has brought more equitable property distribution.

The inequalities in earnings continue and indeed the wage gap is growing. Laws dealing with equality of employment opportunity, equal pay for equal work, credit, etc. can be ignored, repealed with ease by Congress, or rendered pointless by the failure to appropriate funds to administer or enforce them. The only guarantee of the right to equality under the law is by Constitutional Amendment.

Rex E. Lee, in his book, "A Lawyer Looks At The Equal Rights Amendment" which was published in 1980, states most clearly his opposition to the Equal Rights Amendment. Furthermore, he writes in the book that the Fourteenth Amendment extends equality to women. On page 84, he refers to the Congressional hearings on the Equal Rights Amendment and states of those testifying:

"They wanted a Constitutional guarantee of equality for women. At the time, there was none. Today, there is."

Again on page 89 in discussing the Fourteenth Amendment he states, "Now there is a general guarantee of equality which extends to all groups, including women. . . ."

Dean Lee is, of course, entitled to his own opinion but the facts are that in case after case the Courts have held that sex is not a suspect class and have not extended the Fourteenth Amendment to cover discrimination on the basis of sex. In 1978 in Vorchheimer versus School District of Philadelphia, for instance, the Court allowed a public high school to refuse admission to a student solely on the basis of her sex.

In further arguments opposing the Equal Rights Amendment Lee holds that it is in the national interest for the government to have the flexibility to treat men and women differently. Should the Equal Rights Amendment pass, he argues, then it would be impossible to have a sub-minimum wage for women (such as proposed by the Reagan Administration for unemployed young people).

This could harm some women who would be unable to obtain jobs because they are not worth the minimum wage. On page 77 he states:

"What about the minimum wage laws for women? . . . In some cases, minimum wage laws in fact benefit the worker. In other cases, . . . the effect of minimum wages for women is not to protect the female worker . . . because such laws prohibit the employment of persons whose labor is worth less than minimum wage."

Having championed the cause of a sub-minimum wage for women, Lee then turns to the professional women and suggests that the Equal Rights Amendment will somehow interfere with affirmative action, or as he puts it will make "unconstitutional government's power to prefer women." Page 85:

"Many people have the perception that, within the last few years, appointments to federal and state judgeships and to important executive positions in government have favored women. That is, if the appointee had not been a woman, someone else more qualified would have been appointed."

Lee then explains why some believe affirmative action is proper and others do not. But, he says, "the important issue is not . . . which side in the debate is right. The real issue is the debate itself."

We totally disagree. The real issue is that more than half of all females 16 years of age and older held paid jobs in 1979; 52 percent of all wives hold jobs outside the home; 30 percent of married mothers with children under 6 worked in 1970; the figure in 1979 was 43 percent.

Women work for the same reason men do: Their paychecks. Over 50 percent of working women support themselves or their families. One of every nine women in the work force—about 5 million—is the only source of support for her family.

Despite the increased participation of and need for women workers, and despite the existence of federal and state equal employment opportunity laws, women are still victims of massive discriminatory practices. For example, in the federal government 78 percent of women workers are concentrated in jobs at GS–8 level or below. At the top of the government ladder (GS–16 and above) women hold only 6.6 percent of the positions while men hold 93.4 percent of these high paying jobs.

In the work force as a whole women are segregated in low-paying jobs. They are 99 percent of all secretaries, 98 percent of food service workers, 98 percent of household workers, and 71 percent of all elementary and secondary school teachers. The sex-segregation of women in the work force is a century-old story. That is the real issue for women, not some debate about affirmative action.

Dean Lee examines family law and the ERA and states that the ratification of the latter would eliminate the favoring of wives over husbands—the obligation of the father to support the family, criminal penalties in the case of desertion, alimony and child support in the case of divorce, etc.

The fact of the matter is that many wives are deserted or divorced and these homemakers, far from being protected under present laws, find themselves with no adequate economic means of survival and hence are relegated, with their children, to the welfare rolls.

The facts are that "marital property laws illustrate the persistence of sex bias against women. In Georgia, for example, a married couple's home belongs only to the husband, even when it has been paid for by the wife." (Statement on the Equal Rights Amendment, U.S. Civil Rights Commission, Dec. 1978). The Commission statement continues:

"Laws governing support and alimony during separation and after divorce are similarly illusory in the benefits they appear to confer upon women. The reality is that only 14 percent of divorced wives were awarded alimony in 1975 and that fewer than half were able to collect their payments regularly. Similar enforcement problems exist for collecting child support. A study tracing child support payments over 10 years showed that 62 percent of male parents failed to comply fully with court-ordered child support payments in the first year after the order, and 42 percent did not make even a single payment. By the 10th year, 79 percent were making no payments at all."

Not only does Dean Lee oppose the Equal Rights Amendment; he has shown his insensitivity to the whole question of women's rights.

The first and present dean of Brigham Young University's Law School, a school established in the early 70s, but not yet accredited by the Association of American Law Schools, Lee has apparently not been concerned about participation by women. The number of women enrolled in the school is the lowest in the nation and represents 11 percent of the student body compared to the national average of 33 percent. Moreover the faculty has only one woman member—4 percent of the total compared, to a national average of 10 percent.

In 1978 Lee headed a panel to recommend three to five names for federal district judges. The panel recommended five men.

There are many cases dealing with women's rights in the courts today. As these cases proceed, the Solicitor General will have to decide the government's position on many of them. As important as any is the case, recently argued in the U.S. District Court in Idaho, *State of Idaho, et al* v. *Freeman*, concerning the legality of the extension of time, voted by Congress, to ratify the Equal Rights Amendment, and the legality of rescission votes by state legislatures. The principal defendant in the case is the Department of Justice on behalf of the General Services Administration.

[Memorandum]

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES.
Washington, D.C., June 18, 1981.

To Senate Committee on the Judiciary.
From Ruth J. Hinerfeld, President; Ruth Robbins, Action Chair; and Lois Harrison, EPA Chair.
Re Nomination of Mr. Rex Lee for Solicitor General.

The League of Women Voters believes it is appropriate when considering a nominee for Solicitor General to take into account the legitimate concerns of groups and individuals who must depend on full and faithful implementation of the law.

We urge that in debating Mr. Rex Lee's nomination you take into account the following points: He has argued that women should not be as fully protected as men by minimum wage laws. He has suggested that affirmative action programs should not be used to correct the effects of past discrimination against women. As a law school dean, he presided over an admissions policy with the worst record in the nation for admitting women. And, he has made it clear he does not support equality of rights for women and men under the Constitution.

The League of Women Voters believes that to nominate someone with a record of this kind indicates disregard for the legitimate concerns of women throughout the country that their rights and interests be fully protected.

Mr. METZENBAUM. Mr. President, I wish my colleagues would take the time to review these statements, but I am realistic enough to understand that the nomination will come before the Senate within the next several moments and that you will have an opportunity to examine into those statements, but when three such prestigious, well-recognized, well-respected groups as these indicate their opposition, do it publicly, go on record, then one must pause and have reason for concern.

They detail the many positions Mr. Lee has taken which lead to the inescapable conclusion that he has no commitment to advancing the civil rights of women, blacks, hispanics, or any other group seeking to obtain their right to equal justice under the law.

Mr. President, I wish to say parenthetically in connection with the remarks of Senator KENNEDY from Massachusetts as to the question of is this a single issue vote, is this an opposition based upon a single issue, well there is much more than a single issue involved when we are talking about commitment to the rights of women, blacks, hispanics, and other minority groups. That is not a single issue. That is an issue that pervades more than 50 percent of the people in this country, and that is not a single issue.

Mr. President, this is one of the most significant nominations we will be considering. The position is such a powerful and influential one that the Solicitor General is frequently referred to as the "tenth justice." The Solicitor General represents the U.S. Government in all actions before the Supreme Court where the United States is a party.

The Solicitor General intervenes before the Supreme Court on any issue in which a significant Federal interest is involved, whether or not the Federal Government is a party and the Supreme Court often asks the Office of Solicitor General for its opinion on whether to accept jurisdiction over submitted appeals and petitions for certiorari.

So influential is the position that the court grants certiorari in 80 percent of all cases which the Solicitor General brings before it.

We must be confident that the person we charge with these tremendous responsibilities, the person who is speaking for the United States of America, the person who is our attorney, the attorney of everyone in this country, we must be certain that he or she is truly committed to securing the lawful rights of all of the American people.

No one questions Mr. Lee's right to take the positions he has as a private citizen or as a lawyer. But it is an entirely different matter to approve his appointment to an office having the discretion to enforce those statutes, regulations, and policies which he opposed and which are still the law of the land.

This is a time to send a message of support to women and minorities—a message telling them that they too have a right to equal justice under the law.

I simply cannot support the nomination of Mr. Lee for this high office, and I urge my colleagues to join me in opposing his nomination.

It is not easy to vote against the confirmation of any particular individual, but that is part of the advise and consent process.

Therefore, I urge my colleagues to join us in opposing his nomination.

Mr. President, it is my understanding that a rollcall has been agreed upon.

The PRESIDING OFFICER. The Senator is correct.

Who seeks recognition?

Mr. THURMOND. Mr. President, I rise today to state my support for Mr. Rex E. Lee, the nominee of President Reagan for the position of Solicitor General of the United States.

As Solicitor General, Mr. Lee will be responsible for representing the U.S. Government before the Supreme Court. He will decide which cases the Government should ask the Supreme Court to review, and he also will decide which position the Government should take before the Court. He will be called upon to supervise the preparation of Supreme Court briefs and other legal documents of the Government, as well as conduct oral arguments before the Court. The tasks facing Mr. Lee will be difficult, but he is well-equipped to meet them.

Mr. Lee attended Brigham Young University and, upon graduation in 1960, attended the University of Chicago Law School, where he graduated first in his class in 1963.

Mr. Lee distinguished himself as dean of the J. Reuben Clark Law School, Brigham Young University, from 1971 to 1975 and from 1977 to the present. His tenure as dean was interrupted in 1975 when he accepted the position of Assistant Attorney General, Civil Division, U.S. Department of Justice.

I am pleased to support such a qualified and capable individual as Mr. Rex Lee for appointment as Solicitor General of the United States, and I am confident that he will discharge the duties of this high office with courage and determination.

Mr. President, there has been some question raised about his sensitivity toward women and equal rights.

I received a communication from the Utah Association of Women sometime back and I at this time wish to present that. It reads this way:

The Utah Association of Women is a group representing over 1500 Utah women from all walks of life, who have joined together to study current issues of local and national interest.

During our study of the pros and cons of the proposed Equal Rights Amendment (ERA), Dean Rex Lee has been an invaluable source of experience and expertise. His knowledge of the history of discrimination against women, his understanding of its presence in our society today, and his views on how to eliminate it have been a deciding factor in the formation of our Association's Resolution on the Equal Rights Amendment.

We feel, as does Dean Lee, that the ERA is not an appropriate method for resolving women's problems, and choose to work for women's equality in other ways.

As our Association has carefully studied his book, "A Lawyer Looks at the Equal Rights Amendment," we have found it to be not a book against women's rights, but a close scrutiny of the effects of an Amendment to the Constitution based on case studies of past interpretations of the courts.

His objections to the ERA are based not on a desire to deny women equality, but on a desire to offer them all the rights and opportunities to which they are entitled and which the ERA denies them.

As his record clearly shows, Rex Lee is a champion of women's rights, and in our personal and professional dealings with him, he has been an exceptional example of this in every way. We wholeheartedly support his nomination as Solicitor General of the United States.

As I stated, Mr. President, this was a communication received from the Utah Association of Women, a group representing over 1,500 Utah women from all walks of life.

Mr. President, I have a letter that I received from Mr. Lee on July 2, 1981, which, I think, is also encouraging along the lines of sensitivity to the rights of women and minorities. I ask unanimous consent that this letter be printed in the RECORD at the conclusion of my remarks, along with a letter to me dated June 22, 1981, from Mary Anne Wood, associate professor of law.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, in closing, I just want to say that Mr. Lee possesses the personal qualities that I think are desired in a Solicitor General. He is a man of unquestioned character and integrity. He is a man of great ability, he is a man of courage, he has had experience in the Justice Department, he has especially high professional qualifications. I see no reason why anyone, if he really wants to be fair about this nomination, can oppose him.

Mr. Lee is the type of person who, I think, will make an excellent Solicitor General. He has the education, he has the experience, he has the personal qualities. He has been dean of a law school, assistant attorney general, and I do not know what more you could ask for in the way of qualifications in a man to hold the high position in judicial ranks or in legal ranks than those possessed by Mr. Lee.

I sincerely hope the Senate will approve this nomination promptly, and I predict that Mr. Lee will make one of the ablest Solicitors General that this country has ever had.

Mr. President, I yield the floor.

EXHIBIT 1

JULY 2, 1981.

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

DEAR MR. CHAIRMAN: I have been informed that some question has been raised concerning my sensitivity to the rights of women and minorities, and to matters concerning the environment and preservation of natural resources.

I give you my unqualified assurance that I regard these matters, the rights of women and minorities, and the preservation of natural resources and the environment as among the most important challenges that our Nation faces at the present time. If confirmed by the Senate I will vigorously support and defend those laws that strive for improvement in these areas, as well as the policies underlying those laws. Moreover, in reaching my decisions concerning positions to be taken in litigation before the courts, I will do so in light of the importance of these matters, because in my view they represent important values.

I attach a copy of a letter, which I am informed was sent to you as Chairman, and to Senators Hatch and Kennedy. The letter was written by my law school faculty colleague at Brigham Young University, Mary Ann Wood. I was not aware that the letter had been written until after it was sent, but I believe it gives some indication concerning my sensitivity to some of these matters.

I appreciate all the courtesies that have been extended to me by you and your staff, particularly Mr. Short.

Very truly yours,

REX E. LEE.

Attachment.

JUNE 22, 1981.

Senator STROM THURMOND,
Washington, D.C.

DEAR SENATOR: News reports of the confirmation hearings on Rex E. Lee's nomination as Solicitor General have left the disturbing impression that these hearings focused on Rex Lee's commitment to equality of opportunity for women. As a woman and a law professor at the J. Reuben Clark Law School for the past five years where Rex Lee has served as Dean, I believe I am in a unique position to assess Dean Lee's commitment to equality of rights for women, and I would like to go on record as stating that I have no doubts that Rex Lee will perform the duties of his office with skill and vigor and that he will do so fully committed to equality for all people, men and women.

Reasonable minds can differ about whether or not the Equal Rights Amendment is the most appropriate vehicle for achieving equality of rights for women in our society. Opposition to the Equal Rights Amendment, therefore, should not be viewed as opposition to women. Rex Lee's commitment to equality of opportunity for women should be judged by his record as a law school dean, not by his opposition to one particular mechanism for achieving equality for women. Having observed Rex's record as a dean, I think he has displayed an exemplary commitment to assisting women to enter the legal profession.

I have served on both our law school Admission's Committee and the Faculty Recruitment Committee and I am personally aware of how vigilant Rex's efforts have been to recruit women on both fronts. While at present only 16 percent of our student body are women, this represents a dramatic increase in the number of women who are entering our student body. From a number of 27 women in 1976, we have increased to 78 women currently enrolled in law school. This increase reflects considerable efforts by the Admissions Committee. Our efforts have been fully supported by Dean Lee. Because we draw students primarily from a unique cultural background, the increase reflects not just increased recruiting of women who were previously committed to law school, but has involved vigorous recruitment of women who have not considered law school as an option. In order to engage in this kind of recruiting, the Faculty Admissions Committee has sponsored frequent meetings, luncheons, and dinners for undergraduate women to appraise them of the possibilities for women in the law. Rex has been a tireless participant in these recruiting efforts. He has been a frequent speaker at recruitment meetings for women and a counselor to many women who are considering careers in the law.

With respect to recruiting women for teaching at our law school, the Faculty Appointments Committee has been equally vigorous. To date our efforts have not been as successful. Currently I am the only full time woman teacher of the law school. The plain fact of the matter is that there is a dearth of women in legal education generally. Out of a total of 4,225 full time law teachers in the United States, there are only 517 full time women teachers at 171 ABA approved law schools. I think these figures indicate that BYU is not unique. Nevertheless, with Dean Lee's support and the support of the whole faculty, we have and will continue to search for qualified women faculty members.

The number of women enrolled and the number of women employed at the law school, however, do not tell the full story. I have learned from conversations I have had with other women legal educators that many women feel isolated on their faculties. I have not shared these feelings. Rex has set a tone of collegiality and friendship on our faculty. As the only woman on the faculty, I have felt fully a part of everything that has gone on at the law school. Moreover, the processes which Rex has helped develop for tenure and advancement are fair and even-handed. I have known from the day I joined the faculty what expectations he and my colleagues had for my advancement. I further know that many women in legal education have not enjoyed this kind of openness on their faculties and have believed that the tenure and advancement process is a trap guaranteed to assure their failure. I was hired with the expectation that I would succeed as a law professor, and Rex and my colleagues have done everything to see that that expectation was met.

Rex is a superbly trained, experienced, and skillful advocate. He is a man of great personal warmth and integrity. He is an able administrator. As a colleague in the legal profession and as a woman, I can wholeheartedly endorse his nomination for Solicitor General of the United States.

Sincerely yours,

MARY ANNE WOOD,
Associate Professor of Law.

The PRESIDING OFFICER. Who seeks recognition?

Mrs. HAWKINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. Mr. President, it is my very great pleasure to rise in support of the nomination of Rex Lee to be the Solicitor General of the United States. This is a nomination which will bring distinction to the United States, and an exceptional quality to the legal actions in which the Government is involved.

Rex Lee has been outstanding all his life, having graduated first in his class at the University of Chicago Law School, having served as a law clerk to Justice Byron White at the Supreme Court, having practiced law in Arizona for 8 years, having been dean of the J. Reuben Clark Law School at Brigham Young University, he then came to Washington as an assistant attorney general in the Department of Justice. That experience will stand him in good stead in the position for which we will confirm him today. In addition to his private practice and academic experience, he does have considerable experience in the kind of legal work the Federal Government is involved in.

Following his service here, Dean Lee returned to BYU as the dean of the law school, where he remained until his nomination as Solicitor General.

Mr. President, I have a personal knowledge of the nominee, and I can testify that he is among the most scholarly and thoughtful of men. There has been some criticism of Dean Lee on the grounds that he opposes the equal rights amendment. In my view that criticism is misplaced. Sandra O'Connor reportedly supports the equal rights amendment. It would be just as wrong to oppose Rex Lee for opposing it as it would be to oppose Sandra O'Connor for supporting it.

Whatever his personal opinions, I am certain that Dean Lee will carefully and thoughtfully apply the canons of law and precedent to the legal questions the Solicitor must decide. In considering his writings, and after conversations with him, I conclude that his opposition to the ERA does not stem from any bias against women, as has been reported, but from serious concern about the ultimate impact of any such amendment on our fundamental social institutions. It is a concern which I share, I might add.

In testimony to this thoughtful approach, Mr. President, I would like to call as a witness Thomas L. Shaffer, professor of law at Washington and Lee University, and former dean of the Notre Dame Law School. Dean Shaffer wrote the foreword to Rex Lee's book examining the equal rights amendment. As a proponent of the amendment, Dean Shaffer found Lee's treatment of it lucid and thoughtful. It caused him to take another look at the ERA, and to recommend the book to anyone seriously interested in the question of equal rights for women.

Mr. President, I ask unanimous consent that the entire foreword to "A Lawyer Looks at the Equal Rights Amendment" be printed at this point in the RECORD.

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

A LAWYER LOOKS AT THE EQUAL RIGHTS AMENDMENT

A person from Mars, come down to contemplate the development of American government from 1776 to 1980, would stand in wonder before the process we Americans use to change our written Constitution. He would marvel at a bone pile of discarded proposals, and at amendments that, by common judicial consent, have come to mean nothing. And he would shake his head at the story of our attempts to impose grand canons of equality on one another.

There is, for instance, the Fifth Amendment, part of the original Bill of Rights. At first it seemed to protect citizens from all abuses of government. But in Andrew Jack-

son's day the United States Supreme Court justices thought so little of the provision that they were able to hold that it protected citizens from the abuses of only the federal government. Later, by contrast, the justices thought so much of the Fifth Amendment that they applied most of it to local and state governments and decided that the amendment, which says nothing about equality, requires the "equal protection" of citizens. Again and again the Court amended the amendment, even though its words were never changed.

And there is the post-Civil War Fourteenth Amendment, enacted to remove what federal judges came to call "the badges of slavery." The first judges held the Fourteenth Amendment inapplicable to most of the disabilities a former slave might be expected to encounter, but later the Fourteenth Amendment came to mean that virtually the entire Bill of Rights applies against local and state governments—and even against private associations thought to exercise the powers of local and state governments. Then the "equal protection" clause of the Fourteenth Amendment was read to condemn entirely the old American system of apartheid—a system it had earlier been read to permit. That clause has come to abolish distinctions based on race, but at the same time to permit—and maybe even require—distinctions aimed at remedying past discrimination based on race. And, finally, it has come to mean that no level of government can, without the gravest sort of justification, distinguish between men and women. It has come to be an equal rights amendment.

The visitor from Mars might then drop in on political meetings devoted to discussion of the real Equal Rights Amendments, a hardy old feminist Klaxon that has been blaring since the 1920s. One species of discussion involved the sorry history of the subjection of women in Anglo-American law. From this history, the visitor would learn that the time was in America—not so long ago, either—that a married woman did not in any significant sense control her own property. She could not vote, work for pay, borrow money, or practice a profession. The proposed cure—even though, given the Supreme Court's modern view of the Fourteenth Amendment, no cure is needed—is an apparently innocent, straightforward, lucid, short proposal to add an amendment to the Constitution which would forbid discrimination between the sexes. But our visitor would hear opponents of that proposal—acting from motives that are not always clear—suggest that the simple language of equality will result in a ban on rape laws and separate rest rooms for women and men, the legalization of public homosexual behavior, and the conscription of high-school girls into the infantry.

In view of such a history, and in the midst of such strident confusion, the visitor from Mars might ask, "Who can tell me, calmly, what all of this means?" And, chances are, Our Republic being what it is and what it has been, someone would say, "Talk to a good lawyer." Only lawyers can be expected to understand the way Americans amend their Constitution.

Dean Rex E. Lee's book is a good lawyer's answer to the questions of a visitor from Mars. It is, of course, a brief against the Equal Rights Amendment, but there is a difference between a good lawyer's brief and a political argument. I, who have been a supporter of the amendment, and who will continue to wear my ERA bracelet, if only out of habit, am impressed and disturbed by this book. I am persuaded that supporters of the amendment should have second thoughts about their support, and that opponents of the amendment will find in it the sort of balanced, rational lawyer's assessment that their party has so often done without. But no rational reader will put it lightly aside. To his brief Dean Lee brings years of experience in the private practice of law. He brings as well the battle scars from a substantial stint as assistant attorney general of the United States, served at a time (1975–77) when the Justice Department cried out for, and occasionally got, calm, able lawyers of his integrity and rationality. He brings also the reflection of the scholar's study and of the classroom. I am grateful to him, as a colleague, for demonstrating that on some issues, and particularly the most volatile issues of public law, the country occasionally can use a few words from a law professor.

Those who have argued for the Equal Rights Amendment will learn here that the "parade of horribles" assembled against it—the consequences of the amendment for legislation on rape and rest rooms, on homosexual behavior, on conscription, and all the rest—cannot be laughed away. We dare not laugh at the parade and then walk away—not if we have any respect at all for history. Proponents of the ERA may have to remember, as Dean Lee has forced me to remember, that no one can predict what federal judges will do with an innocent piece of constitutional language. No sensitive person can avoid a gulp when he remembers what they have done with the Fifth and Fourteenth amendments and with the right-of-privacy "penumbra" they thought they found in the Bill of Rights.

Dean Lee should cause proponents to take with new seriousness this question: Is a now largely symbolic amendment to the Constitution worth the risk of providing new ammunition to judicial power, which inevitably is—because it has so often been—capricious?

Those who argue against the amendment will find this book encouraging, but they may also learn from it to lower the volume on their arguments. Proponents and opponents alike will learn the difference—a difference our legal history has honored, from Daniel Webster's generation of constitutional advocates to Rex Lee's generation—between a political argument and a good lawyer's brief.

Mrs. HAWKINS. Mr. President, I am proud to support this nomination, and I am certain that Rex Lee will do the Nation proud as its Solicitor. He has already, as designee, successfully argued the Iranian claims case before the Supreme Court. Let us quickly confirm the nomination.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I rise to express my concern over the nomination of Dean Rex Lee to be Solicitor General of the United States. Numerous women's groups and civil rights groups have voiced their opposition to this nomination for a number of reasons, but principally because of the nominee's objection to the adoption of the equal rights amendment and his participation on the board of litigation in the Mountain States Foundation, which is an organization which has consistently involved itself in litigation in opposition to the enforcement provisions of Federal affirmative action policy.

In addition, this individual has gone on record in criticism of the minimum wage laws and a number of other things that are designed to provide some degree of equity in terms of equal opportunity in this Nation.

I think this is clearly one of those important nominations by the Reagan administration that sends a signal to the entire country as to whether there will be an evenhanded and forceful effort to try to see to it that justice is made available in real terms for all people in the United States.

I must say, based on an examination of the record in this case, that I share the concern that has been expressed by so many others. I think this nomination is not anywhere near the caliber of choice that otherwise would be available and that ought to be brought forward at this time.

So this is a nomination that I cannot support and one that I will not vote for, Nevertheless, this individual, I assume, will be confirmed today.

He certainly brings strong academic and employment credentials to his nomination. My hope would be that, once in this position, there be a broader sense of what the commitment and the responsibility of this job provides, and that is not to carry out some narrow set of personal views and not even to carry out some narrow set of partisan views or the views of an administration. The person who takes this position takes this in behalf of all 220 million Americans. So the obligation is to step up to the responsibility of fighting for and protecting the rights of all those people regardless of positions that this nominee may have taken in the past.

So my hope is that we will see that kind of change in attitude and behavior by this individual.

I am disappointed by this nomination. I think it falls far short of what we should be seeing. Therefore, I must vote "No" on this nomination.

The PRESIDING OFFICER. Who seeks recognition?

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I will be supporting the nomination of Rex Lee for Solicitor General. But I would like to express a hope that in his role as Solicitor General Mr. Lee will show a greater sensitivity and responsiveness to social needs than he has from his past record.

The PRESIDING OFFICER. Who seeks recognition?

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, it is my pleasure to support the appointment of Rex E. Lee to the office of Solicitor General of the United States. Mr. Lee has as distinguished an academic career as it is possible to have.

Formerly dean of the law school at Brigham Young University and a professor of constitutional law, he also served during the Ford administration as assistant attorney general in the civil division of the U.S. Department of Justice. He is a member of the bar of the U.S. Supreme Court, and obtained his degree at the University of Chicago Law School in 1963 after which he served as law clerk for Justice Byron R. White. Prior to his appointment as Solicitor General, he had argued several cases before the Supreme Court.

He is the author of "A Lawyer Looks at the Equal Rights Amendment" and "A Lawyer Looks at the Constitution," two books which have been acclaimed by legal scholars for their success in communicating legal ideas to a lay readership.

Perhaps the most telling evidence of this man's character and qualification for this appointment is his performance as the first dean of the law school of Brigham Young University in Provo, Utah. In a very short time he did the finest job anyone could imagine of putting together a law school which quickly became nationally known. He successfully attracted an outstanding faculty, which included some of the finest law professors in the country, and recruited top students.

Attorneys who routinely interview law students around the country have repeatedly been impressed with the quality of the legal education possessed by BYU law students. Then, after creating this institution which immediately became known as one of the Nation's finest, he modestly stepped down to resume his private practice.

Mr. President, Mr. Lee's experience uniquely qualifies him for his present appointment, and I strongly urge the support of my colleagues for this nomination.

Mr. HATCH. Mr. President, I wish to discuss briefly the dubious arguments being raised in opposition to the nomination of Dean Rex Lee to be the Solicitor General of the United States.

First, I hope this body will make short shrift of the rhetoric concerning Dean Lee's book, "A Lawyer Looks At The Equal Rights Amendment." The opinions offered by Dean Lee in this book are legal and constitutional ones. Many of them involve issues that have divided this body itself in the past.

The arguments for and against the proposed equal rights amendment were examined carefully in Dean Lee's book. Merely because an author raises an argument for or against some position does not mean the author subscribes to the argument. I am not impressed that the "women's" organizations that testified in opposition to this nomination in the Judiciary Committee found offensive some of the arguments suggested by Dean Lee in opposition to the equal rights amendment.

The arguments suggested in Dean Lee's book were a broad sampling of the arguments given for opposing the equal rights amendment, not necessarily Dean Lee's own concerns about the equal rights amendment. In fact, Dean Lee quite candidly voiced his major concern about the equal rights amendment at his confirmation hearing: The inability to know for certain what precise manner of limitation is placed upon the ability of National and State legislatures to legislate? What precisely does the language of the ERA mean?

Second, those who oppose this nomination on the grounds of Dean Lee's legal and constitutional opposition to the ERA have a limited understanding of the position for which Dean Lee has been nominated. The Solicitor General does not make substantive legal policy; the Solicitor General is merely the advocate for the Government's policy. As such he only makes litigational policy.

For example: In the Department of Justice, a case is initiated at the district court level with the approval of both the U.S. attorney and the departmental division having jurisdiction. A decision adverse to the Government in the district court is appealed to the circuit court with the approval of the department division having jurisdiction after consultation with the Solicitor General. If the circuit court decision is adverse to the Government, the Solicitor General, in consultation with the primary policymaker in the agency or department having jurisdiction, then decides whether or not to bring the appeal before the Supreme Court on a writ of certiorari.

To suggest that Dean Lee's personally held beliefs on a legal issue would affect his role as an advocate for the Government is an affront to his integrity that has no basis whatsoever. In fact, this point was clarified repeatedly during an exchange between Dean Lee and myself at his confirmation hearing. Dean Lee was most specific, in assuring the Judiciary Committee that his personally held beliefs, including his deeply held religious beliefs, would never interfere with his role as an advocate for the interests of the Government.

Third, it is argued that opposition to the ERA is indistinguishable from opposition to equal rights and equal opportunity. I have challenged any "women's" group, or any other organization, to show me a single statement made by Rex Lee in which he takes a position in opposition to equal rights for women, or any other group. I challenge his opponents in this body to do the same thing.

I am more than a little tired of hearing the same old refrain: "Well, if he's opposed to the ERA, he must be opposed to equal rights for women," or "If he's opposed to the ERA, he must be insensitive to discrimination against women." This argument wears thinner and thinner with each telling. Let us have some evidence, some documentation, something concrete to support the accusations being made with respect to Dean Lee's nomination.

Finally, it is argued that Dean Lee's record as dean of the J Reuben Clark Law School—Brigham Young University—with regard to his hiring practices there is somehow suspect. For the record I shall submit a letter by Prof. Mary Anne Wood of the law school.

I also remind my colleagues that Brigham Young University and its law school are private institutions. There are barriers which must be hurdled either before a student or a teacher becomes associated with the school. We have an honor code and dress code at BYU. We require abstention from alcohol, tobacco, tea, and coffee, among other things, in order to enjoy the privilege of teaching there There are other restrictions as well. I would ask my colleagues to recognize that not everyone is interested in teaching in such an environment. BYU is a unique institution, working under unique hiring constraints.

I strongly urge the nomination of Dean Rex Lee. I also ask unanimous consent that an article by N. La Verl Christensen be placed in the RECORD.

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

[ATTACHMENT I]

BRIGHAM YOUNG UNIVERSITY,
June 22, 1981.

HON. ORRIN G. HATCH,
Dirksen Building,
Washington, D.C.

DEAR SENATOR HATCH: News reports of the confirmation hearings on Rex E. Lee's nomination as Solicitor General have left the disturbing impression that these hearings focused on Rex Lee's commitment to equality of opportunity for women. As a woman and a law professor at the J. Reuben Clark Law School for the past five years where Rex Lee has served as Dean, I believe I am in a unique position to assess Dean Lee's commitment to equality of rights for women, and I would like to go on record as stating that I have no doubts that Rex Lee will perform the duties of his office with skill and vigor and that he will do so fully committed to equality for all people, men and women.

Reasonable minds can differ about whether or not the Equal Rights Amendment is the most appropriate vehicle for achieving equality of rights for women in our society. Opposition to the Equal Rights Amendment, therefore, should not be viewed as opposition to women. Rex Lee's commitment to equality of opportunity for women should be judged by his record as a law school dean, not by his opposition to one particular mechanism for achieving equality for women. Having observed Rex's record as a dean. I think he has displayed an exemplary commitment to assisting women to enter the legal profession.

I have served on both our law school Admissions Committee and the Faculty Recruitment Committee and I am personally aware of how vigilant Rex's efforts have been to recruit women on both fronts. While at present only 16 percent of our student body are women, this represents a dramatic increase in the number of women who are entering our student body. From a number of 27 women in 1976, we have increased to 78 women currently enrolled in law school. This increase reflects considerable efforts by the Admissions Committee. Our efforts have been fully supported by Dean Lee. Because we draw students primarily from a unique cultural background, the increase reflects not just increased recruiting of women who were previously committed to law school, but has involved vigorous recruitment of women who have not considered law school as an option. In order to engage in this kind of recruiting, the Faculty Admissions Committee has sponsored frequent meetings, luncheons, and dinners for undergraduate women to apprise them of the possibilities for women in the law. Rex has been a tireless participant in these recruiting efforts. He has been a frequent speaker at recruitment meetings for women and a counselor to many women who are considering careers in the law.

With respect to recruiting women for teaching at our law school, the Faculty Appointments Committee has been equally vigorous. To date our efforts have not been as successful. Currently I am the only full time woman teacher of the law school. The plain fact of the matter is that there is a dearth of women in legal education generally. Out of a total of 4,225 full time law teachers in the United States, there are only 517 full time women teachers at 171 ABA approved law schools. I think these figures indicate that BYU is not unique. Nevertheless, with Dean Lee's support and the support of the whole faculty, we have and will continue to search for qualified women faculty members.

The number of women enrolled and the number of women employed at the law

school, however, do not tell the full story. I have learned from conversations I have had with other women legal educators that many women feel isolated on their faculties. I have not shared these feelings. Rex has set a tone of collegiality and friendship on our faculty. As the only woman on the faculty, I have felt fully a part of everything that has gone on at the law school. Moreover, the processes which Rex has helped develop for tenure and advancement are fair and even-handed. I have known from the day I joined the faculty what expectations he and my colleagues had for my advancement. I further know that many women in legal education have not enjoyed this kind of openness on their faculties and have believed that the tenure and advancement process is a trap guaranteed to assure their failure. I was hired with the expectation that I would succeed as a law professor, and Rex and my colleagues have done everything to see that that expectation was met.

Rex is a superbly trained, experienced, and skillful advocate. He is a man of great personal warmth and integrity. He is an able administrator. As a colleague in the legal profession and as a woman, I can wholeheartedly endorse his nomination for Solicitor General of the United States.

Sincerely yours,

MARY ANNE WOOD,
Associate Professor of Law.

[ATTACHMENT II]

ERA DESERVES OUR SCRUTINY

(By N. LaVerl Christensen)

Should the ERA become part of the Constitution?

There's a better way to achieve equality while preserving desirable distinctions between the sexes, says Rex E. Lee, Dean of the Brigham Young University Law School and former assistant U.S. Attorney General.

In his book, "A Lawyer Looks at the Equal Rights Amendment" published recently by the BYU Press, Lee makes a strong case for "fine-tuning" present legal and legislative machinery in preference to the less flexible route of locking the rights question into a constitutional amendment.

Given the Supreme Court's modern-day view of the 14th Amendment's equal protection provisions, Lee says the approach should be a case-by-case adjustment of present laws and regulations under existing constitutional guarantees and authority to pass new laws.

In other words, he says, "The situation calls for a scalpel and not a sledgehammer." He reasons this way:

"By far the most inflexible source of law is a judicial decision interpreting a constitutional provision . . . If we are still at the stage when we need to feel our way, committed to equality in the large matters like employment and promotion opportunity, educational opportunity, political activity, and equal pay for equal work, but still uncertain about such things as the draft, military combat, and promiscuity in state college dormitories, then a constitutional amendment is the worst possible choice . . ."

Lee's volume outlines the history of the equal rights movement which first reached Congress in 1923; reviews congressional testimony of the early seventies; notes modern-day use of the 14th Amendments's equal protection language, and analyzes court cases on the subject.

The ERA proposal cleared the House of Representatives in 1971 and the Senate in 1972. The traditional seven-year period for ratification by the necessary 38 states expired March 22, 1979. In an unprecedented step, Congress extended the deadline to June 30, 1982.

Thirty-five states have ratified the proposal—22 of them in 1972, 8 in 1973, 3 in 1974, 1 in 1975, and the last one in January 1977.

Meantime, five state legislatures have voted to rescind ERA ratification. The legality of both the deadline extension and the rescissions has never been ruled on by the Supreme Court. Both issues are pending in a U.S. District court suit in Idaho, Lee notes.

Citing confusion over the "vague" language of the proposed 27th Amendment, Lee says proponents and opponents differ sharply on such questions as whether ERA would invalidate laws prohibiting homosexual relations, forcible rape, and intersexual occupancy of sleeping facilities in public institutions. "Concerning mandatory use of women in combat, even the proponents are in disagreement."

The truth, asserts the author, is that "neither during the present preratification period nor, if ratified, for decades after can anyone on this planet know what the ERA will mean."

An important question, he says, is the "standard of judicial review" which might range from "judicial scrutiny" to "absolutism." No one knows now what that standard will be, he declares, and even when it is identified, the people won't know what they've bought until new rulings and regulations are forthcoming through interpretation by nonelected jurists.

As assistant attorney general 1975–77, Lee headed the Justice Department Civil Division. He has been a practicing lawyer and for a time was clerk to Supreme Court Justice Byron R. White.

Thomas L. Shaffer, professor of law at Washington and Lee University and former dean of the Notre Dame Law School, writes the foreword to Lee's 140-page book and comments:

". . . I am persuaded that supporters of the amendment should have second thoughts about their support, and that opponents . . . will find it (the book) the sort of balanced, rational lawyer's assessment that their party has so often done without. But no rational reader will put it lightly aside."

Lee is a member of the LDS (Mormon) Church which has spoken out for women's rights but opposes ERA.

Mr. CRANSTON. Mr. President, I will vote against confirmation of Rex Lee to be Solicitor General of the United States.

The Solicitor General is the officer of the Deparment of Justice who argues for the U.S. Government before the Supreme Court. As such, he has a controlling voice in which cases will be appealed from lower court decisions. When it appears that departments and agencies will be making controversial decisions which are likely to be litigated, the Solicitor General is consulted. Consequently, the influence of the office of the Solicitor General over the Federal Government's politics is very extensive and often decisive.

Mr. Lee's nomination is vigorously opposed by many women's organizations because of his outspoken opposition to the equal rights amendment and on other issues affecting women and minority groups.

I note also that Mr. Lee was until May this year a member of the board of litigation of the Mountain States Legal Foundation. This is the organization formerly headed by Secretary of the Interior Watt and has as its stated purpose "to combat the presence (and success) of 'special interest groups'—such as environmentalists, no-growth advocates, and those who seek more Government control in the courts."

Mr. Lee's record of opposition to equal rights for women and of opposition to affirmative action programs to carry out our national commitment to end unfair discrimination in employment against women and minorities, does not merit the Senate's vote of approval.

Mr. DIXON. Mr. President, I intend to vote to confirm Rex Lee as Solicitor General of the United States, but I do so with considerable reservations. I have voted for almost all of President Reagan's nominees to executive branch positions, because I believe, in general, that a President is entitled to have people working for him that he is comfortable with, so long as they are qualified. I do not believe, as a general matter, that opposition to the philosophy of a nominee is, by itself sufficient reason to vote not to confirm a nominee.

However, I am concerned about Mr. Lee's seeming insensitivity on issues affecting the rights of women. I do not require him to support the equal rights amendment to the Constitution as a condition of holding office just because I support it, but I am troubled by the way he has dealt with that issue which is so important to so many women.

Women have been, and continue to be, discriminated against in the United States, and I believe this is an injustice that we all must work to correct. Women often do not receive equal pay for equal work; they face discrimination in employment opportunity. Government, also, does not always treat men and women equally. Women face real discrimination under the social security program, for example.

Unfortunately, Mr. Lee's record reflects a less than complete understanding of these facts. As dean of the Brigham Young University Law School, he seems to have had enormous difficulty finding qualified women, both for the student body and the faculty. BYU's percentage of female law students is less than half of the national average, and the school has only one woman faculty member.

He has argued against the equal rights amendment through the use of scare tactics, raising issues that have nothing to do with that worthy amendment.

Mr. President, the Solicitor General represents all Americans; it is disturbing that Mr. Lee seems to be insensitive to issues of importance to women in America. I am particularly concerned because this nomination seems to reflect a pattern of lack of concern on issues of importance to women on the part of the Reagan administration. The President has appointed fewer women to positions in Government than did the Carter administration, and the President, like his nominee for Solicitor General, is opposed to ERA.

I recognize that this nomination will be approved today, and as I stated before, I do not intend to vote against it. I do hope, however, that Mr. Lee, as he undertakes the duties of his new position, will recognize that his duty is to represent all Americans, and that any personal views he may hold will not be reflected in his approach to litigation on behalf of the United States. He must be above reproach in his attempt to represent all persons. I hope he will be.

Mr. PERCY. Mr. President, I intend

to vote to confirm Dean Rex E. Lee, the President's nominee for Solicitor General of the United States. His nomination has been reported to the Senate with the backing of the Senate Judiciary Committee. In addition, he has a distinguished background including service as Assistant Attorney General under my close personal friend, the former Attorney General and past president of the University of Chicago, Edward H. Levi. Mr. Lee, himself, is a graduate of the University of Chicago.

However, Mr. President, I share the concerns of those who have contacted my office over the past several days about Mr. Lee's position in regard to equal rights for women. The Solicitor General is in effect the attorney for the United States. This is an important and sensitive position. I am aware of his stated assurances that he supports equality for all Americans. But, Mr. President, I am reminded of that timeworn phrase, "actions speak louder than words." It is my sincere hope and desire that Dean Lee will conduct his responsibilities as the Office of Solicitor General with the utmost sensitivity to the concerns of those women in this country who sincerely question his commitment to full equality.

Mr. BIDEN. Mr. President, the nomination of Dean Rex Lee to be the next Solicitor General of the United States raises the question of the responsibility of each Senator in evaluating the qualifications of nominees.

I believe the factors we must consider to determine a nominee's qualifications are his or her professional skills, experience, objectivity, and personal integrity. An individual's personal views on a political issue are relevant only insofar as they affect those qualifications. To give personal views any greater weight, or to require a particular point of view would make nearly every intelligent outspoken individual unqualified from the point of view of many of my colleagues, who have a wide variety of strongly held views on religious and philosophical issues.

A number of individuals and groups concerned with the rights of women in this country voiced strong opposition to the nomination of Rex Lee. I believe their concerns are extremely important, particularly when they address the appointment of an individual to the Office of Solicitor General.

I gave a great deal of weight to their concerns as well as the views Dean Lee expressed to Chairman THURMOND on the issue of women's rights:

I give you my unqualified assurance that I regard these matters, the rights of women and minorities and the preservation of natural resources and the environment as among the most important challenges that our Nation faces at the present time. If confirmed by the Senate I will vigorously support and defend those laws that strive for improvement in these areas, as well as the policies underlying those laws. Moreover, in reaching my decisions concerning positions to be taken in litigation before the courts, I will do so in light of the importance of these matters, because in my view, they represent important values.

The Judiciary Committee must always encourage open and through discussion whenever there is opposition to a nominee—that discussion is particularly important when a nominee's position on the rights of individuals is questioned. I am certain that I will continue to be called upon to consider a nominee with whom I have philosophical or political differences.

Dean Rex Lee has demonstrated the professional skills and personal integrity necessary to the Office of Solicitor General. I believe he will represent the United States before the Supreme Court to the best of his legal ability, regardless of his personal or philosophical views on any issue.

Mr. HART. Mr. President, I oppose the nomination of Dean Rex Lee for the Office of Solicitor General.

My position has been not to oppose a nomination on policy grounds. The question here is one of more than disagreement on policy. I have supported other nominees whose policies and views I have opposed. But this nomination concerns fundamental constitutional rights. The Solicitor General is in a unique position of responsibility for insuring constitutional guarantees.

Dean Lee has consistently stated his strong opposition to the equal rights amendment. The purpose of the equal rights amendment, which I strongly support, is to acknowledge that women's rights are constitutional rights, and are as sacred and as deserving of protection from discrimination as those of men. I cannot support a nominee for this special position who is not committed to these constitutional rights.

Mr. BAUCUS. Mr. President, I wish to make a few brief comments concerning the nomination of Dean Rex Lee to be the next Solicitor General of the United States.

I recognize that this nomination has met with a good deal of opposition from organizations representing the rights of women around the country. These groups have serious concerns and their interest in this nomination is clearly warranted as the authority and responsibility of the Office of Solicitor General is substantial.

The members of this committee have an obligation to address the issues raised by the individuals and organizations that have opposed this nomination in our deliberations on Mr. Lee's appointment.

My concern when considering judicial appointments is primarily with the integrity and ability of the nominee. I expect to have philosophical differences with many nominees to judicial office in the future.

These differences are inevitable and I am sure that debates such as this will occur in this forum again.

However, when considering an appointment, I do insist that I be able to satisfy myself that the nominee's understanding of his role in the judicial system is sound and that his ability to serve the Government in this role is unquestioned.

As a result of my questioning both in the confirmation hearings and in a private meeting with Dean Lee, I am convinced that Dean Lee's sole duty and allegiance as Solicitor General would be to the U.S. Government. I am confident that his religious and personal views on any matter, including the equal rights amendment, would have no bearing on the legal positions that he represents.

An exchange that took place between Dean Lee and myself during the confirmation hearings clearly states this position.

Senator BAUCUS. Would you not have to recuse yourself in those cases involving the Equal Rights Amendment even where the church or the university is not a party?

Mr. LEE. Let me put it this way: The only case that I can perceive that would come before me as Solicitor General in the event confirmed involving the Equal Rights Amendment is the one that is now pending in Idaho. I have already identified that as one in which I would disqualify myself.

In the event the amendment were passed, I would be hesitant at this time to make any kind of a blanket qualification as to what I would or would not do.

Senator BAUCUS. You said earlier that your job is to be the advocate of the United States before the United States Supreme Court. Does that mean that in no instance would you advise the Court that a statute is unconstitutional, or that in no instance would you refuse to defend a statute on the grounds that it is unconstitutional?

Mr. LEE. That is a most relevant question to the performance of the responsibilities of Solicitor General. Only in the rarest of instances is it the responsibility of the Department of Justice or the Solicitor General in the discharge of his particular responsibilities to make the judgment that a statute is so clearly unconstitutional that he cannot defend its constitutionality. Apart from that extreme kind of instance, I think that the Solicitor General and the entire Department of Justice owe a heavy obligation to the deference of the Congress and the rest of Government whom they serve to defend the constitutionality of statutes that are passed.

While it is true that Dean Lee and myself have strong differences of opinion on many issues, the most prominent of which is the wisdom of the equal rights amendment, I am satisfied that he will execute the laws of the United States and the U.S. Constitution as they exist, not as he would like them to exist.

I am confident that he will represent the positions of the U.S. Government with integrity, even if the positions are not consistent with his own personal views. I am confident that Dean Lee will represent his client, the U.S. Government, to the best of his professional abilities.

Mr. LEVIN. Mr. President, I intend to vote in favor of the nomination of Rex Lee.

I disagree completely with his views on the ERA but I cannot say his position on ERA alone disqualifies him.

We have heard arguments that a nominee's position on abortion or gun control should disqualify him or her for appointment to important positions. I have argued against that approach.

To vote "no" on confirmation here would, to me, raise the question of applying a double standard.

I particularly feel this way in the absence of a committee report which set forth reasons in the record of Rex Lee, or in the confirmation proceedings, which disqualify him. In that way fairer consideration could be given to arguments that he is disqualified by reason of bias or other significant disqualifying factor.

Mr. MITCHELL. Mr. President, I rise to express my opposition to this nomination.

The post of Solicitor General of the United States imposes a responsibility in the litigation of cases before the Supreme Court and it places upon its holder a burden of openmindedness and fairness toward the various issues to which the U.S. Government is a party in a court of law. The Solicitor General's prestige and position assure that suits in which his office participates are given extremely high respect by the Supreme Court, his opinions are frequently solicited, and the litigation policy over which he presides sets the standard for most other Government agencies as well.

Clearly, the influence of this officeholder is broad and pervasive.

The office demands, therefore, a person whose individual preferences and preconceptions do not, on the face of them, discriminate against any sector of our society.

It is evident from Mr. Lee's own writings and his offer to excuse himself from suits involving the ERA that he does indeed hold opinions and preconceptions which discriminate against the majority of our population—women. The merits of a suit of law are determined in the courts—they ought not be predetermined by the prejudices of appointed officials. I am concerned that in this instance, Mr. Lee's predisposition to believe that affirmative action is needless and that the 14th amendment offers women all the legal protection they need would establish a predisposition on the part of his office to downplay, if not disregard suits involving discrimination on the basis of sex.

It is evident that the advancement of women's rights continues to depend, in large part, on the willingness of individuals and governments to bring suit in cases where discrimination continues to exist. To ignore this fact is to ignore much of recent litigation history. It would be completely at odds with the demands of the Solicitor General's office to place this position in the hands of an individual whose views are so at odds with the facts of contemporary court decisions and contemporary conditions.

I have supported many nominees whose personal opinions differed from mine. I would continue to do so, because it is the Senate's function to measure fitness for the post, not to pass on a nominee's personal opinions. But when those opinions and past actions based on them run counter to the very basic requirements of the position, it is impossible to ignore such personal opinions. I will, therefore, oppose this nomination.

Mr. CHAFEE. Mr. President, the position of Solicitor General, while not widely recognized, is an important one in our Federal system of government. The Solicitor General is responsible for setting policy and conducting litigation for the United States before the Supreme Court. All of the appeals filed by agencies of the U.S. Government must be approved by the Solicitor. In addition, the opinions of the Solicitor General are frequently requested by the Court in non-Government cases that raise constitutional or Federal issues.

Clearly, the Solicitor General is in a uniquely powerful position to influence laws that cover almost every aspect of American life. For this reason, it is extremely important that a solicitor be impartial and objective in his choice of cases, and that he have the knowledge, ability, and experience to litigate these cases effectively on behalf of the United States.

Certainly, Mr. Lee has shown the requisite knowledge of the law to litigate effectively. His previous work with the Department of Justice, as well as his activities in the private sector, speak well of him in this regard.

However, in the course of hearings before the Senate Judiciary Committee, some criticism was raised about Mr. Lee's record and positions, especially as they relate to women's issues. After carefully reviewing both these criticisms and Mr. Lee's record, it is my judgment that Mr. Lee merits confirmation by the Senate.

My support for his nomination, though, does not lessen concern for what his role will be as Solicitor regarding the rights of women in our society. Women still face discrimination in many areas of our society, for example:

Full-time workingwcmen earn 60 cents for each dollar earned by a man;

Women make up 70 percent of the teachers in our school system, but are 20 times less likely to be promoted to principal than a male teacher; and

Seventy-eight percent of the women in the Federal Government are in GS–8 levels or below.

There are many cases dealing with women's rights presently in the courts. These cases deal not only with the extension of time for ratification of the equal rights amendment or the legality of rescission votes by State legislatures, but with issues that go to the heart of this economic discrimination.

As elected representatives, members of this body have a direct and immediate interest in the performance of the Federal Government before the Supreme Court. With this statement, it is my intention to make sure that Mr. Lee is aware that, while myself and other Members of Congress do have concerns about his record in this regard, we anticipate that his actions as Solicitor will be sufficiently evenhanded to put these concerns to rest.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Rex E. Lee, of Utah, to be Solicitor General of the United States? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Idaho (Mr. MCCLURE), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Montana (Mr. MELCHER), and the Senator from Nebraska (Mr. ZORINSKY) are necessarily absent.

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

The result was announced—yeas 79, nays 15, as follows:

[Rollcall Vote No. 246 Ex.]

YEAS—79

Abdnor	East	Mattingly
Andrews	Exon	Murkowski
Armstrong	Ford	Nickles
Baker	Garn	Nunn
Baucus	Glenn	Packwood
Bentsen	Gorton	Pell
Biden	Grassley	Percy
Boren	Hatch	Pressler
Boschwitz	Hatfield	Pryor
Burdick	Hawkins	Quayle
Byrd, Harry F., Jr.	Hayakawa	Randolph
	Heflin	Roth
Byrd, Robert C.	Heinz	Rudman
Cannon	Helms	Sasser
Chafee	Huddleston	Schmitt
Chiles	Humphrey	Simpson
Cochran	Jackson	Specter
Cohen	Jepsen	Stafford
D'Amato	Johnston	Stennis
Danforth	Kassebaum	Stevens
DeConcini	Kasten	Symms
Denton	Laxalt	Thurmond
Dixon	Leahy	Tower
Dole	Levin	Wallop
Domenici	Long	Warner
Durenberger	Lugar	Williams
Eagleton	Mathias	

NAYS—15

Bradley	Inouye	Moynihan
Cranston	Kennedy	Proxmire
Dodd	Matsunaga	Riegle
Hart	Metzenbaum	Sarbanes
Hollings	Mitchell	Tsongas

NOT VOTING—6

Bumpers	McClure	Weicker
Goldwater	Melcher	Zorinsky

So the nomination was confirmed.

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

Mr. BAKER. 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 this nomination.

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

TIME LIMITATION AGREEMENT—BUDGET RECONCILIATION CONFERENCE REPORT

Mr. BAKER. Mr. President, I believe now we are ready to receive a message from the House on the reconciliation resolution. Before I do that, may I ask of the minority leader if it appears now if he is in a position to enter a unanimous-consent agreement for a time limitation consideration of that resolution?

Mr. RANDOLPH. Mr. President, the Senate is not in order.

The PRESIDING OFFICER (Mr. SYMMS). The Senator is correct. The Senate will be in order.

The majority leader is recognized.

Mr. BAKER. I thank the Chair.

Mr. President, may I inquire of the minority leader if he is in a position to consider a unanimous-consent request to limit the time for debate on the conference report on reconciliation?

Mr. ROBERT C. BYRD. Mr. President, I am. I thank the Chair, and I thank my distinguished senior colleague (Mr. RANDOLPH) for getting order in the Senate.

Mr. President, I think we ought to try for an hour equally divided on the reconciliation measure. I have been talking in terms of 2 hours, but I find that some of my colleagues over here would be discommoded if the matter were carried on that long. I suggest to the majority leader—and I have talked with the ranking manager and he has talked with the majority manager of the resolution and it seems that an hour equally divided might be sufficient time.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask unanimous consent that there be an hour equally divided for consideration of this conference report, to be under the control of the distinguished chairman of the Budget Committee (Mr. DOMENICI) and the distinguished ranking member (Mr. HOLLINGS) or their designees, with the additional condition that 10 minutes additional time be allocated to the distinguished Senator from Colorado (Mr. ARMSTRONG).

Mr. President, I modify the request by eliminating the 10-minute request on behalf of the Senator from Colorado, with the understanding, I believe, that he will be accommodated by the distinguished manager of the bill on behalf of the majority.

The PRESIDING OFFICER. Is there objection?

Mr. RIEGLE. Reserving the right to object, Mr. President. Let me inquire, if I may, of the majority leader. As he knows, the House passed H.R. 4331, which is the restoration of the minimum benefit on social security. Is that also here now, waiting to be presented to the Senate along with the reconciliation measure?

Mr. BAKER. Mr. President, I have not received the message from the House and I do not know. I assume both those measures will be delivered by the clerk to the Senate. Let us proceed on that assumption. I am fairly sure that is true.

Mr. RIEGLE. The indication that I have is that it is here as well and it is ready to be presented.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4331 in my own behalf and in behalf of Senator KENNEDY and a number of other Senators on this side who feel very strongly about it. I might say that the House today voted overwhelmingly—the vote was 404 to 20—to reestablish the minimum benefit on social security, not only for those now receiving it but to continue that benefit out into the future for beneficiaries who would become eligible for it. So the House is overwhelmingly on record today.

The President, as recently as last week, has said he intends to keep his promise that no one on social security is to lose their benefits.

So, it is my hope that the majority leader and the majority party will be able to allow this matter to come before the Senate today and be held at the desk and that we have an opportunity to vote on it.

The PRESIDING OFFICER. The majority leader has a request before the Senate.

Mr. BAKER. Yes, Mr. President, I do. But I am prepared to temporarily suspend my request if the Senator wishes to make that.

I had thought that we might get those messages here before we did it.

Since the Senator has made his request at this time, I will make my objection at this time to immediate consideration of that measure, if he wishes to deal with it in that way.

To answer the inquiry, I had anticipated, as the distinguished Senator from Michigan and I had discussed previously, as indeed I have with the minority leader, that when these two messages are received that, No. 1, on his request I would object and the matter would be referred, No. 2, that we will try to set a time for the consideration of the conference report and therefore that the time limitation that we are discussing now applies only to the conference report.

Mr. RIEGLE. Mr. President, let me say I am prepared at the appropriate time, whether it is now or whether it is after the two items are reported at the desk, to renew that request in my behalf and on behalf of a number of other Senators, that we have an opportunity to consider today the vote on this.

Mr. BAKER. Does the Senator wish to make that request at this time?

Mr. RIEGLE. I inquire would it be better that I do that now or does the Senator prefer that that be done after the measures have been reported?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Chair will advise that the majority leader has a unanimous-consent request before the Chamber.

Are there objections?

Mr. BAKER. Mr. President, I reserve the right to object on my own, and yield to the minority leader.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader simply get an order that the rights of the Senator from Michigan may be retained so that we can proceed to let the messenger in and proceed with the majority leader's request.

Mr. BAKER. I am prepared to do it either way. I think that is the more orderly procedure.

To make sure that the Senator from Michigan does not feel that he is giving up any rights, I ask unanimous consent that after the messages are received from the House of Representatives on these two measures the Senator from Michigan be recognized for the purpose of propounding a unanimous-consent request in respect to whichever one that is.

Mr. RIEGLE. Mr. President, I appreciate the courtesy of the majority leader. Will that also protect the rights—might I inquire of the majority leader—will that also protect the rights of other Senators? I know Senator KENNEDY wishes to speak on this measure, and I think Senator CHILES does as well. Will the majority leader's request accommodate the protection of their rights as well?

Mr. BAKER. Mr. President, I was distracted momentarily.

Mr. President, I am really not trying to deprive the Senator of any rights.

Mr. RIEGLE. I understand.

Mr. BAKER. Nor to complicate the issue.

Let me approach it from a different angle. I know what the Senator wishes to do, I believe. Why do we not simply make it in order by unanimous consent for him to propound that unanimous consent at this time, even before the incoming of that message?

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

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. Mr. President, there are Senators who are going to be discommoded because once we get into that discussion we may go for 10 or 15 minutes. May I suggest to the majority leader respectfully that he simply get an order protecting the rights of Mr. RIEGLE and others and let the messenger come on in and proceed with his request

for a time limitation on the reconciliation bill? Let us go ahead with the reconciliation resolution and then following that Mr. RIEGLE's rights would be protected. He could stand then as he stands now if that order were entered.

Mr. SARBANES. Mr. President, will it be possible for the majority leader to provide some time for unanimous-consent requests that I think the Senator from Michigan intends to make of—how much time, 10 or 15 minutes? Otherwise, the Senator could object immediately, and those who would at least want to indicate why they think the Senate should take up this measure have no opportunity to make that point.

Mr. BAKER. Mr. President, I have no problem with that, and assuming we can get on with the conference report because there are Senators who wish to vote on that conference report and get it out of the way.

I withdraw my previous request.

Mr. President, let me put another one:

If the Senator from Michigan will give me his attention just for a moment, Mr. President, I ask unanimous consent that after the incoming of the two messages from the House of Representatives, one dealing with the minimum social security benefits and the other with the conference report on reconciliation, that the Senator from Michigan be recognized for not to exceed 15 minutes in preparation for posing a unanimous-consent request that the minimum social security benefit measure be held at the desk and that with the full understanding that at the expiration of that time and when he makes the unanimous-consent request that I will object to the request and in addition to that that there be an hour equally divided for consideration of the other message from the House of Representatives, the conference report on reconciliation.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee?

Mr. RIEGLE. Mr. President, reserving the right to object, I appreciate the courtesy of the majority leader. I only wish to clarify so that it will be my intention after the 15 minutes in my unanimous-consent request to propose that the Senate proceed to the immediate consideration of H.R. 4331 just so we are clear on that point.

Mr. BAKER. All right.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, I will modify my request in that respect so that the Senator from Michigan will be recognized for the purpose of making a unanimous-consent request for the immediate consideration of that measure.

Mr. RIEGLE. And put that in the other end.

Mr. BAKER. And the other thing is we better have a little division of that time of 15 minutes of 10 to the Senator from Michigan or his designee and 5 minutes for the majority leader's designee.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I am trying to protect the Senators who need to get away from here and catch an airplane, and all I wish to do is preserve the rights which Mr. RIEGLE has at this moment.

May I ask the distinguished majority leads, Will he propound an order that will preserve those rights and let us get on with this message, dispose of it and then return to this matter so that the Senator from Michigan can exercise his rights?

Mr. BAKER. Mr. President, I think we can wrap this up right now with the further agreement that the 15 minutes allocated to the Senator from Michigan under this order and the rights we are protecting not accrue until after the disposition of the conference report.

Mr. RIEGLE. That will be acceptable to the Senator.

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

Mr. BAKER. I thank all Senators.

Mr. RIEGLE. I thank the Senator.

OMNIBUS RECONCILIATION ACT OF 1981—CONFERENCE REPORT

Mr. DOMENICI. Mr. President, I submit a report of the committee of conference on H.R. 3982 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3982) to provide for reconciliation pursuant to section 301 of the First Concurrent Resolution on the Budget for the fiscal year 1982, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of part II of the RECORD of July 29, 1981.)

Mr. BAKER. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays.

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

Mr. BAKER. Mr. President, I ask for the yeas and nays on the conference report on final passage.

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

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, I ask unanimous consent that members of the staff of the Committee on the Budget and of members of the Budget Committee whose names I shall submit at the desk be allowed to remain on the floor during consideration of and votes on H.R. 3982.

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

Mr. DOMENICI. Mr. President, I ask unanimous consent that the presence and use of small electronic calculators be permitted on the floor of the Senate during consideration of this measure.

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

Mr. DOMENICI. Mr. President, as I understand it the Senator from South Carolina has a half hour and I have a half hour.

Mr. HOLLINGS. That is correct.

Mr. DOMENICI. Mr. President, today I bring to the Senate floor the conference report on H.R. 3982, the omnibus reconciliation budget bill of 1981.

This bill is the culmination of more than 7 months' work by the Senate and House Budget Committees, and every committee of the Senate. And, the result of this unprecedented effort is the most historic effort at Federal spending restraint ever undertaken.

Because the committees of the Senate and House were willing to take a new course—to alter the business as usual approach of the past—this Nation's 1982 deficit will be $35.2 billion smaller than it otherwise would be. That is $35 billion that will not have to borrowed in the credit markets, and that is $35 billion that will not have to be printed by the Treasury.

During the next 3 years, this bill will save more than $130 billion, reducing pressure on inflation and allowing interest rates to drop.

A total of 14 Senate committees were given reconciliation instruction by the Congress earlier this year. And, all 14 have responded favorably. All 14 have used their independent judgments to make the cuts they thought wisest. All 14 have spent hours upon hours in hearings and markup and conference, insuring that this bill will be one of the most widely debated, carefully constructed bills in our history.

But, beyond the enormous effort this bill required, the entire reconciliation process has done two other crucial things: It has strengthened the legislative process and it has restored confidence in Congress among the American people.

Using reconciliation, the authorizing committees have been able to enact reforms that have languished for years. They have, using their special knowledge, refined more than 250 separate statutes. While some persons feared that reconciliation might produce faulty legislation, in fact, reconciliation has produced superior legislation, because of the central role of the authorizing committees and virtually every Member of this body. No other single bill in our history has involved so many Members of the Senate in such an intimate and prolonged manner.

Second, this bill silences all those critics who said that Congress simply would not change its decades-long spending habits. Congress has proven itself equal to the most onerous task it has faced since the end of the Vietnam war—cutting Federal spending across the board. This bill will do more to restore

confidence in Congress and the legislative process than any other single measure we may ever confront as Senators.

I will insert in the RECORD a summary of the individual committee decisions made during reconciliation, but let me give a few numbers that show the magnitude of the task and the great responsiveness of the committees involved. In the spring, we asked the committees to save $35.2 billion in 1982 outlays; and the reconciliation bill we have before us, indeed, saves $35.2 billion. We asked the committees to save almost $140 billion during a 3-year span, and, as of this accounting, they have saved about $130 billion, or 93 percent of the funds we asked them to save. We asked them to make changes in entitlements that would save about $40 billion during the next 3 years and, subject to later review, it appears that the changes in entitlements will save almost that amount.

Mr. President, this is more than success—this is a spectacular success achieved under the most difficult of legislative and time constraints.

On this occasion, which I believe is the highlight of my legislative career, I would like to thank the chairmen and ranking minority members of all the committees involved in this historic effort. Every one of you have been a part of this work; if you had not cooperated, if you had not taken the leap of faith in this work, we would not be here today. While all deserve great credit, I would be remiss if I did not single out Senator BOB DOLE of the Finance Committee, who managed the biggest tax cut bill in history on the Senate floor at the exact same time that he and his committee worked in conference to save the American taxpayers more than $9.3 billion in 1982 outlays and more than $29.8 billion during the next 3 years. The work of his committee and his committee staff in these two matters will stand the test of time when legislative competence is measured.

I also must thank and congratulate the work of Senator GARN, who concluded his most difficult and wide-sweeping Banking Committee conference earlier than almost any other committee chairman, making great changes in our housing and community development programs in the process; and, I offer my congratulations, too, to Senator HELMS and his staff on the Agriculture Committee; to Senator PACKWOOD and his staff on the Commerce Committee; to Senator MCCLURE and his staff on the Energy Committee; to Senator STAFFORD and his staff on the Environment and Public Works Committee; to Senator ROTH and his staff on the Governmental Affairs Committee; and to Senator HATCH and his staff on the Labor and Human Resources Committee, all for concluding multibillion-dollar conferences that entailed the most difficult changes in course in public spending.

In addition, I must commend the work of the chairmen and staffs of the Armed Services Committee, the Foreign Relations Committee, the Judiciary Committee, the Small Business Committee, the Veterans Committee, and the Indian Affairs Committee, for the excellent work they have done and for the changes in law that they have achieved. While the magnitude of the savings involved was not as great as some other committees, the reforms they have been able to achieve are an important part of the fiscal restraint package that we have fashioned. And, the conferences of which they were a part were often as contentious and difficult, and involved just as much member and staff time as other, larger, conferences.

Now, I must conclude on a few personal notes. This conference report would not be on the floor today, and, indeed, may not have ever been achieved without the constant help and advice, and the active support of, Senator HOWARD BAKER, our majority leader, and his staff. No one can ever realize the amount of work and the nature of the decisions he and his staff have made during this past 8 months.

In addition, I must thank Senator FRITZ HOLLINGS, my ranking minority member, for his leadership and his constant help and the help of his staff. Senator HOLLINGS chaired the Senate Budget Committee when the first reconciliation bill was finished last year and his pioneering efforts stood us in good stead during this difficult process this year.

Finally, I sincerely thank the staff of the Senate Budget Committee for the extraordinary work in has produced this year. I believe no committee staff has been under such public scrutiny as it has done its work in a matter of this magnitude and controversy. And, no staff has done a better job under such difficult circumstances.

It has been my privilege to manage this process. I must frankly confess my doubts—about the process and about my ability to manage it—during this past 8 months. That it has been concluded successfully is more a tribute to the process and to those who have helped at every turn than it is to any single individual.

Mr. President, I ask unanimous consent that a summary of the savings achieved and of the actions of the individual committees be printed in the RECORD at this time.

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

RECONCILIATION SUMMARY

[In millions of dollars]

Senate committee	Fiscal year 1981		Fiscal year 1982		Fiscal year 1983		Fiscal year 1984	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Agriculture, Nutrition, and Forestry:								
Conference agreement	−97	−146	−3,858	−4,677	−4,556	−5,382	−5,545	−6,268
Senate passed	−140	−163	−3,850	−4,167	−4,720	−4,560	−5,401	−5,254
Instruction to committee	−140	−163	−3,667	−4,024	−4,620	−4,443	−5,405	−5,246
Armed Services:								
Conference agreement	−68	−68	−846	−882	−767	−731	−374	−374
Senate passed	−233	−233	−966	−966	−899	−899	−511	−511
Instruction to committee	−233	−233	−966	−966	−899	−899	−511	−511
Banking, Housing, and Urban Affairs:								
Conference agreement	−5,799	−97	−15,703	−737	−18,918	−2,001	−21,918	−3,804
Senate passed	−5,991	−133	−13,779	−917	−18,883	−2,111	−22,774	−3,968
Instruction to committee	−5,846	−133	−14,498	−840	−17,450	−2,133	−20,341	−3,779
Commerce, Science, and Transportation:								
Conference agreement	+450	−25	−1,444	−1,001	−1,379	−1,016	−1,243	−1,160
Senate passed	+255	−25	−1,433	−1,129	−1,761	−1,127	−1,956	−1,640
Instruction to committee			−1,658	−984	−1,798	−1,528	−1,765	−1,637
Energy and Natural Resources:								
Conference agreement	−907	+113	−6,288	−5,139	−4,787	−5,438	−4,036	−4,161
Senate passed	−2,627	−98	−6,055	−5,483	−5,958	−5,890	−5,419	−5,254
Instruction to committee	−1,331	−94	−3,714	−3,398	−3,660	−3,627	−3,604	−3,711
Environment and Public Works:								
Conference agreement	−756		−4,551	−870	−2,545	−1,969	−3,129	−3,427
Senate passed	−2,351	−71	−5,001	−1,063	−3,069	−2,824	−3,710	−4,341
Instruction to committee	−2,350	−68	−4,835	−978	−3,035	−2,740	−3,500	−4,165
Finance:								
Conference agreement	−36	+424	−4,743	−9,352	−4,549	−9,862	−4,389	−10,668
Senate passed	−174	−282	−5,954	−9,506	−6,857	−10,903	−7,579	−12,227
Instruction to committee	−212	−286	−4,490	−9,330	−4,677	−10,876	−4,824	−11,766
Foreign Relations:								
Conference agreement	+518	+26	+563	−52	+763	−18	+702	+158
Senate passed			−268	−167	−340	−239	−306	−301
Instruction to committee			−250	−130	−275	−200	−300	−300

Senate committee	Fiscal year 1981		Fiscal year 1982		Fiscal year 1983		Fiscal year 1984	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlay
Governmental Affairs:								
Conference agreement			−4,745	−5,203	−6,309	−6,748	−7,286	−7,624
Senate passed			−4,776	−5,203	−6,360	−6,796	−7,462	−7,777
Instruction to committee			−4,776	−5,203	−6,360	−6,802	−7,462	−7,797
Judiciary:								
Conference agreement			−124	−35	−140	−107	−146	−131
Senate passed			−117	−39	−134	−105	−144	−128
Instruction to committee			−116	−13	−133	−81	−344	−124
Labor & Human Resources:								
Conference agreement	−33		−9,511	−6,288	−11,847	−10,080	−13,666	−13,222
Senate passed	−2,582	−508	−10,667	−8,733	−13,473	−12,070	−16,772	−15,370
Instruction to committee	−2,427	−463	−11,088	−8,800	−14,020	−12,464	−17,500	−16,057
Small Business:								
Conference agreement	−760	−131	−504	−823	−540	−517	−527	−506
Senate passed	−304	−67	−526	−582	−578	−541	−588	−533
Instruction to committee	−97	−67	−526	−390	−564	−541	−554	−533
Veterans Affairs:								
Conference agreement			−110	−116	−122	−127	−124	−128
Senate passed	−18	−18	−109	−109	−109	−115	−118	−123
Instruction to committee	−14	−14	−110	−110	−108	−108	−106	−106
Indian Affairs:								
Conference agreement			−36	−15	−38	−37	−40	−38
Senate passed								
Instruction to committee								
Grand total:								
Conference agreement	−7,488	+96	−51,900	−35,190	−55,734	−44,033	−61,721	−51,353
Senate passed	−14,165	−1,598	−53,501	−38,064	−63,141	−48,230	−72,740	−57,447
Instruction to committee	−12,650	−1,521	−50,694	−35,166	−57,599	−46,442	−66,016	−55,732
4-yr total:								
Conference agreement							−176,843	−130,480
Senate passed							−203,547	−145,339
Instruction to committee							−186,959	−138,861

1982 Reconciliation Highlights

Committee on Agriculture, Nutrition and Forestry

The conference agreement tightens eligibility and freezes increases in benefits for the Food Stamp program (outlay savings of $1.7 billion in FY 1982).

Interest subsidies and loan levels for Farmers Home Administration agricultural and rural development lending are reduced (outlay savings of $0.4 billion in FY 1982).

Restrict eligibility and reduce subsidies for the Child Nutrition programs (outlay savings of $1.5 billion in FY 1982).

Total personnel employed by the Department of Agriculture are to be cut by 6 percent (outlay savings of $0.2 billion in FY 1982).

Allows the phasing out of the farm storage facility loan program and directs the remaining loans to those areas of the country where a deficit in storage capacity exists (outlay savings of $0.1 billion in FY 1982).

Growth in the P.L. 480—Food for Peace Program is reduced (outlay savings of $0.1 billion in FY 1982).

Inspection and grading user fees are established or increased for cotton, tobacco, and grains (outlay savings of $49 million in FY 1982).

Committee on Armed Services

Provides for annual instead of twice-a-year cost-of-living adjustments for military retirees compared to previous twice-a-year adjustment (saving of $394 million in FY 1982 outlays).

Permits sale of surplus materials from the Strategic Stockpile of Critical Materials (results in offsetting receipts of $535 million in FY 1982).

Provides for open enrollment for the Survivor Benefit Plan for military personnel and retired personnel (savings of $37 million in FY 1982 outlays).

Committee on Banking, Housing and Urban Affairs

Reduces the level of funding for Community Assistance Grants (CDBG and UDAG) (saves $47 million in FY 1982 outlays and $940 million over three years).

Reduces budget authority for subsidized housing (Section 8 and public housing) by $11.6 billion in FY 1982. This still provides authority for 150,000 new subsidized housing commitments and reduces FY 1982 outlays by $116 million.

Reduces outlays in FY 1982 for rehabilitation loans by $160 million. The reduction was accomplished by repealing the FY 1982 authorization so that loans might only be made from proceeds available in the revolving loan fund.

Reduces FY 1982 outlays for the National Consumer Cooperative Bank by $132 million. This was accomplished by establishing the Bank as a private entity which will repay its initial capitalization.

Reduces outlays of the Export-Import Bank by $111 million FY 1982 through reduced authorizations for export loan credits.

Committee on Commerce, Science, and Transportation

Gives the Secretary of Transportation options to sell Conrail to the private sector and authorizes $262 million for operating subsidies and $385 million for labor protection payments (outlay savings of $0.3 billion for FY 1982).

Amtrak is authorized at $735 million for FY 1982 and $788 million for FY 1983. This would allow Amtrak to maintain 85 percent of existing services. (Outlay savings of $0.3 billion for FY 1982.)

Limits funds for Airport and Airway Development (ADAP) to $450 million for FY 1981 and $600 million for FY 1982, reducing contract authority for two years (outlay savings of $0.2 billion for FY 1982).

The Federal Communications Commission (FCC) is authorized at $80 million for each fiscal year 1982–84. For the Corporation of Public Broadcasting $130 million is authorized for each fiscal year 1984–86. Radio and T.V. licensing periods are also extended (outlay savings of $0.1 billion for FY 1982–84).

A two-year authorization is provided for the Consumer Product Safety Commission (CPSC). Provides for legislative veto for Congressional disapproval of CPSC safety regulations (outlay savings for 1982 are $13 million).

Eliminates FY 1982 ship construction subsidies and avoids new commitments for operating subsidies (outlay savings of $0.1 billion for FY 1982–84).

Committee on Energy and Natural Resources

Adopt caps for authorizations for the Department of Energy for 1982, 1983, and 1984 (outlay savings of $4.6 billion in FY 1982).

Pricing for enriched uranium would remain as in existing law.

The off-gas provision of the Fuel Use Act (sec 301(a)) was removed. This allows utilities to continue burning natural gas.

Department of Interior authorizations have been capped in FY 1982, 1983, and 1984 (outlay savings of $0.5 billion in FY 1982).

The Strategic Petroleum Reserve is placed off-budget.

Fossil energy construction and R & D were cut substantially, with the largest reductions in coal mining and preparation, synthetic fuels research, and other coal research and development programs (outlay savings of $0.5 billion in FY 1982).

Committee on Environment and Public Works

A two-year obligational ceiling is adopted for the Federal-aid Highway program, for FY 1982 and 1983 (outlay savings of $0.5 billion in FY 1982).

A three-year authorization cap is placed on Corps of Engineers construction funding (outlay savings of $0.1 billion in FY 1982).

An authorization ceiling of FY 1982 is provided for States to administer the 205(g) portion of EPA's construction grants program with an additional $2.4 billion authorized for the program in FY 1982 contingent upon reforms (outlay savings of $0.1 billion in FY 1982).

The Economic Development Administration is authorized at $290 million in FY 1982 including language which gives priority to those projects which are currently authorized and others in the pipeline. The Title V Regional Commissions are to be terminated at the end of FY 1981. (Outlay savings of $0.1 billion in FY 1982.)

An allowance of $92 million for FY 1981 funds is made for TVA's coal gasification plant at Murphy Hill Alabama with language prohibiting funding for the plant in FY 1982–84 (outlay savings of $0.4 billion in FY 1982–84).

COMMITTEE ON FINANCE

Deregulates social service programs through creation of a state-operated social services block grant. Saves $700 million in FY 1982 outlays.

Revises several social security benefits, especially those for students, persons who did not earn them and those claiming disabilities. More appropriate payment starting dates, rounding of minor amounts and cancellation of death benefit payments when no survivors exist contribute to projected savings. Extends present earnings limitations for one year. Helps move the system toward solvency. Saves $2.2 billion in FY 1982 outlays.

Improves income eligibility standards, work incentives and employment options in aid to families with dependent children (AFDC). Tightens Child Support Enforcement. Saves over $1.1 billion in FY 1982 outlays.

Reforms unemployment insurance and trade adjustment assistance. Benefits from these two programs will be coordinated and will encourage unemployed workers to return to the work force. FY 1982 outlay savings are $1.4 billion for unemployment compensation and $1.3 billion for trade adjustment assistance. States will begin to pay interest on borrowing from the Unemployment Trust Fund. Training for displaced workers is increased.

Restrains rapid increases in Federal health program costs. $890 million in 1982 Federal Medicaid outlays will be saved by giving States the incentive to control program increases. Estimated Medicare spending goes down by $1.5 billion in FY 1982 outlays through use of token copayments, new deductibles, and tighter administrative and co-insurance provisions.

COMMITTEE ON FOREIGN RELATIONS

Authorizes $3.24 billion over four years for the International Development Association (IDA), the World Bank's soft loan affiliate (no savings, but limits the FY 1983 appropriation to $0.9 billion rather than $1.8 billion as requested by the President).

Stretches out U.S. assessed payments to international organizations (savings of $73 million in FY 1982 outlays).

Authorizes $0.6 billion over six years for the World Bank.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Provides for annual instead of twice-a-year cost-of-living adjustments (COLA's) for retired Federal employees' pensions (savings of $513 million in FY 1982).

Limits Federal civilian pay raises to 4.8 percent in FY 1982, for savings of $3.7 billion in that year.

Limits the Federal payment to the Postal Service (savings of $879 million in FY 1982).

Limits Federal loans to the District of Columbia for capital improvements (savings of $40 million in FY 1982).

COMMITTEE ON THE JUDICIARY

Reduces the authorizations of appropriations for Indochinese refugee assistance and juvenile justice and delinquency prevention grants (savings of $31 million in FY 1982).

COMMITTEE ON LABOR AND HUMAN RESOURCES

Education.—Creates an elementary/secondary education block grant streamlining Federal support for education. Reauthorizes the Title I compensatory education program with little change. Enhances the State's role. Combines several small education grant programs and gives the States authority to administer the funds. Limits Impact Aid and Vocational Education authorization levels. Savings total $400 million in FY 1982 outlays.

Guaranteed Student Loans.—Reforms the Guaranteed Student Loan program. Students from families with incomes over $30,000 will only be able to borrow the amount of their financial need. Students from families with incomes under $30,000 may borrow the maximum amount. All students will be required to pay a loan origination fee of 5 percent of the value of the loan. These program reforms will save about $320 million in FY 1982 outlays.

CETA.—Eliminates funding for CETA public service employment under Title VI and Title II–D, resulting in savings of $3.8 billion in FY 1982 outlays. Provides funding for CETA training activities and programs for youth at reduced funding levels. $694 million in FY 1982 outlays will be saved in CETA.

Health Block Grants.—Creates three block grants which consolidate 14 categorical grant programs. These are: (1) Health Prevention and Services Block Grant, (2) Alcohol, Drug Abuse and Mental Health Block Grant, and (3) Primary Care Block Grant. The grants provide flexibility for States in administering programs as well as transition provisions to allow States and grantees time to adjust to the new consolidations. These block grants will save $101 million in fiscal year 1982 outlays.

Low Income Energy.—Holds current funding levels, saving $372 million in planned fiscal year 1982 outlay increases. Changes to a State run block grant program.

COMMITTEE ON SMALL BUSINESS

Raises the interest rates on SBA disaster loans to homeowners and businesses, restricts the amount of such loans to businesses to 85 percent of the uninsured loss, and limits loans to creditworthy business borrowers to a maximum term of three years (saving $600 million in fiscal year 1982);

Reduces SBA salaries and expenses by 10 percent annually.

Reduces direct and guaranteed business loan program levels, saving roughly $200 million in fiscal year 1982.

COMMITTEE ON VETERANS AFFAIRS

Restricts eligibility for burial benefits, eliminates the Educational Loan Program, eliminates flight training for new enrollees, reduces reimbursements for correspondence training, and limits eligibility for outpatient dental care. These provisions will result in savings of $116 million in fiscal year 1982.

SELECT COMMITTEE ON INDIAN AFFAIRS

Authorizes Indian education programs at the President's requested level saving $15 million in fiscal year 1982 outlays.

Mr. DOMENICI. I yield the floor at this time.

Mr. HOLLINGS. Mr. President, shortly, we will mark the culmination of one of the most historic periods in the history of Congress. On February 24, when the distinguished chairman of the Budget Committee, Senator DOMENICI and I introduced Senate Concurrent Resolution 9, which started the reconciliation process this year, we knew it would be a difficult task. The reconciliation resolution told Congress to reverse a spending course that we have been on for too many years. It directed the committees of Congress to begin cutting Federal spending, not in bits and pieces but by significant amounts.

As finally agreed to by both Houses, the reconciliation resolution instructed the committees to cut back spending by $35.2 billion in fiscal year 1982 and by a total of $138.9 billion through fiscal year 1984. And the committees responded. In the space of just a few weeks, the Senate passed a reconciliation bill that exceeded those targets. The Senate bill cut fiscal year 1982 spending by $38.1 billion and by $145.3 billion through fiscal year 1984. Now, just 1 month later, we have the conference report before us.

The conference agreement would save $35.2 billion in fiscal year 1982 and a total of $130.5 billion through fiscal year 1984. Getting these savings required extraordinary effort on the part of the 281 conferees from the House and Senate—the largest conference in the history of Congress—meeting in 58 subconferences.

The leadership of both Houses and on both sides of the aisle devoted countless hours to move the conferees along in order to produce what we have here today.

I especially commend the very distinguished chairman of the Budget Committee, Senator DOMENICI, for his truly tireless work in both getting us to conference and returning us safely from it. His dedication to the budget process and his efforts on its behalf have been instrumental in passing the reconciliation bill and bringing this conference agreement to us. He deserves our thanks and our gratitude for a difficult job well done.

Mr. President, as pleased as I am that we have made a historic break with the spending habits of the past, I am a little distressed that the results of the conference with the House yielded less savings than either the original reconciliation instruction or the Senate-passed bill. The conference agreement cuts $2.9 billion less than the Senate-passed bill in fiscal years 1982 and a total of $14.9 billion less through fiscal year 1984.

With the administration's tax bill that has passed both bodies, we are facing a series of staggering budget deficits on the order of $60 billion annually for the next few years, at least. A deficit-laden fiscal policy is not the way to restore the economic vitality to our Nation. It should be clear that this reconciliation bill is not the end, but rather a beginning step which must be followed by further cuts in 1983 and 1984 if we are to have any hope of nearing a balanced budget.

I have supported the significant cuts in Federal spending contained in the Senate-passed reconciliation bill. But I think additional cuts, beyond those made in the conference agreement, will be necessary.

One disturbing aspect of this agreement is the inclusion of provisions that are clearly extraneous to reconciliation. The Senate voted to remove provisions that had no connection to reconciliation and did not achieve any budget savings. The conference agreement not only restores some of these provisions but adds new ones, especially in the housing and communications areas.

Mr. President, this is not the purpose of reconciliation. Even though the Senate is on record opposing extraneous provisions on a reconciliation bill, they are in this bill. This is such a fundamental issue that stronger means, such as an amendment to the Budget Act, may be needed to keep this from happening in the future.

We all are aware of the importance of getting our economy moving on the right track. Unfortunately, the combination of the excessive tax reduction bill we passed on Wednesday and the reduced savings achieved by this reconciliation bill will make that task all the harder.

The past few months have not been easy ones, but the coming months promise to be even more difficult. We cannot escape the fact that the need for budget cuts does not disappear with the lost savings in this bill. If we do not make the cuts now, we must make them in the future—our economy will not wait long.

Mr. President, although we have lost some important savings, I fully support this conference agreement and urge my colleagues to vote for it.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of H.R. 3982, the Omnibus Budget Reconciliation Act of 1981.

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

SUMMARY OF H.R. 3982, THE OMNIBUS BUDGET RECONCILIATION ACT OF 1981

SUBCONFERENCE NO. 1

Senate Committee: Agriculture.
House Committee: Agriculture.

Agriculture Programs. On dairy price supports, the conferees deferred the issue by accepting the House position. The statement of managers, however, indicates that the final resolution of this issue will occur during the House-Senate conference on the Farm Bill.

Conferees also agreed on a number of small savings items by essentially receding to the House position on dairy and beekeeper indemnities, AMS payments to the states, fire protection grants, rural development grants, etc. In addition, the conferees accepted the Senate position on commodity inspection fees, grain reserve interest waiver, and the guaranteed access of the REA to the Federal Financing Bank. The conferees also compromised on a number of issues including the USDA personnel cap, the storage facility loan program, and the FmHA rural development loan.

Nutrition Programs. On the major issues of counting school lunches against children receiving food stamps and of increasing the benefit reduction rate, the conferees agreed to achieve savings through other provisions. The largest savings provisions included changes in indexing, prorating benefits, changing eligibility levels and instituting block grants for Puerto Rico.

SUBCONFERENCE NO. 2

Senate Committee: Agriculture.
House Committee: Agriculture and Foreign Affairs.

P.L. 480. The conference dropped the P.L. 480 Senate provisions to increase interest rates. The House Agriculture authorization level was agreed to for FY 1982 while the Senate and House Foreign Affairs levels were split for FY 1983–84.

SUBCONFERENCE NO. 3

Senate Committee: Agriculture and Energy.
House Committee: Agriculture and Interior.

Forest Service. The conferees agreed to the Senate's three-year cap on Forest Service programs.

SUBCONFERENCE NO. 4

Senate Committee: Environment and Public Works.
House Committee: Public Works and Transportation, Agriculture.

Water Policy. The conference agreement modifies the Senate language. It authorizes $12.5 million for the National Water Policy Board, if the board is subsequently authorized, and $24 million for other water resource planning and research activities.

SUBCONFERENCE NO. 5

Senate Committee: Agriculture.
House Committee: Agriculture.

Bankhead-Jones. The conferees agreed to drop this House provision. No provision was included in the Senate bill.

SUBCONFERENCE NO. 6

Senate Committee: Finance; Agriculture.
House Committee: Ways and Means; Agriculture.

SSI Cash-out of Food Stamps. The conferees agreed to continue allowing certain States to pay additional cash benefits to Supplemental Security Income recipients in lieu of food stamp benefits.

SUBCONFERENCE NO. 7

Senate Committee: Labor and Human Resources.
House Committee: Agriculture.

Second Morrill Act. The conferees agreed to drop the Senate reductions in funding for land grant colleges for black institutions.

SUBCONFERENCE NO. 8

Senate Committee: Agriculture and Energy.
House Committee: Agriculture and Energy and Commerce.

USDA Alcohol Fuels. The House receded to the Senate Agriculture Committee provisions to reduce the level of budget authority available for the Department of Agriculture alcohol fuels program.

SUBCONFERENCE NO. 9

Senate Committee: Environment and Public Works.
House Committee: Agriculture.

Rural Clean Water. The conference agreement deletes the House authorizations for the Rural Clean Water program.

SUBCONFERENCE NO. 10

Senate Committee: Armed Services.
House Committee: Armed Services.

Strategic Stockpile, Cost-of-living Allowances. The conference agreement includes the annualization of COLA benefits for military retirees and the sale of materials from the strategic stockpile. Also included are the House provisions for stockpile purchases and a plan for an open enrollment period for survivor benefits for military retirees who did not select the survivor benefits option when they retired.

SUBCONFERENCE NO. 11

Senate Committee: Banking, Housing and Urban Affairs.
House Committee: Banking, Finance and Urban Affairs.

The conference agreement includes, with few exceptions, the housing related extraneous provisions included in the Senate reconciliation bill. In addition, extraneous provisions that were contained in the House reconciliation bill have also been included. The majority of the authorizations in the bill are for only one year, thus requiring another annual housing and development authorization next year.

Issues of particular interest are discussed below.

Rent Control. The Senate receded to the House provision prohibiting flood insurance for undeveloped coastal barriers including islands and other coastal areas. However, the prohibition would not become effective for two years. Within one year, the Secretary of Interior must transmit to Congress a proposed list of the affected areas and recommendations for changes in the definition of coastal barrier. Exemptions are provided for wildlife refuges and sanctuaries.

National Consumer Co-Operative Bank (NCCB). The conferees agreed to convert the NCCB to private status by December 31, 1981, by exchanging Treasury held NCCB stock for equal shares of NCCB debt. This will place the bank off budget. The President would continue to appoint three members of a 15 member board. In addition, the NCCB would be Federally taxed as a co-operative, and exempt from state and local taxes (except real estate taxes). The independent Self-Help Development and Technical Assistance Office would be treated as a non-profit corporation.

Government National Mortgage Association (GNMA) Tandem Program. The conference agreement provides a $1.1 billion FY 1982 increase in GNMA mortgage purchase authority as contained in the House bill. The conference agreement is silent on the issue of program termination.

Federal Housing Administration (FHA) Insurance. The conference agreement extends for only one year the authority of the Secretary of HUD to insure mortgages or loans.

Subsidized Housing. The conference agreement provides authority for about 153,000 new units in FY 1982. It also maintains income eligibility levels at 80 percent of median income (existing practice), but specifies that no more than 5 percent of all newly obligated units may go to renters with incomes between 50 to 80 percent of the area median. Public housing operating subsidies were authorized at $1.5 billion; $0.3 billion above the level requested by the President and provided in the Senate-reported and House-passed HUD Appropriation bill for FY 1982.

UDAG. The conferees adopted the Senate provision which retained the Section 119 authorization for UDAG. The program level was reduced to $500 million annually for FY 1982 and 1983.

SUBCONFERENCE NO. 12

Senate Committee: Energy.
House Committee: Banking and Energy and Commerce.

Low Income Weatherization. Conferees agreed that $175 million of the $336 million allocated for state/local conservation activities be available for low income weatherization. The conferees also agreed to House provisions that building energy performance standards would be developed solely as voluntary guidelines for all buildings, except for federal buildings which would remain subject to mandatory standards.

SUBCONFERENCE NO. 13

Senate Committee: Energy.
House Committee: Banking.

Solar Bank. The conferences agreed to fund the Solar/Conservation Bank at $50 million per year for fiscal year 1982–84. The Senate reported bill authorized $50 million for FY 1982 while the House bill had $132 million annually for FY 1982–84.

SUBCOMMITTEE NO. 13A

Senate Committee: Foreign Relations.
House Committee: Banking, Finance and Urban Affairs.

International Development Association.

The conference agreement provides for an $850 million cap on appropriations for the IDA in FY 1982 which is the level requested by the President. Although this is outside the range of each reconciliation bill ($298 million in the House and zero in the Senate), the Senate has already passed a separate bill, S. 786, at the $850 million level proposed by the President.

The multiyear authorization for IDA requested by the President is for a total of $3.2 billion and covers three years FY 1981–83. The conferees agreed on a four year authorization at $3.2 billion.

SUBCONFERENCE NO. 14

Senate Committee: Governmental Affairs.

House Committee: District of Columbia.

DC Capital Loans. The conference agreement accepts the House bill provision to limit the amount of funds authorized for loans to the District of Columbia for capital projects to $155 million in each of fiscal years 1982 through 1984. The agreement also drops the House limitation on outlays.

SUBCONFERENCE NO. 15

Senate Committee: Labor and Human Resources.

House Committee: Education and Labor.

Elementary and Secondary Education. The conferees agreed to cut funding for elementary and secondary education by 10–15 percent and to consolidate a number of smaller programs into a block grant but continue education programs for the disadvantaged (Title I) and the handicapped as separate categorical programs.

Impact Aid. The conference agreement cuts impact aid by almost 50 percent by eliminating funding for schools on military bases, phasing out over three years funding for "B" children and targeting remaining funds on schools with a high proportion of "A" children.

Employment and Training. The conferees agreed to eliminate CETA public service employment (Reagan proposal). In addition, the conferees cut funding for CETA youth programs by one-third and cut the State Employment Service by about 10 percent. These are smaller reductions than those assumed by the President.

Higher Education. The conferees cut deeper than the Senate bill for Pell Grants but restored funds for guaranteed student loans. Students from families with incomes above $30,000 can qualify for GSL's only after passing a needs test.

Handicapped and other Social Service Programs. Vocational rehabilitation programs will continue at current policy funding and will not be incorporated in a social services block grant. Funding for Gallaudet College is just below the current policy level.

The conferees increased the authorization for Headstart to $950 million as in the Senate bill. Older Americans Act programs were continued at current policy. The Community Services Program, which was not included in the social services block grant, will continue at reduced funding levels through a separate block grant to the States.

FECA. The conference agreement makes no changes in the Federal Employees Compensation Act. The House had proposed cuts in this program.

SUBCONFERENCE NO. 16

Senate Committee: Agriculture.

House Committee: Education and Labor.

WIC. The conferees placed a cap on the WIC program at a level slightly higher than current policy for FY 1982 and at the current policy level for FY 1983 and FY 1984.

Child Nutrition. The conference agreement departs from the Administration's school lunch proposal by retaining subsidies for non-needy students. Non-needy students would receive a subsidy of 21.5 cents per lunch, about a 17-cent reduction from current policy. Free lunch subsidies are set less than current policy. Reduced price lunch subsidies are set at 40 cents less than the free lunch or 80.25 cents per lunch (this represents a 30.5 cents cut due to reconciliation). It is unlikely these cuts will result in the widespread program closings that were once a real possibility.

Other child nutrition savings are achieved by changing the manner and timing of inflation adjustments and sharply reducing or eliminating some programs such as special milk, summer feeding and nutrition education.

SUBCONFERENCE NO. 17

Senate Committee: Judiciary.

House Committee: Education and Labor.

Juvenile Justice Delinquency Prevention.—The House receded to the Senate authorization levels for the Juvenile Justice Delinquency Prevention Program (JJPD): $77 million for FY 1982. In addition, the conferees agreed to continue the JJPD Title III (Runaway and Homeless Youth Act) programs. However, administration of the Title III program would be transferred to ACTION.

Civil Rights Grants.—The conferees agreed to accept the House provision authorizing appropriations for Civil Rights Training Grants at $37.1 million for fiscal years 1982 through 1984.

SUBCONFERENCE NO. 18

Senate Committee: Labor and Human Resources.

House Committee: Education and Labor Energy and Commerce.

Black Lung.—The conferees agreed to drop the Senate proposal placing black lung clinics in a health services block grant.

SUBCONFERENCE NO. 19

Senate Committee: Finance; Labor and Human Resources; Judiciary.

House Committee: Ways and Means; Education anl Labor; Energy and Commerce.

Low Income Energy Assistance. The conferees agreed to authorize the low income energy assistance program at $1.875 billion in FY 1982—the same levels as the Senate bill. The FY 1981 funding level was $1.85 billion. The President had proposed consolidating this program into a block grant and cutting FY 1982 funding to $1.4 billion.

Social Services Block Grant. The conference agreement cuts funding for the block grant by approximately 15 percent rather than 25 percent. Child welfare services, foster care and adoption assistance programs are continued in their present form, and community services and vocational rehabilitation programs were not included in the block grant. The main program included in the social services block grant in Title XX which already is a block grant.

SUBCONFERENCE NO. 20

Senate Committee: Finance.

House Committee: Ways and Means; Education and Labor.

Black Lung Trust Fund. The conference agreement drops the House provision increasing the tax on all coal to $1 per ton.

Community Work Programs for AFDC. The conference agreement provides for a voluntary program for community work projects for AFDC recipients as included in both House and Senate bills.

SUBCONFERENCE NO. 21

Senate Committee: Labor and Human Resources.

House Committee: Education and Labor; Post Office and Civil Service.

Federal Employees Compensation Act. The conferees dropped the House provisions making significant changes in FECA.

SUBCONFERENCE NO. 22

Senate Committee: Indian Affairs.

House Committee: Education and Labor.

Indian Education. The conferees agreed to cut Indian education programs in 1982 by $36 million. This 10 percent reduction reflects the President's proposed level. The House version cut Indian education by $98 million in 1982; the Senate did not make cuts in this area.

SUBCONFERENCE NO. 23

Senate Committee: Commerce, Science and Transportation.

House Committee: Energy and Commerce/ Merchant Marine and Fisheries (for one provision).

Amtrak. The conference agreement adopts the House-Senate authorization level of $735 million for FY 1982 and a split of $788 million in FY 1983. The conferees also adopted a modified House provision which would allow Amtrak to defer approximately $182 million in FY 1982–83 interest payments to the Federal Financing Bank. The Conferees also agreed to change existing criteria which govern Amtrak's reduction of routes and service and to drop Senate changes to Amtrak's labor protection provisions.

Conrail. The conferees resolved differences in authorization levels by adopting the Senate provision of $400 million for labor separations, the House provision of $70 million for computer service transfer and a split of $262 million for operating subsidies. The conferees adopted a compromise on the determination of Conrail's profitability and the sale of the railroad either as an entity or in pieces. The conference agreement postpones any sale in pieces until at least November 30, 1983, a year later than the Senate provision. The conferees also agreed to repeal Conrail's existing and costly labor protection provisions and to provide expedited abandonment of uneconomic lines after 90-day notice.

Other Transportation. The conferees also compromised on a number of miscellaneous transportation provisions with little savings impact. One element of the agreement was to reduce expenses for the Office of the Secretary of Transportation by about 2 percent in FY 1982 and to monitor his official use of Coast Guard and FAA airplanes with the possibility of charging these expenses to his office rather than to either agency.

Communications. The conferees agreed to include several "extraneous" provisions as follows: extending radio station licenses to 7 years and TV licenses to 5 years, and prohibiting nuisance applications on license renewals. The conference did not include the FCC user fee provisions, but did include authorizations for the FCC at $80 million for FY 1982–84. For the Corporation for Public Broadcasting, the conferees adopted the higher House funding level, $130 million for FY 1984 through 1986.

Consumer Product Safety Commission. The conferees agreed to authorize the Consumer Product Safety Commission at $33 million in FY 1982 and $35 million for FY 1983. The conferees ordered the Commission to amend a 1979 rule regulating power lawn mowers and included a legislative veto provision for Congressional disapproval of CPSC rules.

SUBCONFERENCE NO. 24

Senate Committee: Energy.

House Committee: Energy and Commerce.

Strategic Petroleum Reserve. Conferees resolved minor differences with regard to the strategic petroleum reserve off-budget account, the energy conservation activities of the Department of Energy, and the regulatory and information functions of the Department.

In addition, the Senate receded to the House amendments to the Fuel Use Act to eliminate the natural gas outdoor lighting restrictions and the prohibition on industrial/utility burning of gas after the year 1990. Conferees also agreed that a plan to promote voluntary conservation of natural gas by utilities be included in the Fuel Use Act.

SUBCONFERENCE NO. 25

Senate Committee: Finance.

House Committee: Energy and Commerce.

Medicaid. The conference agreement drops the cap on medicaid payments and instead reduces federal reimbursements to States by 3% in FY 1982, 4% in FY 1983 and 4.5% in FY 1984. The reduction in the minimum match from 50% to 40% is dropped. The conferees also agreed to allow States to apply for waivers from HHS if they wish to limit freedom of choice for medicaid beneficiaries in selecting physicians and other providers.

Maternal and Child Health Block Grant. The conference agreement includes 7 programs in the maternal and child health block grant: Title V—Maternal and Child Health, hemophilia, lead paint poisoning, sudden infant death syndrome, adolescent pregnancy, SSI for disabled children, and genetic screening. The conferees split the difference in funding, providing about $365 million for the block grant. (Adolescent pregnancy program is also funded as a categorical program).

SUBCONFERENCE NO. 26

Senate Committee: Environment and Public Works.

House Committee: Energy and Commerce.

Noise Control and Toxic Substances. The conference agreement deletes the House provisions authorizing the noise control and toxic substances control programs.

SUBCONFERENCE NO. 27

Senate Committee: Labor and Human Resources.

House Committee: Energy and Commerce.

Health Block Grants: The conference agreement includes three health block grants:

Community Health Centers—placed in their own block grant called the primary care block grant. In FY 1982, community health centers will remain a categorical program ($280 million) with $2.5 million added for planning grants for the States. Beginning in FY 1983, States may take over administration of the program; existing community health centers would be protected for one year.

Preventive Health—contains 8 programs: health incentive grants, rape crisis centers, risk reduction and health education, rat control, flouridation, high blood pressure, emergency medical services, and home health.

Mental Health, Alcoholism and Drug Abuse—with targeting for each program.

The conference agreement also reauthorizes several categorical programs for three years: family planning, migrant health, venereal disease, childhood immunization, tuberculosis (new authorization), and adolescent pregnancy. The conferees also reauthorized the health professions education program for three years and the health planning program for one year. Several small programs, including HMOs and health services research were also reauthorized.

SUBCONFERENCE NO. 28

Senate Committee: Judiciary.

House Committee: Energy and Commerce.

Drug Enforcement Administration. The conferees accepted a technical House provision repealing an unnecessary, duplicate authorization for the Drug Enforcement Administration, which is contained in the Controlled Substances Act.

SUBCONFERENCE NO. 29

Senate Committee: Energy.

House Committee: Energy and Commerce and Interior.

Alaska Gas Pipeline. Conferees agreed to a compromise on the funding cap for the Federal Inspector of the Alaska Natural Gas Transportation System. In FY 1982 the number will be the level in the House-passed Interior Appropriations bill, H.R. 4035. In FY 1983–84 the number will be the House level.

SUBCONFERENCE NO. 30

Senate Committe: Environment and Public Works.

House Committee: Energy and Commerce, Interior and Insular Affairs.

Nuclear Regulatory Commission. The House receded to the Senate and agreed to strike the reauthorization for the Nuclear Regulatory Commission.

SUBCONFERENCE NO. 31

Senate Committee: Select Committee on Indian Affairs.

House Committee: Interior and Insular Affairs and Energy and Commerce.

Indian Health Service. The conference agreement contains no reduction in Indian health programs, as provided in the Senate bill.

SUBCONFERENCE NO. 32

Senate Committee: Energy.

House Committee: Energy and Commerce, Interior and Insular Affairs, and Science and Technology.

Department of Energy. The conferees accepted the Senate's DOE authorization and the DOE cap in FY 1982. However, in the outyears the established caps are approximately $400 million above the Senate caps. The fair value pricing of enriched uranium provisions were dropped by the House and the Senate energy targets were included in the conference agreement. However, the statement of managers states that these targets do not have legal force.

SUBCONFERENCE NO. 33

Senate Committee: Commerce, Science and Transportation.

House Committee: Energy and Commerce/Public Works and Transportation/Merchant Marine and Fisheries.

Department of Transportation. The conference agreement provides a compromise on provisions affecting the Office of the Secretary of Transportation research and development activities, planning funds, and general expenses. One element of the compromise was to reduce general expenses for the Office of the Secretary by 2 percent in FY 1982 and to monitor the Secretary's official use of Coast Guard and FAA airplanes with the possibility of charging these expenses to his office rather than to either agency.

SUBCONFERENCE NO. 34

Senate Committee: Environment and Public Works.

House Committee: Energy and Commerce, Public Works and Transportation.

Environmental Protection Agency. The conference agreement deletes the Senate's three-year limit on funding for EPA's abatement, control, and compliance and nonenergy research and development activities.

SUBCONFERENCE NO. 35

Senate Committee: Finance and Governmental Affairs.

House Committee: Ways and Means; Post Office and Civil Service; Energy and Commerce.

Federal Employees Health Benefit Coordination. The conferees agreed to drop the House provisions making Medicare the secondary payor of benefits for persons over age 65 who had Federal Employees Health Benefits coverage.

SUBCONFERENCE NO. 36

Senate Committee: Finance.

House Committee: Energy and Finance.

Medicare Physician Services. The conference agreement covered 23 provisions including pneumococcal vaccine, nutritional therapy, deductible levels, renal dialysis services, home health services, and other miscellaneous medicare services.

SUBCONFERENCE NO. 37

Senate Committee: Foreign Relations.

House Committee: Foreign Affairs.

International Organizations. The conference agreement provides for savings in several areas such as international organizations and conferences, voluntary contributions to international organizations, American schools and hospitals abroad, and small miscellaneous items. The agreement reached is essentially the Senate position.

SUBCONFERENCE NO. 38

Senate Committee: Governmental Affairs.

House Committee: Government Operations.

Travel and Consultants. The conference agreement requires the President to submit a rescission bill in FY 1982 to reduce the amount of funds which may be obligated for consultant services and special studies. The required reduction is $500 million below the Carter budget, less any savings achieved in appropriation bills by that time.

The conferees also included similar language regarding $100 million in travel savings. The Director of OMB is responsible for allocating the reduction but the cuts cannot come from funds used for debt collection, law enforcement or national defense.

Block Grants. The conferees modified title XVI of the House bill setting forth administrative and procedural requirements for States receiving block grant funds. The conference agreement requires that States prepare and make public a report on the distribution of funds, conduct public hearings, and audit the use of block grant funds. It also allows GAO access to records for the purpose of evaluating and reviewing the use of block grant funds.

SUBCONFERENCE NO. 39

Senate Committee: Energy and Environment.

House Committee: Interior and Insular Affairs.

Department of the Interior. The House receded to the Senate FY 1982 Department of Interior cap and the Senate receded to the House on the outyear caps. In addition, the Senate accepted the House provision that increases the filing fee for mineral land leases from $10 to $25 but rejected the provision to increase the acreage rental fee to $3 per acre. Conferees also resolved minor differences pertaining to the Pennsylvania Avenue Development Corporation and the Advisory Council on Historic Preservation, and included funding for the Holocaust Memorial Council.

SUBCONFERENCE NO. 40

Senate Committee: Environment and Public Works, Energy and Natural Resources.

House Committee: Interior and Insular Affairs, Public Works and Transportation.

Recreation Fees. The conference agreement adopts the Senate limitation on authorizations for the Corps of Engineers special recreation use fees in FY 1982–84.

SUBCONFERENCE NO. 41

Senate Committee: Select Committee on Indian Affairs.

House Committee: Interior and Insular Affairs.

Indian Relocation. The conferees dropped a House provision limiting the appropriations for the Navajo and Hopi Relocation Commission.

Note: There is no subconference 42 or 43.

SUBCONFERENCE NO. 44

Senate Committee: Judiciary.

House Committeee: Judiciary.

Indo-Chinese Refugee Assistance. The conference agreement drops those provisions of the Senate reconciliation bill reducing authorizations for Department of Justice activities. These authorizations are contained in the Senate-reported (S. 951) and House-passed (H.R. 3462) Department of Justice authorization.

The conferees agreed to accept the Senate's FY 1982 reduction in Indo-Chinese refugee assistance to $583 million and also

accepted for FY 1982 only, the Senate's reduction in authorization for salaries and expenses of the patent and trademark office.

SUBCONFERENCE NO. 45

Senate Committee: Labor and Human Resources.

House Committee: Judiciary.

Legal Services Corporation. The Senate receded to the House position, thus authorizing no funding within the reconciliation bill for the Legal Services Corporation in FY 1982 or beyond.

SUBCONFERENCE NO. 46

Senate Committee: Small Business, Judiciary.

House Committee: Small Business, Judiciary.

Equal Access to Justice. The House receded to the Senate and dropped the Equal Access to Justice provisions of Title XIII of the House bill.

SUBCONFERENCE NO. 47

Senate Committee: Commerce, Science and Transportation.

House Committee: Merchant Marine and Fisheries.

Maritime Administration. The conferees adopted a compromise on the minor House-Senate differences in the Maritime Administration authorization bill which left the Senate savings intact. The conferees adopted a modified House provision which, for 2 years (FY 1982–83), would allow U.S. vessel operators to build or reconstruct vessels in foreign shipyards and still be eligible for operating subsidies if: (1) construction differential subsidies (CDS) are insufficient; and (2) the President requests for FY 1983 at least $100 million in CDS, or proposes an alternative program that creates equal U.S. shipbuilding activity. The conferees did not adopt a House provision which would have deferred the obligation of FY 1981 funds for ship construction subsidies.

SUBCONFERENCE NO. 48

Senate Committee: Environment and Public Works.

House Committee: Merchant Marine and Fisheries, Public Works and Transportation.

Ocean Dumping. The conference agreement deletes the House provision imposing new fees on ocean dumping.

SUBCONFERENCE NO. 49

Senate Committee: Labor and Human Resources.

House Committee: Energy and Commerce, Merchant Marine and Fisheries.

Public Health Service Hospitals. The conference agreement adopts the House language on hospital closure.

Merchant Seamen. The conference agreement adopts the Senate position repealing the entitlement of merchant seamen to free health services.

SUBCONFERENCE NO. 50

Senate Committee: Governmental Affairs.

House Committee: Post Office and Civil Service.

Postal Service. The conferees agreed to reduce Postal Service authorizations close to the Senate-passed level, but reduced the authorization for subsidies for free and reduced rate mail to: $690 million in FY 1982, $708 million in FY 1983, and $760 million in FY 1984.

Offsetting reductions were taken in other areas, primarily the public services cost appropriation. The conferees also agreed to require six days mail delivery for fiscal years 1982 through 1984, as well as to delay implementation of the nine-digit ZIP Code until 1983.

Federal Civilian Pay Raises. The House accepted the Senate provision, thus dropping the outyear cap on pay raises, and accepting the 4.8 percent FY 1982 pay cap.

SUBCONFERENCE NO. 51

Senate Committee: Commerce, Science, and Transportation.

House Committee: Public Works and Transportation.

Aviation. The conference agreed to limit authorizations for expenditures from the Aviation Trust Fund for airport development and planning grants (formerly ADAP) to $450 million in FY 1981 and $600 million in FY 1982. The conference agreement adopted modification of the Senate position on highway safety direct spending/authorization levels and on limiting ICC salaries and expenses.

SUBCONFERENCE NO. 52

Senate Committee: Environment and Public Works.

House Committee: Public Works and Transportation.

Federal Aid Highways. The conferees split the differences between the House and Senate positions on the Federal-aid highway program by agreeing to a two-year obligation ceiling of $8.2 in fiscal year 1982 and $8.8 billion in fiscal year 1983. The Senate included a three-year ceiling.

Economic Development. The conferees included fiscal year 1982 authorizations of $290 million for the Economic Development Administration ($360 million in the House bill, $50 million in the Senate) and $215 million for the Appalachian Regional Commission. The ARC authorization provides $165 million for highways and $50 million for non-highway uses, as in the House bill.

Tennessee Valley Authority. The conference agreement allows TVA to spend $92 million in fiscal year 1981 funds on the Murphy Hill coal gasification plant, as provided in the House bill. However, no funds are authorized in fiscal year 1982–84 for the Murphy Hill project.

EPA Construction Grants. The conferees agreed to authorize $40 million for State management assistance of the EPA construction grant program in fiscal year 1982. The conference agreement retains a modification of the Senate language authorizing $2.4 billion in fiscal year 1982 for construction grants to States contingent on enactment of reform legislation.

Water Projects. The conference agreement adopted essentially the Senate's three-year limitation on authorizations for the Corps of Engineers water project construction.

SUBCONFERENCE NO. 53

Senate Committee: Banking, Housing, and Urban Affairs.

House Committee: Public Works and Transportation.

Mass Transit. The conferees agreed to the House provision for separate program authorizations with a modification to limit overall fiscal year 1982 authorizations for mass transit to $3.792 billion.

SUBCONFERENCE NO. 54

Senate Committee: Energy.

House Committee: Science and Technology.

Department of Energy Research. The conferees reached agreement on the Department of Energy research and development programs including fossil energy, solar, hydro, geothermal, nuclear fission, magnetic fusion, electric energy systems, general science and research, energy conservation and environmental research. For the most part, the authorizations for these programs reflect the House position. The conference agreement also authorizes $247 million for the Department of Energy administrative budget contained in this subconference.

SUBCONFERENCE NO. 55

Senate Committee: Labor and Human Resources.

House Committee: Science and Technology.

National Science Foundation. The conference agreement deletes the Senate's reductions in funding for the National Science Foundation.

SUBCONFERENCE NO. 56

Senate Committee: Small Business.

House Committee: Small Business.

Small Business Administration—The conference agreement provides regular authorizations for appropriations for the business and disaster loan programs. It also provides additional financing in FY 1982 for the SBA business loan programs through implementation of an "interest forgiveness" provision first authorized and used in FY 1981. The provision allows SBA to pass through to Treasury only the interest payments it receives from borrowers rather than the interest it would normally pay on its loan portfolio. The major features of the revised loan programs approved by the conferees are as follows:

Business loans. Targeted loan programs are consolidated into one major loan program with interest rates set at the prevailing market rates, but not less than the Treasury rate plus 1 percent.

Disaster loans. Interest rates are the same as the Farmer's Home Administration disaster loan program.

Homeowners:

unable to obtain credit elsewhere—interest rates of ½ the cost of money to the federal government, plus up to 1% at SBA's discretion, but not to exceed 8%.

able to obtain elsewhere—interest rate at the full cost of money to the federal government plus up to 1%.

Business:

unable to obtain credit elsewhere—8%.

able to obtain credit elsewhere—Administrator of SBA establishes interest rate after discussion with the Secretary of Agriculture, but not to exceed the rate prevailing in the private market and the maximum rate for SBA guaranteed loans.

Nunn/Pryor: The Senate reconciliation bill contained a provision (Nunn/Pryor) overruling regulations implemented by the Administration March 19 limiting SBA business disaster loans to 60% of actual loss and denying disaster loans to creditworthy businesses. The conferees agreed to require SBA to revise its action on pending applications and provide creditworthy borrowers loans at prevailing rates (for 85% of net loss) and to provide non-creditworthy borrowers loans at the rates in effect at the time the disaster commenced (for 100% of net loss).

SUBCONFERENCE NO. 57

Senate Committee: Veterans Affairs.

House Committee: Veterans Affairs.

Veterans Benefits. The conference agreement eliminates burial benefits for all veterans except those receiving compensation and/or pension benefits. The burial plot allowance was maintained. Benefits for flight training are eliminated and reimbursement for tuition for correspondence school courses was reduced from 70 percent to 55 percent. Certain reductions were also made in dental benefits and education loan programs.

SUBCONFERENCE NO. 58

Senate Committee: Finance.

House Committee: Ways and Means.

Social Security. The conference agreement eliminates the minimum benefit beginning in March 1982, phases-out student benefits beginning in the summer of 1982, ends the lump sum death benefit, terminates surviving parents' benefits when the youngest child reaches age 16, and makes changes in benefit formula rounding rules. Under disability insurance, a cap is imposed on total benefits a recipient may receive from federal, State, and local programs. Under SSI, reductions in the vocational rehabilitation program are made.

AFDC. The conference agreement includes tightening of eligibility, lowering of the amount of earnings that can be retained

without losing benefits, strengthening work requirements, limiting striker eligibility, improving reporting of earnings and accounting procedures, and improving child support collections activities.

Medicare. Under Medicare hospitalization, the conferees changed the deductible and coinsurance rates and the reimbursement levels for hospitals, repealed last year's delay in advance payments to States, and reduced the nursing differential bonus paid to hospitals. Changes in dental coverage, hospital interest depreciation, and $1 per day hospital copayments were dropped.

Trade Adjustment Assistance. The conferees agreed to reduce Trade Adjustment Assistance by 75 percent—the President's proposed level—by only paying benefits after regular unemployment insurance benefits are exhausted, limiting the combined UI/TAA payments to a total of 52 weeks and reducing benefit payment levels.

Unemployment Insurance. The conferees accepted most of the Senate's changes in unemployment compensation by terminating the national extended benefits trigger, requiring higher levels of unemployment for State triggers, and eliminating unemployment benefits for voluntary resignations from the military service. In addition, the conferees adopted an unemployment insurance loan reform package that allows States that have depleted their UI trust fund revenues to borrow federal funds at no interest through FY 1984 and at 10 percent thereafter.

CBO ESTIMATES OF CONFERENCE AGREEMENT RECONCILIATION SAVINGS, JULY 31, 1981

[In millions of dollars]

	Fiscal year—							
	1981		1982		1983		1984	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Subconference:								
1		−163	−2,164	−3,042	−2,689	−3,566	−3,551	−4,295
2			−132	−128	−199	−186	−224	−213
3	109	74	−94	−42	−94	−69	−93	−93
4			−9	−2	−10	−7	−12	−10
5								
6			−50	−50	−50	−50	−50	−50
7								
8	−65							
9								
10	−68	−68	−846	−882	−767	−731	−374	−374
11	−5,799	−97	−14,405	−539	−17,072	−1,291	−19,447	−2,449
12	−65		−5,597	−4,572	−4,619	−5,036	−3,715	−3,696
13	−1,000	−10	50	−46	50	−108	50	−102
13A	518	26	807	106	1,088	259	1,016	460
14			−39	−40	−56	−58	−72	−69
15	−33		−8,241	−5,499	−10,035	−8,454	−11,419	−11,073
16	−76		−1,474	−1,457	−1,579	−1,566	−1,682	−1,672
17			−52	−5	−70	−36	−87	−65
18								
19			−1,268	−1,189	−1,662	−1,647	−2,077	−2,054
20					−20	−20	−41	−41
21								
22			−36	−15	−38	−37	−40	−38
23			−746	−693	−901	−658	−713	−695
24[2]								
25			−1,222	−931	−1,051	−982	−942	−1,157
26								
27			−609	−207	−726	−555	−791	−716
28								
29	(1)	(1)	14	13	23	22	24	24
30								
31								
32[2]								
33			−21	−14	−23	−21	−25	−24
34								
35								
36		−1	−44	−45	−50	−518	−52	−707
37			−244	−158	−325	−277	−314	−302
38								
39	93	66	−699	−492	−183	−261	−340	−332
40			(1)	(1)	(1)	(1)	(1)	(1)
41								
44			−72	−30	−70	−71	−59	−66
45								
46								
47			−150	−14	−63	−33	−74	−62
48								
49			−92	−92	−179	−179	−191	−191
50			−4,705	−5,163	−6,253	−6,690	−7,214	−7,555
51	450	−25	−527	−280	−392	−301	−431	−379
52	−756		−4,542	−85[1]	−2,535	−1,962	−3,117	−3,417
53			−1,298	−198	−1,846	−710	−2,471	−1,355
54[2]								
55								
56	−760	−131	−501	−823	−540	−517	−527	−505
57			−110	−116	−122	−127	−121	−128
58	−36	425	−2,778	−7,268	−2,673	−7,487	−2,542	−7,951
Total	−7,488	96	−51,900	−35,190	−55,734	−41,033	−61,721	−51,353

[1] Less than $500,000.

[2] Savings estimates are included with subconference 12 estimates.

Mr. HOLLINGS. Mr. President, I have several Senators willing to put statements in.

Mr. DOMENICI. I am going to see on my side quickly what Senators want to be recognized and for how long.

How long does Senator CHAFEE need?

Mr. CHAFEE. Two minutes.

Mr. DOMENICI. Are there any other Senators who wish to be recognized?

I am aware of the Senator from Colorado. How long does the Senator from Washington require?

Mr. GORTON. Less than a minute.

Mr. DOMENICI. All right.

Mr. HOLLINGS. Mr. President, I yield now to the distinguished Senator from Washington.

Mr. JACKSON. Mr. President, I am deeply troubled by one of the provisions contained in the bill before us today.

The House-passed bill included language providing that no funds are to be made available for the Youth Conservation Corps for fiscal years 1982, 1983, and 1984. The Senate-passed version included no such prohibition.

Although the YCC is funded through the Departments of the Interior and Agriculture, jurisdiction over the program in the House rests with the Education and Labor Committee.

Under the procedure pursuant to which the House Budget Committee "scored" savings, the Education and Labor Committee was credited with some $160 million of savings for eliminating the YCC program.

Under this process, these savings occur even though the agreement reached between the Senate Energy and Natural Resources Committee and the House Interior Committee includes no such prohibition on funding.

The result of all this, Mr. President, is that in order to ensure funds for the YCC, the conferees would have had to make additional reductions in other youth employment programs within the jurisdiction of the House Education and Labor Committee.

Pursuant to earlier agreements worked out between the House Committee and the Senate Labor and Human Resources Committee, these programs have already been cut drastically and further cuts in these programs to provide money for YCC were unacceptable to these conferees. Consequently, the House language was retained and the program capped at "zero" in fiscal year 1982, 1983, and 1984.

In my view, this action, which is strongly supported by the administration, is shortsighted and not in the best interest of the youth of the country or our priceless natural resources. The YCC is a unique program, one which benefits both those who participate in it—approximately 40,000 since 1977—and the parks, wildlife refuges, recreation areas and other public lands where the YCC projects are located.

The YCC is not just an employment program—it is also a natural resource program. This is something all of us should keep in mind in discussing the YCC.

The YCC has become a vital entity in the ongoing management picture of our national parks, forests, wildlife refuges, and other recreation lands. This program represents the least expensive way to accomplish a variety of essential resource management projects benefiting both the visitor and the resources themselves.

In many instances, cutbacks in regular budgets and reductions in personnel have made it impossible for the land managing agencies to complete essential resource management, visitor safety, and other worthwhile projects without the assistance of the Youth Conservation Corps.

For example, in the last 3 years the acreage in the National Park System has more than doubled. At the same time, despite soaring inflation, significant portions of the Park Service budget have actually been reduced and the agency has lost several hundred employee positions. These factors and others combine to make the YCC the only means of accomplishing a number of projects essential to park operations. Without YCC assistance, many national parks will suf-

fer severe resource deterioration and damage—a condition that everyone, including the present administration, agrees is unacceptable.

As a matter of fact, the administration's support of the elimination of this program is especially curious given the concern that Secretary Watt has voiced regarding the sad state of our park resources. One of the cornerstones of Mr. Watt's natural resource program seems to be to repair, rehabilitate, and restore what we have before acquiring more. And yet, at the same time, the Reagan administration has led the fight to terminate one of the programs best suited to help meet this goal. There is simply no doubt that the demise of the YCC program will have a very adverse effect on our National Park System.

In terms of return on investment, there is no question that YCC is cost effective. Comparing the appraised value of the work accomplished to the cost of the program, the taxpayers have consistently received more in terms of the value of service performed than it costs to provide that service.

The Washington office of youth programs shows a return of $1.23 for each dollar invested in the NPS portion of the YCC program for 1980. While the NPS–YCC program received a $4.4 million budget in 1980, the appraised value of YCC work accomplished totals $5.3 million.

It should be noted that these figures are based on the estimated cost of contracted work for the year YCC completed the project. In reality, the completion of the project would probably be delayed for several years if a private contractor or the NPS maintenance division were employed.

This delay would result in increased deterioration and irreparable damage. The agency would end up paying not only the additional inflationary costs but also the added costs incurred by the increased damage.

In addition, YCC enrollees themselves benefit from the environmental education component of the program, gain a variety of work skills, and are given an opportunity to work with other young people of differing backgrounds.

Mr. President, the language in this measure seeking to eliminate funds for this program is certainly contrary to the action taken by the Senate Committee on Energy and Natural Resources on reconciliation in June.

At that time the committee adopted an amendment, offered by Senator HEINZ, accomplished by appropriate report language, making it clear that the committee supported a modest shifting of funds within the natural resource budget function so that certain programs not recommended for funding in fiscal year 1982 could be funded.

One of those programs targeted specifically by the committee was the Youth Conservation Corps. While the committee recognized the fact that the program would certainly be cut—only $30 million was made available instead of the $60 million authorized—it was clearly the committee's intent that the program be continued—not terminated.

Nor is this proposed elimination consistent with the fiscal year 1981 Interior appropriations bill which passed the House on July 22 and recommended $20 million for the YCC program. Obviously, there is still considerable support in the Congress for this worthwhile program.

I am still optimistic that some resolution of this matter can be reached in the context of an appropriations conference and that $20 million might still be made available this year.

In any event, while the bill before us today limits appropriations for this program, the authority for the YCC is still on the books. I am hopeful that a way can be found to fund a summer youth program of this type in the Departments of the Interior and Agriculture in future years.

I am convinced that the action we are taking today with regard to YCC is a mistake and will certainly do what I can to reverse this decision in the future.

Mr. HOLLINGS. Mr. President, I yield now to the distinguished Senator from Arizona.

Mr. DECONCINI. I thank the distinguished Senator from South Carolina.

Mr. President, I intend to cast my vote in favor of the reconciliation conference report. The bill makes the first significant cuts in nonessential Government programs in decades. Only by substantially limiting the percentage of national wealth expended by the Government can we hope to limit its impact on our lives and on our economy.

Over the last three decades, the role of Government has expanded exponentially; it must now be pared back. I applaud President Reagan for his commitment to this goal, a goal to which I have dedicated much of my public service.

I have disagreed with some of the cuts embodied in this legislation, and with one item especially which I will address in detail. Certain cuts in veterans benefits, health care, and nutrition were ill-advised.

I proposed an amendment that would have eliminated an additional $3.9 billion in waste, fraud and abuse that would have allowed the goals of the budget to be reached without impacting on those programs.

Unfortunately, the Senate Budget Committee was unwilling, at this juncture, to expend the time and effort necessary to trim all the fat from Government. I am hopeful, however, that we will ultimately be successful in achieving those economies.

While I intend to vote in favor of the reconciliation bill, I do so with extreme reluctance because of one particular provision. The Congress and the President have, in the context of this bill, violated their fiduciary duty toward the Nation's senior citizens in eliminating the minimum social security benefit.

There is some questionable application of the minimum benefit, particularly among those individuals who also receive a Government pension. I am convinced, however, that the abuses can be rectified without taking the drastic step of totally eliminating a benefit that is of crucial importance to the continued well-being of millions of citizens.

When President Reagan spoke to the American people to urge support of his tax bill, he briefly but clearly indicated that he was now committed to the position that no person who is currently receiving social security benefits should have them reduced or eliminated. I applaud his change of heart. I only hope that this change can quickly be translated into new legislative action.

Both Houses of Congress have passed resolutions expressing the view that the minimum benefit should be restored to current beneficiaries. I have been assured that work will begin on such legislation immediately, legislation that will have the effect of vitiating or repealing the minimum benefit provision contained in this reconciliation bill.

It is also my understanding that this will be a bipartisan effort. It is only in the context of these assurances that the injustice wrought by the present bill will be rectified before the legislation takes effect that I can vote to support it.

I am firmly committed to the view that we should continue the minimum benefit for both present and future beneficiaries. This does not, of course, rule out developing legislation to eliminate abuse of this benefit.

But the minimum benefit is a critical part of the "safety net" about which President Reagan spoke so eloquently. As legislators, we have an absolute obligation not to break trust with those citizens who depend upon these few dollars for their very survival.

● Mr. McCLURE. Mr. President, all of us are aware of the cancerous consequences of sustained inflation for the vitality of the American economy. All of us are aware of the punishing consequences of inflation. And all of us are aware of the need to promote economic recovery.

Following President Reagan's address to a joint session of the Congress approximately 5 months ago on the economic crisis facing America, the Congress undertook a bold new course of action to rescue our Nation from economic and social distress.

On an unexcelled schedule the authorizing committees brought to the Senate floor within weeks the necessary authorization legislation to achieve the objectives of President Reagan's program for economic recovery. And now we have before us, within approximately 4 weeks, the agreements from more than 50 separate subconferences, 12 of them involving members of the Committee on Energy and Natural Resources.

I am once again reminded of the truth in President Reagan's words when he observed that:

> We can no longer procrastinate and hope things will get better. They will not. If we do not act forcefully, and now, the economy will get worse.

The challenge before us has been to get our country moving again—to restore the "American Dream"—for all Americans, not just for a select few. As I have stated before, we must not think of budget reconciliation in terms of indi-

vidual hardships and losses; rather we must think of it as taking the necessary initial forceful steps to counteract inflation and to foster economic growth and full employment.

The Omnibus Budget Reconciliation Act of 1981 takes the initial steps to revitalize our Nation's energies and to bring efficiency to Government. But we must not assume that our job is over; now we must undertake the necessary steps to assure our country's energies are directed to insure the long-term economic growth that must occur if inflation is to be reduced and the Federal budget balanced.

We must capture control over the Federal budget. The Omnibus Reconciliation Act of 1981 represents the initial legislative step to reduce the rate of growth in the Federal budget that has plagued us for years.

For example, the budget proposed by President Carter for fiscal year 1982 for the civilian programs of the Department of Energy represented a 33.5 percent increase compared to fiscal year 1981.

By comparison the budgets proposed by President Reagan for fiscal years 1981 and 1982 represent a slight increase above a reduced fiscal year 1981 base but, more significantly, a 0.3 percent growth rate compared to President Carter's fiscal year 1981 budget.

When both the on-budget and off-budget provisions of the conference agreement are aggregated, the authorization for the Department of Energy approximately equals the Reagan budget, the conference agreement represents a modest growth in the programs of the Department of Energy primarily due to additional funds for the strategic petroleum reserve, energy conservation research and development and State and local programs, including funds for low-income weatherization, and for fossil and solar energy research and development.

Mr. President, programs within the jurisdiction of the Committee on Energy and Natural Resources amount to $24.81 billion in fiscal year 1982. The Omnibus Budget Reconciliation Act affects $17.93 billion of these moneys, or 72 percent of them. The conference agreement affects the current fiscal year 1982 as well as fiscal years 1983 and 1984.

The conference agreements reached by the committee adopt President Reagan's proposed budgets for fiscal years 1982 through 1984 for the Advisory Council on Historic Preservation, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System, the Pennsylvania Avenue Development Corporation, and the U.S. Holocaust Memorial Council.

In the natural resources areas, the conference agreement establishes limitations on the aggregate appropriations for each Department or agency within the committee's jurisdiction. The agreements are consistent with President Reagan's proposed budgets with two exceptions. Programs of the Department of the Interior were authorized slightly higher than proposed by President Reagan.

The conference agreement adopted the Senate passed authorizations for the Department of the Interior which are $3,970 million for fiscal year 1982; $4,680 million for fiscal year 1983; and $4,797 million for fiscal year 1984. The resultant savings are $683 million for fiscal year 1982; $167 million for fiscal year 1983; and $318 million for fiscal year 1984.

Programs of the Forest Service are authorized very slightly below the levels requested by President Reagan. The conference agreement provides aggregate authorizations for forest research, State and private forestry, National Forest System and construction and land acquisition programs of $1,575,552,000 for fiscal year 1981; $1,498,000,000 for fiscal year 1982; $1,560,000,000 for fiscal year 1983; and $1,620,000,000 for fiscal year 1984.

I would also like to note that the conferees agreed to appropriation targets regarding certain programs within the Department of the Interior in lieu of the line item spending floors originally in the House bill.

The appropriation targets established for each of fiscal years 1982 through 1984 are as follows: $275,000,000 for the Land and Water Conservation Fund; $30,000,000 for the National Historic Preservation Act of 1966; $10,000,000 for the Urban Park and Recreation Recovery Act of 1978; $105,000,000 for the restoration and rehabilitation of units of the National Park System; $239,000,000 for the Office of Territorial and International Affairs, including amounts for the Trust Territory of the Pacific Islands; $6,200,000 for mineral institutes authorized by title III of the Surface Mining Control and Reclamation Act of 1977; and $100,000,000 for payments in lieu of taxes (PILT).

Other programs and offices of the Department of the Interior were not specifically capped, thereby leaving decisions, such as which reclamation projects to fund, to the appropriations committees. While I agree with the sense of the conference report provision, it must be recognized that these targets may not be attainable in all instances in light of fiscal constraints and more pressing priorities.

The conferees agreed to a provision setting a minimum fee of $25 for noncompetitive oil and gas lease applications. Discretion was given to the Secretary of the Interior to set a higher fee but only in accordance with the criteria of existing law absent the judicially imposed limit to actual costs.

While the $25 minimum fee is set by the statute, any increase above that level must be set by regulation using normal procedures thereby protecting against the possibility of arbitrary action.

I would also like to emphasize that permanent appropriations accounts were treated in different ways for the Department of the Interior and the Forest Service. Under the provisions capping spending levels for Interior programs, a savings clause originally in the House bill was accepted by the conferees regarding permanent and indefinite appropriations. In essence, the Interior cap may be exceeded by a sum equal to the amount by which budget estimates are exceeded by actual receipts available for permanent and indefinite appropriations.

Under the provision applicable to the Forest Service, the conferees agreed to drop permanent appropriations from the cap altogether by placing a limit on the forest management, protection, and utilization and the construction and land acquisition appropriations accounts solely.

While different approaches were taken for Interior and the Forest Service, the end result is the same, permanent appropriations such as payments to the States for timber and mineral receipts are unaffected by the reconciliation caps.

In the energy area, the conference agreement contains a Department of Energy 3 year authorization for fiscal years 1982 through 1984, as required by the Department of Energy Organization Act.

This action will thus provide a stability to the Department's programs that has not existed since its establishment in 1977. Such stability is particularly critical for the energy supply research and development programs on whose results rests solutions to our country's long-term energy problems.

The authorization in the conference agreements are $5,386 million for fiscal year 1982; and $6,371 million for fiscal year 1983; and $6,417 million for fiscal year 1984. As discussed earlier, these are very slight increases over President Reagan's proposed budgets for fiscal years 1982 through 1984.

But, more importantly, the resultant savings from the President Carter proposed budget are $5,818 million in fiscal year 1982; $4,985 million in 1983; and $4,286 million in fiscal year 1984 for Department of Energy programs.

Particular mention needs to be made of the procedure followed in the establishment of the limitations by appropriations accounts for programs of the Department of Energy. As the Statement of Managers notes:

> In the Omnibus Budget Reconciliation Act of 1981, the conferees from the Senate Committee on Energy and Natural Resources, the House Committee on Energy and Commerce, the House Committee on Interior and Insular Affairs, and the House Committee on Science and Technology took a common approach in the formulation of their recommendations regarding authorizations for the Department of Energy.

The agreement is to establish limitations by appropriation account for programs of the Department of Energy for fiscal years 1982, 1983, and 1984. Where substantial changes were made in the policy assumptions behind the budget proposed by President Reagan, they are discussed in the Statement of Managers.

The limitations on fiscal years 1983 and 1984 appropriations were established by a projection of the fiscal year 1982 recommendations on a basis of the policy established herein for fiscal year 1982. Changes in the assumptions behind these projections will be considered by the Congress during review of the fiscal year 1983 and 1984 budgets, and in its action on associated authorization bills.

Particular mention also needs to be made of the strategic petroleum reserve (SPR) program. The SPR can provide

our Nation with insurance against the economic dislocations, protection against international embargoes, and a source of fuel for military use in the event of wartime mobilization.

The strategic petroleum reserve was created by the Energy Policy and Conservation Act, Public Law 94–163, and signed into law on December 22, 1975. Motivated by concern for national security, the objective of the strategic petroleum reserve is to reduce the U.S. vulnerability to severe interruptions of petroleum supplies through the acquisition and storage of up to 1 billion barrels of petroleum.

Once again, in the context of the Omnibus Reconciliation Act of 1981, the Congress expresses its concern that the Nation establish and maintain an adequate supply of stored oil to minimize the adverse effects of any serious interruption in petroleum supplies.

The conference agreement creates an off budget funding mechanism for the Secretary of Energy with an authorization of $3.9 billion for fiscal year 1982, for oil acquisition, transportation, injection, and expenses associated with drawin down the reserve in response to an energy emergency.

In addition, on budget authorizations are provided to cover the cost of construction, operation—including the drawdown system—maintenance, program direction, and administration in the amounts of $260 million for fiscal year 1982, $366 million for fiscal year 1983, and $364 million for fiscal year 1984.

The initial storage target was 500 million barrels by 1982. The Congress subsequently approved the implementation of a Government reserve of 750 million barrels with congressional approval on the timing and method for the fourth 250-million barrel increment being deferred.

Consistent with these earlier policies the conference agreement requires the President to seek a fill rate for the reserve of at least 300,000 barrels per day. However, because the ultimate size under present policy was approved during a period when U.S. import of oil was substantially greater than it is at present, the conference agreement also requires the Department of Energy to reevaluate the optimal ultimate size of the reserve in a report to the Congress.

In summary, the conference agreement achieves savings of $6,509 million for fiscal year 1982; $5,153 million for fiscal year 1983; and $4.607 million for fiscal year 1984 for programs within the jurisdiction of the Committee on Energy and Natural Resources.

Mr. President, throughout this process it has been my judgment that it would be possible to ultimately fashion a budget package changes that would achieve the goals and objectives of President Reagan's program for economic recovery, although not necessarily an identical package. This has proven to be the case. Some of the required changes have been painful and we therefore have attempted to assure equity in the distribution of consequencies of the necessary change.

Throughout the reconciliation process our goal has been to direct Federal energy and natural resource programs to release the creativity and individual initiative of the American people to sustain economic growth.●

Mr. DOMENICI. Mr. President, I would like to ask the distinguished chairman of the Committee on Energy and Natural Resources for some clarification in the intent of the conference committees actions with regard to the Clinch River Breeder Reactor. Am I correct that the Statement of Managers affirms the need for and timing of the project, and contemplates that construction be undertaken as expeditiously as possible?

Mr. McCLURE. The Senator is correct.

Mr. DOMENICI. Am I correct that the Statement of Managers reflects the intention to affirm the existing project authorization including location of the project at the existing Clinch River site? And am I also correct that the Statement of Managers affirms the existing project arrangements and objectives which were incorporated into the existing project authorization?

Mr. McCLURE. The Senator is correct on both points.

Mr. DOMENICI. Am I correct that the project will be judged on the basis of its ability to meet the existing informational objectives and not on the basis of providing needed power?

Mr. McCLURE. You are correct.

Mr. DOMENICI. Am I correct that the intent of the conferees is to minimize the effect of unrecoverable delays resulting from the 1977 decision to stop the project, and to that end, affirms the existing project arrangements and objectives, and to the maximum extent possible, the pre-April 1977 project schedule?

Mr. McCLURE. Let me say to my colleague from New Mexico that he is correct on this point also.

Mr. DOMENICI. Mr. President, I ask the distinguished junior Senator from Washington (Mr. GORTON) if he is ready. I yield to the Senator from Washington.

AGENDA FOR THE SENATE FOR THE REMAINDER OF THIS WEEK AND NEXT WEEK

Mr. BAKER. Mr. President, before the Senator from Washington begins, would he allow me to intervene? I ask unanimous consent that I may proceed in colloquy with the distinguished minority leader without any time being charged on the reconciliation conference report.

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

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Washington.

I have asked the distinguished majority leader if he would at this time tell us what the business of the Senate will be for the rest of the day, what the program will be for the rest of the week, and what the program will be for the early part of next week if it is necessary to return.

Mr. BAKER. Mr. President, I thank the minority leader. I must say the situation is not even clear now at 4:40 in the afternoon. I had hoped to make an announcement earlier. This is the best reading I can provide at this time.

The conferees on the tax bill are in conference at this moment. As soon as we finish the reconciliation conference report this afternoon, it would be my intention to deal with routine matters on the calendars as they may be available by unanimous consent.

After we have disposed of those matters, it would be my intention to ask the Senate to recess over until 8 p.m. By that time it is hoped the conferees on the tax bill can give us a good reading on whether or not they will have an early conference report to be filed, perhaps on tomorrow. If that is likely, and if the mechanical requirements of producing that report for submission can be accomplished, I will consider asking the Senate to convene at a late hour on Saturday, perhaps 6 o'clock, to consider that conference report at that time.

I reiterate that is not clear at this point. But if it is, then it is, perhaps, possible we could finish the conference report on the tax bill by tomorrow night. I think it unlikely, in all candor. If we cannot, then it is my intention to ask us to come back next week, I hope just for 1 day, on Tuesday or Wednesday—Wednesday seems the more favored day based on the conversations I have had with Members on both sides so far.

In recapitulation, Mr. President, we will finish the reconciliation conference report, we will attend to housekeeping details, unanimous-consent items on both calendars as they are available this afternoon; we will recess at that point until 8 o'clock to receive a progress report from the conferees on the tax bill. At that time, shortly after 8 o'clock, I intend to have a further announcement and be able to state whether it will be necessary to be in on Saturday, and to choose what day, if it is necessary, to complete the conference report next week.

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

Mr. BAKER. Yes, I yield.

Mr. RIEGLE. Is it the intention of the Senator if we go through and over to next week and come in either Tuesday or Wednesday, would it be the thought that the only matter to arise would be the vote on the tax conference report?

Mr. BAKER. Yes.

Mr. RIEGLE. There would be no other items?

Mr. BAKER. I can assure Senators that based on the remarks I made yesterday this is the only business of any consequence we are going to transact, meaning the only business except by unanimous-consent items.

Mr. RIEGLE. I thank the Senator.

Mr. JACKSON. Mr. President, will the majority leader yield?

Mr. BAKER. Yes.

Mr. JACKSON. Under the rules would the Senate take up the conference report first, the conference report on the tax bill?

Mr. BAKER. Mr. President, I thank the Senator for inquiring. I was under the impression that since we asked for a

conference, that the House must act first. But I am advised that that is not the case. That is the practice but not the requirement. The Senate does have physical possession of the conference documents or of the documents involved, and I believe I am correct in saying that the Senate could act first in these circumstances.

I might say parenthetically that I have conveyed this point of view to the distinguished Speaker of the House of Representatives and to the minority leader of the Senate. No decision on that has been made, but I believe under the precedents of the Senate that the Senate can act first but that it is not the usual procedure.

Mr. JACKSON. I hope the Senate can act first, and I hope in connection with taking up the conference report that we can get a unanimous-consent request as to the time on the conference report prior to our departure from here.

Mr. BAKER. Mr. President, I think that is absolutely essential. If we are going to come back, we need a maximum certainty on the time we are coming back and an absolute clarity on why we are coming back.

Mr. JACKSON. Those of us who have to fly all night from the West Coast would appreciate a time certain.

I appreciate the comments of the majority leader, and I hope that that can be a part of any consent agreement that would be entered into prior to our departure over the weekend.

Mr. METZENBAUM. Mr. President, will the majority leader yield for a question?

Mr. BAKER. Yes, I am happy to.

Mr. METZENBAUM. Would it be the majority leader's intent, if there is not strong objection and no insistence from any Member of the Senate for a rollcall vote, would it be the majority leader's intent then to pass the conference report by voice vote?

Mr. BAKER. Yes, it would be. I would then propose to pass two measures. One would be the conference report on the tax bill, and the other would be a resolution of commendation to the Senator from Ohio. [Laughter.]

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished majority leader.

Mr. BAKER. I thank the distinguished minority leader.

THE REAUTHORIZATION OF THE AIRPORT AND AIRWAYS DEVELOPMENT PROGRAM FOR FISCAL YEAR 1981

Mr. GORTON. Mr. President, this is a historic moment in our Nation's history. Today the Senate stands on the threshold of passing legislation designed to start our economy along the road toward economic recovery. This measure will result in the largest single reduction in Federal spending ever passed by the Congress—savings of almost $35.2 billion for fiscal year 1982 alone. This reduction from the levels of spending scheduled for next year will reduce the burden on Government by over $150 for every man, woman, and child in the Nation. Moreover, these substantial savings are only the beginning, as even greater savings will take place in future years, because of the nature of the reconciliation process. The total reduction in Federal Government spending scheduled for the years 1982 through 1984 totals $130.5 billion or almost $600 per person.

Clearly, this bill represents a dramatic break in a decade-long trend in Government spending, a break absolutely necessary for economic recovery. A good case can be made for the proposition that a major cause of our current economic problems has been unchecked growth in Government spending. The Federal Government has run huge deficits over the last decade, mainly as a consequence of the growth of expenditures. These deficits have been financed by borrowing money. When all the sources of Government borrowing are totaled, the Government sector of our economy absorbs over 50 percent of the Nation's savings. Is it any wonder that interest rates are so high and growth so low?

Thus, the cause of our current economic problems: Inflation, high interest rates, and low productivity can be traced in large part to the uncontrolled growth in Government expenditures with which we have been plagued. It is this growth of expenditures that this bill attacks. It is because this bill limits future growth in Government expenditures and because it is the first fruit of the congressional budget process, which provides a means of controlling future spending, that this is a historic occasion.

The reconciliation process which produced this bill required the Congress to engage in a full and frank discussion, not only of how much should be spent, but of spending priorities. Every program of the Federal Government was evaluated and compared with other programs. The citizens of the United States can only benefit from the fruits of this discussion.

I would be less than candid if I stated that reducing the trend rate in Government spending will lead immediately to economic prosperity. Things have gone too far for any solution to work quickly. But, a reduction in the growth of Government spending is clearly necessary to stimulate economic recovery. The first step in this required reduction is going to be taken by the Senate today. I am extremely proud to be a part of this historic occasion.

I would be remiss at this point not to pay tribute to the leadership of Senator DOMENICI in this process. His knowledge, his courage, and his understanding have turned an abstract possibility into a concrete reality. We all owe him a debt too great adequately to tell. It has been my great privilege to have served with him on the Senate Budget Committee.

Mr. President, I want to congratulate the conference committee on successfully resolving in an expeditious manner the differences that existed in the two versions of the omnibus reconciliation bill; and I particularly want to congratulate the subconferees who resolved the differences that existed in the provisions of the two bills affecting airport development, airport planning, and airport noise compatibility planning and programs. Their efforts have resolved a problem which is of concern to my State and others.

In the Fiscal Year 1981 Airport Development Authorization Act portion of the bill specific provision has been made to insure that ongoing airport improvement projects will not be interrupted. A perfect example of this situation involves SeaTac International Airport in my home State, where approximately half of a $12 million grant for a comprehensive model noise control project has been received by the Port of Seattle, with the remaining $6 million of the grant still to be received.

Seattle's effective and far-reaching noise control program, which has been approved by the Federal Aviation Administration and which serves as an example to other airports across the Nation, has been stopped when only partially completed because the remaining $6 million has not been available due to the failure of Congress to enact authorizing legislation permitting the FAA to disperse airport and airways development program (ADAP) funds approved in the fiscal 1981 appropriations bill. This part of the bill reauthorizes ADAP for fiscal 1981 and will allow ongoing programs such as the Port of Seattle's to be funded as originally contemplated. I commend the subconferees for resolving this problem.

Mr. CHAFEE. Mr. President, the process of reconciliation was, at times, an extremely painful one. We, as legislators, were called upon to make cuts in a number of very valuable programs. I am hopeful that the net effect of the huge savings we have achieved will outweigh any dislocations which have been caused. At the same time, reconciliation did have a more positive and pleasant element: The opportunity to eliminate waste and to alter programs and spending patterns which have long been in need of reform.

One example of such reform was the unemployment loan legislation which emerged from the Finance-Ways and Means Committee conference. I have long sought some of the revisions in the law which this measure accomplishes.

In January of this year, I introduced legislation aimed at helping numerous States, including my own, which are in deep debt to the Federal Government as a result of having had to borrow large sums of money to pay unemployment benefits during periods of recession. Current law requires that if such moneys are not repaid within a 2- to 3-year period, an escalating penalty tax be assessed on the States' employers. Thus those States whose economies are most fragile, are laden with an ever-increasing burden.

The Finance Committee—and now the joint conference—has arrived at a solution to this problem by placing a cap of 0.6 percent on this penalty tax, thus sparing these States from potentially prohibitive rates.

The passage of this measure is particularly meaningful in Rhode Island. Currently, our employers labor under an unemployment tax rate which is the highest in the Nation. Inasmuch as my State

has already taken steps which have resulted in our program being solvent, the measure will bring immediate and much-needed relief to our employers and taxpayers. Indeed, a savings of some $18 per employee will be realized immediately.

I am heartened that this action, which combines a sensible and compassionate approach with fiscal responsibility, is part of this historic reconciliation bill.

A fuller explanation of the importance of this provision for States facing increased unemployment compensation penalty payments is contained in a news article which appeared in the Providence Journal on July 30. I ask unanimous consent that this article be printed at this point in the RECORD.

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

EMPLOYERS TO SAVE $6 MILLION IF CAP ON JOBLESS TAX WINS

WASHINGTON.—Rhode Island employers will not have to pay an additional $6 million in federal unemployment taxes next Jan. 1 if Congress approves an action taken yesterday by the Senate-House Conference Committee on the budget reconciliation bill.

As the committee wrapped up work on the final details of the bill, it set a ceiling on the tax penalty the government assesses employers in Rhode Island and other states that have been forced to borrow federal funds to cover deficits in their unemployment compensation funds.

The action was hailed as "a significant victory" by Sen. John H. Chafee, who had been fighting for the ceiling for the last two years and, as a member of the Conference Committee, had played a major role in obtaining the measure's approval.

He said it means that Rhode Island employers will be spared a major increase in payroll costs that, he said, are already among the highest in the nation.

Chafee had introduced a bill providing for the tax penalty ceiling early in this year's Senate session after a bill he introduced last year passed the Senate but died in the House. Then as a member of the Senate Finance Committee, he teamed with another member, Sen. John Heinz, R-Pa. to attach a penalty tax ceiling amendment to the budget reconciliation bill. It was that amendment that was approved by the Senate-House conferees yesterday.

The conference committee measure, which is expected to be approved by the full Senate and House, sets a cap of six-tenths of one percent on the tax penalty the government imposes on employers in states that are delinquent on unemployment compensation borrowings from the federal unemployment trust fund.

Currently ,this penalty is assessed in increments of three-tenths of one percent a year until it reaches a maximum of 2.7 percent. The conference committee measure would limit that tax penalty to a flat six-tenths of one percent.

Last year that penalty tax had reached six-tenths of one percent of employer payrolls in Rhode Island, Connecticut, Vermont and Pennsylvania and had been slated to jump by 50 percent to nine-tenths of one percent on this year's payrolls in those states.

The conference committee action would eliminate that 1981 increase which would have been payable next Jan. 1. For Rhode Island, Chafee said, that will save employers $6 million.

Rhode Island's unemployment compensation fund became insolvent in the 1975 recession year, forcing the state to borrow $121,238,551 from the federal government to cover unemployment benefit payments. Connecticut ran up a debt of $270,894,191; Vermont ran up $40,738,629, and Pennsylvania's indebtedness to the federal government climbed to nearly $1.4 billion.

Actually the tax penalty is a tax credit reduction. Employers by law can be assessed a federal unemployment tax of 3.4 percent of their payrolls. However, they are allowed 2.7 percentage points of that as a tax credit if their state's unemployment compensation program conforms with federal regulations.

Under present law, if a state's unemployment compensation fund is delinquent on any borrowing from the federal government, that tax credit can be reduced at the rate of three-tenths of one percent a year up to the 2.7 percent limit. This additional tax revenue is applied toward the repayment of the loan. The conference committee provision will limit the tax credit reduction to six-tenths of one percent.

In order to qualify for the tax penalty ceiling, the conference committee measures require that a state unemployment compensation fund meet specific conditions. The fund's solvency cannot deteriorate from the previous year, its taxes must meet benefit payments, and there must be no legislative action that reduces the fund's solvency. Rhode Island is expected to meet those conditions.

The conference committee voted to impose interest payments on any borrowings by state jobless benefit funds made after April 1982 if the loans are not repaid within the fiscal year in which they are made.

Mr. CHAFEE. Mr. President, I would also like to bring to the attention of my colleagues another very important provision agreed to by the Senate and House banking conferees which will eventually save taxpayers millions of dollars and at the same time indirectly discourage development on fragile and ecologically-rich undeveloped barrier islands and beaches. The provision would eliminate Federal flood insurance for any new construction or substantial improvements on these areas as designated by the Secretary of the Interior. The prohibition of floor insurance will take effect on October 1, 1983.

As a member of the Banking Committee and one who has been deeply involved in this effort through more comprehensive legislation, I have introduced S. 1018, the Coastal Barrier Resources Act, which prohibits not only Federal flood insurance, but virtually all new Federal expenditures or new financial assistance on undeveloped barriers. I applaud what the conferees did.

According to the language in the conference report, a coastal barrier means:

Depositional geologic features consisting of unconsolidated sedimentary materials subject to waves, tidal and wind energies and protects landward aquatic habitats from direct wave attack;

All associated aquatic habitats including wetlands, marshes, estuaries, inlets and nearshore waters; and

Coastal barrier or portion thereof shall be treated as undeveloped only if there are few people-made structures and human activities do not impede geomorphic and ecological processes.

The report also contains language which directs the Secretary of the Interior to conduct a study for purposes of designating the undeveloped coastal barriers. This study will be submitted to Congress not later than 1 year after the date of enactment and shall include any recommendations the Secretary may have regarding the definition of "coastal barrier."

Mr. President, I would like to point out that for the most part, the Secretary's study is complete. Let me briefly explain. The language used to define a "coastal barrier" in the conference report is identical to the definitions found in the bill I introduced, S. 1018. My bill also contains a series of 125 maps of undeveloped coastal barriers which were prepared by the Department of the Interior in accordance with these definitions. These maps were prepared in a painstaking manner by the Interior Department, and, at my request, are being presently reviewed by State and local government and other knowledgeable experts to insure their accuracy. Thus, the Secretary should incorporate them as the basis for his study recommendations.

Mr. DOMENICI. How much time does the Senator from Colorado desire?

Mr. ARMSTRONG. Mr. President, if the Senator from New Mexico will be kind enough to yield me 5 minutes I believe I will yield part of that time back.

Mr. DOMENICI. I yield 5 minutes to the Senator from Colorado.

Mr. ARMSTRONG. I am grateful to my colleague, the distinguished chairman of the Budget Committee, for yielding.

With the enactment of the Omnibus Reconciliation Act of 1981, Congress has taken a crucial step in restoring national economic sanity. The budget cuts of $35 billion in fiscal year 1982 show that we are beginning to get serious about huge Federal deficits and the resulting inflation that has crippled our economy. Over the past decade, all Americans have come to know the disastrous inflationary efects of irresponsible Federal spending—from the young couple who have seen the hope of owning a home become an impossible dream, to the elderly who have watched a life's savings melt away, to the businessman who comes ever closer to bankruptcy.

Last November, the voters of this country declared that they had reached the end of their patience. Today, Congress is answering their demands for real change. Let us not forget that this Reconciliation Act does not cut spending from last year's levels, it only cuts the rate of growth of spending. Expenditures will rise 6 percent instead of the 12 percent proposed by the Carter administration. But our job has only started. Additional budget restraint will be necessary to achieve our goal of a balanced budget in 1984.

The American people owe an enormous debt of gratitude to Chairman DOMENICI and Senator HOLLINGS, the ranking minority member.

They and their staffs have worked around the clock with remarkable patience and good will for many months. Their efforts—truly superhuman efforts—have provided an agreement that many believed would be impossible. I am personally very much surprised—indeed, I am astounded—at the success which they have brought to this complicated undertaking involving no less than 281

Members and 58 subconferences which went to a conclusion with remarkable smoothness. As Chairman DOMENICI correctly pointed out, the reconciliation conference was a success because of the heroic efforts of those involved. I compliment them.

But, my colleagues, I must at the same time point out that a process which depends so much on superhuman efforts leaves me uneasy. We are, after all, a Government of laws, not of men. And if we had had just a little less good will, a little less personal dedication, a little more partisanship, or if the state of the Nation's economy had been less perilous, this reconciliation effort, in my judgment, would have failed.

In my opinion, the pitfalls of the reconciliation process emphasize the need to strengthen and improve the budget process so that future success will not depend so greatly on superhuman effort nor extraordinary national economic distress.

Of all the measures which would permanently instill fiscal discipline in our system, the most effective would be a constitutional amendment to require a balanced budget. In its most basic form, the amendment would instruct Congress to adopt a balanced budget for a fiscal year unless a three-fifths majority of both Houses voted explicitly for deficit spending.

As Congress has shown year after year that it is unable to bring Federal spending under control, notwithstanding the enormously dedicated efforts of those who bring the reconciliation bill to us today, under the circumstances, it seems proper and prudent to me to impose external discipline on the Congress. To those who say a constitutionally balanced budget amendment would be a restriction on the discretion of Congress to spend, I would say that Congress has abused that discretion to the point that such a restriction is not only necessary but almost inevitable.

If the amendment were enacted, there would, of course, be efforts by Members of Congress and others to remove some programs from the budget and remove them off budget. At the same time, I believe a prohibition or control of off-budget items would be critically essential.

In addition, it is essential that the President be given greater rescission authority. The present rule allows a rescission to take effect only if both Houses of Congress approve the rescission within 45 days.

As most of my colleagues will remember, the restrictions which are now in force, restrictions which require congressional approval of Presidential rescission, came at the end of a long and sometimes bitter struggle with the Nixon administration over a series of impoundments made by the President in order to reduce spending. The Congress objected to the severity of the impoundments which it felt virtually eliminated congressionally mandated programs.

While the problem of excessive executive discretion may have been a real one, Congress over-reacted and has unduly restricted the President's power. Under current law, only 15 percent of all Presidential rescission requests since 1976 have been approved, with the majority of requests never brought to a vote. In the face of this record, the sending up of rescissions has limited appeal.

Accordingly, in fiscal year 1980, a year of near record deficit, inflation and economic chaos, the President sent up only $1.6 billion in rescission requests. The Congress reacted by rejecting through inactions $1.1 billion. Thus, out of a budget of $579.6 billion, a scant $500 million, eight one-hundredths of 1 percent of the total, was saved through the decision of the President that better management could be achieved.

To allow the President more flexibility in achieving needed savings, I have previously introduced an amendment—the Federal Expenditure Control Reform Act of 1981—to change the rescission procedure. Under this amendment the President would continue to notify the Congress of his intent to rescind appropriated budget authority. The Congress would then have 45 days in which to pass a resoltuion disapproving the rescission. This basic change, to congressional disapproval from congressional approval, will alter the climate for Presidential action by requiring a positive, considered action by the Congress in order to require that outlays be made. Thus, the President will be allowed the managerial flexibility required for efficient Government without infringing on the constitutional rights of the Congress to control the public purse.

A related outlay control would be the restoration of the President's authority to impound appropriated funds when such action is required to prevent the increase of Federal indebtedness.

These and other institutional reforms are major items on the agenda of the Budget Committee and the Congress when our session reconvenes in September. I urge all Senators to give these issues their utmost concern and join in the effort to permanently control Federal spending and regularly balance the Federal budget.

I would now like to mention briefly certain specific provisions or the reconciliation bill:

Mr. President, regardless of my reservations about the reconciliation process, I have been forced to make use of it to prevent the loss, or a number of very important Senate-passed housing reform measures would have otherwise been lost.

I am speaking of several amendments to the section 8 housing program, the Nation's largest, most costly, and probably least efficient program of providing shelter to those in need.

Through the reconciliation process, and the resultant Senate/House conference, a number of reforms have been incorporated into this massive piece of legislation that we are about to pass.

To ease the minds of some of my colleagues who believe Senators have come out on the short end of the stick when they engage with a conference with our colleagues from the other body, let me review briefly a few of the accomplishments of the Senate conferees who jousted for a week with the House on these housing matters:

Ninety-five percent of the available subsidized housing units will now be available to the truly needy—those who earn less than 50 percent of the median income in their community.

The Government will no longer make very low-income persons wait for housing only because of arbitrary guidelines about many higher income families should be served to achieve proper economic mix.

Illegal aliens will no longer be afforded public housing at the expense of equally eligible citizens.

The Government will stop allowing ineligible families to live in housing units designated for the needy.

Public housing authorities across the country will be given financial incentive to prosecute employees and tenants for fraud and abuse—not from Government funds, but from judgments awarded against the offender.

The Government will also take steps to institute competitive bidding, reexamine the use of swimming pools and bowling alleys in subsidized housing, limit unnecessary rent increases, and provide more adequate notice to those tenant families who might be losing their subsidized apartments.

The Secretary of Housing will be forced to spend his large discretionary fund on housing for the needy in national emergencies, support for handicapped and minority housing enterprises, housing research and housing needs in new communities. Previously, the Secretary's wide discretion has come under fire due to charges of politicizing housing grants.

I believe the Senate owes a debt of gratitude to Senators GARN and LUGAR—and for that matter, Senator PROXMIRE—for hanging tough in conference and sticking up for housing for the truly needy, and for making politically difficult, but fiscally crucial housing reforms.

Additional reforms are needed and I intend to propose appropriate amendments at the right time.

BUDGET RECONCILIATION—GOOD NEWS AND BAD NEWS

Mr. PROXMIRE. Mr. President, the reconciliation bill now before us is both a good news and a bad news bill. There is a good deal to say in its favor, but there is a very, very great deal wrong with it, both in substance and in the procedures which got it here.

I rise to warn the Senate that unless some of those procedures are changed we risk losing the entire budget process. Let me be specific.

Here are some good things about the bill.

MAJOR INNOVATION

In what must be considered a major innovation in the legislative process, the Budget Committee proposed a resolution early in the year putting the Senate on record favoring major cuts in the budget.

That was a good thing. Like any good business procedure, it first set a ceiling for the budget and a goal for the cuts. We then instructed the legislative committees to carry out the mandate of the Senate and to keep within the totals.

That was a very good thing to do early in the session and the chairman and ranking minority members of the Budget Committee (Mr. DOMENICI and Mr. HOLLINGS) and their staffs deserve great credit for what must be considered a major innovative procedure in the history of the Senate.

$35 BILLION IN CUTS

The second good thing about the bill is that the Congress did in fact cut some $35 billion or more from the budget proposals.

That needed to be done. Inflation is the No. 1 problem this country faces. We have had a long series of deficits over a period of years when we should have had budget surpluses. Cutting the budget by this amount was a major achievement for the Senate.

So the Budget Committee, the Senate, and the Congress must be given very high marks both for the innovative way we proceeded and the size of the cuts.

BAD NEWS

But not everything we did was good. And unless we stop short, take stock, and revise some of these procedures the Budget Reform Act itself may die, or worse, may destroy the Senate as a distributive body.

First of all, while we cut $35 billion, that is far from enough.

We started with a deficit of $40 to $50 billion. We cut $35 billion. We are adding about $7 billion in fiscal year 1982 to military outlays. And on top of that there is a tax cut which will lose $37 billion in fiscal year 1982 and $47 billion in calendar year 1982.

The country therefore faces a deficit, based on the arithmetic of $54 to $64 billion in fiscal and calendar year 1982.

That means more inflation, high interest rates, and no solution to our fundamental problem of inflation.

Having marched up the hill we have now marched down again. This country in fiscal year and calendar year 1982, after the massive $35 billion spending cuts, will face a deficit larger than the estimated deficit when the year began. That, Mr. President, is very bad news indeed.

BAD PROCEDURES

But in addition to a huge fiscal year 1982 deficit, and what is an abandonment of a balanced budget by the new administration in its 4-year term, congressional procedures were greatly abused in spite of the innovative nature of the original reconciliation idea.

ABUSES OF RECONCILIATION

Let me be specific.

The Senate Banking Committee, by a straight party line 8 to 7 vote, adopted in the reconciliation bill a series of substantive changes in the housing laws having nothing whatsoever to do with the budget or reconciliation.

This was a corruption of the Budget Act.

The committee changed the character of housing community development from a targeted approach to a block grant revenue-sharing procedure. This had no effect on the money. Its effect was to usurp the legislative role of the committee and to bring authoritative changes without proper hearings, markup procedures, or attention to the historical legislative process.

The committee raised the ceiling on FHA loans for mobile home parks, on FHA loans for property improvements, and directed HUD to develop a model manufactured housing code, none of which belongs to the budget procedures.

It preempted State usury laws on mobile home parks.

It barred Federal assistance to communities with rent control laws, a provision I favor but which should never have been on this bill.

But this was not all.

In the House, the administration's substitute bill was not even available until the day of the vote. Some of its provisions were penciled in.

The cover of the July 4, 1981, issue of the Congressional Quarterly was a montage of 10 pages from the bill showing penciled in titles, paragraphs, figures and other last-second alterations. Congressional Quarterly entitled its weekly report "An Act In Haste."

That bill, like the Senate bill, contained various items thoroughly irrelevant to the budget. It contained provisions on radio deregulation, TV licensing, and a variety of slip-ups and sleepers.

The block grant provisions were not considered in legislative hearings.

The revisions of the higher education programs in which a $25,000 ceiling was put on the income of the families of those students receiving guarantees was done without proper hearings.

The Office of Management and Budget was given a carte blanche right to define poverty, a definition which up until now has been based on Bureau of Labor Statistics data carefully worked out.

The social security minimum benefit was eliminated without a proper hearing, markup, or review.

By accident the entire Head Start program was eliminated. It was one of the "Sacred Seven" which President Reagan said was among the untouchables.

To garner votes, certain deals were made. One Member said his vote could not be bought, but it could be rented. The return was the promise of a pet energy project.

Other deals include sweeteners for sugar price supports and the Clinch River breeder reactor.

Mr. President, this is a scandalous way to do business.

I favor some of those substantive cuts, but they must not be made and should not be made at the expense of the legislative process.

Senate procedures include hearings on controversial issues, open and public markups, adequate time for reports and study, the unlimited right to amendments on the floor, full and free debate, and the rights of the minority to be heard.

Senator HOLLINGS and Senator DOMENICI controlled the time. They did a fine job, within limitations. They had 10 hours, however, for practically the entire sweep of legislation that this Senate could consider.

On some of these matters, all of us, as Senators, had to simply say, "Well, there is no way that Senator HOLLINGS or Senator DOMENICI can help us. We will just not be able to speak on matters of great importance to our States or to our jurisdictions."

What the administration and the majority in the Senate have done is to apply the special rules we have enacted to make sure that budget matters are not filibustered—particularly the 20-hour limit on debate—to nonbudget, substantive, controversial, and partisan legislative matters as well.

This is wrong.

It may undo the Budget Reform Act if pursued.

It seems to me we have to change the rules to make sure this will not happen again. This is supposed to be a deliberative body with an opportunity for us to speak and to amend. That right was taken away by the way the Budget Act was handled.

Mr. President, I thank my good friend for yielding, and I yield the floor.

Mr. HOLLINGS. I yield to the distinguished Senator from New Jersey.

Mr. BRADLEY. Mr. President, as I said earlier this week, in the short time that I have been in the Senate, I have concentrated my attention on efforts to increase the competitiveness of our national economy. Only with real economic growth will we have the rising living standards that Americans have come to expect as our birthright. Only real economic growth will allow us to keep our promises to the poor, the disabled and the elderly.

I do not believe there is such a thing as a Democratic or Republican economy. We only have an American economy, and we must protect it and nurture it back to health. None of us can afford the high interest rates and high inflation, high sectoral unemployment and general economic uncertainty that we have been experiencing.

Since the President first set forth his economic recovery program in March, I have been concerned that it would lead to continued high inflation, higher interest rates, slower growth and larger deficits. The recent approval of the President's expansionary tax program intensifies the risks to the economy on all these counts.

Federal deficits increase in two ways—through excessive Federal spending or ill-conceived tax cuts. By approving the tax program, Congress regrettably has rejected efforts to contain the risk of a rising deficit inflation. It has rejected a safety valve amendment that would have made the tax cut dependent on the actual performance of the economy. Instead it has chosen to leave the economy exposed to runaway deficits, prices and costs of capital. I believe this is a mistake.

The combination of increased military spending and tax cuts exceeds the administration's own plan for nondefense budget cuts by $197 billion in the next 3 years. Mr. President, that is a receipe for continued economic turmoil and uncertainty. Indeed, my fear is that this expansionary tax cut, will invite drastic budget cuts over the next few years which are not prudent or fair and which endanger a stable and secure society.

But clearly, one of the requirements of a stable economy today is reducing Federal deficit. I accept that view. While no spending cuts are easy to make, some must be made.

Mr. President, the bill before us now does not contain the mix of spending reductions I would have chosen. Although it is a necessary part, it is not sufficient to guarantee long-term economic growth. But this bill does represent a major improvement over the bill passed by the Senate just a few short weeks ago. Indeed, New Jersey has gained enough in the process that, given the present legislative climate, it should be considered a victory. New Jerseyites are much better off under this proposal than under the original Senate bill—in part because of the work of the New Jersey congressional delegation.

Among the more important modifications, I would count the following.

Medicaid: The combination of the 9-percent cap provision and the reduction in the minimum matching rate, both provisions of the Senate bill, would have created severe hardship for those older, disabled and low-income Americans who depend on this program for their health care. The minimum match provision would have unfairly singled out 13 jurisdictions, including my State of New Jersey, for especially onerous burdens.

The compromise which was developed by the conferees—after Senator DOLE gave me his word to help—dropped both provisions in favor of more equitable across-the-board percentage reductions in State medicaid bills and gives States an important measure of flexibility in program administration which will allow them to achieve the cost savings without imposing devastating cuts on the recipients of medicaid services. New Jersey, instead of losing $80 million, suffers only a $10 million loss, and insures that poor people still have access to health care.

Guaranteed student loans: Under the administration's proposals, student loan guarantees would have been drastically reduced and interest subsidies for students while attending school would have been eliminated. Both Houses of Congress had already modified the administration plan by providing more moneys for the GSL program.

In conference a reasonable compromise was reached which will continue the GSL program for students who need these loans to pursue their educational goals, including students from middle-income families over $30,000. I cannot support the requirement for an initial 5-percent loan origination fee, which will be deducted from the student's loan, but I do believe that the compromise goes most of the way to assure that loans will remain accessible to students who need them to pay for their higher education.

Conrail and Amtrak: The administration wanted to dispose of Conrail by selling the system off in whole or in part by the end of fiscal year 1982, just 1 year from this October. The administration also wanted to cut back on Amtrak funding, reducing the country's vital rail infrastructure. In both cases, greater congressional wisdom prevailed in conference, largely through the work of Congressman JIM FLORIO of New Jersey. Conrail freight service will continue to receive necessary Government assistance through September 1983. This service is critical to the businesses and industry in my State and the health of our national export program. Under the administration proposal, 70 percent of that service would have been abandoned—with a loss of 20,000 jobs and $315 million in personal income annually. An orderly transition also has been provided for Conrail commuter services. These provisions are especially reassuring for residents of New Jersey dependent on the system for transportation to their jobs—particularly the New York-Philadelphia route.

Mass transit: We have prevented cuts in rail modernization and bus programs. We have maintained operating assistance at current levels. A major victory is the rejection of the administration's outyear phaseout of capital and operating assistance. With House insistence the conference bill leaves these funding levels subject to reauthorization.

EDA: The administration proposed to eliminate the Economic Development Administration entirely. This Federal program has created many private sector jobs in countless American communities. It is difficult for this Senator to understand the logic behind this shortsighted budget-cutting proposal. The Senate refrained from the total elimination of this valuable program, but provided only $50 million for EDA. Once again, the conference provided a far better outcome. The compromise significantly improves the Senate bill to provide $290 million for the EDA.

Youth training and employment programs: The administration proposed to consolidate these programs with a reduction of funding. In these times of intolerably high youth unemployment, especially severe among minority youth, budget cuts in these programs are extremely ill-advised and unfair. The conferees recognized this fact and agreed to maintain these programs as separate entities, thereby assuring that States will maintain ongoing youth employment and training programs. The conferees also provided $2 billion for these programs instead of the administration's $1.5 billion.

School lunches: Deep cuts were proposed by the administration in the school lunch program, cuts which would have crippled this centerpiece of child nutrition in many school districts. Savings were required, however, and the conferees agreed to reduce the Federal subsidies significantly. These cuts will increase the financial burden on local school districts and on families with children in school. But it is unlikely that they will result in the widespread program closings that were a real possibility with the administration's proposals.

Title XX social services and child welfare services: The services provided by this block grant include child day care, elderly nutrition, homemaker and home health services. The administration proposed to incorporate such programs as child welfare services, foster care, and adoption assistance into title XX and to reduce the funding by 25 percent. The administration claimed States could save money by the creation of the "new" block grant. I made several attempts in the Finance Committee and on the Senate floor to increase title XX funding and to remove child welfare services, foster care, and adoption assistance from the block grant. But those features remained in the Senate bill.

The conferees however markedly improved the Senate-passed bill by agreeing to maintain child welfare, foster care and adoption services in their present form and at current funding levels. The conferees also rejected the administration's proposed 25 percent cut in title XX funds. They limited that cutback to 15 percent. This will create hardships for many, but on the whole, it is an important victory for children and the elderly who need these services.

Maternal and child health: The administration proposed to scatter these programs, including the title V maternal and child health program, into two health block grants and to reduce the funding by 25 percent. Reflecting concern about this poorly conceived idea, the Senate fashioned a new maternal and child health block grant which joined several smaller, related programs with title V. The House followed suit with a similar grouping of programs, and with slightly more funding. The conference compromise is better than either the House or Senate version. Under the compromise, the block grant resembles title V in its commitment to basic services for low-income mothers and children. In addition, it earmarks funds for research programs designed to improve the health of pregnant women and children. The conferees also increased the funding slightly over the Senate figure.

NSF: The administration proposed significant reductions in National Science Foundation programs, including those for science education and new instrumentation grants to upgrade university laboratory equipment needed to train tomorrow's scientists. In a world which is undergoing rapid scientific and technological change, cutting aid to NSF can only be viewed as a false economy. The conferees agreed, and the final bill deletes the Senate's reductions in NSF funding.

I do not suggest that I consider all provisions in the compromise reconciliation bill good policy. Several spending cuts will go beyond reasonable program tightening. I will in future years seek to increase some of these programs with specific legislative efforts, particularly in those areas that relate to children and to the working poor.

But, on balance, I am voting for the bill for two basic reasons. First, I believe we have achieved a substantial victory over the reconciliation bill that I opposed on the Senate floor several weeks ago. Second, I believe our economy requires a reduction in Federal spending if we are ever to restore the economic growth that will allow us for the long term to keep our promises to the poor, the disabled and the elderly.

Mr. DOMENICI. Mr. President, I yield 1 minute to Senator GRASSLEY.

Mr. GRASSLEY. Mr. President, we are about to vote to approve the House-Senate conference agreement on the omnibus-reconciliation bill of 1981. This bill is the culmination of a full 4 months of intense congressional effort in fiscal responsibility. It is through passage of this legislation that we will have achieved an unprecedented savings of $36 billion in fiscal year 1982. The cumulative savings for fiscal years 1981 through 1984 amount to $135 billion. I know that last March, when we on the Senate Budget Committee first began work on this epic piece of legislation, I hardly expected that 4 months later we would be passing a final bill that is very much in line with what we fiscal conservatives hoped that it would be.

I, like many of my colleagues in Congress and the President of the United States, am firmly committed to a balanced budget by 1984. Even though I am a cosponsor of a constitutional amendment to require a balanced budget, I am well aware that simple passage of an amendment demanding this will not necessarily make it so. What we need in order to insure that we achieve true budgetary restraint is the commitment of all our Members to achieving this goal. This is why I am so pleased with our progress on this reconciliation bill.

This legislation is the result of actions taken by each member of each committee in Congress to organize his or her spending priorities. Of course, coordination of this great task would have been impossible without the able leadership of the distinguished majority leader, the distinguished chairman of the Budget Committee, Senator DOMENICI, the chairmen of all the Senate committees and their counterparts in the other body.

For the most part, the bill we have here contains much of the spending and policy changes that President Reagan recommended in his economic recovery program. In most instances, we have managed to achieve the real spending reductions that are necessary to get the productive capacity of our economy going again. I hope that this trend of restraint in Federal spending will continue so that we can indeed "make America great again."

I am concerned, however, that the block grant provisions in this bill are not as extensive as the original proposals recommended by the President and the Senate Budget Committee. The policy objective behind the block grants would be to return control of various social programs to the State. After all, it is the States that best know how to serve the needs of their particular constituencies. The block grants would have allowed them to exercise greater flexibility and discretion to administer these programs. This in turn would minimize the negative effects of the budgetary restraint that is so important to the economy.

Other provisions in this bill that I find troublesome include the absence of the medicaid cap, continued funding for low priority programs and continued funding for programs that clearly have been proven ineffective at best. In some instances, too, there have been economic and policy assumptions that are questionable and could very well lead to supplemental spending if we are not cautious.

On balance, however, I am pleased with this final version of the omnibus reconciliation bill of 1981. We have succeeded in eliminating the Legal Services Corporation, the CETA program, and making substantial revisions in food stamps, housing programs, and education and health programs. These changes are as dramatic as the New Deal was in its day, and I hope that it will result in an era of Federal spending restraint that lasts just as long as those New Deal policies did.

The reconciliation process, of which this bill is a product, is not perfect, but at this point it is the best that we have. I look forward to the day when we can truly maintain fiscal discipline in our budgeting without the reconciliation measure as reinforcement. In this vein, I fully support the initiatives of my colleagues on the Budget Committee to achieve budgetary reforms that will strengthen the process. In particular, I refer to Senator Armstrong's proposal to increase rescission authority to the President, and the Senate Budget Committee's commitment to work with the administration in order to gain some control over outlays. These reforms will be some time in coming, however, and in the meantime, I fully support this reconciliation procedure.

Because this reconciliation bill is unprecedented in its scope, it has been the target of much criticism and controversy. There are those critics that insist that the Budget and Impoundment Control Act of 1974 never intended for reconciliation to be used on such a grand scale. The act, however, clearly intended to shift the budgetary "power of the purse" from the executive to the legislative branch. Reconciliation is the only enforcement mechanism in the budget process that Congress has to maintain its fiscal spending policies. The President has the power of veto over Federal spending bills, and his executive agencies determine the rate at which programs will spend out.

Congress, however, has no formal control over outlays. By practice, spending had increased at the whims of both branches without any restraint. As I have discussed earlier, however, it is from the cumulative efforts of all committees in Congress and Congress as a whole that we are able to bring about this reconciliation bill, which will provide large-scale spending restraint that this economy so badly needs.

The President certainly recommended that Congress pursue a course of action that would lead to these savings, but it is only through the actions of all Congressional committees—from the Budget Committee, the individual authorizing committees, and the Appropriations Committees—that these savings will actually be achieved. Reconciliation bills such as this one can only be initiated, approved, and enacted by the Congress. As such, this bill is the will of Congress and the American people.

The PRESIDING OFFICER (Mr. KASTEN). Who yields time?

Mr. HOLLINGS. Mr. President, I yield to the Senator from Mississippi.

Mr. STENNIS. Mr. President, I will be very brief. I did not get to hear what was said about the interest rates. Mr. President, if there is a Senator who does not know that this current interest rate is a roadblock on all the so-called little people, on little businesses, even the ones being successful, he has not had the chance to go out and come in contact with reality, or did not go out and come in contact with reality.

I said the other day that I thought the present level of interest is a possible roadblock to the success of the Reagan plan. I believe that is the main hazard that the Reagan plan is confronted with.

We must continue to try to do something about this very difficult matter.

I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield to Senator Symms.

Mr. SYMMS. I thank the Senator for yielding.

Mr. President, I would like to say first that I think that Senator HOLLINGS and Senator DOMENICI certainly deserve the commendation of all of us in the Senate for the work they have done to bring this legislation about.

I also have to say that it turned out better than I thought it would. Of course, as big a piece of legislation as this is, there are certainly things that many of us find we agree with and things we do not agree with.

As a Senator who comes from the State in the Union that produces more silver than any other State, I am very concerned about the section in the bill which addresses the silver stockpile issue.

I think it might be worthy of note that the depressed prices that we suffer now have a strong effect on northern Idaho. Northern Idaho, in addition to relying on the mining industry and silver production, also relies on the timber industry. Both of those industries are at a low ebb as far as their profitability. Therefore, it is spilling off into high unemployment rates and a negative slowdown.

The question I want to ask the distinguished chairman pertains to page 27 of the Budget Reconciliation Act, under subsection (2), paragraph (D). It says—

(i) the world silver market (in terms of price and supply), (ii) the domestic and international silver mining industry (in terms of exploration and production).

I would like to say that my interpretation of that, and maybe the chairman could say whether I am correct or not, is that the best way for the problem that we are in would be if there is to be a disposal that it might be done so that it is not left overhanging the market; in other words, so that we do not have little bit sold all the time and having it being negative on the market, which is so detrimental to the economic conditions in northern Idaho.

It appears that this is the intent of this, to see that the least damage to the

market will be done in this process. Is that correct?

Mr. DOMENICI. Obviously, the Senator is more expert than I am on this subject. I do not know whether that is correct or not. But I do know that under this section the President could indeed find that is the situation and could act accordingly, because the authority in subsection (D) clearly indicates that such would be one of the considerations that he would take and conclude on in the process of selling.

Mr. SYMMS. The next question I would ask the distinguished chairman is about this authorization of disposal. Is that a requirement placed on the administration, that they do start disposing of all of these different items?

Mr. DOMENICI. I would say to my good friend it is not mandatory; it is authorized.

Mr. SYMMS. So if the administration in a careful reappraisal of the entire stockpile question comes to the understanding that myself and others, and I could say my distinguished colleague from the other body, Congressman SANTINI, who has spent a great deal of time on this matter, and others, have come to the conclusion that we should be adding to the stockpile for national strategic purposes rather than reducing it, the administration would not be bound, but they would then have to come up with some half billion dollars from some other point to offset this. Is that correct?

Mr. DOMENICI. I would say to my friend my understanding is that it is permissive, not mandatory.

Mr. SYMMS. I would like to let the record show that in the other body, every time the Armed Services Committee studied this and held hearings they have consistently voted in opposition to what we have done here, because of the reliance that the United States has on foreign countries for the production of critical minerals, many of which are listed on page 26 of the report.

I would hope and would urge that the administration go very slowly in implementing this portion of the bill, and if they do it, it be done in a fashion that is not destructive to the producers in this country. It is self-defeating in itself if we go out and slow down and discourage people from producing something. We only compound the problem down the road.

My personal opinion is that if any of these products are sold, we will have to cut back and buy them back at a higher price.

I would hope this part of the bill would not be put into effect.

In closing, I certainly want to give my compliments to the leadership the Senator from New Mexico has exerted, and also the Senator from South Carolina. The cooperation we received on this side has certainly been appreciated by this Senator.

I would also say that Senator DOLE, as chairman of the Finance Committee, and Senator LONG have given us very fine cooperation in the past week on the tax bill.

There is the necessity for these two programs to work hand in glove. I salute all Senators involved.

Mr. DOMENICI. I thank the Senator for his kind remarks.

I am certain that what he has said about the silver stockpile will be taken into consideration by those in authority before action is taken with reference to the sales that this statute permits.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Is it in order to yield back our time if such is our desire? There is no rule precluding that.

The PRESIDING OFFICER. The Senator is correct. There is no rule precluding it. The Senator may yield back the remaining time.

Mr. DOMENICI. 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. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be recinded.

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

Mr. DOMENICI. Mr. President, I yield 1 minute to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I wish to express my concern that we were unable to include funds in this bill for the section 201 wastewater construction grants program in fiscal year 1982. As my good friend the Senator from Utah (Mr. GARN) knows, a cutoff in funding for this program would have a devastating impact, particularly on cities already under court order and on projects already under construction.

I know that the chairman has already brought his concerns to the attention of the Appropriations Committee members so that they are aware of this need. The committee is, understandably, reluctant to act in the absence of reform legislation for the program and assurances that such funding would be within the ceiling set by the Senate Budget Committee in the second budget resolution.

Mr. GARN. Mr. President, the Senator from Rhode Island is correct. Absent budget authority in the second budget resolution, the committee will not act until there is an administration request and concurrence from the Budget Committee in such a request.

Mr. CHAFEE. As the Senator from Utah knows, the Environmental Pollution Subcommittee has sent to the full Committee on Environment and Public Works legislation to reform the construction grants program. I anticipate that a full committee markup will occur immediately after the August recess, with floor action to follow shortly thereafter. I have discussed this matter with the chairman of the Budget Committee in the past and ask at this time for further clarification of this matter. If this reform bill is not acted upon by the full Senate by September 15, will this preclude the Budget Committee from considering inclusion of budget authority of $2.4 billion for the program in the second concurrent budget resolution?

Mr. DOMENICI. Mr. President, the Senator has raised an important question. While the President has indicated that he will not request funding for this program until reform legislation has been enacted, this does not preclude the Budget Committee from considering and including budget authority in the second concurrent budget resolution, if that is the committee's will.

I have spoken with you, the distinguished Senator from Rhode Island, about the need for a budget waiver on the issue of timeliness in reporting out this bill. I personally am committed to supporting Senator CHAFEE and doing everything I can to insure that that waiver is granted. I look forward to working with him on this matter.

Mr. CHAFEE. Mr. President, I thank the distinguished Senator from New Mexico. Given his position, I ask my colleague from Utah what assurances he can provide us with regard to avoiding any interruption of appropriations under this program?

Mr. GARN. I welcome the statements of my two distinguished colleagues. It is unlikely that there will be any unnecessary cut-off of funds under this program. With Senate action on the reform legislation and inclusion of the authorization level in the second budget resolution, it would enable my committee to act promptly in appropriating needed funds for this program.

Mr. CHAFEE. Would such funding have to await a supplemental appropriation?

Mr. GARN. Given quick and positive action as we have discussed, I believe we could act before consideration of any supplemental.

STEPPARENT INCOME IN DETERMINING ELIGIBILITY FOR AFDC BENEFITS

Mr. GORTON. In a State such as Washington, which has a plan relating to the responsibility for support of certain children by their stepparents, which has been approved by HHS, would this proposal prohibit the State from setting a stepparent contribution requirement more stringent than that required pursuant to Federal law?

Mr. DOLE. No, this proposal is intended to set a minimum level for stepparent responsibility, not to reduce the accountability of stepparents in those States which have an approved plan of stepparent responsibility.

Mr. GORTON. What I am concerned about is that this provision might be interpreted to be totally preemptive, thus requiring some States to loosen their standards of stepparent responsibility. If that were the case, it could cost the State of Washington as much as $5 million annually in increased benefits caused by an

increase in the number of families eligible for benefits.

Mr. DOLE. I can assure the Senator that the intent of this provision is to increase the accountability of stepparents, not to reduce it, nor to interfere with the programs of those States which have programs approved by HHS.

Mr. LEAHY. Mr. President, this reconciliation bill would achieve major savings in the areas of child nutrition and food stamps. In the next 3 years, about $10.8 billion in reductions would occur. From my perspective as ranking member of the Subcommittee on Nutrition, these cuts go too far. In the current frenzied political atmosphere, we have opted for short-term savings that may well result in higher long-term costs. These program reductions will result in tangible costs, such as increased health expenditures and lower productivity by present and future workers, as well as intangible human costs of unknown proportions.

This is not to say that no economies can be reasonably achieved in these programs. I do believe that many of the reductions we are enacting are justified. However, I do quarrel with the scope of these reductions. They achieve savings at the expense of persons who can ill afford a reduction in benefits.

Having criticized the scope of these reductions, Mr. President, let me hasten to add that this bill could have turned out far worse than it did.

Many of the provisions in this bill are those that Senator DOLE and I developed as alternatives to those put forth by the President. I take this opportunity to thank Senator DOLE, the Nutrition Subcommittee chairman, for his thoughtful leadership and gracious cooperative spirit in developing proposals in these areas.

Had Congress simply rubber-stamped the proposals put forth by the President or accepted other proposals put forth by Members, the results could have been extremely harmful. For instance, in the area of child nutrition, the President had proposed school lunch cuts that would have threatened the financial viability of thousands of school lunch programs throughout the country. We were able to redesign the President's proposals and develop new ideas for savings to avert this serious problem.

In the area of the special supplemental feeding program for women, infants, and children (WIC), the President had proposed severe reductions. Under his proposal, hundreds of thousands fewer needy persons would have been served than are served now. With the help of many other Members of Congress, we were able to retain authorization levels for WIC that would not require a significant cut in caseload. With its proven record of success and cost-effectiveness, major reductions in the WIC program would have truly been a tragedy.

There are many other important changes from the President's budget proposals that we were able to achieve. In all instances, we tried to be sensitive to the competing considerations of program administrators, advocates for children and low income persons, and the overall need to achieve significant savings.

I am pleased to point out that we were assisted in these efforts by both the American School Food Service Association and the National Antihunger Coalition. Their ability to make joint recommendations in resolving some of the most difficult policy issues and trade-offs in child nutrition helped us immeasurably. Both groups were able to look beyond their own narrow interests and make recommendations that were best for the overall health of these programs and children. Their recommendations became a basis for much of the final settlement. I salute their statesmanlike efforts.

FOOD STAMPS

In the food stamp area, the final result in this bill is very close to the original Dole-Leahy package that was presented in committee.

This bill cuts a bit deeper, in that it would save about $6 billion over the next 3 years. It would achieve about $300 million more in savings in this time period than was proposed by the President and included in the budget resolution.

By and large, however, I believe this bill achieves savings in a manner far preferable to that proposed by the President. It also does not include a variety of other drastic reduction proposals that were pending in Congress. Proposals to restore the purchase requirement, vary allotments by the age and sex of each household member, raise the benefit reduction rate, and count school lunch and energy assistance benefits against food stamp benefits were soundly and, in my judgment, correctly rejected by Congress.

Adoption by Congress of most of the Dole-Leahy package does not mean that I fully support these benefit cutbacks. As I stated before, these cutbacks go too far. If cuts of this magnitude are necessary, I prefer that most of the provisions of H.R. 3982 be enacted rather than alternative proposals. However, in my judgment, many of these reductions do not represent sound social policy.

Mr. President, my views on many of these proposals have already been expressed at length in Senate Report No. 97–128, which accompanies S. 1007, the Food Stamp and Commodity Amendments of 1981. I reiterate my concern here that two of the bill's provisions, gross income limits of 130 percent of poverty and a reduced earned income deduction, will primarily penalize working households that must cope with high living expenses. At a time when the cry to reduce welfare costs has never been louder, I find it ironic that we revise social programs in a way that hurts working people and reduces incentives to work.

I am concerned about the freeze on the shelter deduction until July 1, 1983. This freeze will have a particularly adverse effect on participants in States like Vermont, where winters are long and shelter costs are high. Until July 1, 1983, there will be no increase in the shelter deduction to reflect the rising housing and utility costs incurred by food stamp recipients.

On the positive side, however, this temporary freeze is far preferable to the permanent freeze on deductions recommended by the President.

I also believe that a ban on the participation of strikers is inappropriate. Strikers have always comprised a minute portion of the food stamp caseload. GAO has estimated that households including a striking member, constitute about three-tenths of 1 percent of all households.

If they otherwise meet income, asset, and work requirements, I believe that strikers and their families should be provided the basic subsistence benefits of the food stamp program.

I would like to conclude my remarks with a series of observations on specific food stamp provisions.

CHANGING THE SHELTER/STANDARD DEDUCTION INDEX

In addition to freezing the shelter and standard deductions for 2½ years, H.R. 3982 also modifies the index that would be used in adjusting deductions starting on July 1, 1983. The current index includes homeownership costs. The homeownership component of the Consumer Price Index has been rising far more quickly than the CPI, and appears to distort the overall index. Particularly since no food stamp recipients purchase homes while on food stamps, there is no reason to include the homeownership component of the CPI. H.R. 3982 provides that the homeownership component be deleted from the indexes used to adjust food stamp deductions starting on July 1, 1983, and that the indexes be appropriately reweighted by the Bureau of Labor Statistics. The reweighting procedures should be similar to those used by the Bureau of Labor Statistics in the alternative CPI, known as CPI–XI, since this alternate CPI also removes homeownership costs.

RETROSPECTIVE ACCOUNTING

H.R. 3982 mandates that States use retrospective accounting by October 1, 1983. This requires that eligibility and benefits generally be based on past income.

Retrospective accounting may prove useful in improving the accuracy of benefit determinations, but must be designed carefully to assure that hardships do not result for needy families. H.R. 3982 does require the supplementation of initial allotments in those cases in which pure retrospective accounting causes serious hardship. This is necessary. A worker may recently have been laid off, or other circumstances may arise in which a sudden income loss has occurred. Since eligibility and benefits would otherwise be based on income received in the 30 days immediately prior to application, a household suffering a sudden income loss might have to wait up to 30 days to receive food stamps if supplementation were not provided. This would be needed, for example, in most cases qualifying for expedited service.

Supplementation would, in some circumstances, be needed for the initial months that a household receives food stamps in order to assure that a household's benefits are not based on income that was terminated or reduced before the household applied for food stamps. Accordingly, the reconciliation bill authorizes supplementation for the initial months that a household is on the pro-

gram—rather than restricting this just to the first month of eligibility.

This would be necessary, for example, if a household's bread-winner lost his or her job on the 20th of a month or if a mother with children suddenly had her child support cut off on the 20th of a month. If such households promptly applied for food stamps but supplementation was not provided, their benefits for the 2 months after the month of application would still be based largely on income they had received before their income was cut off.

As a result, they could be declared ineligible for stamps for these months, or eligible for a very small benefit, even though they might have had no income at all for some time. To remedy this problem, the bill provides for supplementation in the initial months a household is on the program where this is needed to avoid serious hardship.

Care must also be taken, Mr. President, in designing retrospective accounting, to assure that after initial application—when benefits are based on income over the preceding 30 days—the lag time between the budget month and the issuance month is not too great. Section 6(c) of the act requires that a household that has timely filed a complete report receive its benefits within 30 days of the end of the month covered in the report, unless the Secretary determines a longer period of time is necessary for administrative reasons.

Current rules in AFDC allow a maximum time lag of 45 days, and a similar maximum should be seriously considered for food stamps. A delay of more than 45 days would both work hardship on recipients and compromise the integrity of the retrospective accounting system by lengthening the period of time for which households continue to receive benefits after their income rises.

While prior income would be used in determining benefits, current circumstances could be used for other eligibility and benefit factors. For example, if a baby had been born shortly before a household applied for food stamps, it would be appropriate to count the baby as part of the household from the time of the application.

PERIODIC REPORTING

Mr. President, the reconciliation bill also requires periodic reporting for certain categories of households. Hopefully, periodic reporting—when used in conjunction with retrospective accounting—will result in more accurate benefit determination and a reduction in overpayments.

The bill prescribes periodic reporting for households with earned income, except migrant farmworker households, that file periodic reports for the AFDC program, and households with potential earners. By potential earners, the bill essentially means households receiving unemployment insurance and households containing persons required to register for work. Potential earners would not include households with no earnings in which all members are elderly or disabled. The bill prohibits extending periodic reporting requirements to these households or to migrant households.

Under a periodic reporting system, Mr. President, some households may not file the required reports or may file them late. If the State does not have a household's report, the household would have to submit the report to receive the benefits which the missing report would generate. If the report is filed late but within a reasonable time, the State would be expected to process it in a timely fashion and issue benefits. States could not terminate a household simply because a report is several days overdue. Section 6(c)(2)(d) of the act requires that households be "given a reasonable opportunity to cure" a failure to file any report timely or completely.

If a State determines to reduce or terminate benefits either on the basis of the report filed by the household, or because the household failed to file a report, the State must provide the household an opportunity to exercise its fair hearing rights under section 11(e)(10) of the act, including the right to have benefits continued, or reinstated, at their full level, pending the outcome of a hearing, if the household appeals within 10 days of being notified. These requirements are clearly set forth in sections 6(c) and 11(e) of the act.

FRAUD DISQUALIFICATION

Mr. President, H.R. 3982 tightens procedures relating to disqualification for fraud or intentional misrepresentation. Currently, if a person is found by an administrative fraud hearing or a court to have committed fraud, he or she is disqualified from the program and must pay back all benefits improperly received. H.R. 3982 provides for these procedures to be used for intentional misrepresentation as well as fraud and lengthens the disqualification period. As is the case now, the standards for proving fraud or misrepresentation should be the same for both administrative and court procedures. "Fraud" and "misrepresentation" are legal terms of art. Proof of misrepresentation is not so difficult as proof of fraud—although misrepresentation still requires a showing of willful intent on the part of the recipient and not simply a mistake. To disqualify a recipient, the State would have to show that an individual intended to misstate household circumstances. Showing of a mere misstatement would not be sufficient if there was not proof of intent.

These changes should encourage States to conduct more administrative fraud hearings and to prosecute more violators. Since an alleged perpetrator of fraud or misrepresentation must be found guilty at an administrative fraud hearing or in court for these stringent penalties to be imposed, the provisions of the reconciliation bill that encourage more aggressive State activities in these areas are welcome.

RECOVERY OF OVERISSUANCES

Mr. President, the reconciliation bill also contains procedures to spur more recovery of food stamp issuances. Collection of overissuances following a finding of fraud or misrepresentation in a hearing or a court would no longer wait until after the guilty individual has served a disqualification period. Recovery could now begin immediately. In addition, in certain circumstances, nonfraud overissuances could be deducted from allotments. This procedure would be limited to those cases where the overissuance was not due in whole or in part to a State agency action—such as the neglect of the State agency to ask the recipient for certain necessary information.

PRORATING THE INITIAL MONTH'S BENEFITS

The reconciliation bill also saves about $500 million by requiring that benefits for the initial month be prorated from the date of application. This is one of the more reasonable cuts in the food stamp portion of the reconciliation bill.

The Secretary will need to carefully integrate this provision with the expedited service requirements of the act. If a penniless household applied on the 26th of a month and was eligible for expedited service, it would make little sense to provide it immediately with only 5 days of food stamps and then make the household wait up to 30 days for any further stamps. The sort of severe hunger situation that could result is exactly what the Food Stamp Act and the expedited service provisions are designed to prevent.

To address this problem, the Secretary should, for expedited service households, provide stamps on an expedited basis for the 30 days following the date of application, and then prorate stamps for the second month unless the household was ineligible for the second month. Thus, the penniless household applying on the 26th of the month would receive no stamps at all for the first 25 days of the month, in keeping with the reconciliation bill, would receive 30 days of stamps on an expedited basis, and would receive a prorated benefit, for 5 days of stamps, in the following month. This achieves the full savings required by the reconciliation bill while not violating the basic intent of the act and its expedited service provisions.

BOARDERS

Mr. President, the reconciliation bill committee closed a loophole in current law by eliminating boarders from the food stamp program. If persons pay room and board for their meals, they do not need food stamps, since they already receive meals. These persons would not be able to apply for stamps themselves.

In addition, under current law, a member of an eligible household could try to declare himself a boarder and apply separately in order to receive additional benefits. H.R. 3982 eliminates persons who pay compensation in return for being served meals. These persons would not be able to apply either by themselves or as part of another household. They and their income and resources would be entirely separate and would not affect the eligibility or benefit levels of others who may reside in the household but are not boarders.

REPEAL OF SECTION 439B OF HEA REGARDING USE OF GSL LOAN IN REPLACING PARENTAL CONTRIBUTION

Mr. STAFFORD. Mr. President, I would like to clarify matters concerning

the guaranteed student loan program, and I would hope that the Senator from Utah, Senator HATCH, chairman of the Labor and Human Resources Committee, could help me clear up any misunderstanding.

Mr. HATCH. Mr. President, I would be happy to cooperate with the Senator from Vermont.

Mr. STAFFORD. It has come to my attention that there is some confusion in the Department of Education regarding whether or not a needs test is required for students from families with adjusted gross incomes less than $30,000. It has always been my understanding that students from families with adjusted gross incomes of less than $30,000 can borrow up to the statutory loan limit of $2,500 without going through any need test. Only those students from families with adjusted gross incomes above $30,000 are to be subject to a needs test for the GSL program.

Mr. HATCH. I concur with the Senator from Vermont on this matter. It was never the intention of the conferees to have students from families with incomes less than $30,000 to undergo a needs test.

Mr. STAFFORD. I thank the Senator from Utah and I concur completely with his remarks.

Mr. HATCH. Mr. President, I have a series of observations relating to the Education Consolidation and Improvement Act, and I would hope that the Senator from Vermont, Senator STAFFORD, chairman of the Education Subcommittee, could help me clear up any misunderstandings about this legislation.

Mr. STAFFORD. Mr. President, I would be happy to cooperate with the Senator from Utah.

Mr. HATCH. Confusion has existed in some quarters about the date when the Education Consolidation and Improvement Act takes effect. Could you please inform our colleagues when this legislation is to begin operation?

Mr. STAFFORD. In reply, I would like to state that it was the intention of the conferees from the House and from the Senate that the programs contained in the Education Consolidation and Improvement Act are to begin operating under the provisions of that act in the 1982–83 school year.

Mr. HATCH. This requirement applies to all programs in the act except followthrough. Do you not agree?

Mr. STAFFORD. Yes, that statement applies to all programs in the act with one exception. The followthrough program will be phased into the block grant over a 3-year period.

Mr. HATCH. I noted that the Omnibus Education Reconciliation Act of 1981 contains separate authorizations for fiscal year 1982 for each of the programs which will be included in the Education Consolidation and Improvement Act. These programs are separately authorized for a variety of reasons for fiscal year 1982.

Mr. STAFFORD. The Senator is correct. Most of the programs which will be included in the act are either forward-funded or advance-funded. Under these procedures, funds that are contained in one fiscal year's appropriations bill are used for spending in the next fiscal year. The purpose of this procedure is to give school officials a reasonable advance indication of the funding they will receive for the school year which follows the fiscal year in which the funds originally were appropriated.

Mr. HATCH. The Senator from Vermont makes an excellent point and I urge him to elaborate on its significance for the fiscal year 1982 authorizations for the Education Consolidation and Improvement Act programs.

Mr. STAFFORD. Our colleagues from the House of Representatives expressed concern that if we had placed an effective date for the act at the beginning of fiscal year 1982, which is October 1, 1981, the impression might have been given that the program provisions of the consolidation bill were to take effect in the upcoming 1981–82 school year. This was definitely not the intention of the conferees. As I stated, these programs take effect in school year 1982–83.

Therefore, we receded to a House provision listing separate authorization levels for fiscal year 1982 only to emphasize that these programs are to operate under their existing authority for the 1981–82 school year.

Mr. HATCH. I thank the Senator for his explanation. Perhaps he could explain further what effect these individual authorizations will have on the education appropriation bill for fiscal year 1982.

Mr. STAFFORD. I would be glad to elaborate.

The conference committee adopted language to insure that the provisions of the Education Consolidation and Improvement Act would receive advance funding en bloc in the fiscal year 1982 appropriations bill. Any funds appropriated for these programs in that appropriations bill would be used in the consolidation act starting with the 1982–83 school year.

To insure that this is done and to guarantee that these programs are not individually funded in the fiscal year 1982 appropriations bill, the conferees approved specific language in the Omnibus Education Reconciliation Act. Section 514(b)(2)(A) of that Act reads:

> Funds appropriated in an appropriation Act for fiscal year 1982 for any program described in section 561(a) (1), (2), (3), (5) and (6) of this Act which are intended for use by a State or local educational agency in the school year 1982–1983 shall remain available to such agency but shall be expended and used in accordance with chapter 2 of the Education Consolidation and Improvement Act of 1981.

The programs described are all those cited in title II of the consolidation bill with the exception of Follow Through.

Mr. HATCH. There are other citations in the legislation expanding on this point?

Mr. STAFFORD. Yes, there are. Section 562 of this act establishes the duration of assistance for the Education Consolidation and Improvement Act as fiscal year 1982 and the 5 succeeding fiscal years. Furthermore, the Secretary is instructed to make payments beginning in July 1, 1982, for these purposes.

Mr. HATCH. In summation, therefore, I ask my colleagues if he shares my conclusion that the funding for title II of the education consolidation bill for fiscal year 1982 be appropriated in a lump sum in the fiscal 1982 education appropriations bill?

Mr. STAFFORD. I agree; that definitely is my conclusion.

Mr. HATCH. I thank the chairman of the subcommittee.

Mr. GOLDWATER. Mr. President, I would like to discuss an issue with the distinguished Senator from Oregon (Mr. PACKWOOD), who is manager of this part of the conference report.

The Senate bill, as originally drafted, amended section 309 of the Communications Act, which allowed the Commission, in its discretion, where there is more than one applicant for a radio or television broadcast frequency that becomes available, to grant the application based on a system of random selection, that is, lottery.

The conference agreement expands the Commission's discretion to use the lottery to the grant of any license for use, not only of broadcast frequencies that become available, but for nonbroadcast frequencies as well. This represents a substantial change from the Senate position, and I understand that the application of the lottery mechanism to the grant of broadcast frequency applications serve many purposes which are not necessarily applicable in nonbroadcast cases.

I assume, therefore, that the Commission will exercise its discretion to use this mechanism carefully and gingerly. The Commission must understand that the random selection process will be used primarily—as it is today—for the grant of broadcast licenses. Is my understanding correct?

Mr. PACKWOOD. The Senator from Arizona is correct in his understanding of the new amendment to section 309. The primary purpose of this amendment is to substantially reduce the expense, delays and backlogs incurred by comparative proceedings. They present a substantial barrier to entry into telecommunications markets by those who are presently unable to incur such costs. The random selection proceeding will encourage those presently discouraged by these barriers to seek license awards. We have emphasized that the random selection proceeding is to be used by the Commission in its discretion. The Commission must be encouraged to use the comparative hearing process where its use would better serve the public interest convenience and necessity.

I have a letter from Mark Fowler, Chairman of the Federal Communications Commission, explaining the rationale of the random selection provisions, and the FCC's plans to use it.

The letter reads:

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN PACKWOOD: I am writing to respond to your request for the views of the Commission on its implementation of the authority granted to it by the Budget Reconciliation Bill regarding random selection (lotteries) for the grant of new radio spectrum licenses.

Section 1242 of the Budget Bill amends to permit the Commission to establish a system of random selection for new radio spectrum licensees where more than one applicant is applying for the same frequency. The authorization of a random select process for the grant of new broadcast and other radio spectrum licenses represents the opportunity for extensive benefits in terms of time and cost savings to the public, the FCC, and to the broadcast industry.

As you know, I have expressed concern that without the kind of reform in our license process that this new provision represents, unacceptable delays in the processing of applications would continue. The introduction of new technologies employing radio might be delayed unnecessarily pending lengthy comparative hearings. The legislation agreed to by the conferees will provide the FCC with the discretion it needs to implement quickly a random selection procedure in those radio services where it can provide immediate benefit in terms of time and cost savings, and to determine when and in which other radio services random selection is appropriate. I believe this flexibility is important for the Commission, since some radio-based services may not benefit from a random selection process, and the public's interest may be better served by retaining comparative hearings in some services.

I hope the Commission will be able to consider a rulemaking for the implementation of random selection in television and expiration of the 180 day period provided for in the legislation. It is in the broadcast field that the most immediate and substantial benefit can be realized from the utilization of random selection.

The material in the FY 1982 Budget Reconciliation affecting the telecommunications industry involves some of the most complex economic and social issues before our nation; the FCC is aware of the enormous effort that went into the consideration of these issues by the Managers of both Houses. I look forward to continued close cooperation between your Committee and the FCC as we work to implement this important legislation.

Sincerely,

MARK S. FOWLER,
Chairman.

Mr. HELMS. Mr. President, consideration of the conference report on the Omnibus Budget Reconciliation Act of 1981 marks a historic occasion for the Congress of the United States. It has been but 5 months since President Reagan spoke to the Congress about the economic crisis facing this Nation. The Congress responded with one of the most ambitious efforts to reduce Federal spending this country has ever witnessed.

While it has been a difficult task, it is one that, I believe, most Americans agree is an essential first step to revitalizing this country and rescuing it from economic disaster.

As chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, I am proud of that committee's efforts in this important endeavor. The committee met and exceeded its reconciliation instructions. Contrary to the approach of many committees, rather than merely capping authorizations and deferring actual program cuts to the appropriations committees, we made specific changes in the authorizing legislation for programs. The members of our committee chose this more difficult course because they wanted to exercise responsibility in the direction of programs under committee jurisdiction.

In the conference on this bill our committee met to resolve differences primarily with the House Committee on Agriculture and the House Committee on Education and Labor. I want to commend both Chairman DE LA GARZA of the Agriculture Committee and Chairman PERKINS of the Education and Labor Committee for their efforts in resolving our differences in an amicable and dignified way. We also met jointly with the House Agriculture Committee and the Senate Committee on Energy and Natural Resources and the House Committee on Foreign Affairs. The efforts of my distinguished colleague from Idaho (Senator MCCLURE), and those of Congressman ZABLOCKI were also extremely helpful in resolving the few differences we had with their committees.

Also, Mr. President, I want to thank the Senate conferees from the Committee on Agriculture, Nutrition, and Forestry: Senator HAYAKAWA, Senator LUGAR, Senator COCHRAN, Senator HUDDLESTON, Senator LEAHY, and Senator ZORINSKY. I know it was difficult to attend conference meetings with so many other things going on at the same time, but the attendance and support of the Senate position by these conferees was of great help to me and facilitated resolution of the differences involved.

Because of substantial differences in many areas between the House bill and the Senate bill—particularly in the agricultural program area—it took some hard bargaining to reach agreement. I am pleased to say, however, that I believe the conference language agreed upon in the areas within the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry represents a fair compromise. As can be expected, we did not get all that we wanted, and I am sure our House counterparts feel the same way.

Nevertheless, in areas within our committee's jurisdiction we achieved savings for fiscal year 1982 totaling $1.5 billion in agriculture and farm-related programs, savings of almost $1.7 billion for fiscal year 1982 in food stamp program reforms, and savings of about $1.5 billion for fiscal year 1982 in the child nutrition program area. Thus, total savings were achieved of $4.7 billion for fiscal year 1982 and a total of $16.3 billion for fiscal years 1982 through 1984.

Mr. President, I ask unanimous consent that a table summarizing the total savings in both authorizations and direct spending for provisions relating to the Committee on Agriculture, Nutrition, and Forestry be printed in the RECORD at this point.

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

SUMMARY OF SAVINGS OF AGRICULTURE, FORESTRY, CHILD NUTRITION, AND RELATED PROVISIONS OF OMNIBUS BUDGET RECONCILIATION ACT OF 1981

[In millions of dollars]

	Fiscal year 1982		Fiscal year 1983		Fiscal year 1984	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Agriculture, forestry, and related programs	728	1,554	936	1,775	1,535	2,267
Food stamps	1,658	1,658	2,046	2,046	2,334	2,334
Child nutrition	1,474	1,457	1,579	1,566	1,682	1,672
Total	3,860	4,669	4,561	5,387	5,551	6,273

I will not go into detail on the provisions agreed to relating to our committee. As mentioned previously, the bulk of the reductions came in the two largest areas of the U.S. Department of Agriculture's budget—food stamps and child nutrition programs. While I personally believe that additional reductions could, and should, have been made in the food stamp area, the conference compromise does contain most of the major cost-saving reforms which were adopted by the Senate on June 10 in S. 1007.

Mr. President, the conference substitute includes a provision that was in both the Senate and the House bills converting the food stamp program in the Commonwealth of Puerto Rico into an $825 million per year food assistance block grant. One of the major issues before the conferees was the effective date of this new block grant.

The Senate would have made it effective April 1, 1982, and the House October 1, 1982. I believe it is fair to say that both sides felt strongly about this issue. The issue was resolved by making the conversion effective July 1, 1982.

The conferees also, however, agreed to require the Commonwealth to submit by April 1, 1982, its plan for carrying out the new program in the last quarter of fiscal year 1982 and in fiscal year 1983

in order to be eligible to receive the block grant funds for those periods. Inasmuch as the legislation removes Puerto Rico from the Food Stamp Act of 1977 on July 1, 1982, it is hoped that the Department of Agriculture and the Commonwealth will cooperate to effect an expeditious transition to the new program by that time.

In the child nutrition area, it has been my aim to minimize the impact of budget cuts in the school lunch program and bring about savings in such areas as summer feeding, where meals are handed out regardless of need. In addition, it has been my goal to tighten up on program management and eliminate fraud and abuse in all feeding programs. I believe that the conference agreement in this area makes important strides toward more effective and cost-conscious programs, while still providing the necessary nutrition for our children.

In the agricultural and related program area we increased interest rates and tightened up loan levels in some Farmers Home Administration programs; made provision for collection of fees for cotton classing, tobacco inspection and grading, grain inspection and naval stores inspection; placed caps on authorizations for certain Department of Agriculture programs; cut back in spending for certain Forest Service activities; and reduced Department of Agriculture personnel.

With regard to the provisions affecting the Forest Service, I would like to point out that it was the intent of the conferees to cap authorizations only as to the Forest Management, Protection, and Utilization and Construction and Land Acquisition accounts. The cap does not include the other currently existing Forest Service appropriations accounts, namely, Acquisition of Lands for National Forests-Special Acts, Acquisition of Lands to Complete Land Exchanges, Rangeland Improvements, Construction and Operation of Recreation Facilities, Youth Conservation Corps, all Permanent Appropriations, including working funds and payments to States, and Trust Funds.

In addition, the conference substitute sets minimum price support levels for milk between 75 percent and 90 percent of parity, with the actual level based on the estimated amount of Government purchases under the price support level.

The conferees made it clear in the Statement of Managers, and I wish to reiterate here, that the action taken in this bill with regard to milk price support levels is merely an interim step.

The farm bill reported by the Senate Committee on Agriculture, Nutrition, and Forestry proposes a 70 percent of parity floor for milk price supports.

This level will be sought during floor consideration of our farm bill in September. Further action on the milk price support issue is necessary to be fair to all concerned—the consumer, the producer, and the taxpayer.

Mr. President, I ask that a summary of the provisions of the conference report relating to the Committee on Agriculture, Nutrition, and Forestry be printed in the RECORD.

The summary follows:

SUMMARY OF PROVISIONS OF OMNIBUS BUDGET RECONCILIATION ACT OF 1981 RELATING TO THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

FOOD STAMPS

The Act would—

(1) prevent artificially splitting households by requiring nonelderly parents and their children to apply as one food stamp household and making "informal" boarders ineligible as separate households;

(2) delay and change the timing of the annual adjustments in the cost of the thrifty food plan and the standard deduction and the ceiling on dependent care/excess shelter expense deductions;

(3) establish gross income eligibility limits at 130 percent of the applicable Federal poverty line except for households with elderly or disabled members;

(4) reduce the earned income deduction from 20 to 18 percent of earnings;

(5) require retrospective accounting and periodic reporting in the determination of eligibility and benefit determinations by all States by October 1, 1983;

(6) deny eligibility for food stamps to households with a member on strike unless the member is exempt from work registration or the household was eligible prior to the strike;

(7) prorate the amount of a household's initial allotment based on the days remaining in the month of application;

(8) prohibit Federal funding of food stamp outreach activities;

(9) extend the penalty of disqualification to include misrepresentation as well as fraud and lengthen disqualification periods;

(10) provide improved procedures for collection of overpayments and allow States to retain 25 percent of certain overissuances;

(11) repeal provisions scheduled to take effect in fiscal year 1982 creating a separate deduction for dependent care expenses of up to $90 per month and lowering the threshold above which medical expenses are deductible from $35 to $25 per month; and

(12) effective July 1, 1982, remove references to Puerto Rico in the present law and provide a block grant for food assistance to Puerto Rico of up to $825 million per year.

REDUCTIONS IN AUTHORIZATIONS FOR APPROPRIATIONS; DEPARTMENT PERSONNEL CEILING

The Act would—

(1) establish ceilings on the amount of appropriations at the specified levels for each of the following programs of the Department of Agriculture—

(a) for dairy and beekeeper indemnity programs at $200,000 for each of the fiscal years 1982–1984;

(b) for payments to States and possessions for marketing activities at $1,571,000 for fiscal year 1982, $1,651,000 for fiscal year 1983, and $1,723,000 for fiscal year 1984;

(c) for rural water and waste disposal grants at $154,900,000 for fiscal year 1982 and subsequent fiscal years;

(d) for rural community fire protection grants at $3,565,000 for fiscal year 1982, $3,821,000 for fiscal year 1983, and $4,038,000 for fiscal year 1984;

(e) for rural development planning grants at $4,767,000 for fiscal year 1982, $4,959,000 for fiscal year 1983, and $5,155,000 for fiscal year 1984.

(f) for grants for developing rural private business enterprises at $5,007,000 for fiscal year 1982, $5,280,000 for fiscal year 1983, and $5,553,000 for fiscal year 1984;

(g) for carrying out Soil Conservation Service programs at $588,875,000 for fiscal year 1982, $596,767,000 for fiscal year 1983, and $602,865,000 for fiscal year 1984;

(h) for carrying out the Agricultural Conservation Program at $201,325,000 for fiscal year 1982, $209,647,000 for fiscal year 1983, and $218,216,000 for fiscal year 1984;

(i) for carrying out the Forestry Incentives Program at $15,090,000 for fiscal year 1982, $16,913,000 for fiscal year 1983, and $18,314,000 for fiscal year 1984;

(j) for carrying out the Water Bank Program at $10,876,000 for fiscal year 1982, $10,854,000 for fiscal year 1983, and $10,813,000 for fiscal year 1984; and

(k) for carrying out the emergency conservation program at $10,069,000 for fiscal year 1982, $10,507,000 for fiscal year 1983, and $10,958,000 for fiscal year 1984;

(2) place a cap on appropriations for most Forest Service programs of $1,575,552,000 for fiscal year 1981, $1,498,000,000 for fiscal year 1982, $1,560,000,000 for fiscal year 1983, and $1,620,000,000 for fiscal year 1984, and prohibit the use of any of these funds for construction of the Bald Mountain road in the Siskiyou National Forest;

(3) place a cap on the amount of appropriations for the Secretary of Agriculture for biomass energy development at $460 million;

(4) limit authorized appropriations for all Public Law 480 programs to $1,304,836,000 for fiscal year 1982, $1,320,292,000 for fiscal year 1983, and $1,402,278,000 for fiscal year 1984; and

(5) establish a personnel ceiling for the Department of Agriculture at 117,000 full-time equivalent staff years including overtime, for each of the fiscal years 1982–1984.

COMMODITY CREDIT CORPORATION PROGRAMS

The Act would—

(1) require that the price of milk be supported at a level between 75 and 90 percent of parity based on the projected level of purchases of surplus products by the government for the marketing year. If inventory on hand at the end of the marketing year exceeds 500 million pounds of nonfat dry milk or 5.5 billion pounds milk equivalent of butter or cheese the support price for the next marketing year would be fixed at the minimum level indicated on the sliding scale. Semiannual adjustments would be required during the period beginning October 1, 1982, through September 30, 1985, unless government purchases exceed 5.5 billion pounds milk equivalent (butterfat basis) or 500 million pounds nonfat dry milk, in which case semiannual adjustment would only be made if necessary to prevent the support price from falling below 75 percent of parity;

(2) make farm storage facility loans discretionary; and

(3) limit CCC administrative expenses in fiscal year 1982 to $52 million.

COMMODITY INSPECTION FEES

The Act would—

(1) require collection of fees for cotton classing, standards, and related services furnished under authority of the Cotton Statistics and Estimates Act, the United States Cotton Standards Act, and the United States Cotton Futures Act;

(2) require collection of fees for inspection, grading, and standardization services furnished under authority of the Tobacco Inspection Act and the Naval Stores Act.

(3) require collection of fees for inspection, examination and licensing of warehouses under the United States Warehouse Act; and

(4) require collection of fees to cover the costs of the Federal Grain Inspection Service in providing official inspection and weighing of grain, including supervision of inspection and weighing by official agencies, and limit total administrative and supervisory costs for inspection and weighing (excluding standardization, compliance and foreign monitoring activities) for fiscal years 1982 through 1984 to 35 percent of the total costs for such activities by the Federal Grain Inspection Service.

All user fee provisions would become effective on October 1, 1981.

FARMERS HOME ADMINISTRATION PROGRAMS

The Act would—(1) authorize insured community facility loans of $130 million and insured water and waste disposal loans of $300 million for fiscal year 1982, and increase the current 5 percent interest rate for these loans to a rate set by the Secretary not to exceed the interest rate on comparable municipal bonds, except that the rate of interest shall not exceed 5 percent for any loans for upgrading or construction of facilities to meet health or sanitary requirements in certain low income areas;

(2) authorize insured farm operating loans of $1.325 billion and insured farm ownership loans of $700 million for fiscal year 1982, and provide that at least 20 percent of the total amount of these loans must go to low-income, limited resource borrowers. Interest rates for farm ownership loans to low-income, limited resource borrowers would be set at not more than one-half of the cost of money to the Government nor less than 5 percent, and for farm operating loans to such borrowers at the cost of money to the Government less 3 percentage points;

(3) set interest rates on various FmHA loans (other than guaranteed loans) for activities that involve the use of prime farmland at 2 percent above the rates that would otherwise be applicable;

(4) require the Secretary to make emergency (disaster) loans available to applicants seeking assistance based on production losses due to a disaster if the applicant's farming, ranching, or aquaculture operation has sustained at least a 30 percent loss of normal per acre or per animal production. Loans would be made available based on 80 percent of the total calculated production loss sustained by the applicant;

(5) limit emergency loans to the amounts provided in advance in appropriations acts;

(6) continue discretionary authority to make emergency loans to credit-worthy borrowers but authorize interest rates on these loans at the prevailing private market rate for similar loans; and

(7) increase from 5 to 8 percent the ceiling on interest rates for emergency loans for actual loss to borrowers who cannot obtain credit elsewhere.

RURAL ELECTRIFICATION ADMINISTRATION PROGRAMS

The Act would—

(1) establish the interest rate for insured electric and telephone loans under the Rural Electrification Act (REA) at 5 percent, but with authority to provide loans at a rate of not less than 2 percent when the borrower is experiencing extreme financial hardship or cannot provide service consistent with the objectives of the Act; and

(2) require the Federal Financing Bank on the request of an REA borrower to make a loan which will be guaranteed by the REA.

SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS

The Act would—

(1) reduce the total cash reimbursement rate for free lunches to 109.25 cents, adjusted annually for inflation beginning July 1, 1982, except that in schools in which more than 60 percent of the lunches were served free or at a reduced price during the second preceding school year the cash reimbursement rate for free lunches would be 2 cents above that amount;

(2) reduce the cash reimbursement rate for reduced-price lunches to 40 cents less than that for free lunches;

(3) reduce the cash reimbursement rate for paid lunches to 10.5 cents, adjusted annually for inflation beginning July 1, 1982, except that in schools in which 60 percent or more of the lunches were served free or at reduced price during the second preceding school year, the cash reimbursement rate for paid meals would be 2 cents above that;

(4) reduce the commodity reimbursement rate for all lunches (free, reduced-price, and paid) to 11 cents, adjusted annually for inflation beginning July 1, 1982.

(5) reduce the reimbursement rate for paid breakfasts to 8.25 cents, and set the rate for free breakfasts at 57 cents. Reduced-price breakfasts would be reimbursed at half that amount, and all rates would be adjusted annually for inflation beginning July 1, 1982;

(6) limit "severe need" breakfast funding to only those schools in which, during the second preceding school year, a minimum of 40 percent of the lunches were served free or at a reduced price, and for which the rate is insufficient to cover the costs. The schools required by State law to operate a breakfast program would continue their special eligibility only until July 1, 1983 in cases in which the State legislature meets annually, and July 1, 1984 if the legislature meets biennially;

(7) instruct the Secretary to review and prescribe changes in regulations governing child nutrition programs within 90 days of enactment of the bill, in order to achieve the local cost savings without endangering the nutritional integrity of the meals;

(8) establish eligibility for free meals at 130 percent of the OMB income poverty guidelines until June 30, 1983, when eligibility would become the same as food stamp gross income limits. Eligibility for reduced-price meals would be lowered to 185 percent of poverty. In both cases, eligibility would be based only on current income;

(9) require that application forms for free and reduced-price meals contain only the family size income eligibility levels for reduced-price meals;

(10) allow the Secretary, States and local school authorities to seek verification of data submitted on applications for free and reduced-price meals. In addition, the Act would require local school authorities to undertake any other such verification as the Secretary may prescribe and would require documentation of income or documentation of participation in the food stamp program as well as Social Security numbers of all adult household members;

(11) require the Secretary to conduct a pilot study verifying data on a sample of applications;

(12) require that State matching revenues equal at least 30 percent of all general cash reimbursement funds for the school lunch program made available in the school year beginning July 1, 1980;

(13) terminate the food service equipment assistance program;

(14) reduce the authorization for nutritional education and training to $5 million;

(15) eliminate the special milk program except in schools which do not participate in any other meal program;

(16) exclude from the definition of "school" those private schools with average annual tuitions above $1,500;

(17) limit sponsorship of the summer food service program to public or private nonprofit school food authorities, local, municipal or county governments, and residential nonprofit summer camps. Programs sponsored by local, municipal or county governments must be operated directly by these local entities. The program would in addition be restricted to areas in which at least 50 percent of the children meet the income eligibility criteria for free and reduced-price school lunches;

(18) limit participation in the child care food program to children 12 years of age or younger, except for migrants who would remain eligible until age 15, and the handicapped;

(19) require that meal reimbursements for the child care food program be based only on each individual's income eligibility;

(20) make only those "for-profit" child care institutions which receive title XX compensation for at least 25 percent of the participants eligible to participate in the child care food program;

(21) reduce the reimbursement factor for family day care home meals by 10 percent, as well as the reimbursement for day care home providers' administrative expenses. No reimbursement would be provided to children of providers with incomes above 185 percent of poverty;

(22) reimbursement a maximum of two meals and one snack per child per day in the child care food program;

(23) prohibit the Secretary from directly administering any child nutrition program that the Secretary has not administered continuously since October 1, 1980, except in the case of nonpublic schools in States where the State educational agency is prohibited by law from administering the program;

(24) extend to children in elementary schools, when approved by the local school district or nonprofit private schools, the option not to accept foods they do not intend to consume;

(25) eliminate requirement for a State plan of child nutrition operations except for those plans required for State administrative expense funding, nutrition education and training, summer food service, and WIC;

(26) make "commodity only" schools eligible to receive donated commodities equal in value to the total of the general lunch cash reimbursement rate and the national average commodity assistance rate. Such schools would be required to serve meals meeting the nutritional standards set forth for the school lunch program, including fluid milk and components of each of the four basic food groups, and would be eligible to receive special assistance cash payments for free and reduced-price lunches;

(27) authorize appropriations for the special supplemental food program (WIC) of $1,017 million for fiscal year 1982, $1,060 million for fiscal year 1983, and $1,126 million for fiscal year 1984; and

(28) eliminate cost based accounting requirements.

● Mr. BOSCHWITZ. Mr. President, as a member of the Senate Budget Committee and as a conferee on both the Small Business Committee section and the reconciliation package as a whole, I am particularly pleased with the outcome of this process. The bill will save taxpayers more than $130 billion over the next 3 years.

When we first started working on the budget for fiscal year 1982, the ultimate goal was completion by the August recess. Along the way we have hit many snags, but it is a tribute to the cooperation among Congressmen that we managed to smooth out the obstacles and meet our August 1 deadline.

This is truly a remarkable achievement. It is extremely rare for Congress to move so quickly to pass in final form any type of legislation, let alone one as ambitious and comprehensive as this budget reconciliation bill.

I think a large part of the credit should go not only to the Congressmen and staff who worked on this bill here, but also to the American people. Without their support for this effort, I have no doubt that this bill would still be in the infant stages. The avalanche of letters, telegrams, phone calls, and meetings between constituents and ourselves on this bill probably was unprecedented.

The passage of this budget package in response to the call for reduced Govern-

ment spending reaffirms the prescription of government by the people. I believe Washington had perhaps forgotten this concept in the past several years, but citizens all over this Nation let us know that they had not forgotten. My thanks to all who helped us in this effort.●

● Mr. SCHMITT. Mr. President, I would like to address a question to the distinguished Senator from Oregon, Mr. PACKWOOD, who is the manager of this part of the conference report.

The conference decision to adopt the provision requiring the Corporation for Public Broadcasting (CPB) to make available to radio and television stations funds to pay for one-half of the cost of their satellite interconnection operations was intended to balance the conference's other decision to reduce television station grants to 75 percent, down from 80 percent, of the television allocation.

However, as I understand, unless the interest CPB will earn from the advance annual Federal appropriation and the revenues from interconnection are included in the moneys to be made available for the payment of fixed costs, the subsequently imposed 60 percent ceiling on CPB's contributions to the system's fixed costs, including interconnection, would result in CPB's making only a small payment to stations for interconnection. Payments on satellite capital and copyright could use up CPB's 60 percent.

The result, despite our conference intention to balance limited Federal funds between local and national activities, is that we have taken funds away from one party—local stations—with the left hand and given nothing back with the right one. This was not the intention of the conference.

Mr. PACKWOOD. Yes, it is true that we were all concerned about that balance; yet, despite lower appropriations, we did not want to lose altogether some CPB support for programing, research, training, and education activities, even though we know they must necessarily be reduced. Therefore, we hit upon the idea of limiting the amount CPB would pay toward fixed costs out of funds for its own expenses. It was our understanding during the conference that any remainder of fixed costs—beyond that maximum to be borne out of the allocation to CPB's expenses—would be borne by the remaining sums available to television and radio. Although CPB retains the discretion to determine which funds will be used, I presume, and the conferees presume, that CPB will apply any and all resources, including interest earned on appropriated funds and moneys earned from interconnection to meet the fixed costs of the Corporation before requiring a reduction in television and radio grants.

Mr. SCHMITT. Yes, and clearly that was the intention of the conference. This bill has been difficult because we have been trying to sustain the most valuable activities of both CPB and the stations which it supports, even though we must reduce Federal funding. But the conclusion we have reached in the complicited conference is that CPB should devote its other resources, including interest earned on appropriated funds and to the remainder of these fixed costs before it subtracts any funds from station resources. This will encourage the Corporation, as the report states, to be especially prudent in the next few years and through the life of this bill to hold down and stretch out fixed costs consistent with actual and negotiated levels of cost for copyright and interconnection, for example. This is also consistent with CPB's use today of its interest income, which it has historically contributed, to the financing of all of its budgeted expense. I make this point because there should be no doubt as to our intention and expectation of CPB and the stations in interpreting these provisions.

Mr. PACKWOOD. This is an approach which both the House and the Senate conferees believe is appropriate and consistent with our intentions.●

CONSULTANT REDUCTIONS IN THE RECONCILIATION BILL

● Mr. PRYOR. Mr. President, as the sponsor of the original Senate amendment, I would like to express my satisfaction with the provision in the reconciliation bill that makes a reduction in the level of Government spending for consultant and related services. The benefits of that provision are twofold: First, it effects a $500 million reduction in Government spending for consultant, management, and professional services and special studies and analyses, and second, it insures that such spending will become more visible.

For too long the various agencies and departments have avoided the accountability in this area or spending which the taxpayers of this country deserve. My 2 years of investigation have confirmed this as well as other problems which must also soon be addressed. This action is, however, a milestone. It marks a concern and a call for responsibility by the Congress and I believe the taxpayers have been well served.●

Mr. HATCH. Mr. President, let me add to the comments of those who have spoken earlier today with words of high praise for the work we have just completed and those of you who have performed such great work: I, too, am glad to have all that behind us.

These major budget control efforts are never easy, but they will, I assure you all, pay great dividends to this country in the future. Control of the Federal budget has proven to be one of the toughest problems of our time—and many of my colleagues here would agree, I am sure, that we have made significant progress toward gaining control. All things good require effort to achieve.

I consider it a great privilege to chair the Senate's Committee on Labor and Human Resources. A finer group, a more dedicated group of people I have never seen. Each member of that committee has made some major contributions to the budget reconciliation package we have created. My distinguished colleague from Massachusetts is fond of calling the committee the Committee of the People, for the work we do and areas of our concern. The people of the United States were uppermost in our minds and hearts when we went to work to reduce the spending of the programs we oversee, and I think that shows in the final product. We have carved great savings, but we have preserved the essential services for those who are in need and truly have no other place to turn than the Federal Government, the government of the American people. There have been many compromises. Many of those compromises have vastly improved this reconciliation bill; some of those compromises I would rather have left alone.

But in the end, the legislative work we have created is cognizant of two important facts: First, that this country is in a budgetary crisis that by its very nature has severely limited the monetary resources we can tap; and second, that this Government does have a duty, as spelled out in the Constitution, to "promote the general welfare" of the American people.

For fiscal year 1982 the committee proposed a $10.6 billion or 20.2 percent reduction in spending; after the 2 weeks of conference, we still have savings of $9.4 billion. This is no mean task for this committee. The total savings over the 4 fiscal years in this bill of about $40 billion in the programs that this committee alone oversees amounts to almost one-quarter of what the whole Congress is required to achieve.

But the Labor and Human Resources Committee has looked upon reconciliation as presenting a rare opportunity. The committee has not seen reconciliation as an abstract accounting exercise to come up with the required level of savings somehow; but rather, the committee has seen this as a chance to accomplish important objectives. The committee has made its reconciliation reductions in such a manner as to shift to the private sector and to other levels of government some of the responsibilities which hitherto have been exercised all too exclusively by the Federal Government. The conviction that the committee has acted upon in designing some of the major elements of its reconciliation package is simply that the old levels of funding and the old program structures have actually hindered needy Americans in their efforts to overcome disadvantages. Business as usual in human resources area is not good enough.

Business as usual with these programs has fostered special interests with special pleas, but it has not always been equally effective in reaching the general population of the disadvantaged—those who are not organized into special constituencies.

The great danger in the Federal Government's continuing to do business as usual with our human resources is the separation of responsibility from knowledge. The small business person, the State government, or the local government are in a far better position than the Federal Government to know the effectiveness of their measures. Equally important, these private and local powers are far easier to bring to account for the failure of mismanagement of their projects.

The savings that have been made in the committee's programs are. therefore, necessary steps to enable the economy and the State and local governments to

play a far greater role in achieving the ideal of equality of opportunity. Reductions in Government expenditures free up the economy to grow and offer more jobs. Devolution of power to the State and local governments enable these powerful actors to play a greater role in developing human resources. Precisely by reducing funding for Federal human resources programs the way is cleared for other powerful actors to lend assistance in accomplishing our important, human objectives. The total effort resulting is likely to be far greater than what the Federal Government alone can do.

Aside from the savings, the most important substantive feature of the committee's reconciliation package is the block grants, six in all: Health prevention and services block grant, alcohol, drug abuse, and mental health block grant, primary services block grants, education consolidation block grant, community services block grant, and home energy assistance block grant. These six block grants show very clearly the committee's larger purpose in reconciliation. At the same time that the committee transferred administrative controls to the State and local governments, great care was taken to include provisions which are fully consistent with this devolution of power to insure that the money will get to where it will do the most good. Thus such problems as accountability, equitable implementation, and, under the contractual approach, certain program protections, are all addressed by features of these block grants.

This committee's reconciliation package is a first step in getting all levels of Government and the economy to cooperate to a far greater extent than ever before in making equality of opportunity a reality for all Americans.

It is with a great deal of pleasure that I report briefly on the budget reconciliation process that has just been concluded for the education of our youth.

Thanks to the wisdom and foresight of President Reagan, for the first time in decades, we have taken a giant step toward restoring educational decisionmaking to those agencies at the State and local levels actually providing the day-to-day services to people. Admittedly, much more remains to be done, but we are now well on our way, and the pattern has been to guide us in future years in the Congress.

When each of the bodies of this Congress accepted overwhelmingly the concept that we would adopt a budget that represented eliminating unnecessary Federal spending and intrusion into State and local affairs, we knew that this would require compromises from all of us involved if we were going to get the job done.

Henry Clay, who should have known, said at one time that "compromise is the cement that made the Union."

In every way, our reconciliation process this year has been one of compromise in its finest sense—agreeing on common ground without at the same time sacrificing principle. Moreover, we have at long last begun the process of returning to the States and their instrumentalities, the authority over education that has been gradually eroding away over the years downstream toward the delta of Federal paternalism.

Mr. President, I know that I speak for all of the managers of the Senate in the conferences on education, and I am confident our colleagues in the House will agree, when I say that both our budget reconciliation process as well as the conduct of the conferences which ironed out the small differences that did exist between the House and the Senate, can best be described as democracy really at work at its best.

We spent no time concerning ourselves with who or which party was right or wrong on any issue. All that concerned us as conferees was, what is right and what is best for the education of our youth. Certainly, we, like all reasonable people, had some honest differences of opinion, but under the able and congenial leadership of Chairman CARL PERKINS of the House, and in the spirit of friendship and compromise, those differences were worked out to the mutual satisfaction of all concerned.

All of us wrote a chapter in history this week when, with only minor adjustments as I have already mentioned, we were able to consolidate numerous line item, categorical programs, into block grants to State educational agencies.

I want to commend our colleagues in the House for accepting the President's request that we place more discretionary authority for educational decisionmaking in the federally assisted programs into the hands of elected State officials rather than continuing to hold on to these functions here in Washington.

We can be particularly proud of what we accomplished in reshaping several aspects of the student financial assistance programs for college youth. We have made access to educational opportunities available to more of our youth who really need them, while at the same time making it more difficult for programs to be abused by those who would be inclined to do so.

I would be remiss, Mr. President, if I did not recognize on behalf of all of the conferees, the invaluable contributions made by the professional staff of both Houses and both sides of the aisle, in the development of a compromise legislative proposal and a conference report. These fine and dedicated women and men worked tirelessly, long and late hours, including weekends and Sundays, to help us come up with a legislative package of which we can all be pleased and proud.

Mr. President, I feel particularly strong about the work we have performed in the areas of health care. As reported by the conferees from our committee and the House Energy and Commerce Committee, the total health package represents an estimated savings of $850 million. We have consolidated 15 categorical programs into three block grants, putting care for our citizens' health closer to them, into the control of the State and local governments.

In addition we have recognized significant savings in a variety of other programs and incorporated reauthorizing legislation into the reconciliation bill. Without objection, I would like to insert into the RECORD a summary of those actions here.

A summary of actions follows:

RECONCILIATION BILL

As reported by the Conferees from the Senate Labor and Human Resources Committee and the House Energy and Commerce Committee. The total Hatch-Waxman health package represents an estimated savings of $850 million.

1. HEALTH BLOCK GRANTS

These three bills consolidate approximately 15 categorical programs into block grants.

A. Health prevention and services block grant

This block grant includes the following programs:

Home Health, Rodent Control, Fluoridation, Health Education/Risk Reduction, Health Incentive Grants, Emergency Medical Service (to continue existing grants). Rape Crisis (with $3 million set-aside each fiscal year and distributed on population formula), and Hypertension (with set-aside according to following formula: 75 percent in FY 82; 70 percent in FY 83; and 60 percent in FY 84).

The funding levels for these programs were calculated at approximately 25 percent below current services. Total funding for this block is:

[In millions]

Fiscal year 1982	$95
Fiscal year 1983	96.5
Fiscal year 1984	98.5

B. Alcohol, drug abuse and mental health block grant

This block grant includes the following programs:

Mental Health.
Alcohol Abuse.
Drug Abuse.

The funding levels for these programs were calculated at approximately 25 percent below current services. Total funding for this block is:

[In millions]

Fiscal year 1982	$491
Fiscal year 1983	511
Fiscal year 1984	532

This block grant provides protection of existing mental health grantees. Also, there are specific earmarks for Alcohol Abuse, Drug Abuse and Mental Health by with ample discretion to the States to set their own priorities within these earmarks.

C. Primary care block grant (a State-option block)

This block grant includes Community Health Centers. The centers will remain a categorical program in FY 82, and then in FY 83 and FY 84 states may take over administration of Community Health Centers program in their state. Existing grantees protected for FY 83. If a state does not take over programs, then the Secretary would continue to run it.

The funding level for this grant is:

[In millions]

Fiscal year 1982	$280
Fiscal year 1983	302.4
Fiscal year 1984	327

2. MERCHANT SEAMEN ENTITLEMENT/PUBLIC HEALTH SERVICE HOSPITALS AND CLINICS

The bill repeals the entitlement effective October 1, 1981. The hospitals must submit a proposal to the Secretary of HHS by September 1, 1981 to transfer to state or local control, or propose plans for self-sufficiency. Hospitals with some prospect of being transferred could stay open until Setpember 31, 1982.

3. HEALTH PLANNING

The conference agreed to reauthorize health planning programs only through FY 82. The legislation provides for $102 million, which is $66 million below current services.

Of this amount, no more than $65 million may be spent on local health planning (HSA's). This will probably gut the program, paving the way for repeal or major modification next year. Amendments to the Health Planning Act that give the Secretary of the Department of Health and Human Services and the governors of the States the authority to phase out many aspects of this program.

4. CATEGORICAL HEALTH PROGRAMS

	Fiscal year—		
	1982	1983	1984
Immunization	$29.5	$32.0	$34.5
TB	9.0	10.0	11.0
VD	40.0	46.5	50.0
Family planning (fiscal year 1981: $166,000,000)	130.0	143.0	155.0
Migrant health centers	43.0	47.5	51.0
Primary care research and development	3.0	(1)	(1)
Alcohol and drug abuse demonstration projects (new, based on S. 755)	30.0	----	----

1 Repealed effective fiscal year 1983.

5. REAUTHORIZATIONS ATTACHED TO OMNIBUS RECONCILIATION BILL AS APPROVED BY THE CONFEREES

A. S. 1029, Health Maintenance Organizations: Funding levels for this bill: grants: FY 82 $20 million, FY 83 $20 million, FY 84 $20 million. Technical Assistance/Management Training: $1 million for FY 82, FY 83, and FY 84. Loans (maintain $5 million in funds for new loans): amounts equal to defaults plus $5 million.

B. S. 800: Funding levels for the programs reauthorized through this legislation include:

	Fiscal year—		
	1982	1983	1984
National Center for Health Service Technology	3.0	4	5
National Center for Health Services Research	20.0	22	24
National Library of Medicine	7.5	----	----
National Research Service Awards	182.0	----	----

6. S. 799—HEALTH MANPOWER

Total authorization levels are $218.8 for FY 82, $239.05 for FY 83 and $250.3 for FY 84, exactly halfway between Senate and House figures. Health Manpower now includes chiropractic and clinical psychologists included in definitions, data and HEAL sections.

7. S. 801—NATIONAL HEALTH SERVICE CORPS

Funding levels for this program are:

[In millions]

Fiscal year 1982	$110
Fiscal year 1983	120
Fiscal year 1984	130

In the face of a physician surplus and slow but real improvement in geographic distribution, this bill allows the NHSC to grow from its current field strength of 2,060, but holds it at a lower level than the excess of scholarship recipients. This bill makes other provisions attractive to scholarship recipients like the private practice option. This will allow the Secretary flexibility in placing individuals who are obligated to serve in the Corps. 550 new scholarships were added to this legislation, considerably less than previous year's levels.

8. KOOP NOMINATION AS SURGEON GENERAL

The Senate and House Conferees have included legislation that removes the restrictions in the Public Health Service Act that stopped the nomination of Dr. Koop as Surgeon General. Staff anticipates receiving Dr. Koop's nomination in August, and anticipates holding hearings in early September. Further plans of action will be drafted and submitted to you by mid-August.

Mr. HATCH. Mr. President, I want to take a minute to discuss one amendment that was postponed, but to which I remain committed. During the Labor and Human Resources Committee's consideration of S. 800, I proposed an amendment that would have required the National Library of Medicine to charge fees for the information products and services it supplies to commercial organizations at rates designed to recover their full cost. The rates charged domestic and foreign commercial companies would then be comparable to those charged by private information companies. My amendment would in no way effect the National Library's charges to nonprofit organizations.

It is not my intention to alter the National Library of Medicine's important information services, but I feel it is preferable policy that when these services compete with the private sector they should do so on the same terms as everyone else. In this vein, I will ask the GAO to examine whether the pricing practices of the National Library of Medicine may be precluding private companies from entering into competition with the Government.

Finally, Mr. President, I would point out that my concerns are consistent with a much wider Government policy. In 1952, this Congress adopted legislation requiring all Federal agencies to recover the full cost of the services it provides to private parties. This policy has been implemented by the Office of Management and Budget in OMB Circular A–25 and has been upheld by the U.S. Supreme Court. It is possible that the National Library of Medicine may be in violation of this policy. Thus, I will ask GAO in its study to report back to me regarding the National Library of Medicine's compliance with OMB Circular A–25 and the Independent Offices Appropriations Act of 1952.

This is, on the whole, a legislative package of which we can all be proud. I want to extend thanks to Senator DOMENICI, the chairman of the Budget Committee, who has prevailed in doing well a very difficult job; his assistance in the conferences to which I was a party was immensely helpful. Our distinguished majority leader also graciously extended a helping hand when we needed one, and I am sure all of my colleagues join me in thanking these two men, and expressing thanks to you all for a job well done.

Mr. SIMPSON. Mr. President, title 20 of the omnibus reconciliation bill relates to veterans' programs. As chairman of Senate Veterans' Affairs Committee, I am pleased to report that the legislative provisions of title 20—yielding the full amount of reconciliation savings required of us under the conference report on the first concurrent budget resolution—have been agreed to without a single negative vote by conferees from both the House and Senate Veterans' Affairs Committees. A pleasing experience.

Briefly stated, the provisions that we have agreed to are as follows:

First, limiting the $300 VA allowance for non-service-connected burial and funeral expenses to veterans who are entitled to receive either VA compensation or pension. This provision will not affect either the $150 plot allowance or burial benefits for veterans who die from service-connected causes.

Second, making certain types of outpatient dental benefits available only for 3 months after discharge from a period of active duty of at least 6 months.

Third, terminating the flight training program, except as to eligible veterans who have enrolled by August 31 of this year and who remain continuously enrolled thereafter.

Fourth, reducing the rate at which the VA will reimburse veterans for the cost of correspondence courses, from the present 70 percent to 55 percent. And finally, eliminating, with two minor exceptions, the education loan program.

Of these five provisions, the one pertaining to burial benefits generates the bulk of the necessary reconciliation savings—$75 million out of our overall target of $110 million in fiscal year 1982.

I should like to make one additional comment with respect to the burial benefits provision. This provision will have an incidental effect on the VA's ability to compile statistics on mortality among veterans through a program known as the beneficiary identification and records locator subsystem, or BIRLS. These statistics are an indispensable aid in studying long-term health problems among veterans—most notably the effects of exposure to agent orange and low-level ionizing radiation.

BIRLS statistics are presently compiled through the burial allowance program. Since the present measure will greatly restrict the availability of the burial allowance it is our intention that BIRLS will now come to rely instead on the plot allowance program. It is also our intention—since plot allowances, unlike burial allowances, are not paid when the veteran is buried in a national cemetery—that the VA take steps to include records of national cemetery burials in the BIRLS program. Specifically, the committee requests that the VA will establish, by October 1, 1981, the necessary administrative mechanism to assure reporting to BIRLS of all national cemetery burials, in order that this vital recordkeeping system may continue uninterrupted at or near its present rate of accuracy after the effective date of this legislation.

Also with respect to the burial benefits provision, I would add that I have today received written assurances from the Acting General Counsel of the VA indicating that when a veteran's application for compensation or pension is pending at the time of death—and the evidence in the file at that time is sufficient to support that claim of entitlement—the veteran will be deemed to have been in constructive receipt of such compensation or pension prior to death, for purposes of recognition of payment of the $300 VA burial allowance.

Mr. President, I am pleased to have played a part in the framing of this legislation to assist in reducing Federal spending. This bill, in combination with the recently passed tax bill, represents this Congress first major step toward the implementation of President Reagan's

program for economic recovery and a balanced budget by 1984.

Mr. President, I ask unanimous consent that the documents—a white paper of the Veterans' Administration's General Counsel's Office and a letter to me from the VA's Acting General Counsel—be inserted in the RECORD at this point.

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

VETERANS' ADMINISTRATION,
OFFICE OF GENERAL COUNSEL,
Washington, D.C., July 29, 1981.

Hon. ALAN K. SIMPSON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to you and other conferees in response to a Senate Veterans' Affairs Committee request concerning the VA's interpretation of proposed statutory language intended to resolve the differences between Senate- and House-passed provisions to limit non-service-connected burial benefits in the pending Omnibus Reconciliation Act of 1982.

The proposal at issue is as follows:

"Delete all of section 902(a) of title 38, United States Code, prior to 'the Administrator' and insert in lieu thereof the following: 'When a veteran dies who was in receipt of compensation (or but for the receipt of retirement pay would have been entitled to receive compensation) or in receipt of pension,'."

At issue is whether this language would cover situations in which an application for compensation or pension is pending at the time of the veteran's death and it appears from the evidence in the file at the date of death that the veteran would have been entitled to the benefit had he or she lived.

Under section 3021 of title 38, certain periodic monetary benefits, such as compensation and pension, may be paid to a veteran's survivors with certain limitations to the extent accrued and unpaid on the date of the veteran's death. Accrued benefits payable by virtue of this section include those to which the veteran was entitled under existing ratings or decisions and also "those based on evidence in the file at date of death".

Our longstanding interpretation of this provision (and its predecessors) has been that, where accrued compensation or pension benefits are payable based on the evidence in the file at the date of the veteran's death, the veteran may then be considered to have been in constructive receipt of compensation or pension prior to death. In such case, statutory burial benefits are also payable. We note that resort to this interpretation is rarely required since the present burial benefits provision covers all veterans of wartime service.

Although this matter is not covered expressly in VA regulations and manuals, we refer you to the enclosed memorandum opinion, dated July 28, 1943, from the Solicitor to the Administrator. We have also been advised by the Chief Benefits Director that, where the evidence in the file on the date of death supports an award of accrued benefits (see M21–1, paragraph 37.07, enclosed), steps are taken to assure payment of burial benefits, if appropriate under the circumstances.

We believe that our interpretation is consistent with Congressional intent that veterans' programs be administered fairly and compassionately with due regard to their underlying purpose.

If the proposed amendment to section 902 is enacted, we do not believe there would be any basis for departure from our longstanding interpretation.

We trust that this letter is responsive to your concern.

Sincerely yours,

ROBERT E. COY,
Acting General Counsel.

[White Paper]

PRESERVATION OF MORTALITY DATA REPORTING (VETERANS' DEATHS) AT CURRENT LEVELS

This paper discusses the extent to which the current level of mortality data reporting in the Beneficiary Identification and Records Locator Subsystem (BIRLS) could be preserved if, effective with respect to deaths occurring on and after October 1, 1981, the burial allowance payable for a veteran's non-service-connected death (section 902 of title 38, United States Code) were payable only where the veteran was entitled to compensation or pension on the date of death, with no change in current provisions (section 903 of title 38) respecting the payment of plot-interment allowances.

IMPORTANCE OF PRESERVING MORTALITY DATA REPORTING

The Veterans Administration for many years has paid a burial and plot allowance on presentation of proof of the death of any wartime veteran or veteran in receipt of service-connected disability compensation who was discharged under conditions other than dishonorable.

As a result, the VA has received notice of the deaths of 95 to 98 percent of all wartime veterans dying of any cause. Through the records thus accumulated, scientists have been able to determine the rate of deaths and the causes of death for any defined group of veterans, *e.g.*, for World War II prisoners of war. This access to reliable mortality data for large, defined groups has been an invaluable epidemiological tool and one without parallel in this country.

It has enabled the Medical Follow-up Agency of the National Acedemy of Sciences-National Rsearch Council to conduct studies of great importance, including those mandated by Congress. An example of the latter is the study submitted to Congress in 1979 concluding that traumatic amputation of the lower extremities increases the risk of death from cardiovascular disease.

The Medical Follow-up Agency currently is relying upon these records to study the consequences of exposure to low-level ionizing radiation as experienced by military observers at atmospheric nuclear weapons tests in Nevada and in the Pacific. Epidemiologists of the University of California at Los Angeles plan to use these records in designing the Congressionally mandated study of the health effects of exposure to Agent Orange.

The Air Force is using the records to document deaths among the Ranch Hand participants and among control groups in its epidemiological study. These studies cannot continue unless the data base upon which they are predicated is preserved.

As noted above, it is believed that BIRLS includes reports of from 95 to 98 percent of all veterans' deaths occurring during fiscal year 1980 and previous fiscal years. This level of reporting is the direct result of the current procedures for payment of burial benefits, both for nonservice-connected and service-connected deaths.

PROSPECTIVE LEVEL OF MORTALITY DATA REPORTING

If the plot allowance provisions continue unchanged and veterans' deaths are reported in connection with claims for the plot allowance, the means for achieving a level of mortality data reporting close to the fiscal year 1980 level exists. During that year, 293,245 plot allowances were paid and there were 29,260 burials in National Cemeteries, for which no plot allowances was payable. The total number of deaths reportable to BIRLS would have been 322,505.

To this total must be added those service-connected deaths reported to BIRLS that did not result in National Cemetery burial; in these cases the service-connected death burial benefit is payable in lieu of the plot and burial allowances.

If one asumes that 50 percent of veterans whose deaths were service connected were not buried in National Cemeteries, the total number of deaths reportable to BIRLS would have been 327,547, 98 percent of the deaths actually reported.

It is, therefore, reasonable to assume that three programs currently in place—the plot allowance program, the service-connected death burial benefits program, and the National Cemetery burial program—are capable of yielding a level of mortality data reporting that is almost the same as the present level.

NECESSARY ASSUMPTIONS

The above conclusion is based on three assumptions. First, it is assumed that no change would be made in the present plot allowance and service-connected burial benefits programs.

Second, it is assumed that necessary administrative mechanisms to assure reporting to BIRLS of National Cemetery burials of veterans would be in place prior to October 1, 1981. BIRLS currently does not contain such records, and this objective can be achieved only if reporting procedures are initiated and implemented as soon as possible.

Third, it is assumed that the present level of reporting based on plot allowances will continue.

Currently, the plot and burial allowances are generally paid directly to the funeral director as a reimbursement. The funeral director, having made the necessary inquiries as to veteran status, files a claim and sets off the amount received against the amount owed by the legally responsible parties, who are usually members of the deceased veterans' family.

In virtually all such cases, the funeral director has a direct financial stake in the burial allowance claim. The extent to which funeral directors benefit directly from the payment of plot allowances is less certain.

In the future, if the funeral director is a mere conduit for the payment of the plot allowance to the cemetery and has no direct financial interest in the claim, it is uncertain whether the same level of claims for plot allowances can be achieved. To the extent that claims are not filed either by funeral directors, cemetery officials, or family members, deaths will not be reported and there will be a shortfall.

This may be obviated to some extent by providing information to funeral directors and cemetery officials regarding the importance of reporting veterans' deaths.

CONCLUSION

It is concluded that the proposal would result in a level of mortality data reporting almost the same as present levels if necessary administrative changes are made promptly and the current high level of cooperation by the private sector is maintained.

Mr. CRANSTON. Mr. President, insofar as the conference agreement on title XX, veterans' programs, of H.R. 3982 is concerned, the proposed "Omnibus Reconciliation Act of 1981" reflects a fair compromise of the House and Senate provisions and vindicates to a very considerable extent the approach taken by the Senate.

Mr. President, I would like to comment on certain specific aspects of our negotiations with the House so that my colleagues will have a full understanding of how the conference agreement on veterans' programs was reached.

BURIAL BENEFITS

In proposing that the vast bulk of the required savings be made in burial benefits and plot allowances, our committee recommended and the Senate approved provisions that would have cut off both benefits in many cases. In the face of the mandate to reduce spending for VA

entitlements by more than $100 million in each of 3 fiscal years, such extensive reductions in that area seemed preferable to us to making cuts in almost any of the benefits for living veterans or for the dependents or survivors of veterans with severe service-connected disabilities or the needy survivors of wartime veterans.

Shortly after Senate passage of the bill, however, we learned that the curtailments of eligibility for the $300 burial benefit and $150 plot allowance that would eliminate eligibility for both payments in a substantial number of cases would very likely have the effect of cutting off an extremely valuable source of information that forms a data base for medical studies.

As is explained in a white paper from the VA General Counsel's Office, which Senator SIMPSON inserted in the RECORD, the VA currently receives, in connection with the payment of the burial benefit and plot allowance, notice of the deaths of over 95 percent of all wartime veterans and incorporates that information in a central computerized system—the beneficiary identification and records locator systems, BIRLS. This extensive data base is a uniquely valuable epidemiological tool.

It is often used by the Medical Follow-up Agency of the National Research Council of the National Academy of Sciences for very important studies, including certain studies mandated by the Congress and its current study of the consequences of exposure to nuclear weapons test radiation. Examples of the uses that these data serve also include their planned use by UCLA epidemiologists in the design of the epidemiological study of the possible long-term adverse health effects of the exposure of Vietnam veterans to dioxin, the highly toxic contaminant found in agent orange.

Mr. President, I ask unanimous consent that a letter from the President of the National Academy of Sciences explaining this issue be printed in the RECORD at this point.

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

NATIONAL ACADEMY OF SCIENCES,
Washington, D.C., June 26, 1981.

Hon. G. V. MONTGOMERY,
Chairman, House Veterans Affairs Committee, Washington, D.C.

DEAR MR. MONTGOMERY: It has come to my attention that the Congress, as part of the effort to reduce federal expenditures, is seriously contemplating limiting eligibility for the Veterans Administration burial allowance to certain classes of veterans. I write to call to your notice one otherwise invisible secondary consequence of such action, a matter that would present a serious problem for medical research work of importance to veterans specifically and the nation generally. Let me explain:

At this time, the only source of information that can be utilized to assess the health status of veterans generally is the VA Beneficiary Identification and Records Locator Subsystem (BIRLS). From BIRLS it is possible to learn, with about 95 percent accuracy, whether a veteran is alive or deceased; if deceased, a copy of the death certificate can be obtained which shows the cause of death. Thanks to BIRLS, medical research workers have been able, for several decades, to study the relationships between disease and veterans' history of exposure.

For example, you may recall the study of elevated cardiovascular disease mortality among veterans who had major amputations while in service. This study, done by the Academy at the request of Congress, depended critically upon the BIRLS file. Other, similar problems will surely arise in the course of time. If the completeness of BIRLS, as the sole existing source of information about veterans generally, is compromised, it will become impossible to accomplish, at acceptable cost, studies of the kind mentioned.

The reason, of course, that BIRLS contains such complete and reliable information concerning mortality and its causes is that, until now, application has been made for the burial allowance on behalf of virtually every veteran who dies. If eligibility is sharply restricted, as I understand is now being contemplated, the proportion of deaths which generate such claims will decline precipitously and the value of BIRLS as a source of information about veterans' health will be seriously impaired, if not altogether destroyed. A few examples of such matters of current interest may illuminate the problem.

The Congress has instructed the Veterans Administration to design and execute a study of the health of Vietnam veterans who were exposed to the defoliant Agent Orange and a protocol for such a study is now being prepared; it is my judgment that it will be impossible to execute any scientifically valid study of this question in the absence of information about the mortality of veterans which is now available through BIRLS. Similarly, the National Academy of Sciences is performing a study designed to ascertain any possible adverse health effects among veterans who were present at tests of nuclear weapons. This study is also critically dependent upon the accuracy and completeness of information now available through BIRLS concerning mortality among veterans.

I appreciate the difficulties which the Congress faces in finding desirable and/or acceptable ways to accomplish the budget cuts which now seem necessary. I would be negligent, however, were I not to call to your attention the very serious, although unintended, secondary consequences upon medical research that would inevitably follow upon restrictions on the eligibility of veterans generally for the burial allowance.

Sincerely yours,

PHILIP HANDLER,
President.

Mr. CRANSTON. Mr. President, it is extremely important to the Nation's veterans—and to the validity of medical research into the total effects on their health and the length of their lives that may result from the wounds they suffered, the diseases they contracted, and the toxic substances and other hazards to which they are exposed during service—that reliable data regarding a very high percentage of veterans' deaths continue to be received and incorporated in the BIRLS data bank.

Consequently, I and other conferees, in reaching a compromise in this area, took fully into account the need to preserve continuing access to such data regarding deaths in fiscal year 1982 and thereafter, and we consulted extensively with the VA in that regard. The results are amendments to title 38 of the United States Code that would have no effect on entitlement to the $150 plot allowance and would, generally along the lines of the Senate provision, restrict the payment of the $300 burial benefit to the cases of veterans who were, at the time of death, in receipt of compensation or pension.

As the white paper from the VA General Counsel's Office concludes, this proposal:

Would result in a level of mortality data reporting almost the same as present levels if necessary administrative changes are made promptly and the current high level of cooperation by the private sector is maintained.

In order to help insure that that high level of reporting is achieved, it is vital that the VA take all steps necessary to maintain the cooperation it now receives from the private sector, specifically funeral directors, who I am sure will respond appropriately if made aware of the great importance of the data involved. It is equally important that the administrative mechanisms are made operational by October 1, 1981, for reporting to BIRLS information on the deaths of veterans who are buried in national cemeteries.

I therefore strongly urge the new Administrator of Veterans' Affairs, Robert Nimmo, to insure that these steps are taken.

I recognize that setting up such new administrative reporting system would require some minor reallocation of resources under the VA's general operating expenses account, and I strongly encourage the making of the reallocations that will be needed to make certain that the information begins to be fed into BIRLS by October 1.

Mr. President, I would also note, in connection with the burial benefit provision, that the term "in receipt of" compensation or pension is intended, by virtue of the operation of section 3021 of title 38, to include those cases in which the veteran's application for compensation or pension is pending at the time of the veteran's death and the evidence in the file on the date of death shows that the veteran would have been determined to be entitled if he or she had not died.

This approach is consistent with the longstanding VA interpretation—as expressed in the July 29, 1981, letter from the VA's Acting General Counsel, Robert E. Coy, to the distinguished chairman of the Senate Committee on Veterans' Affairs (Mr. SIMPSON), which the chairman has placed in the RECORD—of the phrase "in receipt of * * * compensation" in connection with the eligibility for the burial benefit of those who die while their claims for compensation are pending.

Because the level of savings that would be achieved in this area by the conference agreement is $21.5 million less than the Senate provisions would produce, it was necessary for us to make concessions to the House in order to achieve greater savings in other areas. In seeking those additional savings, however, every effort was made to attempt to preserve benefits in a restricted area rather than agree to the total elimination of a benefit to which the Senate had not previously agreed. With the exception of flight training we were successful in those efforts and, even in that case, we were able to provide one final opportunity for veterans to use their GI bill benefits for flight training.

OUTPATIENT DENTAL CARE

Mr. President, the conference agreement provision regarding outpatient

care for the noncompensable dental conditions, not the result of trauma, of newly discharged veterans incorporates the Senate approach of tightening the eligibility requirements for such care rather than the House approach, which was to terminate the benefit. The changes made in the Senate provision would shorten to 3 months the period within which the veteran must apply for this care in order to be eligible. Under current law, that period is 1 year, and the Senate provisions would have shortened it to 6 months.

In light of the relatively shorter application period of 3 months that the conference agreement would provide, we insisted that the conference agreement also require that, when the servicemembers affected are being discharged, they be advised in writing that the 1-year application period has been reduced to 3 months—with the providing of that advice to be documented by the individual's signature or, if he or she refuses to sign an acknowledgement, by a certification of an appropriately authorized officer.

Mr. President, these provisions are designed to insure that no veteran loses the opportunity to receive outpatient care eligibility for any dental condition that can reasonably be attributed to service-connected causes. I am very gratified that we were able to keep this benefit from being terminated.

FLIGHT TRAINING

Mr. President, despite the enactment in Public Law 96-466 last year of various provisions to eliminate abuses in the use of GI bill benefits for flight training, the House passed a reconciliation provision to terminate the payment of such benefits as of October 1, 1981. Although I believe that termination of this program before we have had a chance to gage the impact of last year's changes is inadvisable—especially since there are preliminary data suggesting that utilization has begun to decline—the House Committee was adamant in its insistence on termination. Moreover, in view of the compelling need, as I discussed earlier, for greater savings in areas other than burial benefits, it was not possible to save the program.

However, I am pleased to note, we were able to get the House to agree to a grandfathering provision under which any veteran who is enrolled in flight training on August 31, 1981, would be unaffected by the termination for as long as he or she continues to be so enrolled. In this connection, I urge that the VA, through the news media, take appropriate steps to alert veterans who may have an interest in pursuing employment in the field of aviation aware of this final opportunity to begin using their GI bill entitlement for flight training and to make a major effort to process pending applications for approval prior to September 1, 1981.

Also, in order to help avoid any confusion that might otherwise result from news that the VA education loan program is generally being terminated, all publicity efforts regarding the flight training and loan programs should clearly point out that loans will continue to be available, as under current law, to those using the GI bill for flight training under the grandfather provision.

CORRESPONDENCE TRAINING

Mr. President, Public Law 96-466 also contained provisions designed to eliminate abuses in the area of training through correspondence courses, as well as in flight training. Those changes in the law included a reduction from 90 to 70 percent in the portion of the costs that the VA pays. I strongly believe that the VA share should remain at 70 percent.

However, similar to the situation with respect to flight training, the House position favoring complete termination and the need to achieve the specified savings made it impossible for us to leave this program intact. Thus, I deeply regret it was necessary in order to achieve the required level of savings to include in the conference agreement the provision reducing the VA share to 55 percent with respect to all lessons that are submitted after September 30, 1981.

EDUCATION LOANS

Mr. President, with respect to the provision terminating the education loan program, we reached a fair compromise also. Although I would have preferred to have retained the additional year that the delayed effective date I proposed in the Senate version—October 1, 1982—would have afforded us to assess further the advisability of generally continuing this program, I am grateful to the House conferees for agreeing to the Senate provisions to keep loans available for those who continue, under the grandfather provision that I discussed earlier, to use GI bill benefits for flight training after October 1, 1981, and for those Vietnam-era veterans who continue fulltime training in the first 2 years after the expiration of their GI bill delimiting period.

CONCLUSION

As I previously indicated, I believe that title XX, veterans' programs, of the pending measure reflects a fair compromise between the positions of the two bodies. I would like to express by gratitude to the very able and distinguished chairman and ranking minority member of the House Veterans' Affairs Committee (Mr. MONTGOMERY and Mr. HAMMERSCHMIDT), and the other House conferees, for their excellent cooperation in our mutual efforts to fashion spending reductions that are as fair as possible to veterans and their survivors and reflect appropriate priorities.

I also want to say how much I appreciate the fine work of the chairman of the Senate Veterans' Affairs Committee, the distinguished Senator from Wyoming (Mr. SIMPSON) and the other Senate conferees, the Senators from Wisconsin (Mr. KASTEN), Alaska (Mr. MURKOWSKI), West Virginia (Mr. RANDOLPH), and Hawaii (Mr. MATSUNAGA), in the development of this legislation.

In addition, thanks for their excellent work on title XX of this measure are due to House committee staff members Mack Fleming, Rufus Wilson, and Charles Peckarsky, Senate Veterans' Affairs Committee staff members Ken Bergquist, Scott Wallace, and Harold Carter and minority staff members Babette Polzer, Molly Milligan, Ed Scott, and Jon Steinberg, as well as to the staff members of Senator KASTEN, Jim Gerard, of Senator MITCHELL, Liz Coffee, of Senator RANDOLPH, Ned Massee, and of Senator MATSUNAGA, Vince Versage.

Mr. CANNON. Mr. President, I rise to explain my position on the Reconciliation Act conference report. I intend to vote for approval of the report because of the demand of the American public that we reduce Federal expenses and move toward a balanced Federal budget. My decision to support the conference report was not reached easily, however, because I believe that some of the priorities of the package have been misplaced, particularly as they affect the elderly, students and their parents, and low-income citizens.

Let me say at the outset that I strongly support this effort of the Senate to bring about substantial savings in programs of the Federal Government. If through this effort we may help alleviate the evils of inflation and high interest rates, we will have served the Nation well. I believe our efforts will have a positive impact, both real and symbolic, and I believe we must continue to fulfill the mandate of those we represent as expressed in the last election.

I am particularly pleased that we were able in the Senate Commerce Committee to secure major funding provisions for aviation, communications, consumerism, highway safety, and rail passenger service. Specifically, I am referring to the $450 million for airport development in fiscal year 1981. This program funds important construction projects around the country, including Las Vegas, Reno, and Elko. Additionally, I was successful in convincing my colleagues to authorize $15 million to fund the noise abatement program at Reno's Cannon International Airport. This $15 million grant will provide the airport authority with essential assistance to reduce the burdensome noise problem around Sparks and Reno.

Regarding rail passenger service, I was successful in increasing Amtrak's funding in the Senate and pressed to retain a national rail structure to insure that the Zephyr and Desert Wind continue service in Nevada.

This package extends the highway safety grant program for an additional 3 years at an authorization level of $100 million per year for the basic grant program, but with one important change for the Western States. The Reconciliation Act preserves the current compliance requirements of the 55 miles per hour national speed limit so that a State will be considered in compliance if it achieves a 50-percent compliance level. This action prevents the imposition of increasingly strict compliance standards scheduled for future years which would pose a particular burden on States such as Nevada.

The communications provisions provide for increased license terms for commercial television and radio stations and the continued Federal commitment to

support public broadcasting. Under the new provisions, radio stations will face the costly license renewal process every 7 years rather than the 3 years as they do today. Television stations will have license terms extended from 3 to 5 years. These changes will greatly reduce the cost of regulation to local stations throughout the country.

Finally, of particular interest to consumers, I am pleased to note the conferees agreed to a 2-year reauthorization for the Consumer Product Safety Commission with new amendments protecting the disclosure of confidential material, which I had originally sponsored.

When analyzing the broader implications of this reconciliation package, I cannot but reflect that many of those who can least afford the burden of reduced assistance or program cutbacks are being asked, nevertheless, to shoulder that burden. I cannot help but reflect that the safety net programs the President spoke of have not fared well in this bill. The most glaring example of this is the social security minimum benefit which has been eliminated. Even if there is another chance later to restore this benefit, I cannot vote for this report without protesting what I feel has been a deplorable disregard for the elderly who must depend on this program and who generally have little else in the way of income.

The House vote today of 404 to 20 on separate legislation to restore the minimum benefit has sent a clear signal to the Senate that this benefit must be reinstated. I urge the Committee on Finance to act quickly and favorably on this House bill so that the Senate can also correct this error.

Substantial reductions have been made in housing programs designed to assist those otherwise forced to live in unsanitary, dilapidated, or overcrowded housing. The 40-percent reduction in this program is just too much, in my opinion. It was a disappointment to many low-income citizens when the Senate failed yesterday to pass an amendment that I offered to the HUD appropiration bill that would have brought the appropriation for housing assistance up to the reconciliation level being approved today.

Child nutrition programs are being substantially cut, forcing higher school lunch prices and cutting off thousands of women, infants, and children from supplemental feeding programs.

Other areas which I feel have been targeted to carry more than a fair share of the budget reduction burden are student assistance programs, medicare benefits, and a number of social programs crowded into block grant programs with their funding slashed at the same time.

As with most matters of legislation, we often have to take the best we can. Thanks to the process of compromise, the cutbacks being sustained in the aforementioned programs are not as severe as the administration originally wanted or as the Senate originally wanted. I have also been somewhat relieved with the more reasonable impact levels on Commerce Committee programs that I have also outlined. In light of these cutbacks in the cutbacks, and the legitimate need to cut Federal spending and work toward a balanced Federal budget. I will vote for passage of this conference report.

As I said earlier, we have a mandate to exercise greater restraint in Federal programs, and if our actions will help stabilize the economy, then all Americans, regardless of their economic status, will benefit. With this economic goal in mind, along with the positive aspects I have mentioned, I feel this report should be passed.

COLLOQUY BETWEEN SENATORS GARN, THURMOND, HOLLINGS, AND TOWER ON COASTAL BARRIER CONFERENCE REPORT

Mr. THURMOND. Senator HOLLINGS and I would like to ask the distinguished chairman of the Banking Committee about the Senate amendment to the House provision relating to Federal flood insurance on coastal barrier islands. It is my understanding that the House provision prohibited Federal flood insurance for new construction or substantial improvements of structures located on undeveloped coastal barriers designated by the Secretary of the Interior. Furthermore, the House provision required the Secretary to designate the affected coastal barriers within 90 days of the date of enactment of this legislation. The Senate, however, contained no such prohibition.

It is my further understanding that, led by the distinguished chairman, the House provision was opposed in conference, for which I would like to thank the chairman.

Mr. GARN. That is correct. We do not believe that this issue should be addressed as part of the budget reconciliation process, but rather, should have the benefit of further legislative hearings. For example, the only geologist who testified, from an internationally recognized engineering consulting firm, indicated in House hearings that the House definition of a coastal barrier was so broad that it could include stable structures on the Atlantic and gulf coasts where productive use of property would be otherwise desirable. The House language also referred to undeveloped areas, but used the vague term "few man-made structures." Clearly, these are issues that deserve further examination.

Under the Senate compromise amendment agreed to by the conferees, the Secretary is required to make a study for the purpose of designating undeveloped coastal barriers. The compromise amendment further requires the Secretary to transmit to the Congress no later than 1 year from the date of enactment a report of his findings and conclusions as to which coastal barriers should be designated as undeveloped coastal barriers, as well as recommendations for any changes in the definition. Assuming that no further changes were made by Congress in the definition or designations, Federal flood insurance would not be available for construction on these designated areas after October 1, 1983.

Mr. HOLLINGS. I note that the conference report does not include any reference to prior inventories prepared by the Department of the Interior. However, the report of the managers does include a reference to maps prepared by the Department of the Interior earlier this year. Could you clarify this for me?

Mr. GARN. The study was required because there has been so much controversy over what is a coastal barrier and particularly over whether the areas listed by Interior are actually undeveloped. It is my understanding that Interior has been making an informal inventory of such areas over the last several years through both the Park Service and the Fish and Wildlife Service, and each year the list changes as to which property qualifies and which property does not.

It was not the intent of the conferees to endorse any of these maps. It is my opinion that no one year's list should be any more authoritative than the next. Indeed that is why we are requiring the Secretary to do a year-long study. We want him to review carefully the definition and to make his designations on the basis of his study. Any other interpretation would contravene the purpose of requiring the study in the first place.

In defining undeveloped coastal barriers, only coastal barriers which are truly undeveloped, unstable and environmentally fragile, either islands or coastal barriers which are connected to the mainland, but which serve in any event to protect the mainland from the effects of ocean wind, wave and tidal energies, are the subject of this legislation.

Mr. TOWER. I have one question to ask the distinguished chairman. Do you interpret the phrase "coastal barrier" to include mainland property?

Mr. GARN. I assure my distinguished colleague that the intent of the Senate amendment is not to prohibit Federal flood insurance on coastal mainland property.

Mr. LUGAR. Mr. President, while the statement of the managers with regard to FHA single-family mortgage limits is directly on point with regard to one aspect of the problem, it does not deal adequately with the situation where, because of a substantially higher proportion of sales of existing units as opposed to newly constructed homes, the median sales price of single-family homes is so low that FHA's mortgage limits are unrealistically low and most new homes in these areas cannot be financed with FHA-insured mortgages. In this situation the conferees also intended for the Secretary of HUD to give greater weight to the sales prices of new homes in determining median sales price.

Mr. President, as author of an amendment agreed to by the budget reconciliation conferees to make statutory a hold harmless agreement for insurance agents who participate in the Federal flood insurance program, I want to clarify the meaning and intent of what the conference committee adopted.

The hold harmless language agreed to in conference is intended to hold insurance agents harmless from and indemnify them for judgment for damages as a result of any court action by a policyholder or applicant, court costs, and

reasonable attorney's fees arising out of errors and omissions on the part of the Federal Emergency Management Agency and its contractors. Implicit in the term indemnification for judgments are claims arising out of errors and omissions on the part of FEMA and its contractors that may be settled prior to judgments for damages.

The language inserted in the conference committee bill, along with report explanation, inadvertently and unnecessarily clouds the clear intent of the amendment's author and of the conferee's agreement.

As I stated in the CONGRESSIONAL RECORD on June 3, 1981, a statutory hold harmless agreement became necessary after an opinion issued by the Comptroller General of the United States voided an earlier agency hold harmless agreement that had been in effect since 1978.

It is my firm belief that nullification of the agreement that shielded insurance agents from sometimes substantial losses caused by the mistakes of others seriously jeopardized the overall success of the flood insurance program. Even apart from the potentially adverse impact of the Comptroller General's opinion, I believe as a matter of simple equity that insurance agent participants in the flood insurance program should not be caused to suffer for the mistakes of others.

The language I offered, and agreed to by the conference committee members, restores a hold harmless agreement to the flood insurance program. As importantly, it restores to the program the confidence of the many thousands of insurance agents who bring flood insurance to the public.

● Mr. ANDREWS. Mr. President, sugar is an internationally traded commodity, but one for which the margin between surplus and shortage is very narrow. Price volatility on the world sugar scene is the rule, not the exception.

The United States is a deficit sugar producer. Unlike grain crops and others produced in surplus for which U.S. production establishes the market, the price U.S. consumers pay for sugar is established by offshore producers.

To assure that there is at least some U.S. production is obviously in the national interest. Price stability is one of the prime requisites for maintaining that production.

When we reconvene after Labor Day, one of the early items of business before us will be the 1981 farm bill. It contains a very simple, but, nevertheless, vitally important, provision mandating the operation of a nonrecourse loan programs for sugar beet and sugarcane growers. This program will provide stability. It sets the loan level at 19.6 cents per pound for raw cane sugar and allows the Secretary of Agriculture to determine the level of the loan for refined beet sugar. Historically, the loan level for the refined product has, of course, been minimally higher since, because it is ready for consumption, it has a higher value and costs more to produce.

We are already hearing from critics of the proposal that it is somehow an effort to "rip-off" the American people while providing windfall profits to U.S. producers.

In April, the Department of Agriculture completed an exhaustive cost of production study of domestic sugar production and issued a preliminary report. The study projects the average cost of producing and processing sugarbeets will be 25.3 cents per pound of refined sugar for the 1981–82 crop year, excluding any consideration for land costs.

Mr. President, certainly, it would not be appropriate to propose a loan level that would assure sugarbeet and sugarcane growers a return equal to their full production costs and the study by the USDA clearly indicates that this is not the case. At 19.6 cents per pound, it provides a stabilizing safety net, not a rip-off.

Mr. President, I wish to have printed in the RECORD that portion of the USDA preliminary report dealing with the cost of producing and processing refined beet sugar.

The report follows:

COST OF PRODUCING AND PROCESSING SUGARBEETS

The estimated 1980/81 and projected 1981/82 costs of producing and processing sugarbeets and refined beet sugar are summarized in table 13. Net production and processing cost, excluding land, per ton of beets was estimated at $54.91 for 1980/81 and are expected to increase to $59.98 for 1981/82 equal to 25.3 cents per pound. Production costs were 10.7 cents per pound of refined beet sugar in 1980/81 representing 45 percent of net costs excluding land. They are projected to increase to 11.6 cents or 9 percent for 1981/82. Processing cost per pound for 1980/81 was estimated at 16.7 cents before credit for by-products. For 1981/82 processing cost per pound is expected to increase to 17.8 cents or 7 percent. This increase was expected to be less than the rate of inflation because of two factors—an increase in recovery per ton of sugarbeets based on trend and an increase in processor volume reflecting increased acreage in response to the relatively high sugar prices of 1980/81. Ownership cost of processing, for example, is projected to increase only .1 cent between 1980/81 and 1981/82. Dried beet pulp and molasses are the major by-products of refined sugar production. Estimated credit from by-products in 1980/81 was 3.8 cents per pound or $8.99 per ton of sugarbeets.

U.S. production costs per planted acre, excluding land, were $472 in 1980/81 (Table 14). Major cost components include fertilizer, chemicals, labor, replacement cost for machinery, and management. Nonland production cost per acre for 1981/82 is projected at $535, an increase of 13 percent over 1980/81. In both years land allocation on a share rent basis was well above interest and taxes on owned land at current market value, with cash rent representing the lowest cost. The relatively high 1980/81 and projected 1981/82 sugar prices resulted in high share rent costs.

Regional sugarbeet nonland production costs per planted acre in 1980/81 were highest in California at $719 and lowest in Minnesota-North Dakota at $326 (table 15). The U.S. average yield was 18.9 tons. Except for Texas-New Mexico, the regions with the highest costs per acre were those with the highest yields. Yields of nearly 26 tons per acre were recorded in Western Idaho and Oregon contrasted with 13.6 tons in Minnesota and Eastern North Dakota. Texas-New Mexico yields were also low at 14.9 tons reflecting difficult growing conditions in 1980/81.

Sugarbeet cost of production, excluding land, for 1980/81 ranged from $18.90 per ton in Michigan and Ohio to $37.40 in Texas and New Mexico (table 16). Five of the eight regions had costs in 1980 between $22 and $25 per ton. Variable costs represented roughly two-thirds of 1980/81 costs in most areas ranging from $13.38 per ton in Michigan-Ohio to $23.86 in Texas and New Mexico. The composite land allocation was $8.53 per ton for the U.S. and ranged from a low of $5.44 per ton in Texas and New Mexico to $10.76 in Kansas, Colorado, Nebraska, and Southeast Wyoming.

AVERAGE PRODUCTION AND PROCESSING COSTS PER ACRE, PER TON, AND PER POUND, REFINED BEET SUGAR, UNITED STATES, PRELIMINARY 1980–81 AND PROJECTED 1981–82

Cost item	1980–81 Acre	1980–81 Ton	1980–81 Pound (cents)	1981–82 Acre	1981–82 Ton	1981–82 Pound (cents)
Sugarbeets:						
Production excluding land	$471.59	$24.95	10.667	$534.68	$27.52	11.612
Processing		38.95	16.653		42.19	17.800
Total		63.90	27.320		69.71	29.412
Byproduct credits		8.99	3.844		9.73	4.104
Net cost, excluding land		54.91	23.476		59.98	25.308

Cost item	1980–81 Acre	1980–81 Ton	1980–81 Pound (cents)	1981–82 Acre	1981–82 Ton	1981–82 Pound (cents)
Land allocation:						
Share rent	258.96	13.70	5.857	289.84	14.92	6.295
Cash rent	87.29	4.62	1.975	97.70	5.03	2.122
Current market value	146.68	7.76	3.318	164.18	8.45	3.565
Composite	161.31	8.53	3.647	180.55	9.29	3.920
Yield per acre (tons)		18.90			19.43	
Recovery per ton (pounds)			233.9			237.0

TABLE 13.—SUGARBEETS: PRELIMINARY AND PROJECTED UNIT COST OF PRODUCING AND PROCESSING PER TON OF BEETS AND PER POUND OF REFINED SUGAR, BY COST ITEM, CROP YEAR UNITED STATES

Cost item	1980		[1] 1981	
	Ton	Pound (cents)	Ton	Pound (cents)
Production	$24.95	10.667	$27.52	11.612
Variable	17.54	7.499	19.35	8.165
Machinery ownership	4.61	1.971	5.90	2.148
General and administration	2.80	1.197	3.08	1.299
Processing	38.95	16.653	42.19	17.800
Variable	22.70	9.707	25.40	10.719
Ownership	10.29	4.399	10.59	4.470
General and administration	1.86	.749	1.93	.813
Dried pulp	4.10	1.753	4.27	1.789
Total production and processing excluding land	63.90	27.320	69.71	29.412
Credits	8.99	3.844	9.73	4.104
Dried pulp	5.74	2.453	6.20	2.615
Molasses	2.80	1.198	3.04	1.281
Other	.45	.193	.49	.208
Net production and processing	54.91	23.476	59.98	25.308
Land allocation:				
Share rent	13.70	5.857	14.92	6.295
Cash rent	4.62	1.975	5.03	2.122
Current market value	7.76	3.318	8.45	3.656
Composite	8.53	3.647	9.29	3.920
Yield per acre (tons)	18.90		19.43	
Recovery per ton (pounds)		233.9		237.0

[1] Projected.

TABLE 14.—SUGARBEETS: PRELIMINARY AND PROJECTED PRODUCTION COSTS PER PLANTED ACRE, PER TON OF SUGARBEETS AND PER POUND OF REFINED SUGAR, BY COST ITEM, CRO YEAR UNITED STATES

Cost item	1980–81			[1] 1981–82		
	Acre	Ton	Pound (cents)	Acre	Ton	Pound (cents)
Variable	$331.42	$17.54	7.499	$375.88	$19.35	8.165
Seed	16.06	.85	.364	17.65	.91	.384
Fertilizer	55.11	2.92	1.248	62.67	3.23	1.363
Chemicals	45.37	2.40	1.026	50.86	2.62	1.105
Custom operations	34.64	1.83	.783	38.14	1.96	.827
Labor	81.17	4.29	1.834	90.04	4.63	1.954
Fuel and lubrication	42.66	2.26	.966	52.82	2.72	1.148
Repairs	25.46	1.35	.577	28.82	1.48	.624
Purchased irrigat on water	10.03	.53	.226	11.04	.57	.241
Miscellaneous	2.47	.13	.056	3.05	.16	.068
Interest	18.45	.98	.419	20.79	1.07	.451
Machinery ownership	87.11	4.61	1.971	98.96	5.09	2.148
Replacement	44.11	2.33	.995	49.43	2.54	1.072
Interest	36.14	1.91	.817	41.48	2.14	.903
Taxes and insurance	6.86	.37	.158	8.05	.41	.173
General farm overhead	10.19	.54	.231	11.24	.58	.244
Management	42.87	2.26	.966	48.60	2.50	1.055
Total excluding land	471.59	24.95	10.667	534.68	27.52	11.612
Land allocat on:						
Share rent	258.96	13.70	5.857	289.84	14.92	6.295
Cash rent	87.29	4.62	1.975	97 70	5.03	2.122
Current market value	146.68	7.76	3.318	164.18	8.45	3.565
Composite	161.31	8.53	3.647	180.55	9.29	3.920
Value of beet tops	3.77	.20	.086	4.27	.22	.093
Yield per acre (tons)	18.90			19.43		
Recovery per ton (pounds)		233.9			237.0	

[1] Projected.

TABLE 15.—SUGARBEETS: PRELIMINARY PRODUCTION COSTS PER PLANTED ACRE BY COST ITEM, SPECIFIED STUDY AREAS, 1980–81 CROP YEAR

Cost item	Regions								
	Michigan and Ohio	Minnesota and North Dakota	Kansas, Colorado, Nebraska, and southeast Wyoming	Texas and New Mexico	Montana and northwest Wyoming, southwest North Dakota	East Idaho	West Idaho and Oregon	California and Arizona	United States
Variable	$254.62	$210.60	$304.43	$399.95	$334.24	$378.27	$439.96	$539.57	$331.42
Seed	5.54	19.31	16.08	18.48	18.09	18.79	20.94	12.36	16.06
Fertilizer	81.08	37.78	45.03	29.83	75.15	73.13	92.15	61.21	55.11
Chemicals	28.69	39.47	36.03	88.27	28.70	31.51	49.01	76.77	45.37
Custom operations	39.98	6.95	15.90	51.84	6.14	19.89	29.69	108.40	34.64
Labor	39.36	49.67	93.74	70.01	101.89	92.90	111.69	125.17	81.17
Fuel and lubrication	24.29	25.30	49.17	79.17	38.15	75.09	44.78	57.58	42.66
Repairs	19.49	20.46	26.37	39.49	26.57	33.03	46.00	26.49	25.46
Purchased irrigation water			5.84		11.74	13.73	23.13	31.43	10.03
Miscellaneous	2.17	.45	.72		11.74	2.64	.06	5.38	2.47
Interest	14.02	11.21	15.55	22.86	16.07	17.56	22.51	34.78	18.45
Machinery ownership	64.53	76.93	97.68	96.94	90.52	106.31	88.88	94.76	87.11
Replacement	31.58	37.72	49.68	52.07	46.04	55.87	46.25	48.87	44.11
Interest	27.43	32.71	40.65	38.52	37.10	42.56	35.54	38.82	36.14
Taxes anb insurance	5.52	6.50	7.35	6.35	7.38	7.88	7.09	7.07	6.86
General farm overhead	7.72	9.01	6.80	9.33	6.38	6.25	8.37	19.66	10.19
Management	32.69	29.65	40.89	50.62	43.11	49.08	53.72	65.40	42.87
Total excluding land	359.56	326.19	449.80	556.84	474.25	539.91	590.93	719.39	471.59
Land allocation:									
Share rent	272.00	187.70	251.37	120.26	260.92	256.83	406.32	277.02	258.96
Cash rent	89.48	76.56	42.43	22.25	72.18	46.62	99.70	121.22	87.29
Current market value	163.85	103.64	127.92	41.97	126.91	76.29	211.05	311.84	146.68
Composite	165.20	93.43	205.38	81.01	180.07	121.13	253.79	233.00	161.31
Yield per acre (tons)	19.02	13.58	19.08	14.89	20.75	22.00	25.94	24.54	18.90
Value of beet tops			7.99	14.72	18.47	1.47	.94	3.12	3.77

TABLE 16.—SUGARBEETS: PRELIMINARY PRODUCTION COSTS PER TON, BY COST ITEM, SPECIFIED STUDY AREAS, 1980–81 CROP YEAR

Cost item	Regions								
	Michigan and Ohio	Minnesota and North Dakota	Kansas, Colorado, Nebraska, and southeast Wyoming	Texas and New Mexico	Montana and northwest Wyoming, southwest North Dakota	East Idaho	West Idaho and Oregon	California and Arizona	United States
Variable	$13.38	$15.51	$15.95	$26.86	$16.11	$17.20	$16.96	$21.98	$17.54
Seed	.29	1.42	.84	1.24	.87	.85	8.1	.50	.85
Fertilizer	4.26	2.78	2.36	2.00	3.62	3.32	3.55	2.48	2.92
Chemicals	1.51	2.91	1.89	5.93	1.38	1.44	1.89	3.13	2.40
Custom operations	2.10	.51	.83	3.48	.30	.91	1.14	4.42	1.83
Labor	2.07	3.66	4.91	4.70	4.91	4.22	4.31	5.10	4.29
Fuel and lubrication	1.28	1.86	2.58	5.32	1.84	3.41	1.73	2.35	2.20
Repairs	1.02	1.51	1.38	2.65	1.28	1.50	1.77	1.08	1.31
Purchased irrigation water			.31		.57	.63	.89	1.28	.53
Miscellaneous	.11	.03	.04		.57	.12		.22	.13
Interest	.74	.83	.81	1.54	.77	.80	.87	1.42	.98
Machinery ownership	3.39	5.67	5.12	6.51	4.36	4.83	3.43	3.86	4.61
Replacement	1.66	2.78	2.60	3.50	2.22	2.54	1.78	1.99	2.33
Interest	1.44	2.41	2.13	2.59	1.79	1.93	1.37	1.58	1.91
Taxes and insurance	.29	.48	.39	.42	.35	.36	.28	.29	.37
General farm overhead	.41	.66	.36	.63	.31	.28	.32	.80	.54
Management	1.72	2.18	2.14	3.40	2.08	2.23	2.07	2.67	2.26
Total excluding land	18.90	24.02	23.57	37.40	22.86	24.54	22.78	29.31	24.95
Land allocation:									
Share rent	14.30	13.82	13.17	8.08	12.57	11.67	15.66	11.29	13.70
Cash rent	4.70	5.64	2.22	1.49	3.48	2.12	3.84	4.94	4.62
Current market value	8.72	7.63	6.70	2.82	6.12	3.47	8.14	12.71	7.76
Composite	8.69	6.88	10.76	5.44	8.68	5.51	9.78	9.49	8.53
Value of beet tops			.42	.99	.89	.07	.04	.13	.20

TABLE 17.—BEET SUGAR: PRELIMINARY AND PROJECTED PROCESSING COSTS PER TON OF SUGARBEETS AND POUND OF REFINED SUGAR, BY COST ITEM, CROP YEAR, UNITED STATES

Cost item	1980–81		1981–82	
	Ton	Pound (cents)	Ton	Pound (cents)
Variable	$22.70	9.707	$25.40	10.719
Beet acquisition	3.52	1.507	3.89	1.640
Processing:				
Labor	3.17	1.356	3.52	1.484
Fuel	4.18	1.785	5.17	2.181
Supplies and materials	3.57	1.527	3.93	1.659
Repair and maintenance	2.96	1.266	3.07	1.299
Labor benefits	1.20	.512	1.25	.527
Marketing	2.77	1.186	3.10	1.306
Interest	1.33	.568	1.47	.623
Ownership	10.29	4.399	10.59	4.470
Depreciation	1.60	.684	1.66	.699
Interest	8.11	3.467	8.33	3.518
Taxes and insurance	.58	.248	.60	.253
General and administration	1.86	.794	1.93	.813
Labor	.77	.327	.80	.337
Nonlabor	1.09	.467	1.13	.476
Dried pulp	4.10	1.735	4.27	1.798
Total processing cost	38.95	16.653	42.19	17.800

● Mr. HUDDLESTON. Mr. President, I urge the adoption of the conference report on H.R. 3982, the Omnibus Reconciliation Act of 1981. This legislation is an important step forward in the effort of Congress to bring Federal spending under control and reduce inflation.

Budget cutting under the reconciliation instructions has not been an easy task. Most, if not all, of the proposed budget cuts provide needed assistance to the people of the United States. Of special concern to me is that this bill makes cuts in programs that are vital to U.S. farmers and rural communities and to insuring that the Nation's people receive the benefits of good nutrition. However, it is clear to me that our Nation's citizens want Congress to reduce the Federal budget deficits. Also, the budget reductions in this bill are not focussed on any one group of Federal programs, but are spread out through a number of sectors of our Government.

AGRICULTURE AND NUTRITION ISSUES

Mr. President, I commend the distinguished chairmen of the House Committee on Agriculture, Mr. DE LA GARZA, and the House Committee on Education and Labor, Mr. PERKINS, for their leadership in the conference committee meetings on the agriculture and nutrition issues. I also wish to commend the distinguished chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, Senator HELMS, for his fair and bipartisan leadership.

I believe that, as the result of the hard work of these men and the other conferees on agriculture and nutrition issues, the conference report makes the cuts in agriculture and nutrition programs equitably and in a fashion that will minimize the adverse effects of the cuts on farmers and others in need of the programs.

CUTS IN AUTHORIZATIONS FOR AGRICULTURAL PROGRAMS

The conference bill places appropriations caps, for fiscal years 1982, 1983, and 1984, on a number of agricultural programs of the Department of Agriculture for which advance appropriations are required, and calls for an across-the-board cut in the number of Department of Agriculture personnel administering the programs of the Department. The appropriations caps, except for several minor variations, were uniformly applied to the programs involved.

The conferees accepted the House caps on the Soil Conservation Service and the agricultural conservation program with two important amendments.

The House cap on the Soil Conservation Service was increased by $30 million. The agricultural conservation program cap was increased by $10 million.

These changes will accommodate new soil conservation programs proposed in the omnibus farm bill reported to the Senate, particularly the special areas conservation program.

The new conservation programs are needed to target funds to areas suffering from severe erosion problems. If efforts to retard the erosion of our farmland are not undertaken now, our agricultural industry, the most productive segment of our economy, will not be able to meet the everincreasing demand for food and fiber.

The conferees agreed to an overall reduction of about 6 percent in several Forest Service accounts over which the agriculture committees have jurisdiction.

A cap for each of the individual accounts was considered in order to insure that cuts would be made in production functions as well as management functions. However, the conferees agreed that the Secretary of Agriculture needed some discretion in this matter, and so did not cap individual accounts. I urge the Secretary to distribute the cuts among the various programs in a fair and balanced manner.

Adequate timber production must be maintained to meet the Nation's immediate needs, but long-term forest management programs must not be neglected. The basis for management of forestry programs affected by the budget cuts should be the principles established in existing law, including the Forest and Rangeland Renewable Resources Planning Act of 1974.

The conferees acted to reduce the program authorization levels for the Public Law 480 programs. These cuts should have no effect on the operation of the programs under the Reagan administration because the administration is not requesting funding in the coming year above what the conference bill allows.

The conferees also acted to strike provisions of the Senate bill that would have increased the interest rates for title I concessional sales under the food for peace program.

The conference bill includes a provision in the Senate amendment to cut Department of Agriculture personnel by restricting the number of staff-years available to the Secretary of Agriculture.

The conferees chose this method of restricting bureaucratic growth to assure that the Secretary of Agriculture will be able to appropriately manage the personnel cutbacks and minimize any possible reduction in the delivery of services to the public.

However, this provision of the bill expands the scope of the personnel limitation proposed under the Senate amendment. The Senate amendment limited the number of USDA staff-years to the fiscal year 1981 level; the conference bill will reduce the number of staff-years by 1,300 from the 1981 level and eliminate the overtime staff time available to the Secretary. I am concerned that this reduction may affect the Department in the wrong places, giving us fewer firefighters or fewer commodity inspectors while leaving the USDA administrative bureaucracy untouched. I will watch the Department's personnel actions with interest and oppose any reduction in public service activities if the Washington and regional office administrative staffs remain intact.

This cut will save over $160 million in fiscal year 1982 and larger amounts in later years. I think that it is more reasonable to make a cut of this size more gradually, but I prefer to see the cut made in USDA's administrative budget rather than in farm or consumer programs.

REDUCTIONS IN FARM PROGRAMS

The conferees adopted several provisions to reduce the budget for farmer assistance programs.

The farm storage facility loan program will be made a discretionary program. However, recognizing the continuing need for farm storage, the conferees have urged the Secretary of Agriculture, in exercising his discretion, to provide this program in storage deficit areas.

The major farm program that will be cut back under the reconciliation bill is the milk price support program. The conference provision will set the minimum level at which the price of milk will be supported during the 1982 through 1985 fiscal years at 75 percent of parity, with the actual support level in any year fixed by a schedule based on projected Government purchases of surplus dairy products. Depending on reductions in amounts of Government purchases, the support level could rise to 90 percent of parity.

By changing the minimum support level from 80 to 75 percent of parity, this provision will reduce Government outlays for the program by $449 million in fiscal year 1982, by $891 million in fiscal year 1983, and by $1.118 billion in fiscal year 1984.

I would like to point out that the Senate Agriculture Committee, prior to considering the reconciliation bill, had reported a dairy price support reduction bill that has already become law which contributes to reducing Federal outlays. This earlier bill eliminated the April 1, 1981, adjustment in the level of price support for milk, and saved $160 million in outlays in this fiscal year. While the conferees indicate that the support price for milk will need to be reexamined during consideration of the farm bill, I would like to see serious consideration given at that time to continuing the program contained in this bill.

INSPECTION FEES

The reconciliation bill includes provisions requested by the President to require users of various agricultural commodity inspection and related services to pay fees to cover the costs of these services. There were few differences between the House and Senate versions of these provisions. These provisions, when enacted, will save Government outlays of more than $50 million in each of the next 3 years.

Tobacco farmers in my State will be affected by this request from the administration by having to pay fees for services under the Tobacco Inspection Act. I am pleased that the conferees adopted the provisions, originally included in the Senate version of the reconciliation bill as the result of the adoption of an amendment offered by Senator HELMS and me, to require the establishment of a permanent Advisory Committee of Tobacco Producers to advise the Secretary of Agriculture regarding the level of tobacco inspection, fees, and other services. The Advisory Committee will have subcommittees for each major type of tobacco.

REDUCTIONS IN FARMERS HOME ADMINISTRATION PROGRAMS

The Farmers Home Administration provides credit in rural areas through a variety of programs. These programs include ownership and operating loans to farmers who cannot get credit elsewhere; loans to farmers who suffer losses because of natural disasters; loans and grants to rural communities for water, sewer, and essential community facilities; and guaranteed loans for rural businesses that create jobs, which are an important source of off-farm income.

These programs had been targeted by the administration as areas in which to achieve much of the budget savings in agricultural programs.

The administration had proposed that savings be achieved by raising interest rates, reducing program levels, eliminating the limited resource farmer loan program and the business and industrial loan program, and allowing the economic emergency loan program to expire at the end of this fiscal year.

Fortunately, both the Senate Committee on Agriculture, Nutrition, and Foresty and the House Committee on Agriculture applied the budget cuts in agricultural programs in a more equitable manner and were able to modify the administration's proposals in this area. Nonetheless, the reductions to which the conferees agreed are painful and will reduce Federal assistance provided to rural areas.

For the water, sewer, and community facilities program, the conferees accepted the House proposal on the interest rate. The interest rate will be increased to the municipal bond rate except for loans used to upgrade or construct facilities required to meet health or sanitary standards in areas where the median family income is below the poverty level. In those cases, the interest rate will be 5 percent. The administration had recommended that the interest rate for all water, sewer, and community facility loans be set at 1 percent above the municipal bond rate.

In addition, the administration had proposed a reduction of over one-half in the loan program level. The administration's proposed program level reductions were accepted by both the Senate and House Agriculture Committees.

It should be noted that if the provision relating to interest rates had been in effect during 1980 and the first three quarters of 1981, then 51 and 68 percent, respectively, of the projects receiving loans would have qualified for the 5-percent interest rate. I believe that the program should continue directing loan funds to those small and poor communities with health and sanitary problems and urge the Department to insure that at least 50 percent of the loan funds are loaned out at the 50-percent rate.

The conferees agreed to authorize $154.9 million for water and sewer grants, which is $54.9 million more than the administration requested. The additional grant funds can be used to offset the increased user rates that will result from the higher interest rate. In addition, the conferees agreed that 75 percent of the water and sewer grant funds should be directed to projects in areas where a significant percentage of the persons served have low incomes.

The conferees accepted the administration's proposal on program levels for operating and ownership loans. These levels will represent a reduction in ownership loan funds and an increase in operating loans will help offset the effect of allowing the economic emergency loan program to expire at the end of this fiscal year.

However, given the magnitude of the economic emergency loan program, it is

clear that there will be less operating credit to farmers who qualify for FmHA programs as a result of the administration-proposed loan level.

With respect to the limited resource farmer program, current law requires that a minimum of 25 percent of the operating and ownership loan funds be allocated to limited resource farmers.

The conferees agreed to set aside 20 percent of the loan funds for limited resource borrowers. The interest rates for limited resource borrowers will be set at one-half the cost of money for ownership loans and 3 percent below the cost of money for operating loans.

With the average age of U.S. farmers approaching 56 years, there is an obvious need to maintain the limited resource programs to assist young and beginning farmers.

The administration's legislative proposals on emergency loans were to raise the interest rate for farmers who cannot get credit elsewhere from 5 percent to a rate based on the cost of money to the Government; limit the amount that may be loaned under the program to amounts provided in advance in appropriation acts; and make farmers who can get credit elsewhere ineligible for emergency loans.

The conferees set the interest rate at 8 percent for borrowers who cannot get credit elsewhere.

The provision limiting the program to amounts provided for in advance by appropriations was accepted. It should be noted that the administration has indicated that supplemental funding will be requested if the need arises.

I am concerned that this provision of the bill could cause needless delays in getting assistance to farmers. The Secretary of Agriculture should monitor this program closely to assure that the loan assistance is available when needed by farmers struck by disaster.

The conferees also accepted a provision contained in the Senate bill relating to emergency loans for borrowers who could get credit elsewhere. This provision gives the Secretary of Agriculture discretionary authority to permit farmers who could get credit elsewhere to participate in the disaster program.

I was the sponsor of this provision of the Senate bill because I believe that a disaster program should be open to anyone who suffers from a disaster. In many cases, there is insufficient loan money available for rebuilding or meeting other financial needs in a community that has suffered a disaster, even for those who have good credit ratings. To assure that this extension of eligibility is not abused, farmers who are creditworthy borrowers will have to pay interest based on the normal commercial rate.

The conferees adopted provisions that will make part of the statute certain regulatory changes in the emergency loan program that have already been implemented by the administration. These changes include increasing—from 20 to 30 percent—the amount of production loss an applicant must suffer to qualify for the program, and decreasing the percentage of the loss to be covered by a loan from 90 to 80 percent.

The conferees' action is not an endorsement of the administration's changes in the FmHA emergency loan regulations. These provisions were included in the bill to insure that the program will not be further restricted by the administration. The conferees also requested that the Secretary of Agriculture review the advisability of these recent changes in the regulations.

The conferees also adopted a House provision designed to protect prime farmland from conversion to nonagricultural uses. The provision sets interest rates on certain projects that use prime farmland 2 percent higher than rates that would otherwise be applicable.

RURAL ELECTRIFICATION ADMINISTRATION

The conferees agreed to two important provisions of the Senate amendment with respect to the Rural Electrification Administration.

First, the 2-percent insured loan program was made discretionary. It is important to note that the 2 percent program has not been abolished. It is intended, and provided for in the bill, that 2-percent loans will be made when a higher rate of interest will result in a substantial disparity between user rates for households in the same or nearby areas.

Second, the conference bill mandates continued access to the Federal Financing Bank for REA borrowers that obtain loan guarantees. The Federal Financing Bank is the most efficient and cost-effective means of handling Rural Electrification Administration loan guarantees.

REDUCTIONS IN NUTRITION PROGRAMS

The conference bill will make substantial reductions in nutrition programs, including the school lunch program and the food stamp program.

In the child nutrition programs, major savings are achieved by lowering the income eligibility levels for free and reduced price meals; significantly lowering the reimbursement rates for school lunches; tightening income verification requirements under the school feeding programs; limiting the number of meals served and the levels of reimbursement provided in the child care feeding program; eliminating the special milk program except for schools with no other Federal feeding program; and reducing the size of the summer feeding program, mainly by eliminating private sponsors.

Anticipated child nutrition savings from this bill are about $1.5 billion a year. While this does represent a deep reduction in these programs, the result could have been far worse.

Contrary to the President's budget proposal, the bill will provide enough support for paid school lunches that most school lunch programs nationwide should remain financially viable.

Under the bill, the WIC program, which a growing body of evidence indicates is one of the most successful of all social programs, will continue to serve about as many low-income women, infants, and children in each of the next 3 years as were served this year. Under the President's budget, WIC would have been cut back dramatically.

And, under the bill, many worthwhile summer feeding programs, including those operated by residential camps for disadvantaged and handicapped children, will continue to operate. The President had proposed complete elimination of all summer feeding programs. The bill will eliminate all categories of program sponsors with a history of fraud, abuse, and mismanagement, but will retain those sponsors with a history of operating effective programs.

In the food stamp program, the conference bill will achieve over $6 billion in savings over the next 3 years, exceeding the savings proposed by the President and assumed in the budget resolution by nearly $500 million. These changes—which include a tightening of eligibility limits, delays in cost-of-living adjustments, stringent antifraud measures, and a variety of other proposals—will unquestionably result in a loss of purchasing power for many low-income Americans.

However, some of us were successful in redesignating the reductions proposed by the President to assure that basic levels of support would continue for those most in need. We were also successful in resisting other proposals before Congress that would have had a drastic effect on many participants, including the elderly and disabled.

On the whole, the food stamp reductions in the reconciliation bill represent a responsible approach to meeting the strict budgetary guidelines that were established for this program.

CONCLUSION

Mr. President, as ranking Demorcat on the Committee on Agriculture, Nutrition, and Forestry, I will make every effort to assure that the reduced budget under H.R. 3982 is managed efficiently and wisely for the benefit of U.S. agriculture and those of our citizens in need of a healthy diet.

Nonetheless, I strongly support the effort to reduce the Federal budget that the conference report on H.R. 3982 represents, and urge its adoption by the Senate.

Mr. President. I ask that a summary of the provisions of the conference report relating to agricultural and nutrition programs be printed in the RECORD.

The material follows:

OMNIBUS RECONCILIATION ACT OF 1981

SUMMARY OF THE PROVISIONS OF TITLE I—AGRICULTURE, FORESTRY, AND RELATED PROGRAMS

Subtitle A.—Food Stamp Program Reductions and Other Reductions in Authorizations for Appropriations.

Part 1.—Food Stamp Program Reductions.

(1) Household Definition:

(a) Family unit requirement (Sec. 101): The bill will require parents and children living together to apply for food stamps as a single household unit, regardless of whether they purchase and prepare food in common, except that households with a parent age 60 or older will be exempt from this requirement.

[In millions of dollars]

	1982 BA and O [1]	1983 BA and O	1984 BA and O
Savings (authorizations)	10	10	11

[1] Budget authority and outlays.

(b) Boarders (Sec. 102):

The bill will exclude all boarders from participation in the food stamp program as separate household units; although boarders will be able to participate together with the rest of the household unit.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	50	55	60

(2) Adjustment of Thrifty Food Plan (Sec. 103):

Under existing law, the basis for computing food stamp benefits (the thrifty food plan) is adjusted annually each January for food-price inflation.

The bill will change the timing of this inflation adjustment. The January 1982 adjustment will be eliminated and following adjustments will be delayed until April 1982, July 1983, and October 1984. Thereafter, an annual schedule of adjustments will resume, to occur each October. Also, each adjustment will continue to reflect changes through the fourth preceding month, rather than (as scheduled under existing law beginning in January 1982) the immediately preceding month.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	512	462	440

(3) Gross Income Eligibility Standard (Sec. 104):

The bill will restrict eligibility for participation in the food stamp program to households with gross monthly income at or below 130 percent of the applicable Federal poverty guideline, except that households with elderly or disabled members will be exempted and continue to have a net income standard of 100 percent of the applicable Federal poverty level.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	110	114	118

(4) Adjustments of Deductions (Sec. 105):

(a) The bill will require that home ownership costs be factored out of the Consumer Price Index used to calculate inflation adjustments to the standard deduction and the ceiling on the shelter and dependent care expense deductions used in determining income eligibility for participation in the food stamp program. The bill also requires that the Index be adjusted by the Bureau of Labor Statistics after consultation with the Secretary of Agriculture.

(b) The bill will hold the amount of the standard deduction and the ceiling on the dependent care and excess shelter expense deductions at 1981 levels through June 30, 1983. The following adjustment will be delayed until October 1984. Thereafter, an annual schedule of adjustments will resume, to occur each October. Also, each adjustment will continue to reflect changes through the fourth preceding month, rather than (as scheduled under existing law beginning in January 1982) the immediately preceding month.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	242	360	374

(5) Earned Income Deduction (Sec. 106):

Existing law requires that 20 percent of a household's earned income be deducted from its gross income in computing net income with respect to food stamp eligibility and benefit levels. The bill lowers the deduction to 18 percent of household earnings.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	48	51	55

(6) Retrospective Accounting and Periodic Reporting (Secs. 107 & 108):

Under existing law, States have a choice of using a retrospective or prospective accounting procedure in determining eligibility and benefits under the food stamp program. States also have the option of instituting a system of periodic reporting by food stamp households. In a retrospective accounting procedure, the household income of an applicant or recipient for the prior month is the basis for eligibility and benefit determinations; when using a prospective procedure, the upcoming month's income is estimated. Under a period reporting system, a household must file monthly reports on pertinent household circumstances (such as income and household size) in order to receive food stamp benefits.

The bill will require, beginning October 1, 1983, that all States use a retrospective accounting procedure and that most households file monthly reports (exemptions are provided for hardship cases).

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	(21)	36	572

(7) Eligibility of Strikers (Sec. 109):

Under existing law, households with members engaged in a labor strike may be eligible for food stamps if they meet normal income and other eligibility tests.

The bill will deny eligibility to any household with a member on strike unless that household member is exempt from food stamp work registration requirements or the household was eligible prior to the strike. Households that were eligible prior to a strike would remain eligible, but could not receive increased benefits because of the decrease in income due to the strike.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	50	55	60

(8) Prorating first Month's Benefits (Sec. 110):

The bill will require that the amount of a household's initial food stamp benefits be prorated to reflect the number of days remaining in the initial benefit period from the date of application. Under existing law, an applicant household receives full benefits for the first month (or other initial period) in the program, regardless of the timing of the application within that month or period.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	495	505	520

(9) Outreach; Bilingual Requirements (Sec. 111):

The bill will prohibit Federal funding of outreach efforts to inform low-income persons of the availability and benefits of the food stamp program. However, the bill will retain the requirement that States use bilingual personnel and printed materials in areas in which substantial numbers of low-income persons speak a language other than English.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	4	4	4

(10) Disqualification Penalties for Fraud and Misrepresentation (Sec. 112):

The bill will (a) expand the basis on which individuals may be disqualified from the food stamp program by (i) lowering the threshold of proof required in administrative hearings to include misrepresentation as well as fraud, and (ii) including as an act subjecting an individual to disqualification the violation of a State statute relating to food stamps; (b) increase penalties for fraud, misrepresentation, or violations by lengthening the period of disqualification; and (c) prohibit any increase in food stamp benefits to a household with a disqualified member as a result of the disqualification.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations) (for items 10 and 11 combined)	25	27	30

(11) Waiving and Offsetting Claims; Improved Recovery of Overpayments (Secs. 113 & 114):

The bill will (a) require food stamp households with a disqualified member to repay overissued benefits; (b) require States to collect overissued benefits in nonfraud cases (other than those caused by State error) by reducing future benefits to the households by 10 percent of the benefits per month, or $10 per month, whichever results in faster collection; and allow States to retain 25 percent of these collections; and (c) give the Secretary of Agriculture expanded authority to waive and offset claims against States.

(12) Repeal of Increases in Deductions (Sec. 115):

The bill will repeal two increases in allowable deductions (used in calculating household income for purposes of determining eligibility and benefits under the food stamp program) scheduled to take effect October 1, 1981. The scheduled increases would (a) establish a deduction for dependent care expenses, separate from the shelter deduction, of up to $90 per month; and (b) lower the threshold above which medical expenses for elderly and disabled persons are deductible from $35 to $25 per month.

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	63	65	69

(13) Puerto Rico Block Grant (Sec. 116):

The bill will convert the food stamp program in Puerto Rico into a block grant program for food assistance, to be funded at $825 million annually, effective July 1, 1982. In order for Puerto Rico to receive the amounts payable under the new block grant program for the last quarter of fiscal year 1982 and for 1983, Puerto Rico must submit,

by April 1, 1982, for the approval of the Secretary of Agriculture, its plan for the implementation of the food assistance program.

(NOTE: The provisions of section 1744 (relating to access by the Comptroller General to block grant program records) and section 1745 (imposing audit requirements on block grant recipients) of the bill would apply to the block grant program for Puerto Rico for food assistance under section 116.)

[In millions of dollars]

	1982 BA and O	1983 BA and O	1984 BA and O
Savings (authorizations)	70	302	336

TOTAL SAVINGS IN THE FOOD STAMP PROGRAM

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Authorizations	1,658	1,658	2,046	2,046	2,334	2,334

Part 2—Other reductions in authorizations for appropriations

(14) Agricultural and Related Programs (Sec. 120 & 121):

The bill establishes maximum limits on the amounts that may be appropriated for certain programs of the Department of Agriculture during each of the fiscal years 1982, 1983, and 1984, as follows:

Program	Authorizations, as limited 1982	1983	1984
Dairy indemnity payments	$200,000	$200,000	$200,000
Agricultural marketing activities by States	1,571,000	1,651,000	1,723,000
Rural community fire protection grants	3,565,000	3,821,000	4,038,000
Rural development planning grants	4,767,000	4,959,000	5,155,000
Rural business enterprise development grants	5,007,000	5,280,000	5,553,000
Soil Conservation Service programs	588,875,000	596,767,000	602,865,000
Agricultural conservation program	201,325,000	209,647,000	218,216,000
Forestry incentives program	15,090,000	16,913,000	18,314,000
Water bank program	10,876,000	10,854,000	10,813,000
Emergency conservation program	10,069,000	10,507,000	10,958,000
Rural water and waste disposal project grants	154,900,000	154,900,000	154,900,000

SAVINGS (AUTHORIZATIONS)

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Sec. 120	40	25	55	44	75	67
Sec. 121 (water and waste disposal grants)	63	7	82	22	99	24

(15) Forest Service (Sec. 122):

The bill establishes maximum limits on the amounts that may be appropriated in fiscal years 1981 through 1984 for the following programs of the Forest Service: forest research, State and private forestry, the National Forest System, and construction and land acquisition. The authorizations are as follows:

(a) For fiscal year 1981, $1,575,552,000.
(b) For fiscal year 1982, $1,498,000,000.
(c) For fiscal year 1983, $1,560,000,000.
(d) For fiscal year 1984, $1,620,000,000.

The bill also provides that none of the funds authorized to be appropriated may be used to build the Bald Mountain road in the Siskiyou National Forest in Oregon (although there will be no restrictions imposed with respect to the Bald Mountain timber sale).

[In millions of dollars]

	1981		1982		1983		1984	
	BA	O	BA	O	BA	O	BA	O
Savings (authorizations)	38	15	40	28	40	40		

(16) Assistance to Land-Grant Colleges (Sec. 123):

The bill establishes maximum limits on the amounts that may be appropriated for the purpose of providing assistance to 1890 land-grant colleges under the Act of August 30, 1890, and the Act of March 4, 1907, during fiscal years 1982 through 1984 of $2,800,000 for each such year.

(17) Public Law 480 Appropriation Limits (Sec. 124):

The bill provides that programs cannot be implemented under title I (including related title III programs) and title II of Public Law 480 during any calendar year that will call for appropriations of more than—

(a) $1,304,836,000 for fiscal year 1982,
(b) $1,320,292,000 for fiscal year 1983, and
(c) $1,402,278,000 for fiscal year 1984.

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Savings (authorizations)	132	128	199	186	224	213

Part 3—Department of Agriculture personnel

(18) Establishment of Personnel Ceiling (Sec. 125):

The bill establishes a ceiling on the total number of employee staff years of effort that the Department of Agriculture can use during each of the fiscal years 1982 through 1984. This ceiling fixes the total personnel level for the Department at 117,000 staff years (including overtime) for those years.

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Savings (authorizations)	175	158	187	181	200	194

SUBTITLE B—REDUCTIONS IN DIRECT SPENDING

Part 1—Commodity Credit Corporation programs

(19) Milk Price Support (Sec. 150):

The bill provides that, for the period beginning October 1, 1981, and ending September 30, 1985, the price of milk for each marketing year will be supported at a minimum level of 75 percent of the parity price for milk. Under the bill—

(a) the minimum support level will be on a sliding scale between 75 percent of parity and a ceiling of 90 percent of parity based upon projected purchases of surplus milk products by the Government for the marketing year; and as projected acquisitions decline, the minimum support level will increase;

(b) if the Secretary of Agriculture determines that the inventory on hand at the end of the marketing year exceeds 500 million pounds of nonfat dry milk, or 5.5 billion pounds milk equivalent of butter or cheese, the support price will be fixed at the maximum level indicated by the schedule (75 percent), and the Secretary will have no discretion to establish a support level higher than that minimum;

(c) if there are increases in dairy product import quotas during the marketing year, the support price will be redetermined by reducing the final estimate of net Government purchases by the equivalent of the increased imports;

(d) no semiannual adjustment will be made in the marketing year beginning October 1, 1981, but semiannual adjustments will be required during the period beginning October 1, 1982, through September 30, 1985, to reflect estimated changes in the parity index; although, if purchases are being made at an annual rate exceeding 5.5 billion pounds of milk equivalent, butterfat basis, or 500 million pounds of nonfat dry milk, the support price need not be adjusted except as necessary to prevent a support price of less than 75 percent of parity at the beginning of the semiannual period; and

(e) the Secretary must notify in writing the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry and the Chairman of the House Committee on Agriculture of his decision (and the reasons therefor) on the support level for each marketing year, and on each semi-annual adjustment, at least thirty days prior to the date on which he must provide the annual support level or the semi-annual adjustment.

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
avings (direct spending)	449	------	891	449	1,118	

(20) Farm Storage Facility Loans (Sec. 151):

The bill will make the farm storage facility loan program discretionary with the Secretary of Agriculture after September 30, 1981. However, the Statement of Managers on the conference report states that the Secretary should continue to make the program available in storage deficit areas of the country.

[In millions of dollars]

	1981		1982		1983		1984	
	BA	O	BA	O	BA	O	BA	O
Savings (direct spending)	25	----100		----110		---- 120		

(21) Reduction in CCC Administrative Expense Limitation (Sec. 152):

The bill provides that not more than $52,000,000 in Commodity Credit Corporation funds will be available for administrative expenses of the Commodity Corporation for fiscal year 1982.

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Savings (direct spending)	6	------	7	6	7	

Part 2—Commodity inspection fees

(22) Grain Inspection and Weighing (Sec. 155):

Effective for the period beginning October 1, 1981, and ending September 30, 1984, the bill will require the Administrator of the Federal Grain Inspection Service to collect reasonable fees to cover, as nearly as practicable, the costs to the Service incurred in the performance of official grain inspection and weighing activities, including related administrative and supervision costs, except when the inspection or weighing (or supervision of weighing) is performed by a designated agency of a State. In setting the fees, the Administrator will take into consideration any proceeds from the sale of samples. With respect to inspection and weighing activities performed by designated officials agencies and State agencies delegated to perform grain inspection and weighing activities, the Administrator will collect reasonable fees to cover the estimated cost to the Service of supervising the agencies' personnel and Service field office personnel. Failure to pay a fee within 30 days after it is due will result in automatic termination of the designation or delegation to perform inspection or weighing services until the fee (plus interest) is paid.

The bill also provides that, during the fiscal years 1982 through 1984 effective period, the administrative and supervisory costs incurred by the Service for each such fiscal year (excluding standardization, compliance, and foreign monitoring activities) cannot exceed 35 percent to the total costs of inspection and weighing (or supervision of weighing) carried out by the Service that year.

The bill also requires the Secretary of Agriculture to establish an advisory committee consisting of not more than 12 members who represent all segments of the grain industry. This advisory committee will advise the Administrator of the Federal Grain Inspection Service on matters relating to the efficient and economical implementation of the U.S. Grain Standards Act of 1976. The advisory committee will be appointed within 30 days after enactment of the bill, and its members will serve without compensation except that they will be entitled to reimbursement for travel expenses incurred in connection with performing services on behalf of the advisory committee. The Administrator will be required to provide clerical assistance and staff personnel to the advisory committee as necessary.

[In millions of dollars]

	1982		1983		1984	
	BA	0	BA	0	BA	0
Savings (direct spending)	25	23	25	25	27	27

(23) Cotton Classing and Related Services (Sec. 156):

(a) The bill requires the Secretary of Agriculture to collect fees under the U.S. Cotton Standards Act for licenses issued to cotton classifers, for determinations of the true classification of cotton or cotton samples, and for the establishment of cotton standards and the sale of copies of standards. The fees will cover, as nearly as practicable, the cost (including administrative and supervisory costs (of providing the services and standards under the Act after taking into account the net proceeds from any sale of samples. Fees collected will be deposited in the current appropriation account that incurs these costs and will be used for paying the expenses of providing the services and standards under the Act and the U.S. Cotton Futures Act. The Secretary will be authorized to establish conditions, by regulation, for cotton samples to become the property of the United States and to be sold. The bill provides that the price established by the Secretary for the sale of practical forms representing the official cotton standards should cover the estimated cost of developing and preparing the forms.

(b) The bill amends section 3a of the Cotton Statistics and Estimates Act, effective only for fiscal years 1982 through 1984, to authorize the Secretary to make cotton classification services available to producers, and directs the Secretary to collect fees on a per-bale basis for participating producers. The fees will cover, as nearly as practicable, the cost of providing these services, including administrative and supervisory costs, after taking into consideration the proceeds from sales of cotton samples. However, in calculating the fee, the Secretary's estimate of the net cost for classification services can not exceed $12,000,000 in fiscal year 1982, $12,400,000 in fiscal year 1983, and $13,000,000 in fiscal year 1984. Cotton samples submitted for classification will become the property of the United States and will be sold. The fees collected and any proceeds from the sale of samples will be deposited in the current appropriation account that incurs the cost and will be used to pay the expenses of providing cotton classing services to producers. Appropriations will be authorized to cover services under section 3a to the extent that financing for the services is not available from fees and sales of samples.

(c) The bill amends the U.S. Cotton Futures Act to provide that (i) fees collected by the Secretary for classifications in connection with tenders and settlements of cotton will be credited to the current appropriation account for fees collected under the U.S. Cotton Standards Act; (ii) cotton samples submitted for classification will become the property of the United States.

(d) The bill requires the Secretary of Agriculture to hold annual meetings with cotton industry representatives to review cotton classing and related services and determine the effect, if any, that providing these services has on cotton prices and sales. The purpose of this review will be to improve the procedures for financing and administering these services. The Secretary will be required to take action as necessary to ensure that the cotton standards and classification system continues to operate and that the licensing and inspection procedures for cotton warehouses are preserved.

[In millions of dollars]

	1982		1983		1984	0
	BA	0	BA	0	BA	0
(e) Savings (direct spending)	12	12	12	12	13	13

(24) Tobacco Inspection and Related Services (Sec. 157):

The bill will amend the Tobacco Inspection Act to require the Secretary of Agriculture to fix and collect fees to cover the cost, as nearly as practicable, of establishing standards and of providing tobacco inspection and certification at designated auction markets. The fees will be collected by warehouse operators from the sellers of tobacco. Fees will also be assessed against the warehouse operators. The failure of a warehouseman to collect or pay the fees imposed will result in the suspension or denial of inspection and certification services. All fees and charges collected by the Secretary will be credited to the current appropriations account that incurs the cost and will be available to pay expenses incident to providing the services.

The bill provides for the establishment of a permanent advisory committee of tobacco producers, with subcommittees for each major kind of tobacco, to advise the Secretary with regard to providing tobacco inspections and related services and the level of the fees charged for these services.

The bill will amend the Tobacco Inspection Act to require the Secretary of Agriculture to fix and collect fees and charges for tobacco sampling, weighing, and inspection services performed at the request of tobacco owners. These fees should be sufficient to cover the cost of providing these services, including administrative and supervisory costs, and will be credited to the same account as the fees collected for services at designated auction markets.

[In millions of dollars]

	1982		1983		1984	
	BA	0	BA	0	BA	0
Savings (direct spending)	8	8	9	9	10	10

(25) Warehouse Examination, Inspection, and Licensing (Sec. 158):

The bill will amend the U.S. Warehouse Act to require the Secretary of Agriculture to charge and collect reasonable fees for inspection and related activities conducted under the Act, including the issuance and amendment of warehouse licenses; warehouse examinations and inspection; and the licensing of applicants to inspect, classify, sample, grade, and weigh products stored under the provisions of the Act. The fees will cover, as nearly as practicable, the cost of providing these services (including administrative and supervisory costs), except that any fees collected for cotton warehouse inspections will be limited to not more than $400,000 in fiscal year 1982, $415,000 in fiscal year 1983, and $430,000 in fiscal year 1984. Fees collected will be credited to the current appropriation account and used to pay the Secretary's expenses in performing services under the Act. If any interest is earned thereon, it will be credited to the account.

The bill also provides for the appropriation of funds as needed to carry out the provisions of the U.S. Warehouse Act except for inspection and related services under the Act for which fees are required to be collected by the Secretary.

(26) Naval Stores Inspection and Related Services (Sec. 159):

The bill will amend the Naval Stores Act to delete references to the payment of costs for providing classification and grading services in connection with naval stores, and to require the Secretary of Agriculture to fix and collect fees for the establishment of standards and for providing inspection and related services with regard to naval stores. These fees will be collected from processors or warehousers of naval stores and will be deposited in the current appropriation account that incurs the cost of providing these standards and services for use in paying the costs incident thereto. The fees should cover as nearly as practicable the cost of providing these standards and services. The failure of any processor or warehouseman to pay the fees will result in the suspension or denial of inspection and related services.

[In millions of dollars]

	1982		1983		1984	
	BA	0	BA	0	BA	0
Savings (direct spending) (for this item item and item (25) combined)	6	6	6	6	6	6

Part 3—Farmers Home Administration (FmHA) programs

(27) Water and Waste Disposal and Community Facility Loans (Sec. 160):

The bill will increase the interest rates on FmFA loans (other than guaranteed loans) to public bodies and nonprofit associations for water and waste disposal facilities and essential community facilities from the current maximum of 5 percent per year to rates set by the Secretary of Agriculture but not to exceed the current market yield for outstanding municipal obligations of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The bill provides however, that the rate will not exceed 5 percent per year for any such loans that are for the upgrading or construction of facilities as required to meet health or sanitary standards in areas where the median family income of persons to be served by the facility is below the poverty line and in other areas as the Secretary may provide where a significant percentage of the persons to be served by the facility are of low income, as determined by the Secretary.

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Savings (direct spending)	179	21	208	33	189	49

(28) Farm Ownership and Operating Loans to Low Income, Limited Resource Farms (Secs. 160 & 164):

(a) Interest Rates:

The bill provides that interest rates on FmHA farm ownership loans to low income, limited resource borrowers will be as determined by the Secretary of Agriculture, but not in excess of one-half of the current average market yield on outstanding marketable obligations of the United States of comparable maturities and not less than 5 percent per annum. (Under existing law, the interest rate on these loans is not to exceed 5 percent.)

The bill provides that the interest rates on FmHA operating loans to these farmers will be rates as determined by the Secretary of Agriculture, not in excess of the current average market yield on outstanding marketable obligations of the United States of comparable maturities (plus not to exceed 1 percent), less 3 percentage points. (Under existing law, there is no separate interest rate for operating loans to low income, limited resource farmers.)

(b) The bill provides that at least 20 percent of all FmHA issued farm ownership and operating loans made in fiscal year 1932 must be made to low income, limited resource farmers. (Under existing law, 25 percent of such loan money is set aside for these farmers.)

(29) FmHA Loans Involving Use of Prime Farmlands (Sec. 160):

The bill provides that the interest rates on certain FmHA loans (other than guaranteed loans) for activities that involve the use of prime farmland will be 2 percent per year higher than the rates that would otherwise be applicable. The kinds of FmHA loans to which this provision will apply include recreation loans or other loans needed to supplement farm income; loans for outdoor recreational enterprises or the conversion of farming or ranching operations to recreational uses; small business enterprise loans; soil and water conservation loans; water and waste disposal facility loans; certain electric transmission loans; business and industrial loans; loans made jointly with other governmental agencies for private business enterprises; and recreation or other loans needed to supplement the farm income of low-income borrowers. The bill also provides that, whenever practicable, construction by a State, municipality, or other political subdivision of local government supported by such loans will be placed on land that is not prime farmland and that if the governmental authority nevertheless desires to carry out the construction on prime farmland, the 2 percent interest increase shall apply unless other options for locating the construction do not exist.

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Savings (direct spending)			2	2	3	3

(30) Emergency (Disaster) Loans (Secs. 161, 162, & 163):

(a) Emergency Loan Amounts:

The bill provides that FmHA emergency loans can be made only to the extent and in such amount as provided in advance in appropriation Acts. The Statement of Managers on the conference report on the bill states that this provision does not contemplate any change in the general manner in which prior appropriation Acts have provided funds for emergency loans.

(b) Interest Rates:

The bill changes the interest rates for FmHA emergency loans covering actual losses as follows:

(i) For farmers who cannot get credit elsewhere, the maximum interest rate that may be charged is increased from 5 percent to 8 percent.

(ii) For farmers who can get credit elsewhere, the maximum interest rate that may be charged is increased from the cost of money to the Government, plus 1 percent, to the rate prevailing in the private market for similar loans.

These interest rate changes will take effect with respect to loans made for disasters occurring after September 30, 1981.

[In millions of dollars]

	1982		1983		1984	
	BA	O	BA	O	BA	O
Savings (direct spending)	125	57	65	80	129	

(c) Eligibility for Assistance Based on Production Losses:

The bill will require the Secretary of Agriculture to make FmHA emergency loans available to applicants seeking assistance based on production losses if the applicant shows that a single enterprise that is a basic part of the applicant's farming, ranching, or aquaculture operation has sustained at least a 30 percent loss of normal per acre or per animal production (based upon the average monthly price in effect for the previous year) as a result of the disaster, and the applicant otherwise meets eligibility requirements. Also, such loans will be made available based on 80 percent of the total calculated actual production loss sustained by the applicant.

(These limitations reflect recent administrative changes made in the FmHA emergency loan program. The Statement of Managers on the conference report on the bill states that the limitations were included in the bill to ensure that the program is not limited further.)

(31) FmHA Insured Loan Limits (Sec. 164):

The bill establishes limits for insured FmHA loans made in fiscal year 1982 as follows:

(a) For farm ownership loans, $700,000,000.

(b) For operating loans, $1,325,000,000.

(c) For water and waste disposal loans, $300,000,000.

(d) For community facility loans, $130,000,000.

(These amounts are the same as the amounts included in the President's budget for fiscal year 1982.)

[In millions of dollars]

	1981		1982		1983		1984	
	B A	O	B A	O	B A	O	B A	O
Savings (direct spending) (for this item and item (28) combined)		20		199		62		104

Part 4—Rural Electrification Administration (REA) programs

(32) Rural Electrification Act Amendments (Sec. 165):

(a) Interest Rates on Insured Electric and Telephone Loans:

The bill will establish the interest rate for insured electric and telephone loans under the Rural Electrification Act at 5 percent per year, except that the REA Administrator may make insured loans at a lesser rate, but not less than 2 percent, if the Administrator finds that the borrower has experienced extreme financial hardship or cannot, in accordance with generally accepted management and accounting principles and without charging rates to its customers or subscribers so high as to create a substantial disparity between such rates and those charged for similar services in the same or nearby areas by other suppliers, provide service consistent with the objectives of the Act.

The new interest rates will be applicable to loan applications received after July 24, 1981.

(b) Access to the Federal Financing Bank:

The bill will require the Federal Financing Bank, on the request of any REA borrower, to make a loan that is guaranteed by the REA Administrator. The rate of interest on such loan will be not more than the rate of interest applicable to other similar loans then being made or purchased by the Bank.

SUMMARY OF THE PROVISIONS OF TITLE VIII—SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS

(1) School Lunch—General and Special Assistance Reimbursement Rates (Sec. 801):

(a) The bill sets the general assistance rates of reimbursement to State educational agencies for the school lunch program for the 1981–1982 school year at (i) 10.5 cents per lunch for school lunches served in school districts in which less than 60 percent of the lunches are served free or at a reduced price, and (ii) 2 cents additional per lunch for school lunches served in school districts in which 60 percent or more of the lunches are served free or at reduced prices.

The rates will be adjusted (to reflect changes in the costs of operating meal programs) each July 1, beginning July 1, 1982, for following school years.

(b) The bill establishes the special assistance rates of reimbursement to State educational agencies for free lunches and reduced price lunches under the school lunch program for the 1981–1982 school year as follows:

(i) For free meals, the rate is changed to 98.75 cents per meal.

(ii) For reduced price meals, the rate is changed from 20 cents less than the free meal rate to 40 cents less than the free meal rate.

The rates will be adjusted (to reflect changes in the costs of operating meal programs) each July 1, beginning July 1, 1982, for following school years.

SAVINGS (AUTHORIZATIONS)

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
Lowering overall reimbursement rates for school lunches[1]	50	----	449	468	483	481	514	513
Lower reduced-price lunch subsidy an additional 20 cents[1]	7	----	60	63	63	63	64	63

[1] Includes reductions in commodity assistance. See item (3) below.

(2) School Breakfast Program Reimbursement Rates (Sec. 801):

(a) The bill establishes rates of payments to State educational agencies under the school breakfast program for the 1981–1982 school year as follows:

(1) Fifty-seven cents per meal for free breakfasts.

(2) Eight and one-quarter cents per meal for paid breakfasts.

(3) For reduced-price breakfasts, the rate will be half the free rate or 30 cents less than the free rate, whichever is greater; and the price of a reduced price breakfast cannot exceed 30 cents per meal.

The rates will be adjusted (to reflect changes in the costs of operating meal programs) each July 1, beginning July 1, 1982, for following school years.

(b) The bill changes eligibility for receipt of severe need assistance under the school breakfast program to include only those schools in which (during the second preceding school year) a minimum of 40 percent of lunches were served free or at reduced price and for which the average rate of reimbursement is insufficient to cover the costs of the breakfast program. However, any school required by State law to operate a breakfast program would remain eligible to receive severe need assistance without regard to the revised criteria until July 1, 1983 (if located in a State in which the State legislature meets annually), or July 1, 1984 (if located in a State in which the State legislature meets biennially).

SAVINGS (AUTHORIZATIONS)

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
Reduce breakfast subsidy for nonneedy children; change reduced-price rate; reduce eligibility for severe-need assistance	4	----	45	46	54	46	61	61

(3) Commodity Assistance for Lunches (Sec. 802):

The bill sets the rate at which assistance, in the form of donated foods, will be supplied to schools for lunch programs during the 1982–1983 school year at 11 cents per meal. The rate will be adjusted (to reflect changes in the price index for food used in schools and institutions) each July 1, beginning July 1, 1982, for following school years.

(4) Revision of Income Eligibility Guidelines (Sec. 803):

(a) Income eligibility standards: The bill will set new income eligibility standards for participation in the school lunch program as follows:

(1) For free meals, the income eligibility standard will be 130 percent of the OMB nonfarm income poverty guidelines until June 30, 1983. Beginning July 1, 1983, the income eligibility standard will be the same as the gross income eligibility standard for the food stamp program. (NOTE: Under section 104 of the bill, the food stamp gross income eligibility standard will be set at 130 percent of the poverty guidelines also.)

(2) For reduced-price meals, the income eligibility standard will be 185 percent of the OMB nonfarm income poverty guidelines.

The standards will be revised annually to reflect changes in the consumer price index.

(b) Application procedures: With respect to the procedures for handling applications for free or reduced-price lunches, the bill will—

(i) require that application forms and descriptive materials be made available in a timely manner to parents of children attending school;

(ii) permit the Secretary of Agriculture, States, and local school food authorities to verify data contained in application; and require local school food authorities to undertake such other verification of information contained in applications as the Secretary may prescribe; and

(iii) require applicants to furnish the social security account number of all adult members of the applicant's household and require that appropriate documentation of the income of an applicant's household (or that the household is participating in the food stamp program) is provided to the local school food authority.

(c) Income reporting period: The bill will require that eligibility be determined on the basis of the annual household income for the child's household at the time of application (rather than on the applicant's estimate of annual household income for the school year for which the application is submitted).

(d) Verification pilot study: The bill will require the Secretary of Agriculture to conduct a pilot study to verify data submitted on a sample of applications for free and reduced price meals.

SAVINGS (AUTHORIZATIONS)

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
(a) Tie eligibility for free meals to food stamp eligibility	66	61	70	70	71	70		
(a) Change eligibility standard for reduced-price meals	78	73	90	89	97	96		
(b) and (c) Require documentation of income; define income as current income	125	116	125	125	125	12		

(5) Revision of State Revenue Matching Requirements (Sec. 804):

The bill requires States to provide matching funds for the school lunch program at least equal to 30 percent of the funds made available to the State for school lunches under section 4 of the National School Lunch Act in the 1980–1981 school year (except if the per capita income of the State is less than the national average per capita income, in which case the required match would be reduced proportionately). The State funds provided to meet this requirement, to the extent practicable, must be disbursed to schools participating in the school lunch program.

(6) Termination of Food Service Equipment Assistance (Sec. 805):

The bill will repeal those provisions of law providing funding under the National School Lunch Act and Child Nutrition Act of 1966 for food service equipment in schools.

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
Savings (authorizations)	19	19	19	19	19	19		

(7) Nutrition Education and Training Program (Sec. 806):

The bill will reduce the authorization for appropriations for grants to support nutrition education and training programs, beginning with fiscal year 1982, from $15 million per year to $5 million per year. The authorization for funding expires at the end of fiscal year 1984.

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
Savings (authorizations)	10	10	10	10	10	10		

(8) Revision of the Special Milk Program (Sec. 807):

The bill limits the special milk program to schools and institutions that do not participate in meal service programs under the Child Nutrition Act of 1966 and the National School Lunch Act.

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
Savings (direct spending)	10	----	95	103	99	98	102	101

(9) Limitation on Private School Participation (Sec. 808):

The bill will make nonprofit private schools in which the average yearly tuition exceeds $1,500 per student ineligible to participate in the school nutrition programs.

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
Savings (authorizations)	5	5	5	5	6	6		

(10) Summer Food Service Program (Sec. 809):

The bill will limit sponsorship of summer food service programs to public or private nonprofit school food authorities; local, municipal, or county governments; and residential nonprofit summer camps. Programs sponsored by local, municipal, or county governments must be directly operated by the governmental entities.

The bill will restrict the summer food service programs to areas in which at least 50 percent (not 33⅓ percent, as under existing law) of the children meet the income eligibility criteria for free and reduced price school lunches.

[In millions of dollars]

	1981		1982		1983		1984	
	B		B		B		B	
	A	O	A	O	A	O	A	O
Savings (direct spending)	90	85	95	93	99	99		

(11) Revisions of the Child Care Food Program (Sec. 810):

(a) The bill will make ineligible for participation in the child care food program for-profit institutions that do not receive compensation under title XX of the Social Security Act for at least 25 percent of the children for which the institution provides day care services.

(b) The bill will reduce the age limit for eligibility for the child care food program from 18 to 12, except for—

(i) handicapped children, for which no age limit is set; and

(ii) children of migrant workers, for which the age limit is 15.

(c) The bill will eliminate the tiering system and require that eligibility for reimbursement for the cost of meals served in child care programs be based on the income needs of the individual applicant, as under the school lunch program.

(d) The bill will change the reimbursement rate for food supplements (i.e., snacks) served in child care programs as follows:

(i) For free supplements, 30 cents per unit.

(ii) For reduced-price supplements, one-half the free rate.

(iii) For paid supplements, 2.75 cents per unit.

The rates will be adjusted (to reflect changes in the costs of operating meal programs) each July 1, beginning July 1, 1982.

(e) The bill limits maximum reimbursements for meals under child care programs to two meals and one supplement per day for each child served.

(f) The bill will change the procedures for determining the reimbursement to child care programs for providing food to children enrolled in the program. For a family or group day care home, the bill will eliminate reimbursement for meals and supplements served to children of the child care provider unless the children are eligible for free or reduced-price school lunches. The bill also lowers the reimbursement rate for family and group day care programs (which is based on the costs of obtaining and preparing food for child care meals) by 10 percent. The reimbursement rate will be adjusted (to reflect changes in the Consumer Price Index for food away from home) each July 1, beginning July 1, 1982. The bill will lower the reimbursement allowance for administrative expenses by 10 percent; and, in making the reduction, the Secretary of Agriculture will be required to increase the economy-of-scale factor used to distinguish institutions that sponsor a larger number of day care homes from those that sponsor a lesser number of such homes. The reimbursement rate for administrative expenses will be adjusted (to reflect changes in the Consumer Price Index for all items) each July 1, beginning July 1, 1982.

(g) The bill eliminates the requirements under the child care food program for State plans and food service equipment assistance.

SAVINGS (AUTHORIZATIONS)

[In millions of dollars]

	1981		1982		1983		1984	
	B A	O	B A	O	B A	O	B A	O
(a) Eliminate certain for-profit institutions			7	6	16	16	16	21
(b), (d), (f), exclude children over 12; reduce reimbursement rate; include children of day-care providers			11	10	14	13	16	15
(c) Eliminate "tiering" in calculating reimbursement			11	10	13	13	14	13
(e) Allow reimbursement for only 3 meals per child per day	4		40	41	58	57	63	62
(f) Reduce the day care reimbursement rate and administrative costs by 10 percent			15	14	17	16	19	19

(12) Food Not Intended to be Consumed (Sec. 811):

The bill extends to children participating in the school lunch program at all grade levels (including children in elementary schools) the option not to accept food offered to them that they do not intend to consume.

(13) State Plan Requirements (Sec. 812):

The bill deletes the provision of law that each State educational agency must provide the Secretary of Agriculture annually with a State plan of child nutrition operations for the following school year describing how school lunch, child nutrition, summer food program, and school breakfast funds will be used.

The bill also deletes the requirement that schools and State educational agencies provide to the Secretary estimates each October 1 and March 1 of the number of children under the entity's jurisdiction who are eligible for free or reduced-price meals.

(14) Commodity Only Schools (Sec. 813):

Commodity only schools are schools that do not participate in the school lunch program, but which receive commodities made available by the Secretary of Agriculture for use in nonprofit lunch programs.

The bill will expand commodity assistance, and offer cash assistance, to commodity only schools, as follows:

(a) They will become eligible to receive donated commodities in an amount equal in value to the national average commodity assistance rate under the National School Lunch Act and the general reimbursement rate for school lunches under that Act;

(b) They will be eligible to receive up to 5 cents per meal of the amount described in item (a) in cash for the costs of processing and handling commodities; and

(c) They will be eligible for special assistance cash payments under the National School Lunch Act for providing children free and reduced-price lunches.

The bill also provides that commodity only schools may not participate in the special milk program.

(15) State Administrative Expenses (Sec. 814):

The bill provides that the minimum administrative expense funds that must be allocated to each State will be the larger of $100,000 and the amount made available for such purpose in fiscal year 1981. Administrative expense funds that are made available in one year will be available for obligation or expenditures in the following year.

(16) Authorizations for Appropriations under the WIC Program (Sec. 815):

The bill provides authorizations for appropriations for the special supplementary food program (WIC) for the 1982 through 1984 fiscal years as follows:

(a) For fiscal year 1982, $1.017 billion.

(b) For fiscal year 1983, $1.060 billion.

(c) For fiscal year 1984, $1.126 billion.

[In millions of dollars]

	1981		1982		1983		1984	
	B A	O	B A	O	B A	O	B A	O
Increases (authorizations)		(19)	(16)		(3)			

(17) Claims Adjustment Authority (Sec. 816):

The bill will give the Secretary of Agriculture authority to determine, adjust, and settle claims arising under the National School Lunch Act and the Child Nutrition Act of 1966.

(18) Limitations on the Authority of the Secretary to Administer the Programs Directly (Sec. 817):

The bill will prohibit the Secretary of Agriculture from directly administering any assistance program under the National School Lunch Act or Child Nutrition Act of 1966, except for—

(a) programs that have been administered by the Secretary continuously since October 1, 1980; or

(b) programs in nonpublic schools in cases in which the State educational agency is not permitted by law to disburse the program funds to nonpublic schools in the State.

The bill will also permit States to assume administration of programs that the Secretary is directly administering.

(19) Cost Saving Revisions by the Secretary (Sec. 818):

The bill will require the Secretary of Agriculture to review regulations under the National School Lunch Act and the Child Nutrition Act of 1966 to determine ways to achieve cost savings in the meal programs at the local level without impairing the nutritional value of the meals. The Secretary will also be required to promulgate regulations to achieve cost savings within 90 days after the bill is enacted.

(20) Extension of the Provisions of the 1980 Reconciliation Act:

The bill, as described above, continues beyond fiscal year 1981 a number of provisions of the Omnibus Reconciliation Act of 1980 (Public Law 96-499) that reduced the authorizations for child nutrition programs for fiscal year 1981 only.

By incorporating these provisions of the 1980 Act and extending the applicability of such provisions to the child care feeding program, the bill makes the following budget savings in the 1981 through 1984 fiscal years:

[In millions of dollars]

	1981		1982		1983		1984	
	B A	O	B A	O	B A	O	B A	O
Authorizations	1		367	343	348	349	366	3

CUMULATIVE SAVINGS—CHILD NUTRITION PROGRAM

[In millions of dollars]

	1981		1982		1983		1984	
	BA	O	BA	O	BA	O	BA	O
Authorizations	66		1,289	1,269	1,385	1,368	1,466	1,457
Direct spending	10		185	188	194	181	201	200

Mr. PERCY. Mr. President, the final version of the Omnibus Reconciliation Act will change the Communications Act of 1934 to permit the Federal Communications Commission to use a lottery in lieu of the present comparative hearing procedure for the purpose of granting licenses to use the electromagnetic spectrum.

One important area which will benefit from the new lottery system is that of cellular mobile telephones.

On April 9, 1981, the FCC issued a decision in its cellular proceeding which created an entitlement to one-half of the available cellular spectrum for the telephone company servicing a given market area. The underlying rationale for this entitlement is the FCC's concern that a comparative hearing would take considerable time and that, in the interim, the public would be denied service.

The change effected by the Omnibus Reconciliation Act will permit the FCC to reexamine its decision, since the delay factor will be eliminated once the law takes effect.

On July 27, 1981, the Committee on Commerce, Science, and Transportation reported out S. 898, the Telecommunications Competition and Deregulation Act of 1981. In it report on the bill, the committee questioned the efficacy of the FCC's cellular decision stating, "the Commission should review its policies in cellular service to insure that they are consistent with the act's competitive policy." (Report 97–170, p. 10.)

The FCC will have its work cut out for it in making this lottery option work reasonable; however, this approach removes the delay factor in the hope the FCC will recognize this and take appropriate action.

Mr. KENNEDY. Mr. President, today's vote on the reconciliation conference report is the final important Senate vote in the budget process. We can no longer hide behind the mask of featureless numbers or the promise that what we do can all be fixed later.

Today we vote to cut back on existing laws in ways that will profoundly affect the lives of millions of Americans—the handicapped, the elderly, the middle class, the poor, the young.

I cannot support a budget that relentlessly cuts programs for those most in need and that ignores the plight of our cities and rural areas. I cannot support a budget that makes it harder for the elderly to heat their homes and breaks the promise of social security for millions of senior citizens. I cannot support a budget that forces students to give up their dreams of a college education because of cutbacks in college loans.

We have worked long and hard in the conference with the House to undo this damage. We have achieved some important victories. The administration's proposal for a medicaid cap has been rejected. Their proposal for vast, formless block grants in health, education, and social services has been rejected. Their proposal to slash funds for home heating for the poor and elderly has been rejected. Their proposal for drastic funding cutbacks in student aid for low- and middle-income families has been rejected.

Mr. President, those victories hardly begin to affect the enormous new burdens this budget will impose. It is a budget of unequal sacrifice. It asks too much of the poor and the middle class, and it asks too little from the rich, the powerful, and the special interests. In the same week that we are taking away school lunches for children, we are granting billions of dollars in new tax breaks for the oil companies.

The budget and the tax bill are the product of an economic theory that says that we can have prosperity only by abandoning the social progress of a generation. But I believe that our people will see that the administration's economic policy is a cruel hoax that produces suffering and hardship for most Americans and windfalls for a privileged few.

It is time to say no to these misguided priorities. We can fight inflation, revitalize our economy and rebuild our cities and towns without turning our backs on the values that have made the Democratic Party great. It is time to provide a vision of society that offers both prosperity and compassion, and that responds to the needs of all our people. The citizens of America deserve better from their Congress, and that is why I oppose this harsh and unjust legislation.

COST REVIEW MECHANISMS IN MEDICAID

Mr. CHAFEE. Mr. President, I would like to speak to my colleague from Kansas (Mr. DOLE) about those sections of the reconciliation report and bill which deal with medicaid and the qualification of a State's cost control program. This is of particular concern to my State of Rhode Island.

Mr. DOLE. The medicaid reimbursement formula which was agreed to in conference is designed to reward States which make efforts to control costs. States which operate cost review mechanisms may lower by 1 percent the amount by which the Federal contribution to their programs is reduced.

Subtitle C, chapter 1, section 2161, paragraph 3, subparagraphs A through D of the reconciliation bill establish criteria under which States' cost review or "prospective reimbursement" programs may qualify for such a reduction.

In the Managers' Statement, we have referred to six States which the conferees expect to be considered to be qualified cost review programs. Though Rhode Island was not among these, the Senate conferees did not wish to specifically exclude Rhode Island as a qualified cost review program.

Mr. CHAFEE. Mr. President, my colleague from Kansas, the distingiushed chairman of the Finance Committee, has correctly stated that Rhode Island was a pioneer in the development of prospective reimbursement systems. As a direct result of my State's program, Rhode Island has been extremely successful in controlling medicaid costs.

It is one of the most cost-effective programs in the country. Therefore, it is appropriate, and the intention of the Finance Committee conferees, that Rhode Island's program not be excluded from qualification for the 1-percent reimbursement which my colleague from Kansas has described. Because of the small size of my State, our medicaid administrators, Blue Cross officials, and hospital association representatives have been able to work together effectively.

Chapter 208, title 27, of the General Laws of Rhode Island, does create the framework for direct State participation in any prospective reimbursement system. And indeed, the State is directly involved in the operation of that system.

Mr. DOLE. Inasmuch as Rhode Island's law and mode of operation with respect to prospective reimbursement have facilitated—rather than lessened—the ability of that State to achieve a cost-effective medicaid program in Rhode Island, it seems appropriate to the Finance Committee that Rhode Island's cost review system qualify the State for the 1-percent reimbursement under the statute described above.

THE BATTLE OVER FEDERAL SPENDING

Mr. President, as we proceed to finalize the spending reductions under the reconciliation bill, we ought to consider how we have reached the point where dramatic changes in the level of Federal spending are needed, and what the consequences will be if we do not act now to change direction. President Reagan has stressed that his economic program should be looked at as a whole, including measures to reduce spending, cut taxes, restrain monetary growth, and reduce the burden of Federal regulation.

That makes good sense, and it is up to Congress to enact a series of legislative changes that, taken together, will constitute a coherent assault on our economic problems. But the President has also emphasized that firm control over Federal spending over the next few years is crucial to the success of this program. That is why the steps we take to control spending are so vital to the well-being of the Nation.

FINANCE COMMITTEE ACTION

There were significant differences between the House and Senate versions of the reconciliation bill. However, after thorough, often spirited, debate, the differences were reconciled to the satisfaction of the conferees. The consensus on what we needed to do clearly outweighed the differences we had to iron out.

At the same time it should be remembered that the recommended changes are not so radical as some would maintain. The revisions that came out of the Finance Committee, and which are incorporated in the bill, are clearly in the nature of tightening up on existing programs.

Funding levels for individual programs are not severely cut, and no substantial programs are eliminated. These spending reductions are carefully chosen, not random or arbitrary.

CLARIFICATION OF MEDICAID LANGUAGE

I would like to bring to the attention of the Senate an ommission from the Statement of Managers in House Report 97–208, explaining the conference agreement on the Omnibus Budget Reconciliation Act of 1981, H.R. 3982. In the explanation of subtitle C of title XXI relating to medicaid, reference is made to an amendment regarding services to the medically needy. The language now states, in pertinent part:

The intent of the amendment is to provide States with flexibility in establishing eligibility criteria and scope of services within the medically needy program to address the needs of different population groups more appropriately. Nothing would allow, however, the State to cover individuals not covered under current law.

Inadvertently, the next sentence was omitted. It was to read as follows:

Moreover, it is not the intent of the conferees to alter the requirements under section 1902(a)(17) of the Social Security Act relating to comparable treatment of income and resources between categorically needy and medically needy programs.

Both Representative DINGELL, the co-chairman of the subconference in which this issue was resolved, and I intend that this sentence be considered as part of the Statement of Managers.

POLICY OF COMPASSION

Mr. President, these cuts are difficult but they are reasonable and they are needed. The opponents of spending restraint—particularly the defenders of specific programs—cry that spending cuts will put this person out of a job, deprive that community of a federally-funded development project, reduce the income supplement that another individual receives.

There is no question that withdrawal of Federal funding on the scale we are contemplating will have consequences. But it is unjust to look at only one side of the ledger. That, I may say, is what we have been doing for too long, and that is why spending has gotten out of control.

Mr. President, to calculate the impact of budget cuts we cannot just look at cases where there may be individual hardship. If there were no tough cases to deal with, we could have undertaken this budget-cutting exercise long ago. We have come to realize that the levels of Federal spending we have become accustomed to can cause hardship as well as relieve it. Financing Government programs through the hidden tax of inflation is not a compassionate policy.

IMPROVE THE ODDS

We can and should increase the probability that the economic recovery program will succeed. That is everyone's economic interest. We can do so by proving that we are firmly resolved to control the budget this year, and next year, and the year after that, and that we will continue to be responsive to the public demand for a more efficient and effective Government.

The clearer our sense of purpose, the more likely it is that people, and financial markets, will respond as the President predicts. Together with lower taxes, stable monetary policy, and limits on the burden of Federal regulation, the Reagan agenda of spending reductions can convince people that we mean business and set in motion the transition to a new period of stable economic growth.

We must demonstrate that the old rules of political behavior no longer are an obstacle to developing and implementing the best policies for the economy as a whole. The Federal budget is the place to start.

SUBTITLE E—CONRAIL: SECTION 1131

● Mr. RIEGLE. Mr. President, at this time, I would like to express again my support for community action agencies—especially those in my home State of Michigan—but also those throughout the country. These agencies were established to develop local programs to eliminate the causes of poverty and to develop coordinated approaches to providing needed services for low-income citizens and the elderly. Thanks to the efforts of effective CAP agencies, hundreds of thousands of people throughout our country have been trained or retrained for available jobs, homes have been weatherized and heated through cold winters and early childhood development needs of low-income families have been met through Head Start and day care programs. Community action agencies offer low-income youth, elderly, and handicapped residents a number of vital services including medical and dental care, transportation, and other essential programs tailored to the needs of these special populations.

On May 26 of this year, I had the privilege of chairing a public forum in Michigan sponsored by the Kent County Community Action Agency. Hundreds of Michigan residents, including members of the State legislature, representatives from private and public social service agencies, public officials, and concerned citizens offered testimony on the benefits provided by Federal programs to local communities and low-income populations throughout the State. They also testified on the impact of the administration's proposal to cut back Federal spending, to eliminate the community services administration, and to fold CAP agency funding into a social services block grant. I would be happy to share this valuable testimony with Members of Congress and their staffs.

I wish also to take this opportunity to commend House and Senate conferees of the Omnibus Reconciliation Act who worked with the community services block grant. I believe the conferees have achieved a favorable compromise which will allow CAP agencies to continue their efforts on the local level to combat problems associated with poverty. As a result of the highest unemployment rates in the country, rising energy costs and spiraling inflation, Michigan is particularly in need of the services and experience of CAP agencies. In addition to concrete services, these community-based agencies offer a source of collective support and comfort to community members experiencing economic hardship.●

LEGAL SERVICES

Mr. KENNEDY. Mr. President, one of the most serious defects of the reconciliation bill we are considering today is that it does not reauthorize the Legal Services Corporation. In the rush to cut the budget, there was too little time to resolve the differences that separate those who support the program from those who oppose it.

But this failure to act does not mean the Legal Services Corporation is dead. The Labor and Human Resources Committee reported out a 3-year extension of the program on June 24. We will vote on the bill authorizing that extension when Congress reconvenes in September.

The Legal Services Corporation is too important for us to let it die. America is built on the concept of equal justice under law. Yet, until the legal services program was created, that principle had a glaring exception—equal justice for all except the poor.

In 1981, we cannot afford to slide backward to that time of lesser justice in our history when the poor were denied access to our legal system. In those days, tenants were illegally evicted, consumers were victimized by fraud, elderly Americans were denied their legal benefits, and countless other groups were severely disadvantaged because they could not afford a lawyer to protect their basic rights.

On the balance sheet of Federal programs, the Legal Services Corporation has become one of the Nation's greatest assets. Its approach to providing legal services for the poor has proved itself enormously efficient.

In 1979, over 94 percent of the Corporation's budget went directly into legal services. Less than 3 percent went for administration, and the figure will be less than 2 percent in 1981.

The Corporation has brought its coverage to the entire Nation. Before 1975, there were entire regions of the country where the poor had no access to legal counsel. In 1980, over 1.2 million citizens were served by local legal services programs in every part of America. For the first time, the poor have a real chance to see their rights and interests vindicated by the legal system.

Only low-income recipients are eligible for the program—individuals earning less than $4,700 a year, or families earning less than $9,300. Those who must live on less than $10,000 a year can rarely, if ever, afford the services of a private attorney. Without the legal services program, they would be denied effective access to justice.

The bitter consequences of that denial are legion. It means children forced into programs for the mentally retarded, without any evaluation of their intelligence. It means mothers left without funds to feed their families when a benefit check stops. It means elderly persons left without heat in their apartments because the landlord did not pay the utility bill.

Those who oppose this program do not understand how legal services attorneys spend their time in service to their clients. Thirty percent of their cases involve family matters—issues such as adoption, divorce, support, spouse abuse, and custody questions; 18 percent of their cases involve income and housing; and another 18 percent involve consumer matters.

The underlying reality is that these are the kinds of everyday food, shelter, health and income problems that can make all the difference in the lives of the poor.

Even those opposing continued Federal funding do not deny that the poor have a need for these services. Instead, they argue that the services should be the responsibility of the private bar. However, the private bar, including many judges and law school deans, has overwhelmingly supported the Legal Services Corporation. Every ABA president since 1965 has endorsed the Corporation. They all have recognized that the private bar is neither able nor willing to meet the need.

Frequently, opponents argue that the legal services program is an agent of social or political change. They forget how the law works. They disregard the fundamental truth that legal services attorneys represent clients—breathing, living, human clients. The attorneys win only when the courts rule that their clients are being treated improperly, unfairly, and illegally. If, as a matter of law, individuals are being denied their rights, then the act of vindicating those rights through legal action may produce change—but change that is made only in accordance with the law.

We have heard the administration discuss its safety net to protect the very poor against the current budget onslaught. The legal services program is a vital means to assure that the "safety net" will be there when it is needed. Without the program, too many needy families will find that the safety net has been pulled out from under them.

The House of Representatives has already extended the life of the Corporation for 2 years, and the appropriation is now before the House. After we return from recess in September, the Legal Services Corporation reauthorization must receive high priority in the Senate.

I am confident that when the Senate hears and understands the facts, it will vote to continue this vital program. We cannot accept a double standard of justice in America. To deny justice to the poor is to deny our heritage and our history. That is a step this Nation must not take.

Mr. PACKWOOD. Mr. President, pursuant to section 1199A of H.R. 3982, the Omnibus Reconciliation Act, I am submitting for the RECORD the following explanatory statement of the House and Senate conferees.

The material follows:

EXPLANATORY STATEMENT OF THE HOUSE AND SENATE CONFEREES WITH RESPECT TO SUBTITLES E, F, AND G OF TITLE XI OF THE OMNIBUS RECONCILIATION BILL (H.R. 3982)

SUBTITLE E—CONRAIL: SECTION 1131

House bill

The House bill states that this bill may be cited as the "Rail Service Improvement Act of 1981."

Senate amendment

The Senate Amendment states that the bill may be cited as the "Northeast Rail Service Act of 1981."

Conference substitute

The conference substitute adopts the Senate provision.

SECTION 1132—FINDINGS

House bill

The House bill finds that current arrangements for rail freight and commuter service in the Northeast and Midwest are inadequate to meet the transportation needs of the public and national security, and that the processes set in motion by previous rail legislation have not made the rail system in the region profitable. The protection of interstate and foreign commerce requires federal intervention to preserve rail service in the private sector, including statutory changes to improve Conrail's ability to become profitable. To return Conrail operations to the private sector requires that labor protection conditions different than those established by Title V of the Regional Rail Reorganization Act be imposed to meet the emergency needs of the situation. Shippers, states, and consumers must be included in any solution to the rail service problems in the Northeast and Midwest. The commuter service must be transferred to other operators dedicated to such service, and the functions of the United States Railway Association should be transferred.

Senate amendment

The Senate Amendment finds that (1) the 3R Act has failed to create a self-sustaining railroad in the Northeast; (2) current arrangements for the mix of freight and commuter services in the region are inadequate; (3) there is little likelihood that Conrail can become self-sufficient in the foreseeable future; (4) the employee protection provisions have been far more expensive than anticipated and now pose an obstacle to establishment of improved rail service and continued employment in the Northeast; (5) integration of Conrail's service into the Nation's private rail system can be successful only if adequate and equitable protection is provided for affected railroad employees and if acquiring railroads are not required to assume Conrail's commuter operations; (6) the operation of commuter services by states or related entities is an integral government function of the states which should be assisted but not superseded, by the Federal Government.

Conference substitute

The conference substitute adopts a majority of the House bill's findings.

SECTION 1133—PURPOSE

House bill

It is the purpose of the Congress in this Act to provide for the removal by a date certain of the federal subsidy for Conrail, and the transfer of Conrail's commuter service to other operators. Also it is the purpose to provide for labor protection in the difficult circumstances of Conrail's financial situation. Conrail's freight operations must be performed by the private sector, and the functions of the United States Railway Association should be transferred.

Senate amendment

This section sets forth the purposes of the legislation: to provide for the reduction by Conrail of its operating costs; to transfer Conrail passenger service responsibilities without consideration to one or more entities; to provide adequate and equitable labor protection for employees deprived of employment by the legislation; and to transfer Conrail's freight service and properties to other carriers for reasonable compensation.

Conference substitute

The conference substitute's purpose is declared to be (1) the removal by a date certain of the Federal Government's obligation to subsidize the freight operations of Conrail; (2) the transfer of Conrail commuter service responsibilities; and (3) an orderly return of Conrail freight service to the private sector.

SECTION 1134—GOALS

House bill

The House bill contains no goals.

Senate amendment

The Senate amendment sets forth several goals.

Conference substitute

The conference substitute adopts as its goal to provide Conrail the opportunity to become profitable through the achievement of the following objectives, among others:

(1) Conrail enters into collective bargaining agreements with its agreement employees which would reduce Conrail's costs in an amount equal to $200 million a year beginning April 1, 1981;

(2) Proportional agreements from non-agreement personnel.

SECTION 1135—DEFINITIONS

House bill

The House bill defines nine terms which are used in this Act. All are technical additions which are necessary to the Act, with the exception of the definition of "profitable carrier". "Profitable carrier" is the term used in determining whether the Secretary is required to sell the common stock of the Corporation, or whether he may sell the assets of the Corporation. The definition requires that Conrail be able to generate sufficient revenues to cover its expenses, and includes reasonable maintenance of equipment and facilities.

In meeting its expenses the Corporation will obviously be required, like any other private business enterprise, to borrow funds in the private markets. If Conrail is unable to borrow such funds, assuming that its debt to the federal government is forgiven, it would be unable to meet the definition of profitability.

Senate amendment

The Senate amendment defines the important terms used in the legislation.

Conference substitute

The conference substitute defines the important terms used in the legislation.

SECTION 1136—END OF CONRAIL OBLIGATION

House bill

Conrail's obligation to operate commuter service ends 540 days after the effective date of the section.

Senate amendment

Conrail's obligation to operate commuter service ends 1 year after the date of enactment.

Conference substitute

The conference substitute adopts the compromise date of January 1, 1983.

SECTION 1137—ESTABLISHMENT OF AMTRAK COMMUTER

House bill

The House bill amends the Rail Passenger Service Act by inserting a new title, Title V, Amtrak Commuter Services, which sets up the Amtrak Commuter Services Corporation.

Amtrak Commuter is established within 240 days after enactment. Amtrak Commuter is a wholly-owned subsidiary of Amtrak.

Amtrak Commuter is solely an operator of commuter service under contract to commuter agencies and has no common carrier obligations.

Amtrak Commuter is exempt from the Interstate Commerce Act, but is subject to other Federal laws affecting the railroad industry, such as the Federal Railroad Safety Act, the Railway Labor Act, the Railroad Retirement Act, and the Railway Unemployment Insurance Act. Amtrak Commuter is also not subject to any state or local laws regarding fares or service and is exempt from certain taxes. Finally, certain prohibitions of the Clayton Act do not apply to transactions between Amtrak Commuter and Amtrak.

The Amtrak Board is required to incorporate Amtrak Commuter.

The House bill details the directors and officers of Amtrak Commuter.

The Board of Directors, consists of six members: the President of Amtrak Commuter (chosen by the other five members of the Board), the two commuter agency members on the Amtrak Board, two additional members selected by the Amtrak Board, and one

member from a commuter agency for which Amtrak Commuter operates commuter services.

Certain provisions of the Rail Passenger Service Act are applied to Amtrak Commuter. References to the Corporation and its board in these provisions should be read in this context as referring to Amtrak Commuter and its Board. For example, the president of Amtrak Commuter is to be named and appointed by the Board of Amtrak Commuter.

The House bill describes generally the powers of Amtrak Commuter, including the power to issue common stock to Amtrak.

The standards under which Amtrak Commuter operates commuter service for a commuter agency are detailed.

Amtrak Commuter is required or allowed to operate commuter service if certain conditions are met. Amtrak Commuter is required to operate commuter service Conrail was obligated to operate if a commuter agency offers a commuter service operating payment designed to cover the difference between revenue attributable to the operation of service and the avoidable cost of the service or an operating payment pursuant to a lease or agreement with a commuter agency under which financial support was being provided on January 2, 1974 for the continuation of commuter service.

Amtrak Commuter may operate any other commuter service if a commuter agency offers a commuter service operating payment designed to cover the difference between revenue attributable to the service and avoidable cost.

No changes in the substantive costs standard is intended by use of the term "commuter service operating payment" in this Act, instead of "rail service continuation payment," as used in the 3R and 4R Acts. The two terms are meant to have the same substantive content.

Any agreement pursuant to subsection (b) is to be made in accordance with regulations issued by the Rail Service Planning office (RSPO) of the ICC. RSPO regulations currently govern operating agreements between Conrail and the commuter agencies.

The conditions under which Amtrak Commuter is allowed to operate additional commuter service are indicated.

Amtrak Commuter is allowed to discontinue service on 60 days notice if a commuter agency does not offer a commuter service operating payment in accordance with subsection (b) or if a commuter service operating payment is not paid when due.

The compensation for use of the Northeast Corridor is to be based on the methodology determined by the ICC or agreed by the parties.

If no commuter service operating payment is offered by a commuter agency pursuant to a lease or agreement, such lease or agreement shall not apply to Amtrak Commuter. In such event, Amtrak and Conrail are to retain appropriate trackage rights for passenger and freight operations over any rail properties owned or leased by such commuter agency. Compensation for such trackage rights is to be fair and equitable. In particular, compensation for freight operations should take into account industry-wide average compensation for freight trackage rights and any additional costs imposed on the commuter agency as a result of freight operations over passenger lines.

Amtrak Commuter has no obligation to operate commuter service if a commuter agency contract for the provision of such service by another operator (including by the agency itself).

The Board of Amtrak Commuter is given the authority to allocate a proportionate share of the excess of the working capital revolving fund transferred to Amtak Commuter to the account of an individual commuter agency, which, after operating service through Amtrak Commuter, elects to operate the service itself. Such allocation can only be made if the Board determines that the amount in the fund is in excess of the amount needed for the purposes of this title. The Board may then allocate only the excess amount. The allocation is to be based on ridership.

This section provides Amtrak Commuter a role in coordination of operations over the Northeast Corridor.

Subsection (a) requires the Amtrak Commuter Board to develop and recommend to Amtrak equitable policies regarding Northeast Corridor access, dispatching, public information, maintenance of equipment and facilities, major capital, facility investments, and harmonization of equipment acquisitions, fares, tariffs, and schedules.

Subsection (b) allows the Amtrak Commuter Board to recommend to the President and Board of Amtrak such actions as are necessary to resolve differences of opinion regarding Northeast Corridor operations.

The Corporation and its subsidiary is required to transfer to Amtrak Commuter or other operating entities the rail properties, rights, or interests necessary for commuter service. Inventory transferred shall be paid for at book value. Fixed facilities, rolling stock, and other equipment shall be transferred without consideration. Conrail shall retain appropriate trackage rights over any rail properties transferred under this subsection. Compensation for those trackage rights should be fair and equitable, and should take into account industry-wide average compensation for freight trackage rights and any additional costs imposed on the owner of the facility as a result of freight operations over passenger lines.

The transfer of any lease, agreement, or contract by Conrail pursuant to this title is not a breach, default, or violation of any agreement.

Senate amendment

The Senate amendment establishes Amtrak Commuter, a subsidiary of Amtrak, to provide commuter services on a contractual basis for those commuter authorities that do not assume direct control of their operations.

The Amtrak Commuter Board of Directors will consist of seven members. Three will be representatives of Amtrak and three will be representatives of the commuter authorities. The seventh member is the President. The first President will be appointed by the Secretary. Thereafter, the President will be chosen by the Board of Directors of Amtrak Commuter. The President will serve a three-year term and no individual may serve no more than two terms. The other Board members will serve two-year terms.

Amtrak Commuter is authorized to own, manage, or contract for the operation of commuter services; and to acquire or contract for the facilities and equipment necessary for operation.

This section also authorizes Amtrak Commuter to issue common stock to Amtrak.

A commuter authority shall notify the Secretary and Conrail not later than 90 days after enactment if it intends to assume direct control of its commuter operations or if it intends to contract with Amtrak Commuter.

This section requires Amtrak Commuter to recommend to Amtrak policies regarding harmonious and equitable access and use of the Northeast Corridor for commuter and intercity services; including policies for fares, schedules, facilities, and equipment.

The Amtrak Commuter Board may recommend to the Amtrak Board ways to resolve any differences of opinion regarding operations.

A commuter authority or a state, local, or regional transportation authority is authorized to initiate negotiations with Conrail for the transfer of commuter services operated by Conrail. The transfer agreement shall specify at least the service responsibilities to be transferred, the rail properties to be conveyed, and a transfer date not later than one year after enactment of this Act. Such transfer agreements shall be entered into not later than 180 days after the date of enactment.

If Conrail and Amtrak Commuter have not signed a transfer agreement within 180 days of enactment, the Secretary of Transportation is to determine within 30 days the terms and conditions of the transfer and the rail properties to be transferred.

If a commuter authority later wants Amtrak Commuter to transfer commuter service to the authority, Amtrak Commuter is required to do so upon terms and conditions agreed upon by Amtrak Commuter and the commuter authority.

If Amtrak Commuter and the commuter authority do not sign an agreement for the transfer, either party may appeal to the Secretary for a determination of the properties to be transferred and the terms and conditions of the transfer. Commuter service outside the Northeast Corridor not transferred directly to a State, local, or regional transportation authority would cease to be operated one year after the effective date of the act.

It is provided that a commuter authority assuming rail commuter service responsibilities shall be subject to the Federal Employers Liability Act, the Railroad Retirement Act, the Railroad Unemployment Insurance Act, and the Federal railroad safety laws.

These transfers are exempt from compliance with the provisions of subtitle IV of title 49 United States Code (formerly the Interstate Commerce Act).

The exemption is applicable to subsequent transfers and determinations of the Secretary under certain sections as long as the transfers are effected within 4 years of enactment.

Conference substitute

The Conference substitute combines the House and Senate provisions on the establishment and duties of Amtrak Commuter.

It is the intent of the conferees that Amtrak Commuter's efforts be directed in the first instance to operating service in the Region as defined in the 3R Act.

The Senate recedes to the House provision on the composition of Amtrak Commuter's Board of Directors. There are minor clarifications.

The House and Senate provisions for the transfer of commuter services and related properties are combined.

The Senate recedes to the House provision on the coordination of the Northeast Corridor.

The House recedes to the Senate provision calling for the Secretary of Transportation to decide the terms and conditions of the transfer of services and properties which cannot be decided by the parties.

The House recedes to the Senate provision on regulatory approval.

SECTION 1138—PROHIBITION OF CROSS SUBSIDIZATION

House bill

The House Bill amended Section 601 of the Rail Passenger Service Act by prohibiting cross subsidization between intercity services

of Amtrak and commuter services of Amtrak Commuter. This is a reflection of the intent that Amtrak and Amtrak Commuter be financially separate and independent entities.

Senate amendment

The Senate Amendment required that cost standards avoid cross-subsidization between commuter and intercity services.

Conference substitute

The substitute adopted the House provision.

SECTION 1139—AUTHORIZATION OF APPROPRIATIONS

House bill

The House bill authorizes $50 million in fiscal year 1982 for use by Conrail's commuter subsidiary as a working capital fund. The fund is available only to meet periodic operating expenses of the subsidiary until the expenses have been reimbursed by the appropriate commuter agencies. When Conrail and its subsidiary are relieved of their commuter service obligation, the fund (and liabilities to it) is transferred to Amtrak Commuter for the same purpose.

The House bill also amends section 601 of the Rail Passenger Service Act by authorizing $20 million in fiscal year 1982 to Amtrak for allocation to any commuter authority providing commuter service, operated by a railroad that entered reorganization after 1974, as of July 1, 1979.

Senate amendment

The Senate amendment authorized $50 million to be appropriated to the Secretary to facilitate the transfer of commuter services from Conrail.

Conference substitute

The substitute generally follows the Senate amendment for the $50 million authorization. The substitute provides the Secretary of Transportation the authority to distribute the funds between Amtrak Commuter and the commuter authorities that operate commuter service, which are those commuter authorities contracting with Conrail for the provision of commuter service. The Secretary is to consider any particular adverse financial impact upon any commuter authority contracting with Amtrak Commuter that would result from the termination of any lease or agreement between such authority, such as MTA, and Conrail. The Secretary should ensure an equitable allocation.

It is the intent of the confereees to provide flexibility to the commuter authorities, in the use of this money. Potential uses of this money include transition and planning expenses for commuter authorities, and startup costs of Amtrak Commuter and commuter authorities that elect to directly provide their own service. The conferees also emphasize the importance of ensuring prompt availability of these funds as early in fiscal year 1982 as possible. This is important in light of the fact that Amtrak Commuter will likely have no source of funds until at least April 1982 when the commuter authorities must notify Amtrak Commuter if they intend to contract with it.

The substitute basically follows the House bill for the $20 million authorization. The purpose of this provision is to provide funds in addition to those locally available for commuter rail purposes to commuter authorities that have been subsidizing commuter rail operations of rail lines that have been in reorganization. The Secretray shall approve the expenditure of the funds by the authority, after consultation with the State in which the commuter authority is located.

SECTION 1140—ADDITIONAL FINANCING OF CONRAIL

House bill

The House bill amends Title II of the 3R Act by requiring that any further investment by the Federal Government in Conrail securities be in accordance within this section.

Purchase dates and amounts for the purchase of additional securities and for the purchase of accounts receivable of the Corporation are established. The dates and amounts are as follows:

October 1, 1981—$125 million;
April 1, 1982—$125 million;
October 1, 1982—$100 million;
April 1, 1983—$75 million;
October 1, 1983—$50 million.

The Association is required to purchase accounts receivable of the Corporation attributable to disputes with Amtrak or the commuter authorities over right-of-way related costs for commuter services on the Northeast Corridor, and accounts receivable attributable to any delays in payment by the commuter authorities to Conrail. Since these items are carried on Conrail's books as amounts owed the Corporation, and the reported bill determines that any decision on such costs is prospective only, the failure to purchase such items would require Conrail to show a substantial loss when such items had to be written off.

If Conrail does not request, or the Association does not approve a request, either in whole or in part, the funds shall be available until expended.

On each purchase date the Association is required to make a determination whether Conrail will be a profitable carrier under the definition of the Act. For the purpose of making this determination the Association must assume that the debt and preferred stock held by the federal government is limited to a contingent interest which arises only under the circumstances described in this Act. The contingent interest would allow Conrail to borrow money in the private markets with debt and securities prior in interest to the contingent interest retained by the Federal Government.

The Association shall purchase stock and accounts receivable only if the following conditions are met:

(1) Management, or non-agreement, employees must forego wage increases and benefits in an amount proportionately equivalent to the amount foregone by agreement employees, and the number of management employees must be reduced proportionately to any reduction in agreement employees.

(2) Materials and service must continue to be available to the Corporation under normal business practices.

(3) Conrail must submit to the Association on each purchase date a report on Conrail's efforts to maximize revenues under this Act, the Staggers Act, and the Interstate Commerce Act. Conrail shippers must not unduly interfere with Conrail's attempts to maximize revenues. Nothing in this subparagraph is intended to remove a shipper's right to challenge an individual action of Conrail under the normal provisions of the Staggers Act and the Interstate Commerce Act.

(4) Conrail must submit to the Association a financial plan which indicates how Conrail will become profitable within the time frame and funding limitations of this Act. If Conrail submits such a plan, the Association shall make funds available. It is not intended that Conrail produce a new plan. They should rely on existing plans and studies, such as its April 1, 1981 plan, in developing this plan.

(5) Conrail must enter into a collective bargaining agreement with its employees which provides the Corporation with $200 million annually, beginning April 1, 1981, adjusted annually for inflation. The agreement may allow any portion of the $200 million not provided in the first year to be made up in the second year.

Benefits to the Corporation are calculated against the cost to the Corporation of the National agreement reached by the railroad industry and its employees.

The benefits may not include any cost reductions which result from the firemen manning or crew consist agreement which are in effect, the termination of employees under other parts of the Act, a collective bargaining agreement signed prior to January 1, 1981, any other provision of law or agreement or the assignment of work or single collective bargaining agreement sections of the reported bill.

The collective bargaining agreement must include a provision for the appointment of a fact-finding panel for the purpose of recommending changes in operating practices and procedures.

(6) Conrail must identify its subsidiaries which operate at a loss, and within twelve months of the effective date sell any subsidiary unless the Association finds that the benefits of maintaining ownership of the Corporation outweigh the financial losses.

The Association may modify any of the conditions if it determines that such a modification is necessary for the Corporation to become profitable. To the maximum extent possible the Association shall modify the conditions so that additional burdens are shared equally by all the parties. The Association may require the Corporation to demonstrate productivity increases if it determines that such increases are the only method available for the Corporation to become profitable.

The Corporation is allowed to submit an amended request if the Association denies a request for funds.

The Corporation is required to enter into an agreement with employees for the establishment of an experimental worker participation and self-management program.

Conrail is exempted from the payment of state and local taxes until the common stock of the Corporation is sold by the Secretary or the assets of the Corporation are sold. The tax exemption is limited to the time the federal government retains control of conrail.

Conrail is required to report to the Association on each purchase date payments for any consultants used by the Corporation.

The Association is required to make no more funds available to Conrail in the event of a work stoppage by employees of the Corporation which directly results from the conditions required by this section.

The Association is required to return debentures to the Corporation in an amount equal to the value of any property conveyed by the Corporation to its commuter subsidiary.

Conrail is allowed to collect any accounts receivable which are due them. Although the commuter services are transferred first to Conrail subsidiary and then to an Amtrak subsidiary or the local authorities, Conrail will still be owed money by the commuter to collect despite the purchase of the accounts receivable by the Association.

Authorizations not to exceed $150 million for fiscal year 1982, and $225 million for fiscal year 1983 are provided. Any funds previously appropriated under section 216(g) of the 3R Act shall be available under new section 217 of the 3R Act, and must be provided to the Corporation only under section 217. Such funds will be available for fiscal year 1981. Any funds authorized are to remain available until expended.

Senate amendment

The Senate bill authorizes $150 million in operating subsidies.

Conference substitute

The conference substitute provides that the Association shall purchase shares of stock and accounts receivable of Conrail in amounts not to exceed $262 million. The Association is expected to purchase the accounts receivable as soon as possible; this is

important in order for Conrail to reach profitability.

Conrail is exempted from any state tax except for any tax imposed by any political subdivision of a state until Conrail is transferred by the Secretary of Transportation.

$262 million is authorized for purposes of purchasing securities and accounts receivable, to remain available until expended. Also, any amounts appropriated under Section 216(g) of the 3R Act are authorized to remain available until expended.

SECTION 1141.—ORGANIZATION AND STRUCTURE OF CONRAIL

House bill

This section of the House bill:

(a) makes technical changes to the section designating the Board of Directors of the Corporation;

(b) requires the Secretary of Transportation to act within ninety days on any application by the Corporation to substitute manual block signalling for automatic block signalling, if such application is filed within two years of the effective date.

Senate amendment

The Senate amendment amends section 301 of the Regional Rail Reorganization Act to permit Conrail within two years of enactment to apply to the Secretary for permission to substitute manual block signal systems for automatic systems on lines which carry less than 20 million gross tons of freight annually. The Secretary has 90 days to act on the application.

Conference substitute

The Conference substitute adopted the Senate amendment.

SECTION 1142.—TRANSFER OF FREIGHT SERVICE RESPONSIBILITIES

House bill

The House bill amends the 3R Act by adding a new Title IV—Transfer of Freight Service. Title IV of the 3R Act requires the Secretary of Transportation, after July 1, 1982, and before December 31, 1983, to sell the common stock of the Corporation held by the federal government, if the Association notifies the Secretary that Conrail will be profitable. The Secretary of Transportation is given broad authority to sell the common stock of the Corporation. The bill only provides general direction to the Secretary to ensure continued rail service, promote competitive bidding for the stock, and maximize the return to the federal government. If the Association notifies the Secretary, the sale is mandatory, not optional.

The Secretary may cancel existing shares of the common stock as a means of determining the size of the offering to be made. When all the common stock held by the United States is sold or cancelled, as it must be, the Board of Directors of the Corporation shall be elected by the new common stockholders. At that point the Corporation is no longer controlled by federal law.

To protect against a paralysis of Conrail in the event one or several railroads purchase stock, railroad purchasers are required to vote their share proportionately with all other shareholders. The effect is to nullify the voting power of any railroad purchaser, and allow the Corporation to function as an effective rail carrier in the region.

The employee contributions will have been the key in making Conrail profitable if that goal is reached. As a result of their enormous contribution to the health of Conrail, the Secretary is required to first offer the stock to the employees in the amount of any wages, or wage increases, foregone by the employees. If the Secretary, or anyone acting as the Secretary's agent in selling the stock, first offers it at a price, and then lowers the price to attract additional purchasers, the Secretary must first, in each case where the price is reduced, first offer it to the employees.

The House bill is intended to permit the transfer of Conrail assets on a piecemeal basis only if a sale of stock has not been required under the bill. The Secretary may not sell Conrail under this section if a finding of profitability has been made.

The provision gives the Secretary broad authority to arrange and consummate sales. The entire plan for transfer must be submitted to the Congress within 180 days after December 31, 1983. It shall be approved unless one House adopts a resolution disapproving the plan within 90 legislative days after the plan is submitted.

The House bill provides that on each purchase date the Association is required to make a determination whether Conrail will be a profitable carrier under the definition of the Act. For the purpose of making this determination the Association must assume that the debt and preferred stock held by the federal government is limited to a contingent interest which arises only under the circumstances described in section 402 of this Act. The contingent interest would allow Conrail to borrow money in the private markets with debt and securities prior in interest to the contingent interest retained by the Federal Government.

The determination of profitability by the Association is intended to be a realistic one. The Corporation must be able to continue providing rail service without federal funds. If the likelihood is that the Corporation would become insolvent or go into bankruptcy without federal funds, the Association would not be able to make a finding of profitability. The definition of "profitable carrier" assumes normal maintenance of plant and equipment, but it is management which should make decisions about the level of maintenance and investment needed. If the Corporation's plans are reasonable, the Association shall not decide different levels are more appropriate.

The Association is to purchase stock and accounts receivable only if certain conditions are met.

SENATE AMENDMENT

The Senate amendment directs the Secretary to utilize this authority to initiate conferences and negotiations with respect to rail restructuring to promote the development of agreements between Conrail and financially responsible persons for the transfer of Conrail's freight properties and service responsibilities. The object of this process would be the integration of Conrail lines into those carriers capable of providing high quality service.

As part of the negotiation process, the Secretary is required to consult with affected employees, appropriate state and local officials, shippers and other interested persons. This provision, added during Committee consideration of the bill, is designed to insure that all interested parties have direct input during the negotiation process before the Secretary enters into a freight transfer agreement or agreements.

Negotiation under the auspices of the Secretary is a practicable method for reconciling the public interest in continued rail service in the Northeast with the need of private sector businesses to discuss confidential data and explore alternate system configurations. Conrail, shippers and other interested persons will play an important role in the negotiations. Conrail management will provide technical support to the Secretary and apply its business expertise to the design and evaluation of proposed transfer agreements. Final agreements will be signed by Conrail as owner of the properties and obligated person under service contracts. Purchase price will be paid to Conrail.

The transfer agreements shall specify the rail properties and the service responsibilities to be transferred and such other terms as appropriate.

The problem of switching and terminal services in the Northeast Corridor is addressed where traffic densities and interference among inter-city passenger, commuter, and freight operations make operations particularly difficult. If potential acquiring railroads are unwilling to undertake adequate freight terminal operations, the Secretary shall provide for the formation of neutral terminal companies in the area to provide the necessary services. If such terminal companies are needed, the Secretary shall make every effort to have them in place by the date of implementation of the transfer agreements. A 1-year period is provided to allow for unanticipated problems.

The Senate amendment expresses Congressional intent that to the extent practicable, the Secretary shall make every effort to transfer Conrail as a single entity.

No sale of property is to occur before June 1, 1982. After that date, the Secretary may propose the sale of Conrail as an entity. If Conrail is determined to be unprofitable, the Secretary can propose to transfer individual Conrail lines to separate purchasers after December 1, 1982. If, however, it is determined that Conrail is profitable, the Secretary may not propose the transfer of individual Conrail lines to separate purchasers until after August 1, 1983.

The Conrail Advisory Board shall periodically report to Congress on whether or not Conrail is meeting the goals set forth in the bill. A Conrail Advisory Board is to determine whether or not Conrail has reached a point of profitability by December 1, 1982. Profitability is defined as the generation of net income in accordance with accepted ICC accounting principles. Further excluded from the definition of profitability are labor protection responsibilities to the extent not reimbursed by the Federal Government and payments made by Conrail with respect to its responsibility on Series A preferred stock held by the Federal Government, and Amtrak costs attributable to passenger operations.

Conrail may be sold as an entire entity anytime after June 1, 1982. However, if the Advisory Board makes the determination that Conrail is unprofitable, the system could be sold in parcels to individual purchasers at anytime after December 1, 1982.

The Conrail Advisory Board shall be composed of the Secretaries of the Treasury and Transportation, the Comptroller General of the United States, the Chairman of the United States Railway Association, and the Chief Executive Officer of Conrail.

Net income is defined as determined by the Interstate Commerce Commission's uniform system of accounts for rail carriers. Transfer of the Conrail system as an entity is defined as the sale of Conrail stock or the sale of substantially all Conrail property as a single transaction.

The Senate Amendment sets forth procedures for public participation and notification of the Congress.

A public comment period of at least 60 days is provided with regard to the transfer agreements and the Secretary's proposed determination of approval. The Attorney General shall comment on any antitrust implications of the transfer agreement.

Comment by the ICC on the effect of the proposed transfer agreement on the adequacy of transportation is provided. Further, the Commission is to comment on any adverse effects the agreement would have on other rail carriers or competition among rail carriers.

The Secretary is permitted after consideration of public comment, to grant final approval to a transfer agreement as modified.

In the event the acquiring railroad and the Secretary do not agree on appropriate modifications, negotiations could be reopened and new proposals developed. Once final approval has been granted by the Secretary, that determination would not be subject to judicial review. This is consistent, with the approach of section 209 of the Regional Rail Reorganization Act of 1973 (3R Act), under which Conrail was created. Challenges to the implementation of transfer agreements could result in extensive delays threatening the continuation of rail service in the region. The threat of piecemeal litigation of agreements could also deter purchasers from participating in the transfer process.

The transfer agreements would be deemed approved at the end of 120 calendar days, unless both Houses pass a resolution stating that they do not approve the transfer agreements.

The ICC and the Attorney General are required to report to Congress on the package of transfer agreements negotiated by the Secretary. The time period for these comments is 30 days from receipt of the agreement from the Secretary.

The Senate Amendment authorized performance under a transfer agreement and exempts the operation of the agreement from any other approval process. The issuance of securities to the United States or Conrail for the financing of a transaction would be exempt from the securities laws, since it would appear that the Government and Conrail will have adequate means to determine the worth of those securities. The Senate amendment provides that the acquiring railroad shall be deemed a rail carrier on the transfer date and shall assume service responsibilities under subtitle IV of title 49 of the Code. It also authorizes the discontinuance of rail service by Conrail over lines conveyed and all other rail properties on the transfer date.

The Senate amendment includes provisions regarding the extent of service to be assumed by acquiring carriers, a final transfer date, and the consolidation of the various transfer agreements. It directs the Secretary to insure that the freight transfer agreements provide for the continuation of the optimum level of self-sustaining rail service, consistent with the needs of the communities now served by Conrail and the long-term viability of acquiring railroads, and the preservation and enhancement of transportation competition.

Further, it provides that all the freight transfer agreements shall include the same transfer date. The transfer date shall be a date not later than 36 months after the effective date of the Act. It also requires the Secretary to consolidate all the freight transfer agreements for purposes of public comment and Congressional review.

Conference substitute

The Conference substitute provides that the Secretary is to engage the services of an investment banking firm to arrange for the sale of the common stock of the Corporation.

A sale of the common stock would insure that all the major assets, including equipment repair facilities, would be transferred and continue in operation.

Following the sale, a new Board of Directors is to be elected and railroad purchasers are required to vote their shares proportionately with all other shareholders. The Secretary is required to first offer to sell the stock to the employees. The stock option would be in an amount equal to wages foregone by employees.

The Conference substitute provides that if Conrail is determined not to be a profitable carrier by the USRA Board, or if the plan for the purchase of the common stock is not approved by the Secretary, or if Conrail requires additional funding, the Secretary is to initiate discussions for the transfer of the Corporation's rail freight properties. The Secretary is to insure that no less than 75 percent of the total rail service operated by the Corporation on the date of transfer shall be maintained if Conrail is transferred in pieces.

The USRA Board, which makes the profitability finding and which reviews the Secretary's determination that Conrail cannot be sold as an entity is composed of the Comptroller General, the ICC Chairman, the Secretary of Transportation, the Conrail Chairman and the present USRA Chairman.

There are two profitability tests. The first profitability test is on June 1, 1983 and is a prospective test. If it is determined on that date that Conrail will not be profitable, it may be sold in pieces. If Conrail is determined to be profitable on June 1, 1983, the Secretary is to continue to try to sell Conrail as an entity until October 31, 1983, when there is a second profitability test. The October test is a historical test for the five month period from June 1, 1983 to October 31, 1983. If Conrail is determined to be not profitable on October 31, 1983, it may be sold in pieces. If Conrail is determined to be profitable on October 31, 1983, it is to be sold at an entity until June 1, 1984, unless Conrail requires additional funding in excess of the funds presently authorized.

After June 1, 1984, if the Secretary of DOT notifies the USRA Board that he cannot sell Conrail as an entity, the Secretary may transfer Conrail in pieces. If the USRA Board does not concur with the Secretary, the procedure is repeated every 90 days.

Within 90 days after a determination by the Secretary of DOT, concurred in the USRA Board, Conrail employees have the option of submitting an offer to purchase. The Secretary shall approve the employee's offer unless the Secretary determines that the employees are not financially responsible.

The Conference substitute defines profitable carrier as a carrier that generates sufficient revenues to meet its expenses, including reasonable maintenance of necessary equipment and facilities and which will be able to borrow capital in the private market sufficient to meet all its capital needs, excluding consideration of the debt held by the Federal Government.

The Conference substitute adopts the Senate Amendment on public comment and congressional notification except that the period of congressional review is 60 days and the time period for ICC and Attorney General comments is 10 days.

The Conference substitute adopts the Senate amendment regarding performance under agreements; exempts transfer proposals from judicial or ICC review and says that unless the Corporation is found to be not profitable, it may not be sold in pieces until June 1, 1984.

The Conference substitute requires the Secretary to consolidate all freight transfer agreements for purposes of approval and review. In addition, all freight transfer agreements are to include a common transfer date.

SECTION 1143—PROTECTION FOR CONRAIL EMPLOYEES

House bill

Section 301 amends the 3R Act by adding a new Title VII. Section 701 establishes a program for protecting Conrail employees previously protected under Title V of the 3R Act, while limiting the cost to the federal government. Conrail Title V labor protection is repealed and the protection provided is less than the normal protection in the railroad industry. It is less only because of the dire financial circumstances of the Corporation.

If the employees and the Secretary of Labor are unable to agree on the elements of protection for the employees within ninety days, the Secretary of Labor shall prescribe the benefits. The program established should not contain elements which cause funds to be expended beyond those authorized under section 713.

The benefits under this section are intended to replace the benefits provided under Title V of the 3R Act. This is the exclusive protection for employees, and any employee protection contained in collective bargaining agreements is replaced by this protection. Title V was originally intended to provide for a limited amount of federal funding of employee protection for Conrail employees. It was anticipated that the liability would not be unreasonable. Despite revisions to Title V the liability has proved too great.

A prerequisite to a legislative solution that will permit continued operation of essential rail services in the region is the replacement of Title V with this program of labor protection. Conrail's liability and the liability of the federal government is strictly limited to the funds authorized in this section.

Section 702 permits Conrail to accelerate the implementation of the crew consist and fireman manning agreements so that all excess firemen and all second and third brakemen can be eliminated before the end of calendar year 1982. The firemen on the crews of trains operated in commuter service must be included by the Corporation in the termination program.

Section 703 allows employees who are deprived of employment on Conrail to have a right of first hire on other rail carriers. The Committee intends that all such employees must be qualified for the positions before they have rights under this provision.

Section 704 requires the Railroad Retirement Board and each rail carrier to maintain a list of positions and eligible employees. This provision is similar to one included in the Rock Island legislation and implemented by the Railroad Retirement Board.

Section 705 provides that any employee who accepts any benefits under section 701 or a termination allowance under section 702 shall be deemed to waive any employee protection benefits otherwise available, and shall waive the right to bring a cause of action for loss of any other benefits. The Committee intends the benefits available under this section be the sole benefits available to employees, and the acceptance of such benefits by the employees waives any rights they might have to other benefits.

Section 706 is a provision from the existing 3R Act which allows the Corporation to assign work.

Section 707 is a provision from the 3R Act which requires the Corporation to continue to use employees who have traditionally performed work for the Corporation.

Section 708 is a provision from the 3R Act which requires the various crafts and classes to enter into single collective bargaining agreements for each craft and class. A new section is added requiring that such agreements be reached within 45 days of the effective date of this title.

Sections 709 (a) and (b) are provisions retained from the 3R Act.

Section 710 limits the liability of the federal government and Conrail. The liability of the federal government under this section is limited to the amount of funds appropriated, and Conrail incurs no liability under section 701 or 702.

Section 711 preempts any State law, rule, or regulation requiring Conrail, Amtrak, or their commuter subsidiaries to hire specified numbers of persons for particular tasks. The Committee specifically intends to preempt any State full crew laws which require crews to contain certain numbers or certain positions, and any State laws which phase out

such requirements. Given the dire circumstances of these rail transportation corporations, such a preemption is necessary.

Section 712 authorizes to be appropriated not to exceed $165 million for fiscal year 1982 and not to exceed $150 million for fiscal year 1983. Of the amounts authorized for fiscal year 1982, $115 million is available for termination allowances under section 702. The Committee emphasizes the importance of the termination program to the financial health of the Corporation, and the importance of these funds. Without funds to implement this program, financial improvement will be difficult to accomplish. Funds appropriated under the Staggers Act provision allowing for early retirement shall also be available for use under this section.

Senate amendment

The Senate bill provides protection for Conrail employees who lose their jobs as a result of transactions authorized by the bill, while title IV defines the rights of employees hired by acquiring railroads. Together, the two titles replace the extremely costly protection scheme set forth in title V of the Regional Rail Reorganization Act of 1973.

Section 413–1—Work Force Reduction Program

This section contains a "Special Termination Allowance" allowing Conrail to "blank" the positions (eliminate the job with the man) vacated under the program. Separations would be limited to the numbers of excess firemen and second and third brakemen (including passenger firemen) presently employed by Conrail (but not necessarily the individuals occupying those positions if more senior personnel wish to be separated). About 4600 positions are at issue, and their elimination would make the properties more saleable. This was addressed in the Conrail settlement after the DOT bill was introduced.

The program would operate at the discretion of Conrail but mandtorily as to affected employees (after voluntary separations were taken). The section provides for payments at the rate of $200 per month of active service with Conrail or a predecessor, with a cap of $25,000 (i.e., 4 years, 2 months service).

Section 413–2—Separation Allowance

This section provides for separation allowances for employees of Conrail who do not receive offers of employment from acquiring railroads. The amount of an allowance would be determined by the number of years the particular employee had been employed by Conrail and its predecessor railroads as of the date of separation. For example, an employee who had served on the New York Central, the Penn Central, and then Conrail would be credited with the individual's service under all three corporate entities.

The maximum allowance would be $30,000. The schedule for computation is graduated to provide greater protection for individuals who have invested significant periods in service to Conrail and its predecessors. The schedule also recognizes the greater difficulty and hardship associated with retraining and relocation of employees who are older and have deeper roots in their communities.

Subsection (d) preserves the eligibility of employees deprived of employment to railroad unemployment insurance. Under a peculiarity of the Railroad Unemployment Insurance Act, for purposes of establishing eligibility for future coverage a separation allowance is treated as income only on the day it is paid. However, an employee is disallowed from receiving unemployment benefits for a period determined by dividing the allowance by the employee's straight-time wage for a two-week period. (For instance, an employee whose allowance is $30,000 and whose straight-time wage per 2-week pay period is $1,000 would be disallowed unemployment compensation for 30 pay periods, or over 1 year.) In some cases, this can result in an employee receiving no unemployment benefits or very limited benefits, even if he remains unemployed through no fault of his own for an extended period. This is because the employee is "earning" no new entitlement to benefits during the period the employee is disallowed from receiving benefits. The bill would disallow eligibility for benefits immediately after payment of the allowance but would treat the allowance as if it had been paid as regular wages for purposes of establishing future eligibility. This protection may be required by some employees affected by service transfers because of the concentration of persons who will be seeking new employment at the same time in specific areas. The provision also eliminates an anomalous situation whereby an employee's entitlement to unemployment insurance following the disqualification period may depend upon the date on which he was separated.

Section 413–3—Preferential Hiring

For Conrail employees who fail to receive offers from acquiring railroads, this section provides the same rights to be hired by other railroads on a priority basis that was afforded to dismissed Rock Island and Milwaukee Railroad employees. This priority is strengthened by deletion of the phrase "unless found to be less qualified than other applicants," and substitution of language that qualifies the hiring preference on the more objective basis of experience in the class and craft of employment.

Section 413–4—Central register of railroad employment

This section creates a central register of railroad employment, building on the system of job placement created for Rock Island and Milwaukee employees by the Railroad Retirement Board. The Board would actively promote the placement of Conrail employees and other displaced railroad employees. All railroads would be required to provide notice of vacancies that they are unable to fill from their existing roster, and the Board would act as an agent for former railroad employees entitled to statutory preference by filing applications for employment. Under section 413–9 discussed below, the Board would have authority to issue any regulations necessary to assure that hiring preferences are effectuated.

The purposes sought to be achieved by these provisions could be accomplished more effectively if the railroads unite with rail labor organizations to establish voluntary mechanisms to place unemployed railroad workers. While the poor placement results of the Rock Island and Milwaukee experiences may have been due in part to the reluctance of railroad employees to move from their communities, there also appears to be a problem of insufficient effort within the industry to preserve the industry's most important asset—trained and experienced personnel.

The central register and related requirements and administrative mechanisms would be maintained for a period of 5 years after the transfer date.

Section 413–5—Moving expenses

This section provides for moving expense benefits for former Conrail employees who are forced to move to obtain employment with another railroad. Under section 414–4(b)(3), discussed below, this benefit would extend to a Conrail employee offered a position with an acquiring railroad that requires a change of residence.

The types of costs for which payment is authorized would be similar to those allowed under other protective conditions. The maximum benefit for any individual would be $5,000, reduced by any retraining benefit paid under section 413–6.

Section 413–6—New career training assistance

This section authorizes the payment of new career training expenses for former Conrail employees who are not offered employment with an acquiring railroad. The maximum benefit would be $5,000 reduced by the amount of any moving expense benefit paid to the individual.

Section 413–7—Medical insurance

This section provides for the continuation of group medical insurance coverage for former Conrail employees who are not offered employment by an acquiring railroad. The maximum period of coverage is 6 months from date of separation. In the event an employee comes under the coverage of another comprehensive group policy as a result of re-employment prior to the expiration of 6 months, coverage lapses immediately.

Section 413–9—Authority of the Board and the Secretary

This section prescribes the powers of the Railroad Retirement Board in administering the provisions of sections 413–3 (Preferential Hiring), 413–4 (Central Register of Railroad Employment), 413–5 (Moving Expenses), 413–6 (New Career Training Assistance), and 413–7 (Medical Insurance). The Secretary is required to transfer to the Board funds appropriated for employee protection. The Board would allocate funds needed for separation allowances to Conrail and Amtrak (as successor to Conrail as an employer of commuter service employees), and the remaining funds would be available for the Board-administered provisions of this title, such as moving expenses, medical insurance, and retraining. In addition, the Secretary is authorized to assist the Board in developing programs under this title. The broad authority given the Board under this Section, is intended to avoid the implementation problems, particularly in regard to priority hiring, that arose under the Milwaukee and Rock Island legislation.

Section 413–11—Authorization for appropriations

This section authorizes the appropriation of not more than $400 million for employee protection under this title.

Conference substitute

The conference substitute combines the labor protection provisions of both Houses. The conferees agreed to the House provision directing the Secretary of Labor and representatives of labor to negotiate the elements of protection for employees. However, the conference substitute sets a $20,000 cap on the protection for each employee.

For the workforce reduction program the conferees agreed that payments to employees should be paid at the rate of $350 per month of active service with Conrail or a predecessor. The purpose of this program is to eliminate 4,600 employee positions; 3,300 brakemen and 1,300 firemen. In addition, all the firemen in commuter service are to be included in this program. This will result in the elimination of firemen positions in commuter service.

SECTION 1144—REPEALS

House bill

Section 302 repeals Title V of the 3–R Act, but provides that any benefits accrued as of the effective date of the Act shall be paid. It also repeals section 11 of the Milwaukee Railroad Restructuring Act and section 107 of the Rock Island Transition and Employee Assistance Act.

Senate amendment

This section defines the relationship of this legislation to other provisions of law.

Subsection (a) repeals all provisions of Title V of the Regional Rail Reorganization Act of 1973, except those necessary to the continued functions of Conrail prior to service transfer. Title V is the source of labor

protection provisions that have proved to be excessively costly to the taxpayer, as described in the April reports of Conrail, USRA, and the Department, as well as the Conrail March 15 report on labor. Retention of Title V, particularly the provisions concerning monthly displacement allowances, constitutes a bar to service transfer, since acquiring railroads would not be willing to assume these obligations. The bill terminates the entitlement program as of October 1, 1981. However, employees who performed service through September of 1981, or held themselves available for service, would be paid any benefits due on October 1, 1981, if timely claimed under present law.

Subsection (b)(1) is a clause of limitation that makes clear that the employee protection provisions of the bill are the exclusive protection for employees affected by service transfers under the bill. The waiver provision of paragraph (2) is a technical provision intended to bar an employee from accepting the protections of the bill while challenging its exclusivity in the courts.

Subsection (c) repeals provisions of the Milwaukee Railroad Restructuring Act and Rock Island Transition and Employee Assistance Act relating to the maintenance by the Railroad Retirement Board of lists of dismissed employees, since those lists would be incorporated into the central register established by section 413–4 of the bill.

Subsection (d) repeals sections 216(b)(3) of the 3–R Act and 509(b)(1) of the 4–R Act which provide for special funding to implement Conrail's workforce reduction program. This funding would not be necessary in view of the funding authorized by section 413–11 for labor protection payments.

Conference substitute

Combines the provisions of both Houses and is effective the first day after the first month of the date of enactment.

SECTION 1145—TRANSFER OF PASSENGER SERVICE EMPLOYEES

House bill

The House bill amends the Rail Passenger Service Act by adding new sections 506 and 507.

Section 506 provided a procedure for transferring current agreement employees of Conrail's commuter subsidiary performing commuter functions to Amtrak Commuter.

Subsection (a) required representatives of the employees to begin negotiating an implementing agreement with representatives of Conrail, its commuter subsidiary, and Amtrak Commuter within 420 days of the effective date. These negotiations are to identify the employees to be transferred, giving preference to employees with commuter service experience, determine the procedure by which employees accept transfer to Amtrak Commuter and are accepted by Amtrak Commuter, determine a procedure for seniority within Amtrak Commuter which shall, to the extent possible, preserve the employees' prior passenger seniority rights, ensure that the proper number of employees are transferred to Amtrak Commuter, ensure that all employees are transferred not later than the 540th day after date of enactment (when Amtrak Commuter assumes operations) and determine the extent to which employees of Amtrak Commuter retain freight seniority with Conrail.

Subsection (b) provided that if no agreement is reached by the end of 30 days after negotiations begin, a neutral referee is to be selected. The referee is to expeditiously resolve all matters in dispute, and his decision is binding. This procedure is to ensure that an implementing agreement is in place, and employees transferred, by the time Amtrak Commuter is to commence operations.

Subsection (c) provided that any employee of Conrail or its commuter subsidy not offered employment with Amtrak Commuter under this section shall be eligible for employee protection under Section 701 of the 3R Act (the successor to Title V) to the same extent as if the employees had remained with Conrail.

Section 507 provided a procedure for negotiation of a new collective bargaining agreement.

Subsection (a) required representatives of the employees to be transferred and Amtrak Commuter to enter into a new collective bargaining agreement prior to the date Amtrak Commuter begins operation. The pre-existing Conrail agreement would not apply to Amtrak Commuter.

Subsection (b) requires the establishment of a fact finding panel, chaired by a neutral expert in industrial relations, to recommend changes in operating practices and procedures which result in greater productivity to the maximum extent practicable.

Senate amendment

The Senate Amendment provided for an implementing agreement to transfer Conrail employees to commuter authorities or Amtrak. The implementing agreement worked in a manner similar to that provided in the House bill.

The Senate Amendment also provided for a procedure for negotiating a new collective bargaining agreement for those employees transferred from Conrail, either to Amtrak or a commuter authority. The Amendment provided for a consolidated Amtrak commuter and intercity workforce, with the negotiations conducted by Amtrak and the commuter authority members of the Amtrak Commuter Board of Directors having the power to veto commuter service components of a collective bargaining agreement.

The Senate Amendment provided a procedure for resolving disputes related to negotiation of the initial collective bargaining agreement and also provide for a council of three union representatives to conduct negotiations with a commuter authority.

Conference substitute

The conferees adopted an employee transfer provision. The substitute provides for an implementing agreement, a fact finding panel to recommend changes in operating practices and procedures, and a procedure for negotiation of an initial collective bargaining agreement for Amtrak Commuter and commuter authorities that elect to operate their own service.

The implementing agreement provided for in a new section 508 of the Rail Passenger Service Act is designed to provide for an orderly transfer of employees from Conrail to Amtrak Commuter or the commuter authorities. The conferees note their intent to provide for maximum flexibility to the employees and employers involved by providing generally for retention of seniority rights and the right to "bump" back into Conrail at least once every six months. However, the bumping process is not to result in any disruption of service or the filling of a position which would otherwise not be filled under the terms of any crew consist, fireman manning or other similar agreements. This last provision is designed as protection for Conrail, and is not intended to restrict the ability of Amtrak Commuter or the commuter authorities to manage their work forces, subject to applicable collective bargaining agreements.

The fact finding panel established pursuant to a new section 509 of the Rail Passenger Act is designed to recommend changes in operating practices and procedures which would result in greater productivity to the maximum extent practicable. The fact finding panel should look at a variety of changes which may improve productivity, such as flexibility in employee assignments and ensuring an appropriate number of employees for particular tasks.

The procedure for negotiation of an initial collective bargaining agreement for Amtrak Commuter or commuter authorities provided for in a new section 510 of the Rail Passenger Service Act is designed to provide for an orderly and expeditious procedure for the negotiation of new collective bargaining agreements. The existing Conrail agreements would not apply to Amtrak Commuter or to commuter authorities that chose to operate their own service.

SECTION 1146—LABOR TRANSFER

House bill

The House bill adds new sections 405 and 406 to the 3R Act.

This section requires the rail carrier or other entity purchasing rail properties and the representatives of the employees to be transferred to commence implementing agreement negotiations within 30 days after the date any transfer agreement is entered into.

The negotiations are to determine the number of employees to be transferred, the specific employees offered employment, the procedure by which employees accept employment and are accepted into employment, the procedure for determining seniority (which shall, to the extent possible, preserve prior freight seniority rights), and ensure that all involved employees are transferred no later than 120 days after the date the transfer agreement is entered into.

If no agreement is reached within 30 days of commencement of negotiation, a neutral referee is to be selected, who is to commence hearing and decide all matters in dispute with respect to the implementing agreement negotiations. The referee's decision is to be rendered within 30 days after the date of commencement of hearings.

It requires the Commission to determine the labor conditions to apply to employees affected by any transfer under this title as if such transfer were made under the Interstate Commerce Act.

Senate amendment

The Senate bill requires acquiring railroads and representatives of Conrail and acquiring railroad employees, to make every reasonable effort to achieve a pretransfer agreement. The agreement would determine how new positions on an acquiring railroad would be filled, how Conrail employees would be selected for transfer, and how seniority rights would be determined. The agreement would also deal with compensation, rules, working conditions and fringe benefits applicable to transferred employees, as well as protection of any transferred or acquiring railroad employee adversely affected by service transfer.

The bill permits, and the Department would encourage, a uniform agreement covering multiple acquiring railroads (similar in scope to the agreement covering former Milwaukee and Rock Island operations, known as the "Miami Accords").

Section 414–4—Selection of Employees

This section is the first of the provisions that would take effect only in the absence of an agreement by the parties. The section would accomplish two major objectives. First, it would provide a method for determining the number of new positions on the acquiring railroad that would be filled from the ranks of former Conrail employees ("transferred employees") and the number of positions that could be filled from the acquiring railroad's previous rosters. In general, Conrail employees would be given first bid on new positions. However, if acquisition of a line from Conrail occasions the abolishment of a position due to coordination or consolidation of service, the acquiring railroad employee affected by the transaction would have first bid on any new position the acceptance of which would not require a change in residence.

Second, in selecting Conrail employees for new positions the acquiring railroad would

be required to respect class and craft distinctions common in the industry and to favor persons senior in service over those with less time in service.

Third, the section would provide a method for selecting Conrail employees on a geographic basis. If an insufficient number of Conrail employees are available on the transfered line segment, other employees available to accept positions without change of residence would receive offers. If additional personnel were required, offers would be made at increasingly distant Conrail reporting points.

Section 414–5—Collective-Bargaining Agreements

This section governs basic matters of compensation, work rules, and fringe benefits in the event the agreement is not reached under section 414–3. The approach of this section is to assure transferred employees the same pay and basic quality of working conditions afforded other employees of the acquiring railroad, while avoiding the imposition of unrealistic constraints rooted in the past.

Conrail has filed at least in part because of the legislated imposition of rules and local agreements that derived from the six bankrupt railroads that preceded Conrail in the service area. Those constraints resulted in a balkanization of Conrail labor relations and the perpetuation of artificial barriers to efficient use of personnel. Prospective acquiring railroads will not be willing to accept similar constraints; nor can consumers of rail service afford to support such inefficiencies.

Therefore, section 414–5 would make clear that an acquiring railroad will not be bound by any contract, schedule, or agreement in effect on Conrail. If labor and the management of an acquiring railroad wished to bargain for similar (or even identical) provisions, they would be free to do so; but no inference could be derived from the bill that an acquiring carrier would be bound by prior agreements.

Section 414–6—Seniority Rights

This section assures that a transferred employee's prior service would be respected in determining the employee's relative seniority on the acquiring railroad. The section recognizes that a precise definition of the relative seniority of transferred employees will necessarily await implementing agreements.

Section 414–7—Labor Protection Obligations of Acquiring Railroads

This section requires the Secretary to impose protection for transferred employees and the employees of a Class I or II acquiring railroad who may be adversely affected by a service transfer, in the event no agreement is reached under section 414–3. The protection referenced in this section is principally income protection, since most other issues relating to employee rights and responsibilities are treated in section 414–4, 414–5, and 414–6. The protection imposed would be similar to that adopted by the parties to midwest rail restructing in the "March 4 Agreement," sometimes known as the "Miami Accords."

Those acquiring railroads would be required to provide a guarantee of 80 percent of former straight time wages for up to three years, depending on the employee's length of service.

Amtrak Commuter and the commuter authorities shall not be responsible for the protection under this section.

Section 414–8—Arbitration of Disputes

This section requires that any minor dispute or claim arising under this title shall be subject to binding arbitration under normal Railway Labor Act processes. Resolution of disputes under agreements referenced in this title are already within the purview of the Railway Labor Act and no special provision is required in the bill. This section would make clear that, even if a labor transfer agreement is not reached under section 414–3, the parties would be free to interpret and apply the provisions of this title by agreement; and any subsequent minor dispute or claim would be resolved in accordance with the guidance provided by such agreement.

Section 414–9—Definition

This section restricts the applicability of subpart 4 by defining "acquiring railroad," in the freight context, to mean a Class I or Class II acquiring a railroad or a neutral terminal company established under subpart 2. Thus, short line railroads would not be covered by subpart 4; and, under the definition of "deprived of employment" in section 411–3, Conrail employees who failed to receive a firm offer of employment from a Class I, Class II, or neutral terminal railroad would be entitled to receive the benefits of subpart 3.

Conference substitute

The Conference substitute requires acquiring railroads under a transfer agreement to enter into implementing agreements with employees to determine the number of employees who will transfer to the acquiring railroads and to determine other issues. If no agreement is reached, the issues are submitted to binding arbitration.

If the employees and the acquiring railroads are unable to agree on a collective bargaining agreement, the collective bargaining agreement of the acquiring carrier shall prevail. If the acquiring party is not a railroad, and the parties cannot agree, the collective bargaining agreement of Conrail shall apply.

Employees transferred to acquiring carriers or other parties which become carriers shall be protected under the normal labor protection provisions of the Interstate Commerce Act, which are embodied in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 ICC 60 (1979).

SECTION 1147—ORGANIZATION OF USRA

House bill

The Board of Directors of USRA is reconstituted to consist of the Chairman, who shall be selected by any outgoing Chairman and the other members, the Secretary of Transportation, and the Comptroller General of the United States.

Senate amendment

No comparable provision.

Conference substitute

The Board of Directors of USRA is reconstituted to consist of the present Chairman of USRA, who shall remain as Chairman of the Board until the expiration of his existing term, or his resignation, the Secretary of Transportation, the Comptroller General of the United States, the Chairman of the Commission, and the Chairman of the Board of Directors of the Corporation. The present Chairman's term will expire on Dec. 31, 1983, and the next Chairman's term shall be three years. The present Chairman may be reappointed.

SECTION 1148—FUNCTION OF USRA

House bill

The House bill provides that the Association is to monitor the financial performance of the Corporation, determine whether the conditions and requirements of this Act are met, purchase additional stock or accounts receivable of the Corporation, and appoint and fix the compensation of employees.

The Association shall submit to the appropriate Committees of the Congress within 30 days of each additional purchase of stock a report outlining the progress of the Corporation in meeting the goals and requirements of this Act.

Not later than 30 days after the Association makes its last purchase of stock of Conrail, it shall cease to exist.

Senate amendment

This section amends section 201 of the 3–R Act to effect the transfer of certain USRA non-litigation functions to the Secretary not later than January 1, 1982. The Association would transfer to the Secretary, or as otherwise designated by the Secretary, property and budget resources which are primarily related to and support the conduct of the non-litigation functions. This transfer of authority in no way limits USRA's authority to conduct the valuation litigation under sections 303(c) and 306 of the 3–R Act, including related administrative functions, nor is it to interfere with the functions assigned to USRA under section 415–7 of this legislation.

USRA has developed specific systems, data bases, models and the required in-house expertise to utilize these tools to monitor Congress on specific inquiries. Many of these same systems have also been used by the Association in performing the functions being transferred to the Secretary. Where property is needed to support both the Association's functions and the functions transferred to the Secretary, this section provides that the Secretary and the Board of Directors of the Association shall reach agreement on the joint use of such property. With regard to the computer systems and models now operated by USRA, however, the Committee notes that USRA staff is trained in the use of these tools in an effective manner. Under the circumstances, it appears desirable to retain these computer programs and intellectual property at USRA subject to joint use by both USRA and the Secretary as contemplated by the statute.

Any litigation associated with the functions, powers and duties assumed by the Secretary under this subsection would be the responsibility of the Attorney General.

Upon assuming the new functions, the Secretary is directed to assume the financial obligations of USRA issued under sections 210, 211, and 216 of the 3–R Act and to adopt appropriate USRA regulations governing non-litigation matters until the Secretary has had the opportunity to re-promulgate such regulations in appropriate form. Paragraph (5) makes provision for the continuation of non-litigation contracts and loans following the transfer.

Conference substitute

The Senate recedes except that USRA retains its litigation functions.

SECTION 1149—ACCESS TO INFORMATION

House bill

The House bill requires Conrail to make available to USRA such information as USRA determines is needed to carry out its functions. It also requires USRA to request from other affected parties information which will enable USRA to determine if the conditions of this Act are met.

Senate provision

No comparable provision.

Conference substitute

Senate recedes.

SECTION 1150—UNITED STATES RAILWAY ASSOCIATION REPORTS

House bill

No similar provisions.

Senate amendment

This section established the responsibilities of the USRA under this act. USRA would monitor, evaluate and report periodically to Congress on the Secretary's performance with respect to the entire transfer process as it affects, among other matters, labor, rail services, and the security of Federal funds. The periodic reports would also evaluate Conrail's performance. The USRA is also required to issue a final report to

Congress evaluating the Secretary's transfer agreements.

Conference substitute

House recedes.

SECTION 1151—USRA AUTHORIZATION

House bill

There are authorized to be appropriated to the Association for administrative expenses not to exceed $1 million for the fiscal year ending September 30, 1982, $1.1 million for the fiscal year ending September 30, 1983, and $1.2 million for the fiscal year ending September 30, 1984.

Senate amendment

In view of the substantially increased responsibilities that the Secretary would assume under the 3–R Act, this section deletes the existing $12.5 million limit on authorizations and substitutes $15 million. The USRA's authorization is extended through fiscal 1982. Due to the decreased functions of the USRA, the authorization is limited to $15 million.

Conference substitute

The conference substitute provides an authorization of $13,000,000 for fiscal year 1982 and $4,000,000 for fiscal year 1983.

SECTION 1152—JUDICIAL REVIEW

House bill

The House bill consolidates all civil actions arising out of the provisions of or the amendments made by this Act to the Special Court.

Subsection (b) provides for appeals to the Supreme Court.

Subsection (c) provides the standard for review of administrative action under the provisions of or amendments made by this Act.

Subsection (d) provides for the assignment of additional judges to the Special Court, if necessary.

Senate amendment

The Senate bill is identical to the first three subsections of the House bill. The Senate bill does not include a provision for the assignment of additional judges to the Special Court, if necessary.

Conference substitute

Senate recedes.

SECTION 1153—TRANSFER TAXES AND FEES; RECORDATION

House bill

The House bill exempts the transfers or conveyance of rail property made under this Act and the recording of all deeds, bills of sale, and other instruments incident to such transfers, from the payment of any taxes, imposts, or other levies imposed by the United States or any State or political subdivision thereof. The exemption would apply to the transfer of any interest in rail property including real, personal and mixed. The transferors and transferees of rail property would be entitled to record deeds, bills of sale, easements and other such instruments, and to record the release or removal of any pre-existing liens or encumbrances with respect to transfers of property, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed. This provision is not intended to affect the Federal income tax liability of Conrail or acquiring railroads.

This section also provides that transfer of designated rail property under section 205 of the Act is to have the same effect for purposes of rights and priorities with respect to the property as recordation on the transfer date of deeds, or other appropriate instruments, in offices appointed under State law for such recordation. Acquiring railroads and other entities would, however, be required to proffer such deeds or other instruments for recordation within thirty-six months after the transfer date as condition of preserving such rights and priorities beyond the expiration of that period. Conrail would be required to cooperate with the acquiring railroad in preparing the necessary recordation documents.

Senate amendment

The Senate bill is identical.

Conference substitute

The substitute is identical to the House and Senate bills.

SECTION 1154—SATISFACTION OF CLAIMS

House bill

Section 1154 requires Conrail to satisfy all valid claims against the Corporation including loss and damage claims, or make provision for their satisfaction, before making any distribution of assets to the United States.

Senate amendment

This section requires Conrail to satisfy all valid claims against the Corporation, or make provision for their satisfaction, before making any distribution of assets to the United States. The effect of this provision is to relinquish any priority of payment to which the Conrail debentures and series A preferred stock may be entitled on liquidation or otherwise.

Conference substitute

The conference substitute is the same as the House bill and the Senate amendment.

SECTION 1155—EXPEDITED SUPPLEMENTAL TRANSACTIONS

House bill

This section requires the Secretary, within 10 days after the effective date of this Act, to initiate discussions and negotiations for the transfer of Conrail's rail properties and freight services in Connecticut and Rhode Island to another railroad in the region.

Within 60 days after the effective date, the Secretary is required to petition the Special Court for an order transferring Conrail's rail properties and freight service in Connecticut and Rhode Island to another railroad in the region. That railroad must have completed negotiations and submitted to the Secretary a proposal to assume Conrail's freight service in those states on a self-sustaining basis for at least 5 years or developed a proposal to assume freight service in those states under an agreement with Conrail or which has, prior to May 1, 1981, submitted a proposal to the Secretary for such a transfer.

The Secretary shall, as part of the transfer, promote the transfer of additional nonmainline Conrail properties in adjoining states that connect with properties to be transferred.

The Special Court is to determine a fair and equitable price for the transferred rail properties and shall, unless the parties otherwise agree, establish fair and equitable divisions. The Special Court may establish a method to ensure that such divisions are promptly paid.

If Conrail continues to operate freight service over those portions of the Northeast Corridor in Connecticut and Rhode Island after the transfer date, Conrail is responsible for paying Amtrak the compensation, as may be agreed to by Conrail and Amtrak, for those operations.

Any employee deprived of employment as a result of the transfer process is eligible for labor protection benefits under the new section 701 of the 3R Act.

Senate amendment

The Senate bill give the Secretary discretion to transfer the lines in Connecticut and Rhode Island.

Conference substitute

The conference substitute adopts special procedures for the transfer of lines in Connecticut, Rhode Island and Massachusetts. Under this section, the Secretary is required within 10 days, to initiate discussions and negotiations for the transfer of some or all lines in Connecticut and Rhode Island under a plan which provides for continued rail service on those lines for a period of four years.

Within 120 days of enactment, the Secretary is required to petition the special court for an order to transfer all of Conrail's rail properties and service obligations to one or more railroads which have submitted proposals to assume operations and service obligations in such states for at least four years. For the purposes of this provision, the transfer proposal may include Conrail as long as the carrier agrees to maintain service for the requisite period.

The special court is to determine a fair and equitable price for the property, and it must establish divisions of joint rates if the parties cannot agree. In addition, the special court is required to establish a method to insure that divisions are promptly paid.

The acquiring carrier or carriers must assume all charges payable by Conrail to Amtrak except in instances where Conrail operates freight service over portons of the Northeast Corridor after the date of the transfer.

Any employee eligible for Title V protection prior to the date of enactment deprived of employment as a result of the transfer shall be eligible for benefits under section 701 unless such employee refuses an offer of employment with the acquiring railroad or railroads.

Subsection (g) provides procedures for the transfer of specified lines in Massachusetts similar to those discussed above for Connecticut and Rhode Island lines. The conferees agree that the Secretary can sell some or all of the lines in Connecticut and Rhode Island to one or more purchasers, so long as 100 percent service is maintained on all of the lines.

SECTION 1156—ABANDONMENTS

House bill

The House bill adds a new section 309 to the 3R Act. Any application for abandonment filed by the Corporation with the Interstate Commerce Commission before November 1, 1981, shall be granted within 30 days by the Commission unless an offer of financial assistance is made. If such an offer of financial assistance is made, the provisions of the Interstate Commerce Act applying to such offers shall apply (49 U.S.C. 10905(d)–(f)). The Corporation may file a notice of insufficient revenues with the ICC for any line prior to November 1, 1981. At any time prior to October 1, 1983, the Corporation may abandon such a line with 30 days notice to the ICC unless an offer of financial assistance is made. The Corporation solely shall determine what is contained in the notice of insufficient revenues. The Committee expects the Corporation to give particular consideration to lines where state or local governments have expressed an interest. The Corporation is given broad authority by this section, which is necessary because of the financial circumstances of the Corporation, but the authority must be exercised with the utmost regard for the transportation needs of states and local communities.

The employee protection provisions of the Interstate Commerce Act do not apply to employees affected under this section. The employees would be covered under the funds available under section 701.

Senate amendment

The Senate amendment provides that all transfer agreements entered into this subsection or section 412–11 of the subtitle shall provide for the disposition of proceeds of liquidation in the event that property transferred or leased is abandoned within five years after the transfer date.

Subsection (b) provides that no purchaser can submit an application for abandonment

on any line transfer until one year after the date of any transfer or sale.

Conference substitute

The Conference substitute adopts the House bill with several changes. The Corporation may file, before December 1, 1981, with the Commission any lines which it will abandon. The Commission shall grant the application within 90 days unless an offer of subsidy is made. The Corporation, at any time before November 1, 1983, may file a Notice of Insufficient Revenues for any line. 90 days after the notice is filed, the Corporation may file an abandonment application. Such application must be granted within 90 days unless a subsidy offer is made.

After a line is abandoned the Commission shall appraise the net liquidation value of such line. If Conrail receives a bona fide offer within 120 days, it must sell the line for 75% of net liquidation value. In addition, Conrail may not dismantle bridges or other structures for an additional 120 days.

The labor protection provision of the Interstate Commerce Act shall not apply to any abandonment granted under this section. The Interstate Commerce Commission may not reject any abandonment application filed under the procedure of this Act.

SECTION 1157—AMENDMENT TO THE RAILWAY LABOR ACT

House bill

The House bill amends the Railway Labor Act to provide a special procedure for disputes involving publicly funded and operated rail commuter services, including those involving Amtrak Commuter.

This provision allows either party to the dispute, or the Governor of any state through which the service operates, to request the President to establish an emergency board. Upon such request, the President must establish an emergency board.

If the President has established an emergency board, either under this new provision or under his existing discretionary authority, no change in conditions may be made by either party for 120 days, unless by agreement.

The emergency board must report on the dispute within 30 days of its creation. Within 60 days of the emergency board's creation, the National Mediation Board shall conduct a public hearing on the dispute at which each party is to explain why it has not accepted the recommendations of the emergency board for settlement of the dispute.

If within 120 days of the creation of the emergency board, there is no settlement, either party, or the affected Governors, may request establishment of a second emergency board, which the President must then establish.

Within 30 days after creation of the second emergency board, the parties to the dispute shall submit final settlement offers to the board. Within 30 days after submission of such offers, the board shall report to the President with its selection of the most reasonable offer. No change in conditions may be made by the parties for 60 days after the board's report, unless by agreement.

If the board selects the carrier's final offer and the employees then engage in work stoppage arising out of the dispute, then such employees shall not be eligible for railroad unemployment benefits for the duration of the dispute. Conversely, if the board selects the employees' final offer which the carrier does not accept, and the employees engage in a work stoppage arising out of the dispute, the carrier is not entitled to any benefits from a mutual aid pact for the duration of the dispute.

Senate amendment

The Senate Amendment did not amend the Railway Labor Act but had a free standing provision of a similar nature that applied only in the negotiation for a new collective bargaining agreement.

Conference substitute

The conference substitute adopts the House provision.

SECTION 1158—CONCERTED ECONOMIC ACTION

House bill

The House bill provides that cross strikes between freight and commuter service are prohibited. Any such action is a violation of the Railway Labor Act.

Senate amendment

The Senate amendment provides that cross strikes between freight and commuter service are prohibited.

Conference substitute

The Senate recedes to the House.

SECTION 1159—CONSTRUCTION AND EFFECT OF CERTAIN PROVISIONS

House bill

The House bill provides that any cost reductions resulting from this Act may not be used to limit the amount of any rate, rate increase or surcharge maintained or proposed by Conrail. The Committee expects the Commission to prescribe a simple formula to allow implementation of this section without undue burden on shippers, Conrail, or other railroads. Conrail management would retain discretion to adjust rates downward on the basis of any reductions or competitive efficiencies that would be achieved as a result of this Act.

Subsection (b) provides that the transfer of any lease agreement or contract by Conrail pursuant to the provisions of or amendments made by this Act is not a breach, default, or violation of an agreement.

Senate amendment

No comparable provision.

Conference substitute

The Conference substitute adopts the House provision with a change that limits the House language to labor savings which result from this Act. The Commission may not consider such savings in any rate proceeding.

SECTION 1160—LABOR AUTHORIZATION

House bill

The House bill provides an authorization of $25,000,000 to pay for title V labor protection payments that accrue prior to the repeal of title V.

Senate amendment

Basically the same as the House bill.

Conference substitute

The conference substitute is the same as the House bill.

SECTION 1161—LIGHT DENSITY RAIL SERVICE

House bill

No comparable provision.

Senate amendment

The Senate bill provides that the Secretary shall, to the extent possible, encourage purchasers of property to assume operating responsibilities over all associated branch lines which are financially viable.

Subsection (b) provides that the Secretary may negotiate for and execute the transfer of any lines designated by Conrail as not necessary to achieve profitability as defined in section 412–12 of this subtitle. Conrail shall make such a determination on any line within thirty days of such request by the Secretary of Transportation.

Subsection (c) provides that not withstanding the provisions of section 412–12 from the date of enactment the Secretary may negotiate and execute a transfer of the following classification of lines:

(1) any Conrail lines subject to abandonment.

(2) rail properties located in the States of Rhode Island and Connecticut.

(3) branch lines identified by Conrail as not necessary for the achievement of profitability pursuant to subsection (b) of this section.

Subsection (d) provides that all lines subject to a transfer agreement under section 412–15 of this Chapter for subsection (c) of this section can be transferred to states or shippers or any combination free of the Rail Common Carrier Status under the requirements of Subtitle IV of Title 49, United States Code.

Subsection (e) provides that compensation for the transfer of these properties may be for a nominal consideration if justified by the public benefit. Further, this subsection frees a noncarrier entity purchaser from regulatory authority under Subtitle IV of Title 49, United States Code.

Conference substitute

The conference substitute generally follows the Senate provision. The reference to abandonments in subsection (a) is clarified to indicate that the provision applies to abandonments other than those subject to section 308. A provision is also incorporated to permit a credit against the purchase price for reasonable expenses incurred in negotiations for purchase of rail properties which are subsequently purchased in accordance with the provisions of this subtitle. An equitable division of joint rates for through routes is required.

SECTION 1162—REHABILITATION AND IMPROVEMENT FINANCING

House bill

The House bill limits funding for fiscal years 1981 and 1982 at a $6.5 million level.

Senate amendment

The Senate bill does not limit the funding for this program. Instead it provides that the rail lines of carriers in bankruptcy, such as the Milwaukee Road and Rock Island Railroads, be given the highest priority for rail rehabilitation and improvement financing. It also allows purchasers of Conrail lines to be eligible for funding.

Conference substitute

The House recedes on its provision which limits funding for this program. The conferees adopt the Senate amendment with the addition of a provision providing the same high priority for the St. Louis Rail Gateway Project.

The conferees recognize that restructuring the rail freight network in the St. Louis Rail Gateway is a high priority, necessary to increase terminal capacity and to meet the growing traffic demand.

Since terminal congestion is one of the major deterrents to profitability for railroads, it is the intent of the conferees that the Federal Railroad Administration reserve $50 million of preference share funding in fiscal year 1982 of the available authorization, for the restructuring project in the St. Louis Rail Gateway.

SECTION 1163—NORTHEAST CORRIDOR COST DISPUTE

House bill

The House bill provided a means to resolve outstanding cost disputes on the Northeast Corridor.

Subsection (a)(1) would require the Interstate Commerce Commission (ICC) to determine an appropriate costing methodology for allocation of Northeast Corridor costs resulting from commuter operations within 120 days of the effective date, unless the involved parties otherwise agree on a methodology by that date. The Commission is to consider all relevant factors, including existing statutory standards. The Commission already has the jurisdiction to decide this dispute, but no party has previously invoked its jurisdiction.

Subsection (a)(2) would require the ICC

to determine a fair and equitable costing methodology for compensation to Amtrak by Conrail for freight operations over the Northeast Corridor within 120 days of the effective date of this Act, unless the parties otherwise agree by that date. In making its determination, the ICC is to consider the industry-wide average compensation for freight trackage rights and any additional costs associated with high-speed service provided over the Northeast Corridor.

Subsection (b) would provide that any determination by the ICC would be effective only for the future (or if the parties reach an agreement, only since the date agreed by the parties). Any such determination by the ICC (or agreement by the parties) shall not apply retroactively (or before the date agreed by the parties). The effect of this is to settle the past disputes with no money changing hands, and to resolve the disputes for the future.

Subsection (c) clarifies that this section would not preclude the involved parties from agreeing on different cost allocation methodologies in the future.

Subsection (d) makes the ICC determinations pursuant to subsection (a) final and non-reviewable.

Senate amendment

The Senate amendment provided for separate procedures to resolve the commuter and freight cost disputes on the Northeast Corridor. The procedures were similar to those in the House bill. However, the procedure for resolving the commuter cost dispute was not limited to the Northeast Corridor.

Conference substitute

The substitute adopts the House provision.

SECTION 1164—DELAWARE & HUDSON RAILROAD

House bill

The House bill has two provisions affecting the D&H by requiring it to pay its debt to the federal government and by requiring that its trackage rights not be transferred.

Senate amendment

The Senate bill allowed the Secretary to expand the present trackage rights of the D&H.

Conference substitute

This conference substitute provides an expedited review and decision process for the application to acquire the D&H Railroad. The expedited procedures are necessary given the present cash positions of the carrier. A prospective purchaser, on the other hand, cannot make investments in the D&H when it has no assurance it will be able to acquire and control the property. This amendment will insure that the transaction can occur within 180 days.

A similar provision is included in the conference substitute for the Boston & Maine Railroad.

It would also permit the same treatment of existing D&H debt as will be accorded the Conrail debt in the pending bill only if there is an agreement to purchase.

The Secretary would be empowered to recapitalize the debt structure and make the new securities junior to the securities issued by a prospective purchaser.

Such an amendment would insure that sufficient working capital would be available under the new ownership.

SECTION 1165—INTERCITY PASSENGER SERVICE EMPLOYEES

House bill

The House bill has no provision.

Senate amendment

The Senate amendment requires Amtrak to establish new positions not fewer in number than the equivalent number of full-time Conrail positions devoted to N.E. Corridor intercity passenger operations. Any employee transferred to Amtrak is separated from employment with Conrail.

Conference substitute

The conference substitute requires that Conrail's intercity passenger employees will be tranferred by January 1, 1983. Amtrak, Amtrak Commuter and the Corporation will negotiate for the right of freight and passenger employees to move from any of these services to another once every six months. The work force of each of these services will not be increased by the ability of an employee to move from one service to another. An employee with less seniority will be furloughed when an employee with more seniority moves back into that particular work force.

SECTION 1166—TRACKAGE RIGHTS

House bill

No comparable provision.

Senate amendment

The Senate bill allows trackage rights in Philadelphia to be expanded.

Conference substitute

The Conference substitute modifies substantially the Senate provision. The Conferees expect the Corporation to negotiate with the Philadelphia Belt Line Railroad for trackage rights. The Interstate Commerce Commission shall report to Congress within eight months on the progress of such negotiation.

Although the conferees are concerned that Conrail not lose its own traffic to other carriers to its competitive disadvantage, the conferees fully expect Conrail to agree to trackage rights for reasonable compensation for traffic that would otherwise not move through the Philadelphia Port. For example, certain traffic which is located on the D&H and does not presently move through Philadelphia would do so if trackage rights were granted to the Philadelphia Belt Line.

SECTION 1167—TECHNICAL AMENDMENTS

House bill

No provision.

Senate amendment

The Senate bill effects certain technical amendments. Subsection (a) amends section 303 of the 3–R Act to eliminate Conrail securities as a payment medium in the valuation proceedings before the Special Court. This amendment is necessitated by section 416–6 which provides that the Secretary shall receive, and may vote, such securities. Any remaining obligations of the United States under the 3–R Act will be satisfied in cash, as has been the case with the initial settlements in the valuation proceedings.

Subsection (b) provides that securities conveyed to the Secretary under section 416–6 shall be deemed to be without value, unless the Special Court determines otherwise. The intent of this subsection is to ensure that no transferor under the Regional Rail Reorganization Act of 1973 receives more than the constitutional minimum value of the properties conveyed.

The bill also requires the Clerk of the Special Court to convey to the Secretary, within ten days after the effective date of the legislation, the common stock and series B preferred stock of Conrail which are on deposit with the clerk. These securities were originally intended to serve as partical compensation for the properties conveyed under the 3–R Act to Conrail. However, as a result of Conrail's poor financial performance those securities are without value. The rights of the transferor railroads with respect to compensation for the assets which they conveyed to Conrail are adequately secured by certificates of value. Any claim against the United States resulting from the conveyance of Conrail securities to the Secretary under this section would be litigated in the Special Court in accordance with section 601 of the bill.

Subsection (b) authorizes the Secretary to exercise voting rights with respect to the securities obtained under subsection (a) or by other means, such as settling the claims of transferors arising from the transfer of rail properties to Conrail in 1976.

Conference substitute

House recedes.

SECTION 1168—APPLICABILITY OF OTHER LAWS

House bill

No comparable provisions.

Senate amendment

The Senate amendment exempts actions taken under the authority of the bill from the application of several laws which were not designed with the subject matter of the bill in mind, or the literal application of which would necessitate extensive delays in the transfer process. For instance, exception from the Administrative Procedure Act ensures prompt action, as well as confidentiality of initial discussions over terms of sale, and avoids legal pitfalls associated with alleged procedural defects.

An exception to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) is also necessary. It is the objective of the bill to provide for the continuation of rail service in the northeast and the prevention of significant diversion of traffic to the highways which may have a direct adverse impact on the human environment in the region. On the other hand, formal compliance with requirements for impact statements and judicial review would lengthen the transfer process and could result in serious deterioration of traffic levels as funding is exhausted and service levels deteriorate. Thus, in this case it appears that observance of the NEPA procedures would prompt a result inconsistent with its purposes. Exemptions from the National Historic Preservation Act of 1966 and Section 4(f) of the Department of Transportation Act of 1966 are included for the same reasons—to avoid lengthy days in the transfer process.

CONFERENCE SUBSTITUTE

The conference substitute adopts the Senate Amendment but deletes exemption from the Freedom of Information Act.

SECTION 1169—EFFECTIVE DATE

House bill

The House bill provides the effective date of this Act is October 1, 1981.

Senate amendment

The Senate bill provides that the effective date of this Act is the date of enactment.

Conference substitute

House recedes.

ALASKA RAILROAD REVOLVING FUND

House bill

The House bill provides that no funding shall be authorized for the Alaska Railroad Revolving Fund for fiscal years 1982, 1983, and 1984.

Senate amendment

No similar provision.

Conference substitute

The House recedes.

INSURANCE COVERAGE

House bill

This section affirms Congress' intent that any railroad in reorganization or a successor corporation which has acknowledged certain insurance payments as obligations of the railroad or which was under order of its reorganization court to continue these insurance programs shall be deemed to have conclusively acknowledged that the cost of such continued coverage constitute valid

preconveyance administrative obligations of such railroad in reorganization.

Senate amendment

No similar provision.

Conference substitute

The House recedes.

LOAN GUARANTEES

House bill

The House bill amends Section 511 of the 4R Act by adding a new subsection (o). This new subsection requires the Secretary to guarantee obligations of Conrail's commuter subsidiary and commuter service prior to initial reimbursement by the commuter agencies and to cover any subsequent cash flow problems arising from delayed reimbursements from commuter agencies. The aggregate unpaid principal amount of obligations guaranteed under this subsection cannot exceed $50 million.

The Committee notes it has not adopted the Administration proposal to provide low interest loans for potential purchasers of Conrail freight lines. However, these loan funds are virtually important to other parts of the country. For example, the Committee recognizes that restructuring the rail freight network in the St. Louis Rail Gateway is a high priority, necessary to increase terminal capacity and to meet the growing traffic demand.

The St. Louis Gateway is the nation's second largest, with some 60 rail yards and with more than two million rail cars passing through each year. The number of rail cars passing through is expected to double by the year 2000. The Committee supports the restructuring project aimed at reducing chronic rail freight traffic bottlenecks and improving the capacity of this national rail freight hub to handle the steadily growing volume. Federal funding assistance for this project is crucial, and the Committee directs the Federal Railroad Administration to give high priority consideration in order to assure that the project can proceed.

Senate amendment

No comparable provision.

Conference substitute

The conference substitute does not modify section 511 of the 4R Act.

SUBTITLE F—AMTRAK; SECTION 1170—SHORT TITLE

House bill

The House bill provided that this Act may be cited as the "Amtrak Improvement Act of 1981".

Senate amendment

The Senate amendment provided that this legislation may be cited as the "Amtrak Improvement Act of 1981".

Conference substitute

The Conference substitute provides that this subtitle may be cited as the "Amtrak Improvement Act of 1981".

SECTION 1171—FINDINGS

House bill

The House bill added new findings to the Rail Passenger Service Act to reflect the establishment of Amtrak Commuter.

Senate amendment

The Senate amendment abbreviated the findings under section 101 of the Rail Passenger Service Act to highlight the basis for this legislation, which envisioned a significant reduction in Federal funding for Amtrak. Under subsection (a), Congress finds the need for a cost-efficient and energy-efficient intercity rail passenger service, which can help to alleviate the overcrowding of airways and highways and can add to the alternatives for convenient transportation, to the extent that funds are available to do so. References made under current law to the essentiality of a national rail passenger system as a significant asset in time of national emergency or energy shortage and to the need for Federal financial assistance for such purposes were deleted.

Congress further finds under subsection (b) the need for cooperation among all interested parties, including Amtrak, the operating railroads, labor, and the state and local authorities so as to secure a rail passenger system justifying continued funding. Certain other findings under current law relating to inadequately defined goals, problems with state-subsidized service, and difficulties with the operating railroads were deleted.

Conference substitute

The Conference substitute essentially combines the provisions from both the House bill and the Senate amendment.

SECTION 1172—ADDITIONAL GOALS FOR AMTRAK

House bill

The House bill established the following additional goals for the Corporation:

(1) improvement in the number of passenger miles generated systemwide per dollar of federal investment;

(2) reduction in the cost of long-distance service;

(3) elimination of the deficit in the food and beverage operation;

(4) improvements in productivity and efficiency;

(5) improvement in the "on-time" performance of all trains operated by the Corporation;

(6) development of service on rail corridors;

(7) increases in the nationwide average speed of trains operated by the Corporation;

(8) improvement of the ratio of revenues to operating expenses; and

(9) certain other goals for Amtrak to reflect the establishment of Amtrak Commuter.

Senate amendment

The Senate amendment expanded the goals set forth in section 102 of the Rail Passenger Service Act to reflect the need for Amtrak to take such actions as are necessary to improve performance and decrease Federal spending. Specifically, Amtrak would be encouraged to maintain a fare policy on each route which would minimize Federal subsidy: to reduce management costs and increase labor productivity; to reduce losses on food service and increase revenues on mail service; and to ensure that trains arrive within 15 minutes of their scheduled times and that they adhere to a systemwide average speed of at least 55 miles per hour. With respect to Amtrak's attainment of a certain revenue-to-cost ratio, this legislation would make the ratio under current law more stringent and include it as a mandate under section 15 of this Act rather than as a goal under this section.

This section also emphasizes the need for state, regional and local governments and the private sector to share in the costs of rail passenger service, including the operation of stations. The goal was to reduce Federal expenditures for Amtrak.

Conference substitute

The Conference substitute adopts the following goals from both the House bill and the Senate amendment:

(1) exercise of Amtrak's best business judgment in minimizing Federal subsidies;

(2) encouragement of non-Federal funding of rail passenger service;

(3) improvement in the number of passenger miles generated by Amtrak's system per dollar of Federal funding;

(4) elimination of the deficit in Amtrak's food and beverage operation;

(5) improvements in Amtrak's productivity and efficiency;

(6) improvement in Amtrak's on-time performance;

(7) development of rail passenger corridors;

(8) increase in the nationwide average speed of Amtrak trains;

(9) improved coordination of intercity and commuter rail services on the Northeast Corridor; and

(10) maximization of Amtrak's resources and increase in revenues and decrease in Federal subsidies.

SECTION 1173—DEFINITIONS

House bill

The House bill added several definitions to the Rail Passenger Service Act relating to the establishment of the Amtrak Commuter Services Corporation.

Senate amendment

The Senate amendment amended the definition of basic system in section 103 of the Rail Passenger Service Act to include those changes made in the system pursuant to this legislation. The amendment added two definitions which are important to the labor protection provisions under section 14 of this bill: the term "deprived of employment" was defined as a condition which results when service is discontinued and an Amtrak employee is unable to obtain reemployment; and the term "year of completed service" was defined as a 12-month period during which compensation is credited.

Conference substitute

The Senate recedes to the House with clarifying amendments.

SECTION 1174—CHANGES IN BOARD OF DIRECTORS

House bill

The House bill amended 45 U.S.C. 543(a) by removing the authority for the existing board and providing for the appointment of the new board. This section provided that the new board shall have eleven members.

This section also provided that the Secretary of Transportation and the President of the Corporation shall serve as ex officio members of the board.

Under this section, the President would appoint a total of seven members of the board with the advice and consent of the Senate; one to be selected from a list submitted by each of the following groups:

(a) the American Federation of Labor and Congress of Industrial Organizations or its successor;

(b) the National Governors' Association;

(c) the business community;

(d) the National Association of Railroad Passengers of its successor;

(e) organizations representing users of commuter services operated by the Corporation;

(f) organizations representing the elderly; and

(g) the Association of American Railroads.

This section also provided that two individuals representing commuter agencies shall be members of the board. Prior to the initiation of service by Amtrak Commuter, the two commuter representatives on the board shall be chosen by commuter agencies whose service is operated by either the Consolidated Rail Corporation or Conrail Commuter Corporation. Once the Amtrak Commuter has begun providing service, two members of the board shall be chosen by those commuter agencies for which Amtrak Commuter provides service or those commuter agencies which operate service over properties owned by the Corporation or Amtrak Commuter.

This section provided that presidential appointments to the board shall serve terms of four years and that not more than four of the presidential appointees shall be from the same political party. Representatives of the commuter agencies who serve on the board shall serve terms of two years.

This section provided that six members of the board constitute a quorum and that no

one other than a member of the board serving pursuant to the authority of this act shall be permitted to vote at meetings of the board.

This section also provided that the terms of office of the current members of the board shall terminate upon enactment of this act and that such members shall continue to serve for not more than 90 days during which time the President shall appoint new members to the board. If, for whatever reasons, a vacancy occurs on the board as a result of the failure of the President to make his appointments to the board within the time provided, the President of Amtrak shall fill such vacancy with whomever he chooses, provided that any individual appointed by the President of Amtrak shall serve only as long as it takes for the President to make his appointments.

Under this section, the President of the Corporation shall serve as the chairman of the board.

Senate amendment

The Senate provision amended section 303 (a)(4) of the Rail Passenger Service Act to mandate that the President, in appointing eight members to the Amtrak Board of Directors, would choose out of the eight at least one member to be a States' representative, in view of the increased importance of the state and local role in the provision of rail passenger service anticipated by the legislation, and one to serve as a commuter representative.

Conference substitute

This section represents a compromise of the two provisions by establishing that the Amtrak Board of Directors shall consist of nine members as follows:

(1) the Secretary of Transportation, ex officio, who may be represented by any one of three statutorily designated individuals;

(2) the President of Amtrak, who is to serve as Chairman of the Board;

(3) five members appointed by the President—one from a list representing rail labor; one of the governors of the states interested in rail transportation, or his representative; one from the business community, who has an interest in rail transportation; and two members selected from lists submitted by the commuter authorities, depending upon the entities operating the commuter service; and

(4) two representatives of the preferred stockholder, which under the Conference substitute is the Federal Government.

The Presidential appointees shall serve four-year terms, and not more than two of such members chosen from rail labor, the governors, and the business community can be from the same political party. The commuter representatives shall serve for two years.

This provision also includes certain other requirements relating to member selection. Specifically, the terms of the present Board are to expire October 1, 1981, the effective date of this legislation. However, the current members are to continue serving until the Presidential appointees are selected. If such appointments do not occur within 90 days, the President of Amtrak may fill any vacancy with whomever he chooses until appointments are made.

SECTION 1175—FINANCING OF THE CORPORATION

House bill

The House bill contained no similar provision.

Senate amendment

The Senate amendment made significant changes in the financial structure of Amtrak. It amended section 304 of the Rail Passenger Service Act to provide for the issuance of preferred stock by Amtrak to the Federal Government in order to better protect the Government's interest and investment in Amtrak in the event of liquidation. Specifically new subsection (c) would require such issuance to the Secretary of Transportation as a prerequisite to obtaining further Federal funds. Certain preferred stock would have to be issued by February 1, 1982, and be equal to past capital grants made to Amtrak through fiscal 1981. With respect to future operating and capital grants, Amtrak would be mandated to issue such stock within 30 days of the close of each fiscal quarter. There would be no restrictions on the amount of stock held by the Federal Government nor on its redemption rights.

As under current law, the preferred stock would have liquidation preference over common stock. This section would further provide under new subsection (d) that while Amtrak would still be able to issue various non-voting certificates of indebtedness, no such obligation could have a liquidation preference higher than the Federal Government's outstanding preferred stock nor could it be secured by a lien on Amtrak property without the permission of the Secretary of Transportation.

Under subsection (e), Amtrak stockholders would continue to have inspection rights without respect to the amount of stock held. Also, preferred stock would not be subject to any issuance fees or taxes unless Congress otherwise specifies.

Conference substitute

The House recedes to the Senate provision.

SECTION 1176—CHARGES FOR CUSTOMS AND IMMIGRATION SERVICE

House bill

The House bill amended 45 U.S.C. 545 to exempt the Corporation from the payment of fees to the federal customs and immigrations services for "on-board" inspection of rail passengers crossing international boundaries.

Senate amendment

The Senate amendment contained no similar provision.

Conference substitute

The Senate recedes to the House provision.

SECTION 1177—FOOD AND BEVERAGE SERVICE

House bill

The House bill amended 45 U.S.C. 545 and 45 U.S.C. 565(e) to direct the Corporation to eliminate the deficit in its food and beverage services by September 30, 1982. Beginning October 1, 1982 this section provided that the Corporation shall not operate "on-board" food and beverage service unless revenues cover costs. Amtrak would be allowed to contract out for food and beverage services in order to reduce the associated costs.

Senate amendment

The Senate amendment listed as a goal the reduction of losses associated with food and beverage service.

Conference substitute

In addition to the general Senate goal, the Conference substitute adopts the House provision with an amendment providing for computation of losses on an annual rather than a quarterly basis. With respect to the provision allowing contracting out for food and beverage services, it is the intent of the conferees that Amtrak report to Congress as to other areas of its operation where savings could be realized through contracting out.

SECTION 1178—APPLICABILITY

House bill

The House bill amended 45 U.S.C. 546 by exempting the Corporation from the payment of state and local taxes to the same extent as the Government of the United States is exempt from the payment of taxes. This provision is estimated to save Amtrak $14.5 million in fiscal year 1982.

Senate amendment

The Senate amendment exempted Amtrak from future payment of certain state and local sales and property taxes, which it has been paying. Specifically, Amtrak would not be required to pay any further taxes based on the acquisition and improvement of personal property, such as equipment, or on the improvement of real property, made in connection with the provision of rail passenger service. It is expected that this exemption would provide a reduction of $6.5 million in Amtrak's costs during fiscal year 1982.

This section also exempted Amtrak from state and local full crew laws, which require that a specified minimum crew be employed on passenger trains operated in various states. Such an exemption would allow Amtrak to reduce surplus personnel which now cost Amtrak approximately one-half of a million dollars annually.

Conference substitute

The House recedes to the Senate with respect to the state and local tax exemption. The Senate recedes to the House with respect to the state and local full crew law exemption.

SECTION 1179—SANCTIONS

House bill

The House bill amended section 404 of the Rail Passenger Service Act to provide that any change in the basic system made by Amtrak shall not be reviewable in any court.

Senate amendment

The Senate amendment amended section 307 of the Rail Passenger Service Act to enable Amtrak to make changes in its service subject only to court review upon petition of the United States Attorney General. In the past, Amtrak has been hampered in its efforts to discontinue routes by a multitude of court actions for injunctive relief.

Conference substitute

The House recedes to the Senate provision.

SECTION 1180—ELIMINATION OF UNNECESSARY REPORTS

House bill

The House bill amended section 308 of the Rail Passenger Service Act to relieve Amtrak of its obligations to provide Congress with monthly reports on revenues and expenses attributable to each operating railroad over which Amtrak service is provided. It also would eliminate the requirement that the Interstate Commerce Commission report annually to Congress on Amtrak. Neither of these reporting requirements is necessary.

Senate amendment

The Senate amendment was identical to the House provision.

Conference substitute

The Conference substitute adopts the House provision.

SECTION 1181—FACILITY AND SERVICE AGREEMENTS

House bill

The House bill contained no similar provision.

Senate amendment

The Senate amendment repealed section 401(c) of the Rail Passenger Service Act which provides that, except for auto-ferry service, no railroad or any other person may provide intercity rail passenger service over a route which Amtrak is operating, unless given consent by Amtrak. This amendment should be considered together with section 17 of the legislation, which encourages private entities to undertake rail passenger service.

Under section 402(g) of the Rail Passenger Service Act, Amtrak was required by January 1, 1981, to enter into an industry-wide contract with other rail carriers for the operation of special and charter trains.

This section would eliminate such requirement, which has not been met. Separate contracts with individual railroads still could be entered into with respect to such special service.

Conference substitute

The Senate recedes to the House with an amendment to section 402(a) of the Rail Passenger Service Act specifying that any contracts negotiated between Amtrak and the railroads under that section shall include a penalty for untimely performance.

It is also the intent of the conferees that a rail carrier which commences intercity passenger or auto-ferry service after the date of enactment of the Amtrak Improvement Act of 1981 is authorized to establish, discontinue or change such routes and services as well as passenger fares and freight rates as it deems necessary.

It is the further intent of the conferees that if any rail carrier operating such passenger or auto ferry service, discontinues such service no other rail carrier shall be required to continue • • •.

SECTION 1182—STATE-SUPPORTED SERVICES

House bill

The House bill amended 45 U.S.C. 563(b) to eliminate the deadline for a state to submit an application for the initiation of 403(b) service.

Under this section, a state would pay 60 percent of the short-term avoidable loss of 403(b) service in the first year of operation and 80 percent of the short-term avoidable loss in each year of operation thereafter.

This section eliminated the technical assistance panels and provides instead that the Corporation shall conduct a preliminary evaluation of the market potential of service a state proposes to operate under subsection 403(b). This section further provides that proposed service shall not be eligible for operation under subsection 403(b) unless it is reasonably expected that revenues from such service will cover 30 percent of the costs, with the state's contribution not included.

Under this section, the Corporation could agree to provide 403(b) service on a route that is not expected to achieve this minimum level of performance if the state agrees in advance to pay the annual loss. If the Corporation and a state enter into such an agreement and the service actually does achieve the minimum level of performance, this section provides that the Corporation shall reimburse the state for the difference between the annual loss of such service and the appropriate percentage of short-term avoidable loss the state would have otherwise paid.

This section provided that the Corporation may agree to provide service under subsection 403(f) if:

(a) such service is projected to achieve the minimum level of performance specified above; and

(b) sufficient resources are available to the Corporation.

Under this section, an agreement to provide 403(b) service could be renewed for one or more additional terms of not more than two years, provided that an agreement shall not be renewed for a train that fails to meet the minimum level of performance unless the state agrees to pay the annual loss.

This section further provided that the Corporation shall consult with a state at least 90 days before a fare increase affecting 403(b) service is scheduled to take effect. If any state objects to the fare increase within 30 days from the date of such service will cover 30 percent of the costs, with the state's contribution not included.

Under this section, the Corporation could agree to provide 403(b) service on a route that is not expected to achieve this minimum level of performance if the state agrees in advance to pay the annual loss. If the Corporation and a state enter into such an agreement and the service actually does achieve the minimum level of performance, this section provided that the Corporation shall reimburse the state for the difference between the annual loss of such service and the appropriate percentage of short-term avoidable loss the state would have otherwise paid.

This section provided that the Corporation may agree to provide service under subsection 403(b) if:

(a) such service is projected to achieve the minimum level of performance specified above; and

(b) sufficient resources are available to the Corporation.

Under this section, an agreement to provide 403(b) service could be renewed for one or more additional terms of not more than two years, provided that an agreement shall not be renewed for a train that fails to meet the minimum level of performance unless the state agrees to pay the annual loss.

This section further provided that the Corporation shall consult with a state at least 90 days before a fare increase affecting 403(b) service is scheduled to take effect. If any state objects to the fare increase within 30 days from the date of such notification, this section provided for a delay in the implementation of the fare increase for an additional 30 days to give the state an opportunity to recommend ways to reduce costs in order to reduce or to eliminate the need for the fare increase. At the end of the extended period, the Corporation shall make the decision as to whether the fare increase should take effect in whole or in part, taking into consideration the state's recommendation.

Under this section, the states would be given an opportunity to consult with the Corporation in the development of a definition of short-term avoidable loss and associated capital costs.

This section also provided that the Corporation shall expend at least one but not more than 5 percent of the revenues generated by 403(b) service in the advertisement locally of such service.

This section further stated that the provision for state payments contained in this section shall apply to existing 403(b) service at the time agreements for such service are renewed.

Senate amendment

The Senate amendment amended section 403 of the Rail Passenger Service Act.

Section 403 of the Rail Passenger Service Act provides that Amtrak shall operate additional service if a State, local, or regional government agrees to share in the associated costs. Specifically, such non-Federal entity must agree to cover 20 percent of the solely related costs (interpreted to mean avoidable losses) in the first year of operation, 35 percent in the second year, and 50 percent each year thereafter. The state or locality also must agree to cover 50 percent of the capital costs.

This section made no changes with respect to existing contracts entered into pursuant to this cost-sharing arrangement prior to the date of enactment of this legislation. However, this legislation would add a new section 403a to cover future such agreements.

Section 403a is different from the current program in several respects. First, a private party would be able to fund rail passenger service in addition to the states and localities. Also, such cost-sharing agreements could be entered into for retention of existing service as well as for new service in order to ensure the opportunity for continuing service which Amtrak might otherwise have to discontinue. In addition, Amtrak would not have to enter into these agreements and could require that the non-federal funding source cover more than the percentages of operating loss heretofore mentioned. Finally, this section would eliminate the period for filing applications with Amtrak, the technical assistance panels now convened to review applications, and the requirement that Amtrak notify a state of a fare increase on one of its subsidized routes.

It is expected that these changes in the current program would encourage expanded non-federal funding of rail passenger service. At the same time, this section would ensure that Amtrak share in the costs of operating such service only to the extent that its funding level allows.

This section also amended section 403 relating to commuter rail service which Amtrak is required to operate. Effective October 1, 1981, provisions under subsection (d) mandating that Amtrak operate certain commuter rail service at reduced fares would be repealed since the current law does not require operation after such date.

With respect to any future commuter services operated by Amtrak, new section 403a(c) provided that Amtrak only would operate such service if it is reimbursed for 100 percent of the associated avoidable losses and such other amounts as the Amtrak Board of Directors determines would contribute to the costs of providing intercity rail passenger service. This amendment would help to minimize Amtrak's losses, given the funding level provided in this legislation.

Conference substitute

The Conference substitute adopts certain Senate provisions, and amendments reflecting the House provisions. A non-Federal entity could offer to fund rail passenger service. Amtrak would have the discretion to decide whether or not to operate such service. Such entity would have to agree to pay 45 percent of the short-term avoidable losses in the first year of operation and 65 percent in the second year and thereafter, and also 50 percent of the associated capital costs. Amtrak's Board of Directors would establish the basis for determining short-term avoidable loss and capital costs. The Board must consult with the states and provide them with such basis for determination.

The provision as adopted by the conferees ensures that those 403(b) agreements entered into prior to October 1, 1981, the effective date of the legislation, shall not be subject to the increased percentage shares included in the Conference substitute for fiscal years 1982 and 1983. Renewals of such agreements are to be funded at 35 percent and 50 percent of the solely related costs as provided in the current law for the second and third years of operation.

The conferees believe that states participating in the 403(b) program should have greater impact on the fare decisions than they do under the current law. As a result, the Conference substitute requires Amtrak to notify a state at least 90 days in advance of the date that a proposed fare increase which is applicable to 403(b) service and which represents an increase of more than 5 percent over a 6-month period is scheduled to take effect. The substitute also requires Amtrak to provide such officials with an explanation of the circumstances warranting the proposed fare increase.

Within 30 days of such consultation, the affected state may submit proposals to Amtrak for reducing costs and increasing revenues of 403(b) service. After the 30-day period and after having considered those proposals submitted by the state, Amtrak shall decide whether to implement the proposed fare increase in whole or in part. The conferees expect that a state would object to a fare increase only if it had a proposal that could reasonably be expected to reduce the costs of operating service and therefore reduce or eliminate the need for a fare increase. The conferees would also expect that a state notifying Amtrak of its objection to a fare increase would begin discussion with Amtrak immediately regarding its proposal for reducing costs.

The conferees also intend that Amtrak thoroughly analyze and evaluates a state's proposal and that, only after such consideration, shall Amtrak make a decision as to whether the proposed fare increase should be implemented in whole or in part.

An important exception to the above provisions must be noted. In those cases where either Amtrak's authorization or appropriation for the fiscal year is not enacted at least 90 days prior to the beginning of such fiscal year, Amtrak may increase fares during the 30 days following enactment of such appropriation or recession. However, the conferees intend that in such instances Amtrak must notify the affected state of the fare increase as soon as possible. This exception addresses the conferees' concern that Amtrak not operate service for an additional 90 days in those instances where Amtrak's funding is not finalized 90 days prior to the beginning of the fiscal year.

This section also provides that at least 2 percent but not more than 5 percent of all revenues generated on a particular route funded under this section is to be dedicated to local advertising of such service.

The Senate recedes to the House provision with respect to commuter service, which is dealt with section 1183 of the conference substitute.

The conferees intend that this provision represent a gradual transition towards a greater non-federal share in the funding of rail passenger service under section 403 (b) of the Rail Passenger Service Act as amended.

SECTION 1183—OPERATION WITHIN AVAILABLE RESOURCES

House bill

The House bill amended 45 U.S.C. 564(c)(3) to give the Corporation the authority to amend the route and service criteria by submitting such an amendment to the Congress. If within 120 days, neither the House nor the Senate has disapproved it, it shall become part of the route and service criteria.

This section also amended 45 U.S.C. 564(c)(4). The Corporation is directed to conduct an annual review of each route in the basic system to determine whether such route meets the criteria for short-distance or long-distance trains, whichever is appliable. The Corporation is directed to terminate any route which does not meet the criteria.

Based on an evaluation to be performed at the beginning of each fiscal year, this section directed the Corporation to take necessary actions to reduce its costs in order to operate within the level of funds authorized.

Such actions shall be designed to improve the operational efficiency and cost-effectiveness of service and to preserve the maximum of service feasible.

If, however, the Corporation determines these improvements will not yield the required level of savings, the Corporation would be directed to reduce or discontinue routes in order of their performances under the criteria.

This section also directed the Corporation to give notice to states and localities affected by a route discontinuance.

For purposes of achieving savings necessary to operate within the level of authorized funds, this section amended 45 U.S.C. 564(c)(5) to exempt the Corporation from the route and service criteria. This section repealed 45 U.S.C. 564(e), the authority for the operation of the "regional balance" trains. Under this section, changes in the basic system which are made by the Corporation shall not be reviewable in any court.

Finally, this section amended 45 U.S.C. 563(d) to provide that the Corporation shall continue operating funding service in the same manner it currently operates and funds service under the authority of 45 U.S.C. 563(d) as long as that service meets the ridership criteria for short-distance trains.

Senate amendment

The Senate amendment amended section 404 of the Rail Passenger Service Act which sets forth certain criteria to be followed by Amtrak in determining whether or not to discontinue service. Under existing subsection (d), Amtrak could not discontinue a long-distance train if it meets the criteria of 150 passenger miles per train mile and a 7 cent avoidable loss per passenger mile. Similarly, a short-distance train cannot be eliminated if it meets a criteria of 80 passenger miles per train mile and a 9 cent avoidable loss per passenger mile. Furthermore, Amtrak is mandated under existing subsection (c) to conduct an annual review of all long-distance trains and is required under subsections (e) through (g) to operate certain regional balance trains and short-haul demonstration trains. Finally, subsection (b) requires that Amtrak make certain other discontinuances subject to its corporate route and service criteria.

This section would eliminate those requirements in order to facilitate the adjustments in Amtrak's system necessitated by this legislation. Amtrak would be able to discontinue any service, without regard to any statutory criteria or to its corporate route and service criteria, as it deemed appropriate in order to comply with the funding levels of this legislation.

The Senate amendment also added an important new section 407 to Title IV of the Rail Passenger Service Act. Subsection 407(a) would require Amtrak to operate within the limits of available resources, including Federal grants, state and local assistance, and revenues. Furthermore, beginning in fiscal 1982, Amtrak's revenues, including non-Federal funding, would have to cover at least 50 percent of its total operating costs, excluding capital costs. Also, under subsection (c) Amtrak would be required to reduce its management costs by 10 percent before October, 1983.

Amtrak would be authorized under subsection (b) to discontinue routes, trains and services, or reduce frequency of service, as necessary to comply with the funding levels of this legislation. Amtrak would be required to provide notice upon date of enactment of its intention to discontinue service as appropriate to give states and other parties an opportunity to agree to share in the costs of such operations.

Conference substitute

The Conference substitute is intended to ensure that Amtrak provides cost-effective and efficient service and to ensure that Amtrak has the ability to improve its overall performance.

In this regard, this section requires that, commencing in fiscal 1982, Amtrak recover 50 percent of its costs, excluding capital costs, from its revenues, including non-Federal contributions. In addition, Amtrak is required to reduce costs associated with its management.

The Conference substitute further provides that Amtrak shall conduct an annual review of the trains which it operates in its basic system and shall discontinue, modify or adjust service which does not meet the performance criteria. The criteria are an objective measure of a train's performance and should, therefore, guide Amtrak in making decisions regarding service reduction or adjustments.

For short-distance trains, the statutory criteria provide that the avoidable loss per passenger mile, as calculated by Amtrak and projected for the next fiscal year, not exceed nine cents, and that the passenger miles per train mile not be less than 80. Adjusted to reflected constant 1979 dollars, as both the Conference substitute and the present law require, the criteria in fiscal year 1982 limit the avoidable loss per passenger mile of short-distance trains to 12.9 cents.

The criteria provide that the avoidable loss per passenger mile of long-distance trains, as calculated by Amtrak and projected for the next fiscal year, shall not exceed seven cents and that the passenger miles per train mile not be less than 150.

Adjusted for constant 1979 dollars, this criteria stipulates that the avoidable loss per passenger mile of long-distance trains shall not exceed 10.1 cents during fiscal year 1982.

For purposes of modifying or adjusting routes which do not meet the criteria as determined by the annual review, this section exempts Amtrak from the provision in current law requiring that all reductions or additions of service be made in accordance with the route and service criteria. The conferees believe that adherence to the procedure for eliminating service under the route and service criteria, including requirements for local hearings, could delay Amtrak's ability to make important service modifications or adjustments.

It is the intent of the conferees that Amtrak should make every effort to adjust or modify service so that routes will meet the criteria. The conferees also intend to ensure that Amtrak pursue all available alternatives with respect to all the routes in the system, including the Cardinal, the Inter-American and the Pioneer, in order that the maximum level of service be maintained.

In addition, at the beginning of each fiscal year, the Conference substitute requires Amtrak to assess its financial needs for operating all of the service provided at the time. If Amtrak projects that it cannot operate its system within its available resources, then Amtrak is directed under this provision to take such actions as may be necessary to reduce costs and improve performance. Such actions may include the following: changing the frequency of service; increasing fares; reducing the cost of sleeper car and dining car services on certain routes; increasing the passenger capacity of cars used on certain routes; restructuring, adjusting or discontinuing service over routes, considering short-term avoidable loss and the number of passengers served by such routes.

In order to accomplish the reductions or discontinuances of services which Amtrak determines are necessary in order to operate with the funds available, the conference substitute exempts Amtrak from the requirements of the route and service criteria.

The conference substitute also creates a procedure by which Amtrak may amend the route and service criteria. The conferees believe that Amtrak's management needs flexibility to make adjustment in its system in order to create efficient and cost-effective service.

With respect to discontinuances, this section provides that Amtrak shall give advance notification to states and localities of the discontinuance of service over any route.

In addition, this section provides for the continued operation of rail passenger service which is presently operated under the authority of section 403(d) of the Rail Passenger Service Act, as long as it meets the criteria in section 404(d)(2)(B) of the Act. Those trains which Amtrak operates under this section are among the better performers in the system and provide essential service which the conferees believe Amtrak should continue under the present funding and operating arrangements.

Finally, the conferees would encourage Amtrak to place importance on maintaining its long distance routes. Such routes are an integral part of the nation's transportation network and remain an important al-

ternative which serves the transportation and energy needs of the country.

SECTION 1184—EXTENSION OF COMPENSATION FOR PASS RIDERS

House bill

The House bill amended 45 U.S.C. 565 to provide that Amtrak continue to be reimbursed by other railroads for their employees who ride on Amtrak at a reduced rate. The reimbursement would be equal to at least 25 percent of the revenue that Amtrak would otherwise have received.

Senate amendment

The Senate provision was identical to the House provision.

Conference substitute

The conference substitute adopts the House provision.

SECTION 1185—AUTHORIZATION OF APPROPRIATIONS

House bill

The House bill amended 45 U.S.C. 601(b) to authorize $625 million for operating expenses for fiscal year 1982, of which $24 million is for capital and operating expenses associated with provision of 403(b) service.

This section also stated that not more than 50 percent of the amount by which the Corporation subsidized the provision of food and beverage services in fiscal year 1981 shall be used to subsidize such service in fiscal year 1982. This section also reduced certain prior year authorizations for capital expenses and labor protection.

For fiscal year 1982, this section authorized $842 million, of which:

(a) $170 million is for capital expenses; and

(b) $26 million is for capital and operating expenses associated with provision of service under 403(b).

Senate amendment

The Senate amendment authorized appropriations not to exceed $735 million for each of the fiscal years 1982 and 1983 and not to exceed $640,000,000 for fiscal year 1984. No specific amounts were set aside for operating capital, non-federally subsidized service, or labor protection. Accordingly, section 601 was amended to remove the specific fiscal 1982 figures for capital, state-subsidized service, and labor protection.

Conference substitute

The Conference substitute represents a compromise between the two bills by authorizing $735 million for operating and capital expenses for fiscal year 1982, of which $24 million is for capital and operating expenses associated with provision of 403(b) service. The Conference substitute also authorizes $788 million for operating and capital expenses for fiscal year 1983, of which $26 million is for capital and operating expenses associated with provision of 403(b) service.

The substitute also contains the House provision which states that not more than 50 percent of the amount by which the Corporation subsidized the provision of food and beverage services in fiscal year 1981 shall be used to subsidize such service in fiscal year 1982.

SECTION 1186—LOAN GUARANTEES

House bill

The House bill amended 45 U.S.C. 602(d) to increase the level of loan authority available to the Corporation and to eliminate the requirement that the Corporation pay the Department of Transportation a fee for serving as the guarantor of its loan with the Federal Financing Bank.

This section also amended 45 U.S.C. 602 to provide for the Corporation to defer making interest payments on its debt to the Federal government for the period of this authorization. In addition, this section stated that deferral of interest payments by the Corporation shall not constitute default under any note or obligation of the Corporation, and that notes of the Corporation shall continue to be refinanced by the Secretary and the Federal Financing Bank as they mature in order to pay for previously ordered equipment.

Senate amendment

The Senate amendment contained no similar provision.

Conference substitute

The Senate recedes to the House provision with respect to the guarantee fee and the level of loan authority. The new loan authority will cover the final payment on the purchase by Amtrak of the Northeast Corridor.

The Conference substitute also adopts a provision similar to the House bill with respect to interest deferral. This provision allows Amtrak to defer its interest payments during fiscal years 1982 and 1983, amounting to $82 million and $100 million, respectively. However, such interest would remain as an obligation to the Federal Financing Bank, and it is intended that interest would accrue on this outstanding obligation.

This interest deferral is not to constitute a default with respect to any note or obligation, and the Secretary of Transportation is to continue to guarantee loans to Amtrak for fulfillment of existing obligations. The conferees understand that three of Amtrak's notes having a total value of $750 million will mature in fiscal years 1982 and 1983 and direct the Secretary of Transportation and the Federal Financing Bank to refinance these notes in the usual manner.

This legislation would also require that the Department of Transportation, in consultation with Amtrak, the Treasury Department, and the General Accounting Office, submit to Congress by February 1, 1982, legislative recommendations for relieving Amtrak of its debt obligation. The conferees believe that this continuing issue of Amtrak's loan repayment should finally be resolved by relieving Amtrak of its obligation to repay the principal and interest associated with its debt to the Federal Financing Bank.

The conferees emphasize that this interest deferral is not intended to set a precedent for future actions with respect to a debt owed the Federal Government. The conferees were concerned that Amtrak have sufficient funds to operate its system and thus approved this extraordinary measure of deferral.

SECTION 1187—RAIL CORRIDOR DEVELOPMENT AND OTHER STUDIES

House bill

The House bill required the Corporation to report to Congress by January 15, 1982 with recommendations and a plan for development of rail corridors.

Senate amendment

The Senate amendment required Amtrak and representatives of labor and other railroads to submit to Congress within 6 months of the date of enactment of this legislation a joint report regarding efforts and recommendations to achieve efficiencies in both the Amtrak management and labor areas.

The Senate amendment also required Amtrak to report to Congress within 3 months of the date of enactment of this legislation on any actual or potential problems, with appropriate legislative recommendations, regarding the direct employment of operating employees for whose services Amtrak now contracts with the operating railroads.

Conference substitute

The conference substitute adopts the House provision, with some amendments, and the Senate amendments without modifications.

The conferees believe the cost-effectiveness and energy efficiency of rail passenger service is largely dependent on Amtrak's ability to increase ridership. If Amtrak's system-wide average ridership were increased, the passenger miles generated per dollar of public investment as well as the energy efficiency of Amtrak's service would also increase. Estimates are that increased ridership could result in a tripling of the number of passenger miles per gallon of fuel that Amtrak provides.

The conferees believe, therefore, that Amtrak should develop services which have the greatest potential for increasing ridership. Rail corridors, providing frequent and fast train service over short to medium distances, from city center to city center, hold great potential for increasing Amtrak's ridership.

The Passenger Railroad Rebuilding Act of 1930 directed the Federal Railroad Administration and Amtrak to evaluate the market potential for rail corridor service between 25 different city pairs around the country and to perform detailed design and engineering studies to identify the improvements needed to implement rail corridor service.

The resulting report demonstrates that corridors could help rail passenger service achieve a number of different goals: cost-effectiveness; increased ridership; and energy efficiency. According to the study, six of the corridors could be developed and operated for a public expenditure of 15 cents or less per passenger mile: Los Angeles-San Diego, $.06/passenger mile; Philadelphia-Atlantic City, $.12/passenger mile; New York-Buffalo, $.12/passenger mile; Chicago-Detroit, $.13/passenger mile; Los Angeles-Las Vegas, $.14/passenger mile and Chicago-Cincinnati, $.15/passenger mile.

High ridership was also projected for a number of the corridors. By 1985, the Philadelphia-Atlantic City corridor is projected to carry four million passengers annually, and its passenger mile per train mile rating would be 304—higher than all but two trains Amtrak presently operates. The study also projected Los Angeles-San Diego to have a passenger mile per train rating of 180 and New York-Buffalo, one of 123.

While a number of the corridors were projected to result in substantial energy savings, the Philadelphia-Atlantic City corridor is the only one that was projected to be more fuel efficient than bus service. According to the study, development of the Philadelphia-Atlantic City corridor would result in an energy efficiency rating of 229 passenger miles per gallon of gasoline or diesel fuel. Bus service would yield only 135 passenger miles per gallon of fuel. Other corridors that ranked high in energy efficiency were Chicago-Cincinnati, 117 passenger miles per gallon of fuel, and New York-Buffalo, 100 passenger miles per gallon of fuel.

The conferees note that the potential demand for rail service in certain corridors is high. The Chicago-Detroit corridor has one of the highest "on-line" populations. The State of Michigan has demonstrated strong support for rail service and the conferees believe that Amtrak should work with the state in the development of corridor service on this route.

In addition, development of certain corridors has been shown to significantly increase the share of all intercity passengers who would travel by rail. According to information from the Department of Transportation, development of the New York-Buffalo corridor would increase rail services' share of the total inter-city passenger market from 5.8 percent (projected for 1985 without corridor service) to 9.3 percent (projected for 1985 with corridor service)—a 3.5 percent increase. Furthermore, the conferees note that in some cases states have begun to work directly with Amtrak in building a dedicated rail ridership market and in developing rail corridor service. The State of Illinois is funding the crea-

tion of a station stop at Normal, Illinois which will make rail service on the Chicago-St. Louis corridor accessible to a total student population of more than 170,000.

In addition, the State of Illinois has funded an engineering study for the development of corridor service. The conferees believe Amtrak should work with the state in conducting this study and in evaluating the potential for rail corridor service along this route.

The development of rail corridor service has the potential of improving Amtrak's overall efficiency. Therefore, the conferees believe that in fiscal year 1982 Amtrak should begin design and engineering studies on those corridors which will improve the cost-effectiveness, energy-efficiency and ridership of the service Amtrak provides.

The conferees believe Amtrak should develop design and engineering plans on at least the following corridors: Los Angeles-Las Vegas; Chicago-Detroit; Chicago-St. Louis; New York-Buffalo; the Texas Triangle; and Chicago-Cincinnati; and Philadelphia-Atlantic City.

In addition, the conferees believe Amtrak should undertake development of a preliminary engineering study of the Los Angeles-San Diego Corridor to determine the feasibility of instituting higher frequency of service within the corridor. In doing so, Amtrak shall work with the Orange County Transportation Commission in the development of the transportation study within the Los Angeles-San Diego corridor which is in progress on the date of enactment of the Act. Specifically, Amtrak should participate and cooperate by portion of the study or Draft Environmental Impact Statement dealing with increased frequency of service on the corridor. Upon completion, the Draft Environmental Impact Statement should be transmitted to the Secretary of Transportation for certification.

The conferees believe that Amtrak should work with state and local governments and private interests in the development of rail corridor service. The conferees note with interest that there is strong private sector interest in two of the corridors, Philadelphia-Atlantic City and Las Vegas-Los Angeles. The conferees feel strongly that Amtrak should make every effort to enter into cooperative agreements with private interests, state and local governments or both for the development of these corridors. With particular respect to the Las Vegas-Los Angeles Corridor, the conferees also urge the Department of Transportation to work with Amtrak and the state and local officials in the study and development of high-speed rail passenger service in that area.

The conference substitute directs Amtrak to report to Congress not later than June 1, 1982 with its recommendations for the development of rail corridors. Amtrak is to include in its report an identification of the corridors it would develop, a timetable for their development, and a financial plan outlining how such development would be financed.

The conferees intend to examine Amtrak's report. It is expected that whatever efforts are made towards corridor development should complement and strengthen Amtrak's system.

SECTION 1188—TECHNICAL AND CONFORMING AMENDMENTS

House bill

The House bill made certain technical and conforming amendments.

Subsection (a) merely conformed the Corporation's mission to include the new functions provided in this Act related to commuter service.

Subsection (b) conformed the powers of the Corporation to the new functions provided in this Act.

Subsection (c) merely indicated that preference is to be given to commuter trains as well as intercity passenger trains.

Subsection (d) made inapplicable to Amtrak Commuter certain protective arrangements.

Subsection (e) repealed Section 702 of the Railroad Revitalization and Regulatory Reform Act of 1976. This section established the Operations Review Panel (ORP) to resolve disputes over operations on the Northeast Corridor. The ORP is no longer necessary because of the provisions for Northeast Corridor coordination included as part of the the new Title V of the Rail Passenger Service Act.

Senate amendment

The Senate amendment made certain other technical and conforming amendments to the Rail Passenger Service Act.

Conference substitute

The Conference substitute adopts certain technical and conforming amendments.

SECTION 1189—EFFECTIVE DATE

House bill

The House bill established October 1, 1981 as the effective date.

Senate amendment

The Senate amendment provided that the provisions of the legislation were to take effect on the date of enactment, except as otherwise provided in the legislation.

Conference substitute

The effective date of the Act shall be October 1, 1981 except as otherwise provided under this Act.

EMPLOYEE PROTECTION

House bill

The House bill limited Amtrak's obligation to make certain labor protection payments to $10 million in fiscal year 1982.

Senate amendment

The Senate amendment made significant changes in the employee protection provisions contained in section 405 of the Rail Passenger Service Act in anticipation of the service discontinuances which would result from the legislation.

Specifically, new subsection (f) would require the Amtrak Board of Directors to elect for its employees one of two labor protection programs. This election would be made, within 60 days of the date of enactment of this Act, between the contractual agreements currently in effect and the labor protection provisions included in this section. Pursuant to new subsections (g) and (h)(1), if this latter program is chosen, Amtrak would be required to give appropriate notice, and the current labor protection contracts would no longer be in effect. This program would provide the exclusive protection.

This new labor protection program as outlined in subsection (h) (2) through (4) would provide that an Amtrak employee deprived of employment would receive from Amtrak a separation allowance based on the years of completed service with Amtrak and with a predecessor rail carrier. Employees with service between 6 and 15 years would be entitled to receive $1,000 per year for each year of completed service over 5 years. Employees with service between 16 and 25 years would be entitled to receive $10,000 plus $2,000 for each year of completed service over 15 years. Employees with service of over 25 years would be entitled to receive $10,000 plus $2,000 for each year of completed half of such separation allowance no later than 30 days after the employee is separated from employment, with the remainder to be paid within 90 days. These payments would be considered taxable earnings for the purposes of the Railroad Unemployment Insurance Act.

The benefits provided under this section would also include moving expenses if the employee is required to make a change in residence within 3 years of the discontinuance in order to retain employment with Amtrak or to obtain employment with another rail carrier. The maximum moving expenses benefit would be $5,000 and would include the costs of moving the employee's family and the costs associated with the sale of a house or with an unexpired lease.

The employee also would be entitled to receive reasonable expenses for new career training if begun within 2 years of a service discontinuance. The maximum benefit for retraining would be $5,000. Finally, the employee would be entitled to a continuation of medical insurance coverage for a period not to exceed 6 months from the date of seperation unless covered in a new position by substantially equivalent group medical coverage. Any dispute over these benefits would be resolved through arbitration procedures agreed to by labor and Amtrak management.

A right of first hire with other rail carriers would be provided for any vacancy in a class or craft in which an employee was employed by Amtrak or a predecessor railroad, unless such vacancy is covered by an mandatory or permissive affirmative action plan. All the rights afforded by this labor protection provision are mandated to be coequal with those afforded by the Milwaukee Railroad Restructing Act and the Rock Island Transition and Employee Assistance Act.

In addition to the labor protective provisions outlined above, section 14 of the bill makes two changes in existing law. First, it would repeal existing section 405(e) which prohibits Amtrak from contracting out for services if it would result in an employee layoff. It is expected that the elimination of this provision would allow Amtrak to contract out for food services, on which it loses at least $50 million a year.

Conference substitute

Neither provision was adopted in the Conference substitute. With respect to the Senate provision allowing contracting out for any service, the Senate recedes to the House to the extent that contracting out is limited to the area of food and beverage service, as provided in Section 1177 of the Conference substitute.

BASIC RAIL PASSENGER SYSTEM

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment repealed Title II of the Rail Passenger Service Act as outdated and no longer necessary. Title II of the Act sets forth the process which led to the designation of the original Amtrak system and the restructuring implemented in the Amtrak Reorganization Act of 1979.

Conference substitute

The Senate recedes to the House on this provision.

PRIVATE SECTOR RAIL SERVICE

House bill

The House bill contained no similar provision.

Senate amendment

The Senate amendment added a new section 812 to the Rail Passenger Service Act encouraging any party to undertake rail passenger service, in view of the anticipated reduction by Amtrak of its system pursuant to this legislation.

Conference substitute

The Senate recedes to the House on this provision.

AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

House bill

The House bill contained no similar provisions.

Senate amendment

The Senate amendment amended Section 504(f) of the Regional Rail Reorganization Act to provide that labor negotiations between Amtrak and former Conrail employees

are to commence 90 days after the date of enactment of this legislation. In this regard, this section would eliminate the provision that if no agreement is reached within a certain time period, these employees retain the work rules which they had at Conrail. This amendment was intended to encourage a renegotiation with these employees to assist Amtrak in assuming total control over the train and engine crews in the Northeast Corridor and to assist Amtrak in reducing some of its labor costs.

Also, this section amended the 3–R Act to permit Amtrak to transfer employees in the Northeast Corridor outside of their seniority districts. Currently, other railroads operating in the Northeast have this option.

Conference substitute

The Senate recedes to the House on these provisions.

MARKETING AND PROMOTION

House bill

The House bill provided that Amtrak should spend at least 1 percent of the revenues from 403(b) service on the advertisement of such service locally.

Senate amendment

The Senate amendment amended section 403(b)(8) of the Rail Passenger Service Act to require Amtrak to dedicate at least 4 percent of the revenues generated on a route subsidized under that section to local advertising and promotion of such service. The current law provides that Amtrak dedicate no more than 5 percent of such purpose.

Conference substitute

The conference substitute in Section 1182 directs Amtrak to dedicate at least 2 percent, but not more than 5 percent, of the revenues generated on a route subsidized under section 403(b) to local advertising and promotion of such service.

TRANSFER OF NORTHEAST CORRIDOR INTERCITY PASSENGER SERVICES TO AMTRAK

House bill

The House bill contained no similar provisions.

Senate amendment

The Senate amendment authorized Amtrak to initiate negotiations with Conrail for the transfer of intercity passenger service operated by Conrail. The section provided that the transfer agreement shall specify at least the service responsibilities to be transferred, the rail properties to be conveyed, and a transfer date not later than one year after enactment of this Act. Further, it required that such transfer agreements be entered into not later than 180 days after the date of enactment.

If Conrail and Amtrak have not signed a transfer agreement within 180 days of enactment, the section directed the Secretary of Transportation to determine within 30 days the terms and conditions of the transfer and the rail properties to be transferred.

If Conrail and Amtrak do not sign an agreement for the transfer, either party could appeal to the Secretary for a determination of the properties to be transferred and the terms and conditions of the transfer.

This section provided that Amtrak shall be deemed with respect to its service functions a rail carrier subject to Federal laws governing the rights of employees in the railroad industry, including the Federal Employers Liability Act, the Railroad Retirement Act, the Railroad Unemployment Insurance Act, and the Federal railroad safety laws.

Conference substitute

The Senate recedes to the House on this provision.

TRANSFER OF NORTHEAST CORRIDOR INTERCITY PASSENGER EMPLOYEES TO AMTRAK

House bill

The House bill contains no similar provision.

Senate amendment

The Senate amendment addressed the transfer of Conrail Northeast corridor passenger employees to Amtrak. It required Conrail and Amtrak to estimate the number of positions (by full-time equivalent positions) devoted to services for which Conrail provides personnel for the operation of Amtrak intercity passenger trains on the Northeast corridor. Conrail was directed to transfer to Amtrak a sufficient number of employees to fill the new Amtrak positions.

This section relieved Conrail of its contractual obligation to provide operating personnel for Amtrak Northeast corridor trains, since the requisite personnel will be permanently transferred to Amtrak under this section.

Conference substitute

The Senate recedes to the House on this provision.

DEFINITIONS RELATING TO NORTHEAST CORRIDOR PROVISIONS

House bill

The House bill contained no similar provision.

Senate amendment

The Senate amendment defined the terms "Amtrak" and "Conrail" for purposes of the transfer provisions included in the Senate bill.

Conference substitute

The Senate recedes to the House on these provisions.

PENALTY FOR UNTIMELY PERFORMANCE

House bill

The House bill contained no similar provision.

Senate amendment

The Senate amendment provided that when a passenger train arrives more than 15 minutes late at a station due to interference by a freight train, the responsible railroad must pay a fine to Amtrak. The fine was to be determined by the Commission.

Conference substitute

The Senate recedes with an amendment included in section 1181 of the Conference substitute stating that contracts between Amtrak and the operating railroads shall include a penalty provision for untimely performance.

SUBTITLE G—MISCELLANEOUS: SECTION 1191—AUTHORIZATION OF APPROPRIATIONS

House bill

The House authorized $40,000,000 for the Local Rail Services Assistance Program in fiscal year 1982, $44,000,000 in fiscal year 1983 and $49,000,000 in fiscal year 1984.

Senate amendment

The Senate bill limited the authorization for the Local Rail Services Administration to $40,000,000 in fiscal year 1982, $44,000,000 in fiscal year 1983 and $48,000,000 in fiscal year 1984.

Conference substitute

The Conference substitute adopts the Senate provision.

SECTION 1192—RAIL FREIGHT ASSISTANCE

House bill

Sec. 6521 of the House bill authorizes funding of $40 million to be made available in FY 1982, $44 million in FY 1983, and $49 million in FY 1984.

Sec. 6522 of the House bill changes program in a number of respects. Federal share is changed from 80 percent to 70 percent. Federal share is changed from 80 percent to 70 percent. Applications must be filed during first 6 months of the fiscal year. To the extent applications are not timely filed, Secretary may distribute funds according to new criteria specified in statute (likelihood of future abandonments, ration of benefits to costs, etc.). On the first day of fiscal year, State shall be entitled to $100,000 for planning purposes. DOT is required to approve or disapprove application within 45 days of filing. State retains contingent interest for Federal share if line is sold after receiving Federal assistance.

Senate amendment

Section 422 of the Senate bill authorizes rail service assistance funding as follows: $40 million for FY 1982; $44 million for FY 1983; and $48 million for FY 1984.

Conference substitute

House recedes on funding and elimination of 1 percent guaranteed funding to all participating states.

SECTION 1193—NORTHEAST CORRIDOR IMPROVEMENT PROJECT

House bill

The House bill provided that not more than $200,000,000 would be authorized for the Northeast Corridor Improvement Project in Fiscal Year 1982 and not more than $185 million in Fiscal Year 1983. In addition, the House Bill stated certain provisions of the existing law which the Secretary has cited as reasons for reducing the scope of the project.

Senate amendment

The Senate amendment authorized $215 million for Fiscal Year 1982 and $185 million for Fiscal Year 1983.

Conference substitute

Senate recedes to House authorization. The Conference Substitute also contains a provision requiring the Secretary to complete the Corridor Improvement Project in accordance with the goals and to the extent funds are authorized under the Railroad Revitalization and Regulatory Reform Act of 1976 as amended.

The Conferees note that the Northeast Corridor is an important part of the national transportation system. It is the Conferees intent that all funds authorized under the Railroad Revitalization and Regulatory Reform Act of 1976 as amended be used to complete project improvements.

SECTION 1194—AUTHORIZATION OF APPROPRIATIONS

House bill

The House bill authorized $34,000,000 for fiscal year 1982, $37,000,000 for fiscal year 1983, and $38,650,000 for fiscal year 1984 for railroad research and development. The House bill also authorized $10,000,000 for the Minority Business Resource Center for each of the fiscal years 1982, 1983, and 1984.

Senate amendment

The Senate amendment authorized $40,000,000 for fiscal year 1982, $44,000,000 for fiscal year 1983 and $48,000,000 for fiscal year 1984 for railroad research and development.

The Senate amendment also authorized $5,000,000 for fiscal year 1982, $5,500,000 for fiscal year 1983, and $6,000,000 for fiscal year 1984 for the Minority Business Resource Center.

Conference substitute

The House recedes to the Senate with an authorization of $40,000,000 for Railroad Research and Development for fiscal year 1932. The Conference substitute contains no authorization for fiscal years 1983 and 1984. The conferees intend that the Federal Railroad Administration shall maintain and continue to operate the Transportation Test Center at Pueblo, Colorado. The Senate recedes to the House on funding for the Minority Business Resource Center.

SECTION 1195—RAILROAD SAFETY

House bill

The House bill authorized $27,650,000 for fiscal year 1982 to carry out the provisions of the Federal Railroad Safety Act of 1970.

Senate amendment

The Senate amendment contained no limitation on the existing authorization.

Conference substitute

The Senate recedes to the House on this provision.

Conferees are encouraged by the high priority the Secretary and the Administrator of the Federal Railroad Administration have attached to the need to improve safety. Recent technological improvements provide opportunities for progress in these areas particularly in the detection of cracks and defects in railroad wheels. The Conferees recommend that up to $2 million of the Department's authorization for rail programs be used for the purpose of implementing new technology to improve rail safety in this regard. The Conferees further recommend that this program be a joint one with the railroad industry. The Secretary shall report to the Commerce Committees of both Houses by February 19, 1982 on the progress of the testing and demonstration program.

SECTION 1196—INTERSTATE COMMERCE COMMISSION

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment authorized $77,900,000 for fiscal year 1982, $80,400,000 for fiscal year 1983, and $80,400,000 for fiscal year 1984.

Conference substitute

The Senate recedes to the House with an authorization of $79,000,000 for fiscal year 1982. The House recedes to the Senate with an authorization of $80,400,000 for each of the fiscal years 1983 and 1984.

SECTION 1197—TRANSPORTATION RESEARCH AND SPECIAL PROGRAMS

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment authorized $30,047,000 for fiscal year 1982, $32,300,000 for fiscal year 1984 for Research and Special Programs Administration.

Conference substitute

The House recedes to the Senate on the authorizations for fiscal years 1982 and 1983. The Senate recedes to the House with an authorization of $33,300,000 for fiscal year 1984.

SECTION 1199A—STATEMENT OF MANAGERS

House bill

No provision.

Senate amendment

No provision.

Conference substitute

The conferees included this provision in the final bill because the extraordinary time pressures of the budget process prevented the conferees from preparing a statement of managers in time to be printed in the Conference Report.

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

Mr. HOLLINGS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Idaho (Mr. MCCLURE), and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

I further announce that, if present and voting, the Senator from Connecticut (Mr. WEICKER), would vote yea.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Montana (Mr. MELCHER), and the Senator from Nebraska (Mr. ZORINSKY), are necessarily absent.

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

The result was announced—yeas 80, nays 14, as follows:

[Rollcall Vote No. 247 Leg.]

YEAS—80

Abdnor	East	Matsunaga
Andrews	Exon	Mattingly
Armstrong	Ford	Mitchell
Baker	Garn	Moynihan
Baucus	Glenn	Murkowski
Bentsen	Gorton	Nickles
Biden	Grassley	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Percy
Bradley	Hawkins	Proxmire
Burdick	Hayakawa	Pryor
Byrd, Harry F., Jr.	Heflin	Quayle
	Heinz	Randolph
Byrd, Robert C.	Helms	Roth
Cannon	Hollings	Rudman
Chafee	Huddleston	Sasser
Chiles	Humphrey	Schmitt
Cochran	Inouye	Simpson
Cohen	Jackson	Specter
D'Amato	Jepsen	Stafford
Danforth	Johnston	Stennis
DeConcini	Kassebaum	Stevens
Denton	Kasten	Symms
Dixon	Laxalt	Thurmond
Dole	Long	Tower
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner

NAYS—14

Cranston	Leahy	Riegle
Dodd	Levin	Sarbanes
Eagleton	Metzenbaum	Tsongas
Hart	Pell	Williams
Kennedy	Pressler	

NOT VOTING—6

Bumpers	McClure	Weicker
Goldwater	Melcher	Zorinsky

So the conference report (on H.R. 3982) was agreed to.

Mr. DOMENICI. I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

H.R. 4331—TO AMEND THE OMNIBUS RECONCILIATION ACT OF 1981 TO RESTORE MINIMUM BENEFITS UNDER THE SOCIAL SECURITY ACT

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized for 10 minutes.

Mr. RIEGLE. Mr. President, I had 15 minutes on the conference report.

The PRESIDING OFFICER. The Chair understands there were 15 minutes, with 10 minutes allocated to the Senator from Michigan and 5 minutes allocated to the Senator from Tennessee. The Senator from Michigan is recognized, but before the Senator from Michigan begins, the Senate will be in order. Senators will clear the aisles. The Senate is not in order. The Senator from Michigan.

Mr. RIEGLE. Mr. President, very shortly I will endeavor to bring to a vote here on the Senate floor the minimum benefit on the social security restoration.

For the benefit of colleagues in the Chamber you should understand what happened today in the House of Representatives. The House by a vote of 404 to 20 voted to restore and maintain the minimum benefit on social security, and to do it by force of law and, in effect, to undo the removal of that benefit contained in the reconciliation bill we just passed here moments ago. Moreover they not only would maintain the minimum benefit for those people who now receive it but they would continue it on into the future for those who would become entitled to receive it in future years.

I stress again the vote was 404 to 20. So both parties in the House are overwhelmingly on record in terms of acting on that today.

Now that bill has come over from the House and is right now here at the desk of the Senate. We have the remainder of 15 minutes to discuss this issue, but I think it is essential that the Senate vote on this issue today. The President, within the last week, has gone to the country on national television to repeat his promise that no one receiving social security benefits today will have those benefits taken away, and we know that the bill that we have just passed takes away the minimum benefit under social security.

The bill the House has passed today, and which now is at the desk here in the Senate would restore that benefit. It would keep the President's promise and it would enable us to go out during the August recess without having the elderly people in this country, the 3 million who receive this benefit, in doubt, wondering what is going to happen to them, wondering why it is that the House of Representatives could take this issue up today and vote on it, but here in the U.S. Senate, despite the fact that we could act on other issues, we just could not find the time or find a way to act on this issue.

Well, clearly, we can act. I think we can afford the 15 minutes that a rollcall vote takes. I know people want to leave town, and I can understand that. But we are not sure now but that we will be in tomorrow, so there is not really a certainty as to what the schedule is for the next hour in any event.

But even if that were a consideration I would hope the Senate would be willing to take this issue and take it off the desk right now within a matter of 15 minutes and vote up or down, and I would hope vote up the restoration of this minimum benefit under social security. At the very least let us not slip quietly out of this Chamber today without facing this issue squarely.

The President has addressed it, the House of Representatives has voted on it today, and we have an opportunity now here to vote on it. I think we have an obligation to do so.

I think we have an obligation to face this issue, and when you go back to your States during the month of August and you talk to people you can tell them you voted and why. But I do not think it is acceptable to go home today and to say, "Well, I am sorry, we just did not have

time. We just could not take the 15 minutes that it took to vote on this issue."

I think we ought to vote on it and I hope the votes are here to keep the President's promise. The votes were there in the House of Representatives today. Their desire now is to put that burden on our back, the Senate being unwilling to face the issue. We should face the issue, and we ought to vote on it right now. We are in position to do so, and shortly I will ask unanimous consent, as I previously indicated, that the House bill, H.R. 4331, be taken up and voted on immediately and we can settle this issue.

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

Mr. DOMENICI. Mr. President, reserving the right to object——

Mr. KENNEDY. The Senator from Michigan has the floor.

The PRESIDING OFFICER. The Senator made unanimous-consent request.

Mr. RIEGLE. I am withholding that. I yield time to the Senator from Massachusetts.

Mr. KENNEDY. I think the Senator from Michigan has made a very important point here. We have just received two messages from the House of Representatives, one on the conference report and one on social security. We acted on the reconciliation proposal here and handled that within a period of 1 hour.

Now, 400 Members of the House of Representatives have said to the elderly people of this country, "We want to say to you we are going to continue the minimum social security payments."

Mr. RIEGLE. Mr. President, could we have order?

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order.

Mr. RIEGLE. This is important.

Mr. KENNEDY. Four hundred Members of the House of Representatives have acted this afternoon and said, "We want to give assurances to the senior citizens of this country that they are going to continue to have the minimum social security payments."

Two pieces of legislation came over here. We have acted on one, and all the Senator from Michigan is asking is that the Senate, in its own good time, act this afternoon on the other which got 400 votes in the House of Representatives, on an issue that the President gave assurance to the American people that there was going to be no reduction.

Now, what can possibly be the objection for the Senate of the United States to vote on that issue? We voted up and down on that issue on three different occasions. We know what the issue is. The House of Representatives has asked for it and has voted for it. I just think for us to go out here at a time of the August recess and go home and try to explain to the elderly people of this country that we cannot act because we are tied up in some parliamentary maneuver here, which will refuse to permit the Senate to go on record on a substantive issue, is irresponsible action.

Now, I would hope that the——

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

The PRESIDING OFFICER. The Senate will be in order.

Mr. KENNEDY. The majority in this body has the power to delay, to postpone, to reject. I think what we are going to see now in just a few minutes is whether the majority is going to delay and postpone and reject a reasonable request that should be honored by any Member of this body, and that is that what we were able to do for the conference on budget reconciliation we should be able to do with respect to the message that came over on the issue of the minimum payment.

So I hope there will not be objection to the request of the Senator from Michigan.

We know what the issue is. We know what the matter is that is before the Senate. The elderly people in this country know what the issue is, and I think we do this body a disservice if we fail to vote either "Yea" or "Nay" on that matter.

Mr. RIEGLE. Mr. President, how much time remains?

The PRESIDING OFFICER. Two minutes and fifty seconds.

Mr. RIEGLE. I yield 30 seconds to the Senator from California.

Mr. CRANSTON. Mr. President, I rise in support of the motion by the distinguished Senator from Michigan (Mr. RIEGLE) which would allow the Senate to proceed immediately to restore the minimum social security benefit.

Mr. President, the House has voted today by an overwhelming margin of 404 to 20 to restore the minimum benefit which would be eliminated for 3 million elderly Americans in the reconciliation conference report. The Senate is now in the position to act in an affirmative fashion to put to rest much of the anguish and fears that have been created in the minds of millions of elderly Americans in the last few months.

Mr. President, Monday night President Reagan told the American people:

> I will not stand by and see those of you who are dependent on social security deprived of your benefits.

Yet, within a few days, he will sign into law a measure that will eliminate the minimum benefit and thereby deprive some of the poorest and most needy social security recipients of their benefits.

Mr. President, over 75 percent of the people who will be affected by elimination of the minimum benefit are elderly women. Most of them are considerably older than 65. Over half are over 70, more than half-million are over 80, and almost 100,000 are over 90. Many of these very elderly social security recipients paid into the social security system at a time when wages were very low and many of them worked in the lowest paying jobs—cooks, laborers, domestic workers.

Mr. President, I think that many Americans are very confused about what this administration intends to do about the social security system. On the one hand, the President has told them he will not stand by and allow those who are dependent upon social security to be deprived of their benefits. Last October, the American people were told by candidate Reagan that the benefits of those now receiving or looking forward to receiving social security must be protected.

Today, they see President Reagan's plan to eliminate the minimum social security benefit received by 3 million elderly Americans being enacted into law. And coming right behind the elimination of minimum benefits is the rest of the Reagan administration's social security benefit reduction proposals—proposals to slash the benefits of millions and millions of Americans who are approaching retirement.

The administration has said it is willing to compromise on the drastic proposal it announced in May.

Yet, what the American people have seen with respect to the first round of social security benefit reductions is an unyielding insistence on total, complete, and retroactive elimination of the minimum benefits. It is important to remember that the votes that have been taken in the Senate on this issue over the past several months have not been whether to eliminate the minimum benefit for future beneficiaries, but whether to take benefits away from elderly individuals who are already receiving these benefits—elderly beneficiaries, in their eighties and nineties who retired 20 and 30 years ago. That is what the fight has been over—and the Reagan administration has not yielded an inch.

Mr. President, if elderly Americans are fearful about the future of the social security system, it is because they have heard the Reagan administration threaten bankruptcy next year, at the same time it has refused to allow the swift passage of legislation—interfund transfer legislation—that would avert any crisis next year.

If elderly Americans are fearful, it is because they have seen President Reagan break promises made by candidate Reagan not to take social security benefits away from current beneficiaries.

If elderly Americans are fearful, it is because they have heard the administration talk about compromises on the drastic proposals it announced in May, but what they see is an unyielding, uncompromising stance on elimination of the minimum benefit.

Mr. President, if President Reagan and the Republicans truly wanted to alleviate the fears of elderly Americans, they would demonstrate it by restoring the minimum benefit for those currently receiving this benefit. If they wanted to eliminate those beneficiaries who receive public pensions or otherwise fail to meet the administration's definition of who should receive the minimum benefit, they would propose legislation targeted at those individuals—not a sweeping elimination of all the individuals affected by the minimum benefit.

Mr. President, we have a unique opportunity to act now to reassure the millions of Americans watching that this Government will not allow social security beneficiaries to suffer, that we will not turn our backs upon 80- and 90-year-old Americans, elderly women receiving minimum social security benefits. To delay,

to give excuses, will send the wrong message to these Americans. Let the Senate speak today with compassion.

Mr. RIEGLE. Mr. President, I yield a minute to the Senator from New York.

Mr. MOYNIHAN. Mr. President, the elemental justice of the issue we are going to present to the Chamber surely commends itself to the Members on both sides of the aisle. We have just adopted an extraordinary reduction in social programs. We are soon to have a tax bill that will provide a third of its unprecedented benefits to 5 percent of the population, and the administration I fear is helping to finance consequent deficits by taking away social security of elderly people, single women, men, who lived their lives at $140 a month, and surely this Chamber will not do that.

It will have an opportunity not to do it in a very short while.

Mr. RIEGLE. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 1 minute and 30 seconds remaining.

Mr. RIEGLE. I yield 30 seconds to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I commend the Senator from Michigan for his leadership in this effort. It is shameful that we ought to stand here talking about whether we are going to reduce the minimum social security benefit of $122 a month at the very same time one of the major disputes facing this Congress has to do with $46 billion in tax cuts for the oil industry.

Mr. President, when I told Budget Director Stockman, several months ago, that I thought that this administration was cruel, inhumane, and heartless, this was precisely the type of issue to which I was addressing myself.

Who are these people, these minimum social security benefit recipients, who deserve to be singled out by this administration for the first actual social security benefit cutbacks in the history of the United States?

Almost a million of them, 941,000 to be precise, are over age 75; 270,000 of them are over age 85; 13,678 of them are over 95.

The only argument we hear from the supporters of eliminating the minimum benefit is that we are somehow eliminating double-dipping. Well, I say to you that if we want to eliminate double-dipping we should begin with someone other than defenseless senior citizens. We should start with high-paid and powerful military retirees and Government retirees who are in the private sector, and not with tens of thousands of people who are 75, 85, and 95 years old.

This Senate must show some compassion here this afternoon. We must show a sense of justice, and we must honor the commitment we have made to our Nation's senior citizens.

Mr. RIEGLE. Mr. President, I yield 30 seconds to the Senator from Maryland.

Mr. SARBANES. Mr. President, I think it is very important to understand that there is a measure at the desk now which, if the Senate will take it up and pass it, will resolve this problem with respect to the minimum social security payment for 3 million people.

It has passed the House earlier today by more than 400 votes. It is at the desk. We can take it up and pass it here and the issue will be put to rest for millions of elderly Americans. We ought not to pass by this opportunity. It would be shameful to do so.

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

The PRESIDING OFFICER. The Senator from Tennessee has 5 minutes remaining.

Mr. DOLE. Mr. President, the social security minimum benefit has been the subject of controversy throughout this reconciliation process. The Senate voted on the issue three times during the last 4 months and today the House of Representatives took its second vote on the subject. The elimination of the minimum benefit has become an emotional issue and the emotion, heightened by Democratic rhetoric, threatens to obscure the facts. Obviously, it is time to focus on those often ignored facts.

First of all, and I think this is significant, there is widespread agreement that the minimum benefit should be eliminated for future recipients. The minimum benefit is largely unearned, consisting of a welfare support add-on to the monthly payment a recipient is entitled to from his or her tax contributions. Under current law, some husbands and wives retiring on the minimum benefit next year, for example, would be eligible for a lifetime retirement income from social security about 300 times greater than the amount they paid into the system.

It is widely recognized that the minimum benefit no longer achieves its original purpose. The minimum benefit was intended to provide retirement income for workers with very low wage histories and for those elderly persons whose employment took place primarily before social security covered their work. Times have changed. Today, people who work their lifetimes under social security at low wages—the minimum wage or even half the minimum wage—receive a benefit based on the regular benefit formula that exceeds the minimum benefit.

Elderly poor people actually receive no extra income from the minimum benefit because their Federal assistance payments from SSI are reduced dollar for dollar on account of other sources of income.

The result is that, today, the minimum benefit provides a windfall gain to people with short work histories under social security—such as those with long periods of Government employment. This has been well documented in separate studies by the CBO and GAO. Based on GAO data, it is estimated that 450,000 minimum benefit recipients also receive Federal civil service pensions which average $16,000 annually. Combined with the minimum social security benefit, such retired Federal employees have annual incomes over $18,000.

It is also estimated that some 50,000 minimum beneficiaries have retired spouses who receive $18,500 a year in Federal pension income. The average annual retirement income for such a couple exceeds $21,000.

Yet another group of minimum benefit recipients, approximately 300,000, have working spouses. According to GAO, the combined income for these couples—earnings plus the minimum benefit—is at least $23,000 annually.

To sum up, the relevant data indicate that up to 800,000 current minimum beneficiaries have total incomes which, on the average, exceed $20,000. Certainly, few would consider this a poverty level income.

The only real controversy surrounds the elimination of the minimum benefit for those now receiving it—whether they too should have their benefits recalculated to reflect actual earnings in covered employment. The concern is whether or not there would be a large group of elderly poor adversely affected by this change. This, of course, is no one's intention. Our investigations to date suggest that this would not occur. Anyone who is elderly and poor, or would become poor as a result of eliminating the minimum benefit, is eligible to receive SSI.

For them, Federal assistance payments would rise dollar for dollar to offset any loss of social security income. The available evidence suggests that more than a million of the 3 million minimum benefit recipients will be protected from a decline in their incomes by SSI. The incomes of another million beneficiaries are protected by the fact that they are entitled to more than one social security benefit. In the event one benefit is reduced, the other one is there to make up the difference nearly dollar for dollar.

Two special provisions contained in the reconciliation bill make it even more certain that the elderly poor will not be adversely affected. Under a provision added by the Finance Committee, anyone 60 to 64 who meets the SSI eligibility requirements, would be eligible for a special SSI payment even though they are not yet 65. To insure that they experience no reduction in income, the amount of this payment would be equal to the difference between the minimum benefit they had been receiving and their newly calculated benefit. This means that no minimum beneficiaries 60 or older who are poor must experience a loss of income.

The reconciliation bill also includes a provision that instructs the Social Security Administration to give early notice to recipients who may experience a reduction in benefits. This notice will advise recipients to contact their local social security offices for information on new benefit amounts and eligibility for SSI. This is intended to provide ample time for recipients to contact these offices and be informed of the availability of SSI.

The proposal to eliminate the minimum benefit has been carefully studied in the Finance Committee since it was first recommended by the President in February. For the committee, the facts spoke for themselves, and we adopted the proposal, as did the Senate and the House in their respective reconciliation bills.

To be certain that no unintended side-effects or inequities will be created by eliminating the minimum benefit, we will continue to study the provision during the August recess and hold hearings on the subject in September. If it becomes apparent that the truly needy will be inadvertently harmed by the provision, it will be modified when the Finance Committee meets again.

Since the elimination does not become effective until December, for new recipients, and until March, for current recipients, we will have the opportunity to refine elements of the current provision, where necessary, at the same time we deal with the very serious social security financing problem.

Mr. BAKER. One of the burdens of leadership in the Senate on both sides of the aisle is to attempt to act in a way that serves the ultimate best interests not only of the Members of this community of Senators, but of this Nation.

In the course of the discharge of that responsibility, it is often necessary to meet with Members on both sides of the aisle to try to make arrangements and agreements on how difficult, tedious, and emotional issues will be dealt with.

A good part of my day yesterday was spent in such a meeting with the distinguished Speaker of the House of Representatives; the chairman of the Rules Committee of the House of Representatives, Congressman RICHARD BOLLING; the majority leader of the House of Representatives; the minority leader of the House of Representatives; the minority whip; the chairman of the Budget Committee, and others. Because, at that time, we were on notice that there would be an effort in the Rules Committee of the House of Representatives to attach this measure to the reconciliation conference report as an amendment to be voted on together and that the rule would not have permitted that conference report to have been voted on and dealt with by this Congress before the August recess unless it included this provision.

I must say, in respect to the Speaker of the House and to Congressman BOLLING and others, that we mutually agreed that that should not be the result; that the Congress should act on this measure and do so in a rational and reasonable way. It was decided that there would be a rule in the House today which would provide for two measures instead of one, the conference report and a separate bill dealing with social security minimum benefits.

But it was also clearly understood in that conversation that when that bill—not an amendment to the conference report, not a concurrent resolution, not anything else—but when that bill reached the Senate that it would, indeed, be referred to committee.

All I have said has no bearing on the rights of the Senator from Michigan or the Senator from Massachusetts or the Senator from Ohio or the Senator from California or the Senator from New York. It is to simply tell you the negotiations that went on by the leadership as trustees of the responsibility to operate this body.

Now, if I understand what the distinguished Senator from Michigan has said, he intends to try to produce a rollcall on this issue. He knows, because I have told him, he knows, because it was made clear in a meeting on yesterday, that there would be a unanimous-consent request to proceed to the immediate consideration of this measure and that I would object to it, not because I think there is no need to address the issue of minimum social security benefits, but because this is the way we must transact the business of the Senate in an orderly way and address this question on some basis that bears rational relationship to the issues involved—by referring it to committee.

Mr. President, I do not know what the Senator has in mind. Presumably, he is going to make his unanimous-consent request, and certainly I will object to it. But if he attempts to produce a rollcall vote on this issue or an issue related to it, may I simply suggest to my friend that he has every right to do that. But my friend is also at variance with what Members on both sides of this aisle have agreed was the orderly procedure for trying to dispose of this issue at this time and for the time being.

Mr. President, I have said, the Presi- has said, Congressman MICHEL has said, many have said, and I now repeat, that this issue must be addressed—the question of minimum social security benefits. There are men and women in great need who receive these benefits, but there are others who are not in need and who are a burden on the system unjustly. It is necessary that we address that question as carefully as the system of the Senate will permit.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I will say in the time remaining to me that if the House can act today, the Senate can act today. I think the question here is whether 3 million elderly Americans are worth 15 minutes worth of time that it takes for a rollcall vote on this floor. That is what it takes to vote here.

I plead with my Republican friend to reconsider whatever agreements were made yesterday. Staying here for 15 minutes to vote on this issue is not going to inconvenience anybody. I think it is wrong to leave those 3 million people out there worrying for the next month while we are off on vacation. I think it is wrong. We ought to vote on it.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the bill that is at the desk, H.R. 4331, be called up now and voted on at this time.

Mr. BAKER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MOYNIHAN addressed the Chair.

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

Mr. President, I withhold the request in deference to the Senator from New York.

Mr. MOYNIHAN. Mr. President, on behalf of Senators KENNEDY, RIEGLE, and myself, I move that the Senate proceed to the immediate consideration of H.R. 4331, the bill to restore the minimum benefit under social security.

The PRESIDING OFFICER. Under rule XIV, paragraph 3, no bill from the House of Representatives may be considered or debated on the day it is received unless by unanimous consent.

Mr. MOYNIHAN. Mr. President, is that the ruling of the Chair?

The PRESIDING OFFICER. Is there objection to the request of the Senator?

Mr. BAKER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute.

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

Mr. ROBERT C. BYRD. Mr. President, I recognize that my colleagues want a vote on this measure. I think there ought to be a vote on this measure. I support the measure.

But there are two considerations that I am compelled to mention. One, I asked the distinguished majority leader, I believe it was on yesterday, as to whether or not there would be anything else that would be be called up before the August recess, other than the tax conference report, the reconciliation conference report, and the HUD appropriation bill. He assured me there would not be.

Now, a lot of Senators may have made their plans on the basis of that promise.

Second, the motion has been ruled by the Chair to be out of order. As one who has acted as the majority leader of this body for 4 years, I have to maintain that it is clearly out of order. That is what I would maintain if I were majority leader. I cannot maintain anything else under the present circumstances.

I would hope that we could avoid this controversial vote at this time, which is not going to accurately reveal the sentiments of at least one Senator here. Myself—I can only speak for myself—I support the measure. But I cannot vote to overrule the Chair in this circumstance when the motion is clearly, and beyond any doubt, out of order.

Mr. President, I ask the distinguished majority leader if he would—and I know before I ask the question that it is within the rights of any Senator under rule XIV to initiate action that will force this bill on the calendar after an adjournment over to a new legislative day—I wonder if the distinguished majority leader would consider letting this bill go to the calendar and setting a date next Tuesday or next Monday, when we could move to take up the bill and have a vote on it so that my colleagues would get the vote that they want and we would not have to prostitute the rules of the Senate in order to attempt to force a vote at this time, which is not going to accurately reveal at least one Senator's sentiments on this question. If the distinguished majority leader could find it in his heart to do that, I would personally very much appreciate it.

Mr. BAKER. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, as much as I would like to accommodate the minority leader, I cannot. I recited earlier the long and difficult negotiations undertaken yesterday on how this matter would be handled in both Houses. If for no other reason than that I feel obligated to abide by the arrangements that were worked out at that time, I would not be prepared now to agree by unanimous consent to proceed now or to set a time certain next week.

What I am prepared to say is that if this goes to committee, as I indicated yesterday in our meetings and have said today and repeat now, when this goes to committee I am confident that there will be action on it. I will insist. But, Mr. President, this, I believe, is an effort to force a vote on a collateral issue for the sake of having a vote. I simply cannot agree to that, Mr. President.

I must tell my friend, the minority leader, with great reluctance that I feel obligated to stand by commitments I made in this body and in the other body yesterday. I cannot do that.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 1 additional minute.

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

Mr. ROBERT C. BYRD. Mr. President, there is another way of going about this, even though I am sure we will be unsuccessful in the effort—as indeed it may be unsuccessful in the long run in the pending approach. I know that the distinguished majority leader and all of my colleagues will understand if I should later resort to another approach by which at least the Senate would have an opportunity to vote on the measure, although indirectly.

Mr. MOYNIHAN. Mr. President, with great reluctance, I cannot accede to the recent request of the majority and minority leaders. They know the respect in which they are held by this Member and all Members.

I respectfully appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. The Chair has not ruled. The Chair read rule XIV for the benefit of the Members.

Mr. MOYNIHAN. Was that the ruling of the Chair? Perhaps the Chair will be kind enough to inform the Senator.

The PRESIDING OFFICER. The Chair previously stated under rule XIV, paragraph 3, that no bill from the House of Representatives shall be considered or debated on the day it is received unless by unanimous consent.

The Chair inquired if there was objection and an objection was lodged.

Mr. MOYNIHAN. Mr. President, I move the immediate consideration of the matter and was informed by the Chair that we could not proceed. There was a ruling by the Chair and I ask that the ruling be appealed. That is not an unusual proceeding. I ask for the yeas and nays.

The PRESIDING OFFICER. Does the Senator claim that his motion is in order?

Mr. MOYNIHAN. I claim that my motion is in order.

The PRESIDING OFFICER. The Chair rules that the motion of the Senator is not in order.

Mr. MOYNIHAN. I respectfully appeal the ruling of the Chair and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question, is shall the decision of the Chair stand as the judgment of the Senate? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Maine (Mr. COHEN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Idaho (Mr. MCCLURE) and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MELCHER), the Senator from Maine (Mr. MITCHELL), the Senator from Tennessee (Mr. SASSER), and the Senator from Nebraska (Mr. ZORINSKY) are necessarily absent.

Mr. INOUYE (after having voted in the affirmative). Mr. President, on this vote, I voted "yea." If the distinguished Senator from Tennessee (Mr. SASSER) were here, he would vote "nay." Therefore, I withdraw my vote.

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

The result was announced—yeas 57, nays 30, as follows:

[Rollcall Vote No. 248 Leg.]

YEAS—57

Abdnor	Grassley	Packwood
Andrews	Hart	Percy
Armstrong	Hatch	Pressler
Baker	Hatfield	Proxmire
Boren	Hawkins	Quayle
Boschwitz	Hayakawa	Roth
Byrd, Harry F., Jr.	Heinz	Rudman
Byrd, Robert C.	Helms	Schmitt
Chafee	Humphrey	Simpson
Cochran	Jepsen	Specter
D'Amato	Kassebaum	Stafford
Danforth	Kasten	Stennis
Denton	Laxalt	Stevens
Dole	Long	Symms
Domenici	Lugar	Thurmond
Durenberger	Mathias	Tower
East	Mattingly	Wallop
Garn	Murkowski	Warner
Gorton	Nickles	
	Nunn	

NAYS—30

Baucus	Exon	Matsunaga
Bentsen	Ford	Metzenbaum
Biden	Glenn	Moynihan
Bradley	Heflin	Pell
Chiles	Huddleston	Pryor
Cranston	Jackson	Randolph
DeConcini	Johnston	Riegle
Dixon	Kennedy	Sarbanes
Dodd	Leahy	Tsongas
Eagleton	Levin	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Inouye, for.

NOT VOTING—12

Bumpers	Goldwater	Mitchell
Burdick	Hollings	Sasser
Cannon	McClure	Weicker
Cohen	Melcher	Zorinsky

So the ruling of the Chair was sustained as the judgment of the Senate.

Mr. ROBERT C. BYRD. Mr. President, I shall not detain the Senate for very long. I wish to make clear for the record—because I am hearing various questions that are being asked and I think quite properly so—that I was not a participant in the meeting to which the distinguished majority leader referred a moment ago during which certain agreements were reached, and I only wish to say that for the record.

Mr. BAKER. Mr. President, if the minority leader will yield to me, I think he will acknowledge that I did not include his name among them.

Mr. ROBERT C. BYRD. No, not at all. The majority leader did not, nor did he so imply as much.

Mr. President, there is a procedure whereby this measure can be voted on. I do not have any illusions that it will be voted on tonight or in the very near future—with respect to this particular bill at least. But under rule XIV the measure can be put on the calendar and once there, and with passage of two new legislative days, a motion can be made to proceed to this measure.

Of course, if a majority of Senators would vote to uphold such a motion to proceed then the matter would be before the Senate. That is an orderly way in which to proceed.

I do not think I will succeed but at least I have the conviction that I should try.

So, Mr. President, I ask that the clerk proceed to read the bill for the first time.

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

The assistant legislative clerk read as follows:

A bill (H.R. 4341), to amendment the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act.

Mr. ROBERT C. BYRD. Mr. President. I ask unanimous consent that the Senate proceed to the second reading of the bill.

THE PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. BAKER. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I make the next motion, with an apology to the distinguished majority leader. I know that I will fail. I always maintained as majority leader that it is the majority leader who has the responsibility to make the motion to adjourn, but it is within the right of any Senator to make that motion, and during my tenure as majority leader and during my tenure as majority whip there were Senators from time to time on the other side who made the motion to adjourn. My argument always was that that is the majority party's prerogative and the majority leader's prerogative, but it is not necessarily a right that reposes only in the majority leader.

So I am going to make that motion to adjourn for the simple reason that by adjourning, if a majority of Senators support the motion, the Senate will then

be in a new legislative day when it resumes its meeting and in that new legislative day under rule XIV the measure, which I have just asked for second reading on, would get that second reading automatically at the close of morning business and then, with the proper objection to further consideration of the measure, it would automatically go on the calendar and then, of course, with another adjournment over in a subsequent calendar day it would be in order to move to take up the measure from the calendar.

I have no illusions that I have the votes to do this, but at least it is a procedure whereby the Senate can, in an orderly way and under the rules, get to a vote on the measure.

Mr. President, the Parliamentarian has pointed out to me that this is the 31st day of July and that it is necessary to adopt a certain concurrent resolution at this time.

So if the distinguished majority leader wishes to take up this concurrent resolution now, I yield the floor for that purpose.

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

The PRESIDING OFFICER. Without objection, it so ordered.

The majority leader is recognized.

Mr. BAKER. Mr. President, of course, the minority leader is right, and we must pass House Concurrent Resolution 164 before we can proceed further.

But in all candor, I must say that the only thing that I can see that we would do if we make an issue out of this is perhaps create another rollcall vote. I have no desire to do that. I must tell you in all frankness I had no desire to create the last one.

HOUSE CONCURRENT RESOLUTION 164—ADJOURNMENT OF THE TWO HOUSES OF CONGRESS

Mr. BAKER, Mr. President, so that we are in a position to proceed as the minority leader has indicated, I am prepared now to ask the Chair to lay before the Senate House Concurrent Resolution 164, a message from the House of Representatives.

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

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 164), relative to adjournment to a date certain during the remainder of the 97th Congress.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

Mr. SARBANES. Mr. President, could we have the resolution read so we know what is in it or will the majority leader tell us what is in it?

Mr. BAKER. It is the concurrent resolution initiated by the House of Representatives that makes it possible for us to continue this session past a certain date set in the statute that otherwise we could not go beyond.

Mr. SARBANES. I understand that. What is the date and what are the conditions under which we are doing this?

The PRESIDING OFFICER. The clerk will state the resolution.

The assistant legislative clerk read as follows:

Resolved by the House of Representatives (the Senate concurring), That notwithstanding the provisions of section 132(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 198), as amended by section 461 of the Legislative Reorganization Act of 1970 (Public Law 91–510; 84 Stat. 1193), the House of Representatives and the Senate shall not adjourn for a period in excess of three days, or adjourn sine die, until both Houses of Congress have adopted a concurrent resolution providing either for an adjournment (in excess of three days) to a day certain, or for adjournment sine die.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in adjournment for 5 minutes.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, if the minority leader will withhold that, has the Chair put the question on the House concurrent resolution?

The PRESIDING OFFICER. The Chair has not acted on this pending matter.

Mr. ROBERT C. BYRD. I beg the Chair's pardon and I beg the majority leader's pardon.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 164) was considered and agreed to.

MOTION TO ADJOURN FOR 1 MINUTE

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in adjournment for 1 minute.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Maine (Mr. COHEN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Iowa (Mr. GRASSLEY), the Senator from Idaho (Mr. MCCLURE), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr MELCHER), the Senator from Maine (Mr. MITCHELL), the Senator from Tennessee (Mr. SASSER), and the Senator from Nebraska (Mr. ZORINSKY) are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee (Mr. SASSER) would vote "yea."

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

The result was announced—yeas 37, nays 49, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—37

Baucus	Ford	Metzenbaum
Bentsen	Glenn	Moynihan
Biden	Hart	Nunn
Boren	Heflin	Pell
Bradley	Huddleston	Pryor
Byrd, Robert C.	Inouye	Randolph
Chiles	Jackson	Riegle
Cranston	Johnston	Sarbanes
DeConcini	Kennedy	Stennis
Dixon	Leahy	Tsongas
Dodd	Levin	Williams
Eagleton	Long	
Exon	Matsunaga	

NAYS—49

Abdnor	Gorton	Packwood
Andrews	Hatch	Percy
Armstrong	Hatfield	Pressler
Baker	Hawkins	Proxmire
Boschwitz	Hayakawa	Quayle
Byrd, Harry F., Jr.	Heinz	Roth
Chafee	Helms	Rudman
Cochran	Humphrey	Schmitt
D'Amato	Jepsen	Simpson
Danforth	Kassebaum	Stafford
Denton	Kasten	Stevens
Dole	Laxalt	Symms
Domenici	Lugar	Thurmond
Durenberger	Mathias	Tower
East	Mattingly	Wallop
Garn	Murkowski	Warner
	Nickles	

NOT VOTING—14

Bumpers	Grassley	Sasser
Burdick	Hollings	Specter
Cannon	McClure	Weicker
Cohen	Melcher	Zorinsky
Goldwater	Mitchell	

So Mr. ROBERT C. BYRD's motion to adjourn for 1 minute was rejected.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. ROBERT C. BYRD. Mr. President, the motion to adjourn having failed, is it not true that under rule XIV, the bill, H.R. 4331, will be placed on the calendar at the close of morning business on the next new legislative day, which will require an adjournment, once the second reading has occurred, which will be automatic, and objection to any further proceedings has been placed thereto?

The PRESIDING OFFICER. The Senator is correct. The Chair will state for the RECORD that the bill, having been read the first time, shall remain at the desk pending the second reading the next legislative day.

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

Then once on the calendar, of course, it is a candidate for a motion to proceed to its consideration.

The PRESIDING OFFICER. Once it has been on the calendar for 1 legislative day.

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

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, there is

no doubt that, when the time comes and we have completed our work, there will be, indeed, a resolution of adjournment. It is my fond hope that it will occur very fast and we can get on with the business at hand.

At that time, Mr. President, there will be an opportunity for Members to consider the future course of action that they may wish to proceed or pursue on both sides of the aisle on this measure. After we have returned from the recess, and after the requirements of rule XIV and the other Rules of the Senate are complied with, of course the minority leader can move to take up the measure on the calendar. But perhaps by that time the Senate Finance Committee may have other things to say on this subject, as well.

I would only—and this is not meant to reopen the argument or to prolong the debate—I would only reiterate what I began with weeks ago. I suggested in public and on the floor that this issue should be addressed, but not in reconciliation. It will be addressed. It will be addressed in committee.

I assure Members on both sides of the aisle that I do not intend to see that this issue is laid aside, but that it is dealt with. I also must say, Mr. President, I do not intend to agree to consider this motion.

Mr. President, there are two other matters that I would like to take up. I would like to invite the attention of the minority leader, if I may, to another House message which is at the desk, House Concurrent Resolution 167, concerning the correction of the enrollment of H.R. 3982, the budget reconciliation bill.

If the distinguished minority leader has no objection, I would like to proceed to dispose of that remnant of the bill.

Mr. ROBERT C. BYRD. Mr. President, that is the resolution making technical corrections, I believe, to which Senator HOLLINGS referred in his discussions with me and I believe in the presence of Mr. DOMENICI. Am I correct?

Mr. DOMENICI. The Senator is correct.

Mr. ROBERT C. BYRD. There is no objection.

Mr. DOMENICI. It has been checked out with minority and majority staffs on both sides of the aisle. It had already been so cleared on the House side. That is what the resolution does. Technical errors in the reconciliation are cured.

Mr. ROBERT C. BYRD. May I say further, Mr. President, that the staff lady to whom Mr. HOLLINGS assigned the checking out of those corrections has reported to me and I have no objection. I know that I am proceeding in accordance with the wishes of Mr. HOLLINGS, who is the ranking manager on this side.

Mr. BAKER. Mr. President, I thank the minority leader and I thank the distinguished chairman of the Budget Committee.

HOUSE CONCURRENT RESOLUTION 167—DIRECTING CORRECTIONS TO BE MADE IN THE ENROLLMENT OF H.R. 3982

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives.

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

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 167) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 3982.

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

There being no objection, the concurrent resolution (H. Con. Res. 167) was considered and agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, there is one other matter that has been cleared for action. After the disposition of this matter, it is my intention to ask the Senate to recess for approximately an hour while we await further progress reports from the conferees on the tax bill. I understand the distinguished chairman of the Foreign Relations Committee has a resolution that has been cleared and that he wishes to proceed with at this time.

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

FOOD EMERGENCY IN POLAND—SENATE RESOLUTION 201

Mr. PERCY. Mr. President, I send to the desk on behalf of myself, Senators TOWER, GOLDWATER, BIDEN, MATHIAS, DIXON, BOSCHWITZ, CRANSTON, ZORINSKY, KENNEDY, PELL, SARBANES, TSONGAS, and LUGAR, a resolution relating to the food emergency in Poland and ask for its immediate consideration.

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

The legislative clerk read as follows:

A resolution (S. Res. 201) relating to the food emergency in Poland.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

Mr. PERCY. Mr. President, all of us have been impressed by the truly historic renewal that has been taking place in Poland for the last year. The Polish people have shown great discipline and restraint, as well as great political creativity, in this process of evolving a more responsive partnership between workers and government. Most recently, we have admired the calm and order in which the extraordinary party congress introduced substantial changes into its personnel and procedures.

Now that a new party central committee and leadership have been chosen, it is essential that Poland be able to turn to its considerable short and longer term economic predicament, and concentrate on building a productive economy.

A severe food emergency, however, especially difficult in the large urban centers and among older people and large families, threatens to disrupt that process. It could also lead quickly to further instability, with potentially grave political consequences. Foodstuffs are in extremely short supply, and the government has just been forced to cut the already meager monthly meat ration—obtained, if at all, by nights and days in lines—by another 20 percent.

This year's harvest promises to be a good one for the first time in 8 years. But there will be a critical situation for the next couple of months before that harvest is in, and before the broiling chickens, that our $50 million worth of corn is destined to feed this fall, will be available.

American Catholic Relief, CARE, and other private agencies are now stepping into this gap with programs designed to put basic foodstuffs directly into the hands of Polish citizens over the next few months. This is a commendable program that deserves our full support and that of the American people.

I am today introducing a sense-of-the-Senate resolution which commends our private relief agencies and encourages public support for emergency food for Poland. It further urges the President to continue to try to be responsive to Poland's emergency food needs, including expediting purchase of surplus U.S. perishable agricultural products by private American relief agencies for shipment to Poland. Finally, it urges the Western and Eastern Europeans to do their fair share in this effort.

I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the resolution.

● Mr. D'AMATO. Mr. President, this morning the news from Poland was of increased demonstrations and greater threats of strikes and slowdowns. The Polish economy is on the verge of collapse as food prices skyrocket and rations are inevitably reduced.

The situation as it exists now is similar, if not parallel, to that which existed in 1980 and 1976. Each time spendable income substantially decreases, rioting followed. The austerity program proposed by the Polish Government basically entails a reduction in real income and an increase in prices. This is aggravated by a scarcity of food. Shortage of grain is a large part of this food supply problem. The 400,000 metric tons of corn scheduled to be sent by the administration, as part of the food relief effort, is essential to the Polish poultry industry; a vital source of protein.

The Polish austerity program, it appears, will bring about results little different from that which happened in 1956, 1970, 1976, and 1980. The workers will strike and the economy will slide further. This time there is infinitely more at stake. What was achieved by the party congress at its recent session is a very fragile experiment in democratic expression. The democratic movement cannot be left to dissolve under the weight of a disintegrating economy.

If we, as the world's greatest supporter of the democratic process, stand by and do little or nothing, then Soviet domination will be reffirmed. We cannot expect the Soviets to stand by as the economy

crumbles and possible rioting ensues. Poland could revert to a state of repression: Solidarity and the gains they forged will exist no more.

The food relief effort is one way to support the gains made by the Poles in the extraordinary Polish Party Congress. We must help improve the economic situation as best we can to support the basic principles of freedom and democracy that were a result of the party congress. Cooperation and peaceful negotiations between worker and government should continue and a reviving economy is a necessary predicate for that progress.

Mr. President, I was going to offer my own resolution concerning the fragile balance that now exists. In light of this resolution, I would be happy to join my colleague, Mr. PERCY, as a cosponsor, and urge the rest of my colleagues to show their support for the Polish nation.●

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 201) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

SENATE RESOLUTION 201

Whereas the American people have expressed widespread admiration for the creativity combined with restraint and discipline with which the Polish people have been evolving a mutually more responsive relationship between workers and government;

Whereas it is now essential that the Polish people be free to concentrate on rebuilding a productive economy;

Whereas acute food shortages, particularly in large Polish urban centers, are creating a potentially destabilizing atmosphere between now and the time the harvest comes in and poultry protein, assisted by the recent U.S. sale of corn feed, will be available: Now, therefore, be it

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

(1) private relief agencies now embarking on a program of emergency foodstuffs for Poland are to be commended for their initiative, and the American people encouraged to support this worthwhile humanitarian effort; and

(2) the United States Senate supports the President in his efforts to be responsive to the Polish food emergency, and urges a continuation of this stance, including expediting purchase of U.S. surplus agricultural products by private American relief agencies for shipment to Poland.

(3) the United States Senate urges European governments and peoples, Western and Eastern, to further assist in helping to relieve the Polish food emergency.

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

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

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I indicated earlier that at this point the Senate would recess, but since that time I have learned that there would be a requirement for time so that Senators could speak.

Instead of recessing, I now ask that there be a brief period for the transaction of routine morning business to extend not past the hour of 8 p.m., and that Senators may speak therein.

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

THE HYATT HOTEL TRAGEDY IN KANSAS CITY

Mr. EAGLETON. Mr. President, it is not often these days that one can point with pride to the operations of a Federal agency. I am pleased to have that opportunity today in commending the superb cooperation of the National Bureau of Standards and its center for building technology in the aftermath of the recent Hyatt Hotel tragedy in Kansas City.

On the Monday morning following that accident, my office contacted the Bureau to inquire what assistance might be available to help the city determine the cause of the skywalk's collapse. I have to confess that I was taken back by the almost instant offer made by the Bureau Director—Dr. Ernest Ambler, and his Deputy Director Dr. Richard Wright—to dispatch an investigative team to Kansas City that same afternoon and to prepare an in-depth public report on the most probable cause of the tragedy.

It was a remarkable experience not to hear the usual bureaucratic explanations of how the decision would have to percolate through a maze of clearances before an answer could be given. The Bureau had one interest foremost in mind, and that was to be of immediate assistance to a distressed city and they accomplished that in exemplary fashion.

I am happy to report Kansas City's fine Mayor Richard Berkley recognized the value of bringing in an independent expert group to make an impartial, public investigation of the accident. He welcomed the Bureau's offer and that investigation is now underway.

Mr. President, when the catalog of Government inefficiency and unresponsiveness is next recited in this Chamber, I hope this example of the Bureau's public service will be remembered.

I ask unanimous consent that a recent editorial from the Kansas City Star be printed in full at this point.

[From the Kansas City Star, July 30, 1981]

THE FEDS CAN PLAY A VERY USEFUL ROLE

When a city—take Kansas City, for instance—casts about looking for someone, some agency, some expertise, to do a disinterested professional study of a catastrophe of large and complex dimensions—take the Hyatt Regency tragedy, for example—where does it finally turn? It turns to the federal government—in the instance cited, to the Center for Building Technology of the National Bureau of Standards.

There, one rightfully expects, a fair and objective study can be done, and answers much needed and sought in the interest of the public can be found.

The words "federal government" have all the status of a curse in some circles these days, but right now in Kansas City they mean something else: the only place the public can focus its hope of getting answers. The example surely applies elsewhere, for other times and circumstances.

SECRETARY OF THE INTERIOR JAMES WATT

Mr. SYMMS. Mr. President, in my opinion, one of President Reagan's finest Cabinet officers is Mr. Jim Watt.

I have not been suprised at the intensity of the attack on Secretary of the Interior James Watt because of his dedication to private property. The charges that have been leveled against him are truly incredible, both substantively and emotionally. As a Senator who represents a State in which the majority landlord is Uncle Sam, I have seen emotional reactions to public figures, but few which have reached the depths of the charges against Secretary Watt.

It is not the intention of this Senator to stand before this body to address each of the charges individually. It is becoming increasingly clear to this Senator, however, that it is a no-growth, preservationist policy that has prompted the rancor, which is directed as much to an unwillingness to accept the changes mandated by the last election as to anything truly substantive.

The Secretary is bound by the laws of the land, as they are passed by Congress, and interpreted by the administration. In the 6 months of his term, Secretary Watt has not once proposed the repeal of the environmental laws that protect our public lands. There is always a divergence of opinion of how the laws should be interpreted, but there is nothing new or shocking about that divergence, or even about the changes that take place as a result of a national election.

The law says what it says, but the Senator and Congressman who voted for a particular law will undoubtedly have different ideas about what that law actually meant. No one can rightly say who is right in their interpretation, but this Senator's legislative experience in both bodies of Congress have taught me that legislation is never precise, it is always fluid and changing. And those changes are the inevitable result of this Republic, which makes major changes in its leadership through the elective process.

I am greatly disturbed to see the changes envisioned by leaders such as Secretary Watt labeled as extreme. In fact, they are merely interpretations of the same laws which were viewed and upheld by his predecessor. The difference is that I hear Secretary Watt saying to his bureaucrats, and to the Nation as a whole, in effect, that Congress has passed good laws. They are perfectly adequate and they will both protect the environment and allow for the development so necessary to our economic health. Those laws will be administered, in accordance with the intent of Congress, which is often at odds with the intent of bureaucrats.

In my years in Congress, I have supported some of the laws that form our environmental policy in this Nation. And to this Senator, the interpretations handed down by the previous administration were the truly extreme interpretations of those laws. It was Secretary Andrus and President Carter that adopted the extreme philosophy of no use and no growth of our natural resources. And to the opinion making strata of society that were so accustomed to the policies of the previous administration, some of the policies of Secretary Watt and Ronald Reagan may indeed appear to be a radical departure from the past.

And it is that strata that have orchestrated the hardcore criticism which is leveled at Secretary Watt—the strata of society that favor no growth and managed scarcity of natural resources for the purpose of achieving socioeconomic change. That approach has no place in natural resource management, and certainly has no place when it is camoflaged with the ludicrous charges that accompany the criticisms.

Secretary Watt is attempting to implement a wise, balanced policy that takes into account economic as well as ecological concerns as they are mandated by Congress in the volumes of environmental law that direct the use of our public lands. This policy, clearly a departure from the philosophies and interpretations of the Carter administration, should be welcomed and encouraged for the continued environmental and economic health of this great Nation.

I can tell you this, Mr. President, Jim Watt is doing what this Senator wants him to do, and he is doing what the vast majority of my constituents want him to do. The fact of the matter is that the Department of the Interior, under Cecil Andrus, who was the Governor of my State, had run away with the law. It was, in fact, a law unto itself, ignoring the intent of Congress. The Department of the Interior under Jim Watt is paying careful attention to the intent of Congress, and is dutifully trying to carry out that congressional mandate. That is what Ronald Reagan was elected to do, and that is what he chose Jim Watt to help him do. I hope he will keep on.

Mr. President, I will have more to say on this subject later, and perhaps some specific responses to some of the specific issues raised against my friend, Jim Watt, but for the moment, I yield the floor.

TRIBUTE TO FRED KROLL

Mr. KENNEDY. Mr. President, it was with a deep sense of sorrow and personal loss that I learned of the death of Fred Kroll, president of the Brotherhood of Railway and Airline Clerks, who passed away yesterday at age 45 after a long and courageous struggle with leukemia.

Fred Kroll was not only an energetic, forceful, and dynamic union president, he was widely acknowledged to be one of the most promising young leaders in America.

He was also a close personal friend whose advice and perspective on national transportation issues were of great value to me and to many of my colleagues in the Senate.

He had a sure grasp of the governmental process and of the problems facing our country. He was a man of vision whose extraordinary personality made him one of the fastest-rising young labor leaders in the country. Fred Kroll was first elected to union office in 1961 as chairman of BRAC Local 587 in Philadelphia. He moved up through union positions with the Penn Central Railroad and became International vice president in 1975.

In 1978, he was elected vice president of the AFL–CIO, and became the youngest person ever to be a member of the Labor Federation's executive council. Earlier this year, he was elected chairman of the Railway Labor Executive Association, the top position among railway unions.

Everyone who knew and worked with Fred Kroll recognized his extraordinary abilities. His death is a devastating loss for the American labor movement, to the members of his union, and to everyone who knew and worked with him.

I know the Members of this body join me in expressing our deepest sympathy to the Kroll family, his wife Frankie and his three daughters, Karen, Anita, and Michelle.

Our prayers and thoughts are with them. We know that no words can erase the present pain. But as time goes by, I know they will remember the bright and happy days when Fred was with us.

MIA's RETURNED FROM VIETNAM

Mr. CRANSTON. Mr. President, the Vietnamese Government recently returned to us the remains of three Americans: Navy Commander Ronald W. Dodge, Air Force Lieutenant Stephen O. Musselman, and Air Force Captain Richard Van Dyke. The families of Commander Dodge and Lieutenant Musselman are constituents of mine.

I welcome this action. At least for these three families, the long agony of not knowing whether their missing son, father or brother was alive is finally over. I deeply sympathize with them for their loss and for the years of uncertainty they have had to endure. I remain disturbed that we do not know the specifics of how two or these men died, and I support the efforts of the State Department to obtain an explanation from the Vietnamese Government.

I will also continue to support strongly efforts by our Government to determine the fate of the men still listed as missing in action. Since the 1973 Paris peace accords, the remains of only 78 missing Americans have been returned to the United States by the Vietnamese. Some 2,500 men are still missing and unaccounted for. Hundreds of American families continue to agonize over the possibility their loved ones may be alive. Although we can never relieve their grief, we can help bring them peace of mind. For the sake of our men and for the sake of their families, we must persist in our efforts to account for our other 2,500 soldiers.

Mr. JACKSON. Mr. President, I would like to associate myself with the remarks of the senior Senator from California. I welcome the opportunity to join with Senator CRANSTON in this memorial eulogy. One of these returning Americans, Commander Ronald Dodge, grew up in my home State of Washington, where his parents still reside. I welcome the opportunity to express deep feelings of sympathy to the loved ones of these three men and to share in their great relief in finally receiving word of their fate.

RETIREMENT OF REAR ADM. FRAN McKEE

Mr. HEFLIN. Mr. President, one of Alabama's most distinguished career naval officers and one of her most distinguished daughters retired recently. She is Rear Adm. Fran McKee, an old and valued friend of mine who served 30 years in the U.S. Navy.

Fran McKee's naval career began during the Korean war when she was commissioned as an ensign after her graduation from college. After assignments to duty stations at home and abroad, she became the first female officer ever promoted to flag rank. From June 1978 until June 1981, Admiral McKee served as Director of the Human Resource Management Division in the Office of the Chief of Naval Operations. In this last post she was awarded the Navy's Gold Star Medal, her citation reading in part:

Her untiring efforts to ensure the development of sound relevant programs were nationally recognized and truly enhanced the Navy's image as a service that cares for its own. Her unfailing commitment, perceptive counsel, and personal dignity were manifested in the many programs devised and executed to improve quality of life, educational opportunity and career attractiveness.

At her retirement ceremonies here in Washington, she received—for the second time—the Navy's Legion of Merit Medal capping a series of decorations and awards. Her home State of Alabama also has recognized her by her early induction into the Alabama Academy of Honor in 1969. Her firsts are too numerous to mention here, but her pioneering has resulted in the Navy's enviable record of equal opportunity for naval personnel.

Rear Adm. Fran McKee is one of Alabama's most illustrious citizens, dedicated to her country and to the Navy. Her accomplishments have made naval history; her place in the Navy's proud tradition is assured.

U.S.S. "CROMMELIN" CHRISTENED

Mr. HEFLIN. Mr. President, recently the U.S. Navy honored the State of Alabama by paying tribute to one of our State's most distinguished families, the Crommelins, by naming a naval vessel after two Crommelin brothers who died for their country in combat during World War II.

No Alabama family has produced more distinguished naval officers than has the Crommelin family. The two brothers who died in combat, Comdr. Richard G. Crommelin, a naval pilot killed over Japan in 1945, and Comdr. Charles Crommelin who died the same year during the assault on the island of Okinawa, were heroes of the stuff legends are, and were, made of. Their gallantry in war in the service of their country ennobles the vessel which bears their family's name and reminds those who serve on the U.S.S. *Crommelin* as well as us that love of country may demand the supreme sacrifice. The last full measure of Charles and Richard Crommelin's devotion finds a fitting emblem in this ship, dedicated to two brothers who died within 3 months of the end of the war.

Honored in death, the Crommelin family saw three other brothers in distinguished service during World War II, Vice Adm. Henry Crommelin who died in retirement in 1971, Rear Adm. John

Crommelin retired, of Wetupka, and Capt. Quentin Crommelin, retired, also of Wetumpka. The two surviving brothers, the widow of Vice Adm. Henry Crommelin, and Quentin Crommelin, Jr., staff director of the Senate Judiciary Committee, joined with other relatives, friends, and fellow sailors in the recent dedication ceremonies in Seattle.

I ask unanimous consent that an article from the Montgomery Advertiser of June 26, concerning the christening of the U.S.S. *Crommelin* be inserted in the RECORD.

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

NAVY TO HONOR MONTGOMERY BROTHERS WITH CHRISTENING OF U.S.S. CROMMELIN

(By Richard A. Rosenberg)

The U.S. Navy will be honoring five Montgomery brothers—two of whom died in combat—when it christens the USS Crommelin in ceremonies at the Todd shipyard in Seattle next Thursday.

The brothers—Capt. Quentin Crommelin, retired Rear Adm. John G. Crommelin, Cmdr. Richard Crommelin, Cmdr. Charles Crommelin and Vice Adm. Henry Crommelin—all graduated from the U.S. Naval Academy and were highly decorated for their parts in the Pacific campaign of World War II.

The brothers were nicknamed "The Crommelin Boys" during the war, said Capt. Crommelin's wife, Priscilla. Mrs. Crommelin said she read in Naval literature that the Crommelins were the most highly decorated family in American Naval history.

Richard Crommelin and Charles Crommelin were both fighter pilots in the war. Richard Crommelin was killed in a bombing raid over Japan in 1945 and Charles Crommelin was killed during the invasion of Okinawa. Both died during the last three months of the war.

Vice Adm. Crommelin died in retirement in 1971. Rear Adm. Crommelin lives in Montgomery and Capt. Crommelin and his wife live in Elmore County.

Although the ship is named for all five brothers, the three deceased brothers are to be especially honored by a plaque on the ship which will have their names engraved on it.

Mrs. Crommelin said one reason the five young men all entered the Naval Academy was that it was a good way to get an education during the Depression, although the Academy was tough to get into.

The USS Crommelin is a "ship of the line" combat ship, said Capt. Crommelin. It will carry guided missiles in lieu of the guns combat ships formerly carried.

The missiles will be for surface-to-air and surface-to-surface action, Capt Crommelin said.

There will a guest speaker during the ceremonies Thursday. Capt. Crommelin said he was told Sen. Henry "Scoop" Jackson of Washington state had been scheduled to speak.

"Around 20 family members" from around Alabama will be going to the ceremonies, Capt. Crommelin said, "We're a rather large family you know."

Among those who will attend the ceremony are Rear Adm. John Crommelin and his wife, Lillian; Mrs. Henry Crommelin, the wife of Vice Adm. Crommelin; Quentin Crommelin Jr., who is chief of staff of the Senate Judiciary Committee under Sen. Strom Thurmond of South Carolina; Dr. Henry Crommelin Jr. of Birmingham, his wife, Mary, and their four children; and Mrs. Catherine Jenkins of Anniston, sister of the Crommelin brothers.

Mrs. Crommelin said they were surprised to hear recently from a relative in the Holland branch of the family, Rudolph Crommelin, of the Royal Dutch Navy, who said he also planned to attend the ceremony.

SECRETARY OF THE INTERIOR, JAMES G. WATT

Mr. LEAHY. Mr. President, I would like to submit for the RECORD an editorial which appeared in one of our Vermont newspapers regarding the Secretary of the Interior, Mr. James G. Watt. I am submitting this article because it reflects the growing concerns that many Vermonters have expressed to me over the policies and actions taken by the Secretary in the last 6 months.

I earlier opposed his confirmation as Secretary because I believed his previous experience clearly ran against the grain of basic conservation practices. Mr. Watt has done nothing to allay my fears since his appointment, and in fact has shown a callous disregard for public sentiment. In many ways, the damage to land and water resources incurred by Secretary Watt's policies may be irreparable.

Vermonters are alarmed by the senseless exploitation of resources promoted by Secretary Watt. Vermont is proud of its heritage of protecting the natural resources with which our State has been richly endowed. This strong conservation ethic has been reflected in landmark environmental legislation designed to save our State's resources, yet promote carefully planned development.

Most Vermonters believe that these efforts have been worthwhile: Our water and air are remarkably clean, wildlife is abundant, and our forests still earn the State its "Green Mountain" distinction. A growing industrial base and thriving recreational sector are proof that sensible land and water management and business interests are not necessarily inconsistent.

Of course, problems differ with geographic areas, and Vermonters do not suggest that our solutions are uniformly applicable throughout the United States. But Secretary Watt has not taken a balanced approach to conservation. In fact, in almost every major policy decision where the Secretary has been faced with a choice between conservation and development, he has chosen the latter. Indeed, if the Secretary's policies continue in this fashion, we may witness the greatest land grab since the 19th century.

Mr. President, it is alarming that the man who is charged with the stewardship of almost of one-fifth of the Nation's land acts as if there will be no tomorrow. Secretary Watt has proposed that wilderness study areas be opened up to drilling and mining. He has proposed that over 1 billion acres of land off the California shore be opened to the oil industry, despite the objections of that State and in contrast to other Federal efforts to return more authority to the States. He has tried to halt acquisition of national parks and turn their management over to private interests.

He has emasculated the Office of Surface Mining, and has advocated the drastic reduction of funds designed to identify and protect America's endangered species. The Youth Conservation Corps has also been slated for elimination despite the fact that this is one of the most popular and effective youth work programs. Mr. Watt deplores the physical condition of our park system, yet wants to end this extremely inexpensive source of labor to maintain our trails and grounds.

Mr. President, Secretary Watt's philosophies, which place a premium on short-run economic exploitation, should be an affront to all Americans. Taxpayers will be burdened by the increased costs of acquiring land which the Government has already committed itself to purchase. Private landowners within the areas of proposed Federal purchases will be left in limbo because of the uncertainty caused by the moratorium on land acquisition.

But Americans will suffer more than just an increased financial burden as a result of the Secretary's policies. The quality and character of many of our wilderness areas are in jeopardy as are the existence of many of our endangered species. The damage may very well be permanent. Furthermore, unwise exploitation of nonrenewable or nonrecoverable resources may lead to acute shortages for future generations of Americans, a prospect about which the Secretary seems little concerned.

I cannot believe that a nation as great and as rich as ours needs to develop all of its wilderness and use up all of its resources now. I cannot believe that our Nation is in such sorry condition that we cannot reserve some of our riches for use by future generations. It should be seen as a symbol of our strength that we can afford to put some of our resources aside for alternative future uses.

Secretary Watt has characterized conservationists as "environmental extremists" whose fervent endeavors would weaken our country. Yet the National Wildlife Federation, one of the largest and most conservative of conservation groups, has called for Secretary Watt's removal. The Federation, whose members voted over 2 to 1 for President Reagan in November, admitted that Mr. Watt's unsuitability for the job which he holds has become overwhelming. Many of today's programs that Mr. Watt is attempting to gut were initiated, supported or expanded during Republican administrations.

In recent months, Vermonters have spoken with increasing vehemence against Secretary Watt's policies and decisions. I submit as evidence of this fact the editorial from the Brattleboro Reformer which represents the sentiments of many Vermonters about our Secretary of the Interior.

I hope that Secretary Watt will heed the outcry of Vermonters and of many Americans. The potential that he will permanently affect the character of our public land is enormous—and frightening. Thus far, the Secretary has exercised his power for the benefit of private interests, and to the detriment of the American public. Vermonters will not tolerate Secretary Watt's flagrant abuse of the powers of his office much longer.

I submit the editorial previously mentioned, from the Brattleboro Reformer, for printing in the RECORD.

The editorial follows:

THE ENVIRONMENT

What's bad for the environment is good, at least in the short run, for business. Until this week, that bottom-line mentality seemed to be the sole motivation in the Reagan administration's concerted efforts to dismantle the federal laws and regulations protecting the nation's land, air and water.

Then, last week, The Wall Street Journal printed a profile of the administration's chief despoiler of the environment, Interior Secretary James G. Watt, which indicated that the administration's preference for bulldozing first and asking questions later may have a religious basis. The Journal described an astonishing exchange between Mr. Watt and members of the House Interior Committee in which the new secretary, asked about whether he favored preserving wilderness areas for "future generations," replied, "I do not know how many generations we can count on before the Lord returns."

Apparently, Mr. Watt—a born-again Christian who won't even drink coffee and eschews small talk—wasn't joking. On another occasion, he said that Washington's role is to maintain a balance between preservation and the use of the nation's natural resources so that "people are provided for until He does come."

It is, to say the least, a novel justification for giving over as much as possible of the federal government's 770 million acres to the lumbermen, oil companies and ranchers who covet the land for their own purposes. If the Second Coming is as imminent as Mr. Watt thinks it might be, a rational believer might conclude this would argue in favor of protecting the environment, not pillaging it. A returning Creator would not be happy with us as tenants if his eye should fall first on unreclaimed strip-mine land or the discolored polluted air of Mr. Watt's hometown, Denver.

Perhaps more than any other Cabinet member, the secretary of the interior has the responsibility to take the long view, to worry about whether this generation leaves as its legacy a garden or a garbage dump. Whether this long view has theological underpinnings or is based simply on the parental instinct of duty owed to the next generation, a secretary of the interior who lacks it is going to flounder in his work.

The Republican Party has a long tradition of producing environmentalists who did have such a long view, from Gifford Pinchot and Theodore Roosevelt down to Walter Hickel, Richard Nixon's interior secretary who quit in disagreement with the president over policy. Nathaniel Reed, a Republican businessman from Florida who has served in the Interior Department under several administrations, is cited in the Journal article as one Republican who is worried that Mr. Watt's extremist policy on resource development may wipe out that GOP heritage in the public's consciousness and brand the party indelibly as the enemy of the environment. He could be right. If Mr. Watt is allowed to run unleashed, the GOP may become Grand Old Plunderers until the second coming of Theodore Roosevelt.

OILSPILL STATEMENT

Mr. MITCHELL. Mr. President, I have spoken to the Senate on many occasions about the dependence of the State of Maine on its marine resources. I will continue to do so as long as our resources are threatened.

There is an immediate threat in legislation now pending before the House of Representatives. It would preempt the oil pollution protection programs established by Maine and a number of other coastal States.

I call the Senate's attention to this oil spill bill because some have alleged that a preemptive law would actually be beneficial to the States. I would ask those who hold such a belief to find one State that agrees with that view. Maine need not be polled; its views on preemption of its oil spill law are clear and unequivocal.

Those who support the preemption of State oilspill laws tell us that a comprehensive Federal liability and compensation regime to deal with oil spills is long overdue. I agree. There are gaps in the coverage of the various Federal laws that deal with oilspills. It was for that reason that I cosponsored S. 681, which would provide a unified Federal approach to oil spills. However, those of us who introduced the Senate bill believe that State oil spill statutes are a critical element in a truly comprehensive oilspill protection scheme. Our goal is preservation of our precious natural resources and adequate compensation to damaged parties, not simplicity of administration at the expense of innocent persons.

Mr. President, those who support preemption of State oil spill laws emphasize what States can continue to do if Federal preemption were enacted. I find it equally instructive and relevant to examine what States would be prohibited from doing.

Maine's 12-year-old coastal conveyance law now provides compensation from the State's industry-financed fund for damages to real or personal property or loss of income, directly or indirectly as a result of an oil discharge. Let us examine the damages for which a State could not collect fees for its fund under the House bill:

First, costs of removing spilled oil;

Second, injury to, or destruction of, real or personal property;

Third, loss of use of real or personal property;

Fourth, injury to, or destruction of, natural resources;

Fifth, loss of subsistence use of natural resources.

Sixth, loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss; and

Seventh, loss of tax revenue for a period of 1 year due to injury to real or personal property.

These are all of the critical elements of Maine's compensation regime.

Preemption supporters continue to point to the ability of States to collect taxes for any purposes not covered by the Federal law. But they cannot have it both ways. They cannot praise the comprehensive nature of their bill as a justification for preemption and in the same breath allege that there are significant areas in which the States retain the ability to act. The latter is simply not true. Under the House bill, the States' ability to act in any meaningful way to protect their interests is outlawed.

The House bill specifically cites the purchase and prepositioning of oil spill cleanup equipment, training of personnel, and research as areas that are not preempted. Frankly, these three items are not the essential elements in a State's ability to respond to an oil spill. And, although these three items are constantly cited only as examples of areas in which State funds are not preempted, I challenge anyone to find any other significant way in which a State could still act. This list of three relatively minor responses may be exhaustive.

Preemption supporters also defend their position on the grounds that States with funds will continue to have them and that such funds will not be transferred into the Federal fund. This is true only for a period of 3 years after enactment. After that time no State can collect fees to finance a fund to reimburse persons for any of the damages covered by the Federal fund. The 3-year delay in the effective date of the preemption provision simply postpones the imposition of this impediment to State action; it does not remove it.

And, although existing State funds will not be expropriated by the Federal fund, this will be cold comfort to those States with funds because after 3 years passes, that money cannot be used to pay oil cleanup costs or to compensate for other damages covered by the Federal fund.

Preemption supporters would also have us believe that because the States will be encouraged to act as claims adjusters with respect to claims from the Federal fund to speed claims settlement, that this will somehow result in adequate compensation. It may result in an efficient settlement process, but the ultimate payment of a claim against the Federal fund is not the decision of the State. Compensation is the decision of the Federal administrator of the fund whose priorities must necessarily reflect the needs of all coastal States, not any one State. Yet no State would have the ability to maintain a fund to provide compensation in the absence of a satisfactory Federal payment.

Preemption supporters also point out that if State funds are spent to clean up oil, the State would be eligible for full reimbursement from the Federal fund. This is true. But the critical issue is that States are only eligible for reimbursement. This is not an entitlement. Actual repayment from the Federal fund is discretionary, and will be dependent on the judgment of the Federal administrator of the fund and the resources of the fund. I am not suggesting that this should be an entitlement. But I am suggesting first, that the Federal fund is clearly not going to be large enough to cover all oil spill cleanup costs incurred in this country and second, that if State funds were not preempted by the House bill, there would be another source of funds to pay cleanup costs and other damages.

Preemption supporters tell us that States are not preempted in areas such as ground water pollution from ore. This may be true, but it is not really the issue. What I take issue with is the extent to which State oil spill liability and compensation laws are preempted. If State law is, in the judgment of those who support preemption, adequate to protect ground water that supplies drinking water, why is it inadequate for marine resources? Under the House bill, there is the anomalous situation that State lia-

bility law governs oil damage to ground water but Federal law applies to oil damage to navigable waters.

Mr. President, I would remind those who support preemption of three things:

First, under the hazardous waste "superfund" law, fees on chemical feedstocks have been collected since April 1 of this year. There is approximately $70 million in the fund now. Yet 4 months have passed and not one claim has been paid.

Second, the preemption provision is so broad that States are prohibited from maintaining funds to compensate virtually all damages from oil spills. Compensation is totally dependent upon the resources of the Federal fund and an affirmative Federal decision that the claim is worthy of compensation. This places the States in a position of subservience to the Federal Government and runs counter to the current trend of incorporating a cooperative Federal/State approach into Federal laws.

Third, while the alleged purpose of the House preemption regime is to avoid duplication, there is no inherent evil in duplication if the problem demands more than one avenue of recourse. It is clear to me that the beneficiaries of this preemption provision are not the persons whose property is at risk from oil spills. The parties who will be helped are the oil companies, who advocate preemption on the grounds that differing State statutes are an inconvenience.

There is absolutely no justification for placing at risk the natural resources of Maine and other coastal States simply as a matter of convenience to the oil companies.

ACID RAIN

Mr. MITCHELL. Mr. President, the issue of acid rain continues to grow as an environmental, international, and economic problem.

As the Senate begins its August recess, I would like to share some of my concerns with my colleagues.

First, there is a growing body of evidence with respect to the environmental consequences of acid deposition. It has already been documented that approximately 50 percent of the high elevation lakes in the Adirondack Mountains no longer support fish life. Entire populations of brook trout, lake trout, white sucker, and brown bullhead have been eliminated in the past 40 years as the acidity of these lakes has markedly increased. Maine lakes have undergone a similar change over the past 40 years; an eightfold increase in acidity has been measured.

Recent data suggest that our forests may also be at great risk as acid deposition increases. Swedish studies gave us preliminary indications that acid deposition may retard forest growth. More recently, scientists have linked a 45-percent decrease in the density of red spruce on Camel's Hump in Vermont with increasingly acid soils in the area.

Canadian scientists at the research center of the Domtar Paper Co. have just published a discussion paper summarizing additional data on this subject. German data suggest that serious die-back is occurring in spruce and beech forests in areas receiving relatively heavy acidic deposition. The observed effects are a reduction in growth rate, an initial drying out and loss of needles or leaves from the top of the tree. This condition moves down the tree until it eventually dies after a number of years. In Germany and the United Kingdom, spruce, fir, Douglas fir and beech are affected.

Mr. President, these environmental trends have potentially alarming economic consequences for the national economy and the economy of the State of Maine. Maine is the most heavily forested State in the Union, with about 90 percent of the State covered by forests. Our wood resources are without question the single most important component of the State's economy. Fully 30 percent of all manufacturing jobs in Maine are in the pulp and paper or wood and lumber resources industry. Those industries combined produce better than $2½ billion worth of products, which is 43 percent of the value of all products produced in Maine. If in fact acid rain does cause a reduction in forest growth, it could have a profound effect on Maine's entire economy.

At an April hearing I held in Augusta, Maine, on this subject, a representative of the American Paper Institute and the National Forests Products Association testified that even a 1-percent reduction in productivity would be a catastrophe for this industry.

If trends of adverse effects on forest growth continue in the same direction as the initial data we have, acid deposition may represent a far greater threat to forests than a 1-percent reduction in productivity.

Timber is not the only crop at risk. Damage to agriculture crops and fisheries from atmospheric deposition of oxidants and acid rain has been estimated to be $65 to $75 billion over the next two decades.

The National Research Council of the National Academy of Sciences estimates that in the Eastern United States, current losses to the sport-fishing industry from acid deposition are about $125 million.

According to the Office of Technology Assessment, one of its Federal contractors has estimated total current losses of $250 million from the loss of lakes and streams east of the Mississippi, due to acidification.

Mr. President, the third aspect of the acid rain problem that cannot be ignored is its international ramifications. Acid rain generated in the United States and exported to Canada is severely straining United States-Canadian relations. We are neighbors and friends, and we want to maintain good relations with Canada.

But unless the United States reduces its large contributions to Canadian acid rain levels, the historic relationship of our two countries, and particularly of Maine and the Canadian Provinces, may be sorely tested, by a problem for which the people of Maine are not responsible.

Prime Minister Trudeau has made his government's concern about the acid rain issue known to President Reagan during the course of their two meetings in March and June. President Reagan responded that he is committed to solving the acid rain problem. In addition to the President's recent commitments, the United States is bound by a "Memorandum of Intent" entered into by the United States and Canada in August 1981. Specifically, our mutual commitment is:

> To combat transboundary air pollution both Governments shall:
>
> (a) Develop domestic air pollution control policies and strategies, and as necessary and appropriate, seek legislative or other support to give effect to them;
>
> (b) Promote vigorous enforcement of existing laws and regulations as they require limitation of emissions from new, substantially modified and existing facilities in a way which is responsive to the problems of transboundary air pollution.

Mr. President, to date I have seen no evidence that the United States is willing to act on its stated commitments. The administration has no public position on an acid rain control strategy. However, if working documents are any indication of the administration's position, no recommendation for action to reduce the pollutants producing acid rain will be forthcoming.

The following paragraph from a June 1981 administration document entitled "Summary of the Clean Air Act Working Group Discussion" is the source of my concern:

> The most conspicuous transport issue is acid rain. Canada is exerting considerable pressure for preventive action. Environmentalists also seek prompt and stern action to address the problem. The best option appears to be to accelerate EPA's current ten-year research project (required by last year's energy legislation) as much as currently available dollars and sound science will permit, and defer regulation until the sources and extent of the problem can be better identified. Industrial groups would support this as they feel further regulatory measures would be premature given the present state of knowledge on the subject.

On the basis of my continuing contacts with Canadian officials, I am convinced that they regard the commitments of the United States in the form of the "Memorandum of Intent" and verbal assurances by President Reagan, to mean more than several years of study. I believe they understand us to be committed to action now to control acid rain.

Not only does it appear uncertain that the United States lacks the will to develop an acid rain control strategy the "Memorandum of Intent" also commits both countries to vigorous enforcement of existing laws and regulations that limit emissions of acid rain precursors. Yet the U.S. Environmental Protection Agency is pursuing a policy in direct contradiction of this commitment.

During the confirmation hearing of Kathleen Bennett to be EPA assistant administrator for air pollution programs, I asked the nominee about the decisions that have been made since January to relax sulfur dioxide emission requirements, particularly in the Midwest. She subsequently responded that substantial relaxations, 23 in number, have been granted in the past 7 months, resulting in an additional 50,000 tons of sulfur emissions annually; eleven applications for relaxations are still pending. If

granted, they would result in a 30,000 ton increase annually in sulfur emissions.

I also questioned Ms. Bennett on the broader issue of the administration's commitment to solving the acid rain problem. Her response was equivocal at best. I ask unanimous consent that portions of that transcript be included in the RECORD at the end of my statement.

THE PRESIDENT OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MITCHELL. Mr. President, I am committed to solving the acid rain problem. I will introduce next month legislation that will prevent any further increases in sulfur emissions and that will also require substantial reductions in sulfur over a period of time.

I intend to pursue enactment of this acid rain control strategy in the context of reauthorization of the Clean Air Act this fall.

Mr. President, in a related vein, I regret very much that the administration has not yet been able to make its views on acid rain and other important Clean Air Act issues known to Congress. We are ready and we are willing to examine their positions. I urge those responsible for formulating these positions to expedite their work so that we may get on with our work.

EXHIBIT 1

Senator MITCHELL. Mrs. Bennett, as you recall, we met on Wednesday at which time I asked you a series of questions about your views on the problem of acid rain.

Mrs. BENNETT. Yes, sir.

Senator MITCHELL. Which is a matter of great concern to people of New England and people of Canada, generally the receiving areas of acid deposition. And I would like, if I might, to follow that up today, repeating some of the questions I asked you and going a little bit further.

As you are aware, the governments of the United States and Canada entered into a Memorandum of Intent last year dealing with the problem of acid rain. Are you familiar with that memorandum?

Mrs. BENNETT. Yes, sir, I am.

Senator MITCHELL. In that Memorandum of Intent, each government committed itself to a series of specific covenants, one of which states, and I will read it, Section 2(b) under Interim Actions, Commitment by each Government, "to promote investigation, vigorous enforcement of existing laws and regulations as they require limitation of new emissions from new substantially modified and existing facilities in a way which is responsive to the problems of trans-boundary air pollution."

Are you familiar with that portion?

Mrs. BENNETT. Yes, sir.

Senator MITCHELL. Can you tell me how many applications are now pending at EPA for relaxation of emission limitations in state implementation plants?

Mrs. BENNETT. I can't tell you today but I will certainly inquire of the Agency and provide it for the Agency.

Senator MITCHELL. Will you do so?

Mrs. BENNETT. Yes.

Senator MITCHELL. You are aware, having been at the Agency, that a number of applications have been made and approved, and some are still pending, which result, if approved, those that have been approved and will be approved an increase in emissions, particularly sulfur dioxide.

Mrs. BENNETT. I have heard that but I am not personally familiar with that.

Senator MITCHELL. You are not familiar with this?

Mrs. BENNETT. No, sir.

Senator MITCHELL. If it is true that relaxation of emission limitations does result in increased levels of emissions of those elements which are the precursors of acid rain, would you agree that such relaxations are inconsistent indeed directly contradictory to the commitment of the United States government as stated in the Memorandum of Intent which I just read?

Mrs. BENNETT. This Administration as well as the last is quite firmly committed to carrying out the Memorandum of Intent and the purpose described. There have been several working groups established to study various aspects of the problem of the control technology, source of the problem, scientific certainty and many other questions.

I know the Administrator has met with the Canadians to discuss that. The Canadians also have raised that question at the Agency.

Senator MITCHELL. I appreciate that. But my question to you is, since the United States government has committed itself to promote vigorous enforcement of existing laws and regulations in a way responsive to the problems of acid rain, and if in fact, relaxation of the emission limitations increased the level of acid rain, then would you not agree that any such relaxations are in fact contradictory and inconsistent with the commitment of the United States under this Memorandum of Intent?

Mrs. BENNETT. If the middle portion of that could be demonstrated that would be the case. Mrs. Gorsuch and I firmly are committed, and I hope I will have the opportunity to swear that commitment to a vigorous enforcement of our laws and regulations.

The problem comes when we try to do modeling or whatever tools we have to relate any increase that might occur in acid rain to the precise sources that might cause the acid rain. That is the difficulty and many millions of dollars were committed on both sides of the border to investigate ways of making that determination.

Earlier in the century, the 40's, 50's and 60's when we first started getting serious in air pollution we addressed the problem of sulfur dioxide, and many of the technologies may facilitate the formation of acid rain. We cured the SO_2 problem, but created acid rain. We are concerned any future regulations would not create any now unforeseen problem or aggravate this problem.

Senator MITCHELL. In the question of contributing acid deposition to specific sources, is there any doubt in your mind that acid rain results from the emissions of sulfur dioxide and nitrogen oxide into the atmosphere at some point other than the place where acid deposition falls?

Mrs. BENNETT. Certainly, sulfur dioxide and nitrogen are believed to be the precursors, pollutancy of acid rain.

Senator MITCHELL. Do you have any personal reason to doubt that basic fact?

Mrs. BENNETT. I don't personally, Senator, but I can't say it is a subject I have investigated from a scientific point of view in great detail.

Senator MITCHELL. Do you know of any scientific evidence to the contrary?

Mrs. BENNETT. I don't personally now.

Senator MITCHELL. If then, assuming for the purposes of this question, and I understand what you have said about it—but if, in fact, increased emissions of sulfur dioxide do produce higher levels of acid rain, assuming that now—is it not correct then that relaxation of emissions limitations which result in higher levels of sulfur dioxide are inconsistent with our commitment under the Memorandum of Intent with the Canadian government?

Mrs. BENNETT. Senator, I believe there is some uncertainty as to the direct relationship, because it is not the relation of that, but it also has to do with complex meteorology things, the amount of clouds and water vapor in the air, and many other factors. I can't come before you today and say I have all the answers for acid rain. But I know the scientific community is very concerned about the problem and millions of dollars are used here for that.

Senator MITCHELL. Well, I understand that, and I certainly would not expect you or any other individual to have all the answers to acid rain. It is obvious that all the answers do not exist. But what I am trying to determine here is the extent of your commitment to a resolution of the problem, and by resolution of the problem I am not talking about just more studies.

In the Memorandum of Intent the United States government also committed itself, "to develop domestic air pollution controls, policies and strategies and as necessary and appropriate seek legislation or other support to give effect to them."

Now, as you know, the President met last week with the Prime Minister of Canada in which it was widely reported in most newspapers in the United States and Canada that the President told the Prime Minister that the United States had a commitment to solving the problem. Were you aware of that statement?

Mrs. BENNETT. Yes, sir, I am.

Senator MITCHELL. Now, I have seen an excerpt from an Administration document, a so-called first draft of the Clean Air position by the Administration, which includes a paragraph on acid rain. And I would like to read that to you, it says: "The most conspicuous transport is acid rain. Canada is exerting pressure for action, and environmentalists also seek stern action to address the problem. The best option appears to be to accelerate EPA's current ten year research acquired by last year's legislation, as much as currently available dollars and sound science will permit, and defer regulation until the sources and extent of the problem can be better identified. Industrial groups support this as they feel further regulatory measures would be premature given the present state of knowledge on the subject."

First let me ask you whether your own position is in accord with this summary of the Clean Air Act discussion?

Mrs. BENNETT. I can't hold in my mind all the details of that paragraph. Let me state my position.

There is a great number of regulations on the book calling for control of nitrogen oxides and nitrogens, where the control technologies were not so well developed as in SO_2. But at any rate, the development of these regulations is well underway and the implication is well underway in many cases, that the addition of further regulations should only be done after we are clear on what the effects will be.

Senator MITCHELL. Do I take it your position is that we are not yet clear on what the effects are going to be?

Mrs. BENNETT. I believe that is the case, or the government would not have committed $20 million for that question. A large share of that money is at EPA, about half of it, and the rest is other agencies like Interior and Atmospheric Administration, and other agencies of the government.

Senator MITCHELL. So I would take it that your position seems to be in accord with this draft position which says the best options appear to be to accelerate research as much as available dollars, and defer regulations——

Mrs. BENNETT. Sir, you know there is a ten year program that was authorized last year. And we believe that program can be accelerated significantly to perhaps five years or so, and that even before that time there may be some indications of the appropriate policy directions.

Senator MITCHELL. Well, I just want to say that the Canadian government—I can't speak for it, of course, but in my view, and I have regular contacts with Canadian officials—regard commitments of the United States in the Memorandum of Intent and the commitment by the President of the United States to mean something other than more than several years of study, whether it is ten or five years. I believe they understand that to mean a commitment of some action now.

I share their view. As you know, we discussed this in some detail. And while it is obviously true that more information can and should be gathered, it is also obvious that there is sufficient information that exists to make it clear that this is a very real and severe problem. It is particularly severe and inequitable when one considers the fact that the benefits in reduced cost of facilities and operation accrue to persons in one region of this country and the costs in terms of environmental pollution, acid rain deposition are imposed on persons in another region of this country and in another country.

Most environmental cost benefit analyses relate to the same group of persons. Persons in a particular region or area get certain benefits from that, and certain costs from it, and they then through their elected officials make the judgments as to what the proper cost or benefit is.

In the case of acid rain we have a situation where the group receiving the benefits and the group paying the costs are entirely separate and distinct. And it is clear the Clean Air Act in its present form does not deal with that; because it relies on separate state standards. So there is an overwhelming economic incentive upon people living in the states of Ohio, Indiana, Pennsylvania, and other states to burn the cheapest coal, to install the least expensive facilities possible, because the acid rain does not fall in their states. It falls in Maine, New Hampshire, Vermont, and in Canada.

Mrs. BENNETTT. Yes, Senator, but the Act does provide limits on how much they can do. And there are primary and secondary standards that apply no matter where they are located. And there are further case situations which apply to new cases, and additional limitations would be necessary but——

Senator MITCHELL. But there are, as you well know, a large number of facilities now operating which do not meet new source performance standards.

Mrs. BENNETT. Certainly.

Senator MITCHELL. In fact, they don't meet them by very large factors, as you well know, isn't that correct?

Mrs. BENNETT. Yes, Senator.

Senator MITCHELL. And it is also true, is it not, that every time the EPA approves an application for relaxation of emission limitations, the result is an increase in emissions, isn't that true? That is the very purpose of the application for relaxation?

Mrs. BENNETT. Yes, Senator.

Senator MITCHELL. To permit greater pollution increases than are permitted under the existing limitations, that is true?

Mrs. BENNETT. Yes, Senator.

Senator MITCHELL. I would ask if you would provide to me the number of applications for relaxation of emission limitations which have been made to the EPA this year and the disposition of those—that is, those which have been approved and those which were denied and those still pending.

Mrs. BENNETT. Yes, sir.

Senator MITCHELL. And I would ask you, and indeed I would implore you in your position, because you will have great power and influence in this area, to look very carefully at these applications for relaxation of emission limitations and remember that there are other people involved in this decision who live hundreds and thousands of miles away from the plants which will be emitting this pollution into the atmosphere.

Mrs. BENNETT. Yes, Senator, I will do that.

Senator MITCHELL. And also, you have had experience in this industry, and this draft says that environmentalists seek prompt and stern action. Now this is more than a problem for environmentalists. My state is 91 percent forest land, the highest percentage of any state in the Union. Thirty percent of all jobs manufactured in the state of Maine are in the lumber, wood resources and pulp and paper resources. Forty-five percent of the value of all products manufactured in the state of Maine are produced in those industries. It is overwhelmingly the most important economic element in our state. That is true in other states, but not to the same degree.

As you well know, there are some preliminary studies which indicate that acid rain causes retardation of forest growth. It is not conclusive, I grant that.

The representative of the American Paper Institute, your former employer, testified before me that a one percent retardation in forest growth would be a catastrophe for the paper industry. And a one percent or greater retardation would be a catastrophy for the people of Maine.

This is not just a question for environmentalists. And I hope you won't regard it as such. This strikes at the very foundation of the economy of the state I represent and other states; and we are getting no benefits, none whatsoever. We are just the dumping ground for pollution from other states. And as I said, I employ you to bear that in mind as you pass judgment on these applitions, and as you seek to determine just what the President meant when he said to the Prime Minister, "I have a commitment of solving the problem."

I hope you will come around to the view that does not mean ten or even five years of studies, but doing something right now. Thank you.

Mrs. BENNETT. Thank you, Senator.

ARMS CONTROL

Mr. MITCHELL. Mr. President, since January, the attention of the administration, the Congress and the American people has been focused on budget and tax cuts. Now that work on those important matters has been essentially completed, we must turn our attention to what is in my judgment the most important problem we confront as a nation—the need to prevent nuclear war.

I believe deeply in a strong America. Plainly, American military strength plays an important role in deterring aggression. But maintaining, even increasing our strength is not inconsistent with reaching fair, balanced, verifiable agreements with the Soviet Union to first restrain the increase in the quality and quantity of nuclear weapons and then, hopefully, to bring about a realistic reduction of such weapons.

I urge the President to focus his energies, and those of his administration, on the prompt development of an American policy and the swift resumption of negotiations with the Soviets in an effort to reach such agreements.

Over a century ago, Baron von Clausewitz profounded the idea of war as an extension of diplomacy. He wrote:

> War is not merely a political act, but also a political instrument, a continuation of political relations, a carrying out of the same by other means.

The truth of that maxim is accepted and acted upon by governments today, as it was in von Clausewitz's time. There has been no decrease in man's willingness to resort to armed force when political means fail. We need look only to Afghanistan and the Middle East for recent examples of this unfortunate reality.

Armed conflict between nations remains, as it ever has, a method of settling disputes.

That is a tragic commentary on mankind. It is an indictment of our inability to eliminate war as a method of settling disputes.

But there is a major difference between the environment in which von Clausewitz wrote and the environment in which we live. In the 19th century, wars could and did kill, maim, and mutilate human beings. Wars cost nations their treasuries. Wars strengthened the hatreds and deepened the divisions between peoples. But in the 19th century, no country, no person, had the power to annihilate an entire city, an entire nation, an entire society, even the world as we know it. That is something we can do today. Indeed, in the first hours of an all-out nuclear exchange, more human beings would die than have died in all the wars since the beginning of recorded history.

That power makes von Clausewitz's formulation of war as an arm of diplomacy dangerously irrelevant.

Nuclear conflict is not and cannot be accepted in that way. Nuclear war would not be just another conflict. It presents for the first time the possibility of the ultimate holocaust. It raises for the first time the spectre of the deliberate mutilation of unborn generations of people through genetic radiation damage. Nuclear war is and must remain unthinkable.

In recent years there has developed the notion of "limited" nuclear war. "Tactical" nuclear weapons have entered the debate over strategic doctrine. But it is likely that any conflict in which nuclear weapons are detonated would escalate out of control in a short time.

Our weapons delivery systems are increasingly sophisticated. Fewer and fewer of the judgments surrounding their detonation are in human hands. Targeting and guidance are computer operations. The remaining decision for human minds to make is the very basic one of using the weapons or not. So the practical scope for limiting a nuclear exchange is less today than ever before, and the weight and accuracy of our arsenal makes it unlikely that any party to a low-level nuclear conflict would long remain unwilling to respond in kind.

The difference between conventional war, waged with conventional weapons against conventional targets, and the total annihilation of life and poisoning of the environment involved in a nuclear exchange is not a difference of degree. It is a difference of kind. Mankind simply cannot afford a nuclear exchange.

Ever since the explosion of the atomic bomb in the air over Hiroshima, man has known that this weapon was not merely an addition to the arsenal of war—it is a radical departure from it. The 36 intervening years have accustomed us to the existence of nuclear weapons, but it has not brought home to us their reality.

The only steps we have taken to help control this destructive power are in the form of arms control negotiations with the Soviet Union.

Those negotiations have resulted in a few successes and many failures.

But when the question at stake is the preservation of life as we know it, even the most modest success cannot be ignored. And our successes are modest only in comparison to the scope of our arsenal. The steps we have taken to control nuclear weapons are meaningful, and they are a solid foundation on which we can and should build further controls.

The limited test ban treaty of 1963 has helped prevent the poisoning of the atmosphere and the oceans of the world. The 1968 Nonproliferation Treaty has helped bring 115 signatory nations to agree to prevent the spread of nuclear weapons. The 1971 SALT I agreement and the subsequent interim agreement helped abort the rush to anti-antimissiles, which was brewing during the 1960's. It helped stabilize the balance of nuclear armaments to an extent which permitted us to shift the focus of the United States-Soviet challenge to arenas less threatening to human life.

These are not negligible achievements.

The Senate has before it now two other nuclear limitation treaties: The threshold test ban treaty, which would permit "black box" installations and on-site inspections of tests, and the peaceful nuclear explosions treaty, which would provide some control over explosions for ostensibly peaceful purposes and over possible evasion of the test ban treaty. Neither of these negotiated agreements has been ratified, although both offer good grounds for controlling both the technological and institutional pressures which escalate the arms race on both sides.

Today, we face several factors which could constrain future arms control efforts. These factors demand serious attention.

In addition to the six nations now known to have nuclear weapons, 24 others are within a decade of achieving them. The increased risk of accidental or small-scale nuclear explosions will exponentially increase should those 24 nations successfully realize their weapons potential.

We are now working with our NATO allies to deploy theater nuclear weapons in Western Europe. Allied agreement to this proposal was gained on the understanding that we and the Soviets would recommence arms control negotiations promptly. Without prompt action, European leaders are facing the very real prospect that their electorates may not maintain their agreement to theater force deployment. Many Europeans see deployment of theater forces in their countries as a means of moving the locus of a nuclear confrontation to their continent. Only meaningful arms control agreements can help stem that perception.

Today, we are at a crucial decision point. Our technological advances have brought us to the point of developing and deploying a counterforce capability which is essentially equal to a first-strike force.

If we and the Soviets step across this technological boundary and fully deploy these weapons—a full-fledged first-strike capability on both sides—the control of nuclear arms will be immeasurably more difficult.

Our nuclear strategy is a strategy of deterrence, not a strategy of victory, because we know that in a nuclear holocaust there can be no real winners. There can only be survivors. In the words of President Kennedy, in such a case the "living will envy the dead."

But the full deployment by both sides of a first-strike capability represents movement away from deterrence and toward the goal of nuclear victory. Not only is that goal illusory, each step toward it is fraught with incalculable danger for our world. It represents a quantum leap in the nature of the nuclear arms arsenal, not merely an upgrading of existing weapons. It intensifies the conflict between ourselves and the Soviets, and it returns us to the hair-trigger world of the cold war period at its worst. It gives other nations on the brink of nuclear weapons capability no reason for self-control.

The SALT I treaty has expired. It did so in 1977, but the hope of a follow-up agreement then meant that the expiration was not so serious.

But our inability to reach an acceptable SALT II agreement leaves both sides with no legal or agreed limits on their arsenals.

This not only vastly complicates the task of responding to the Soviet threat, it provides an impetus to technological advances which destabilize the existing relationship.

The United States is abiding by the terms of the agreement, even though no agreement is in place requiring us to do so. But the rapidly increasing call for a new ABM makes it very unclear how long we can resist the temptation to ignore our informal, self-imposed restraint.

In an interview this January, Secretary Weinberger suggested that the 5-year extension of the existing ABM treaty may not be automatic, as it was last time, and he said that the administration may also seek to build a larger ABM site than the treaty permits. The administration has increased ABM research funding from the $285 million provided last year to just under $400 million for fiscal year 1982. The Pentagon has suggested that the closed site at Grand Forks, N. Dak., be reactivated. All these developments point ominously in the direction of reliance on a new ABM technology, even though the successful ABM limitation treaty was achievable only because the technological shortcomings of the early 1970's persuaded both sides that it was an illusory defense hope.

These circumstances and the administration's emergent arms control policies are a disturbing series of signs that arms control negotiations are not a serious objective of this administration.

I was, therefore, deeply concerned when Eugene Rostow, soon to be Director of the Arms Control and Disarmament Agency, recently suggested that negotiations not begin until March next year, and that they be preceded by the revitalization of the containment doctrine. That position surely distressed our allies as well.

Under Secretary of State Walker Stossel testified before the Senate Foreign Relations Committee in May that arms control negotiations and modernization of the nuclear arsenal be decoupled, and he urged that negotiations be based on Soviet behavior. He said that because arms agreements are limited in their ability to restrain competition between ourselves and the Soviets in other areas, so arms control negotiations should receive a correspondingly lower degree of attention and concern from the administration.

That view ignores the central reason for arms controls: To enhance our security.

If we insist that negotiations must wait until we establish clear superiority—beyond equivalence—we will set up a condition under which no arms control negotiations can be successful. We should not and will not accept an arms agreement that leaves the Soviets with clear superiority. Can we expect them to agree to leave us in clear possession of superiority? If that is a precondition to negotiations, then negotiations are already doomed.

It is also disturbing that Mr. Rostow acknowledges that the administration does not know whether it wants to seek limits on arms, or reductions; whether it wants to seek a finite agreement or a permanent one; whether it wishes to seek limits on missiles or on launchers—in short, the administration does not know what it wishes to negotiate.

Those who were instrumental in preventing the SALT II accord from being debated in the Senate, whatever its merits, surely have an obligation to outline in more precise detail the shortcomings of that accord and the corresponding areas in which they would attempt to strengthen a new agreement.

This administration appears to have a perception that arms agreements are a kind of favor we do for the Soviets, which have no corresponding benefit for ourselves.

The notion that we ought not negotiate with the Soviets until their behavior improves is illogical, and not in our interest. It presumes that only when they accept our definition of acceptable behavior can we talk. But if the Soviets accepted our definition, there would be no need to talk for there would be no arms race to control. It is precisely the fact of our disagreement which makes arms control imperative.

Arms control agreements are not needed between nations which are friends; they are essential between potential adversaries.

Arms control agreements are not a reward for good behavior; they are a vital safeguard for ourselves. Without negotiated limits on nuclear weapons, our defense procurement is far more costly, and our strategic planning is far less secure. Without negotiated limits on nuclear weapons, our ability to reduce tensions in other areas of our relationship with the Soviets is seriously undermined.

The fact is, of course, that arms nego-

tiations are not a favor to the Soviets. They are essential for ourselves and for all other people on the face of the Earth. Our Nation has many means of expressing our position to the Soviets when their behavior warrants a U.S. response. We can embargo grain sales, as we did when they invaded Afghanistan, we can withhold credits for trade, we can embargo other items of trade. It is foolish and not in our national interest to hold arms negotiations hostage to Soviet behavior.

Arms agreements are not a reward for the Soviets any more than they are a concession we make. We should enter into agreements only when and because they help meet our security needs. That is not a concession of any kind.

If we insist on viewing the negotiating process and any resulting agreement in terms of winning or losing, we will be doing ourselves much more damage than we inflict on the Soviets. We will have tied our future to the ever-increasing costs of replenishing a nuclear arsenal which we are pledged not to use, which has no value in the conflicts that face us in the real world, and which can only help encourage the proliferation of more deadly weapons around the world, to our own risk and to the risk of every other nation.

MACK GARRETT, DEAN OF ALABAMA'S SHERIFFS, RETIRES

Mr. HEFLIN. Mr. President, Sheriff Mack Garrett of Cherokee County, Ala., has served notice to the people of Cherokee County that he will not be a candidate for reelection next year, retiring after 34 years as the chief law enforcement official in this northeast county.

At a time when only one of my colleagues, the distinguished Senator from Mississippi, Senator STENNIS, has served in the Senate for 34 years, it is impressive, indeed, that a man such as Sheriff Mack Garrett has served so long and so well. All Cherokee County has respect for him and for the law, even outlaws and his former opponents.

When Sheriff Garrett retires, Cherokee County will have an adjustment period no doubt, as will Mack Garrett himself. But his even temper, good humor, and bright outlook will make Mack Garrett Alabama's most experienced and most distinguished sheriff emeritus, and all Alabama salutes his many years of service.

Mr. President, I ask unanimous consent that an article from the Birmingham News of June 17, 1981, related to the retirement and character of Sheriff Mack Garrett be included in the RECORD.

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

GARRETT, DEAN OF STATE SHERIFFS WITH 34 YEARS IN OFFICE, TO RETIRE WHEN TERM ENDS

(By Nancy Campbell)

CENTRE.—They say after Sheriff Mack Garrett dies the people of Cherokee County could hang his pants on a line in front of the courthouse and he'd be re-elected to two more terms.

But the dean of Alabama sheriffs—who enjoys that old joke as much as anybody—says he doesn't plan to die—or be re-elected—anytime soon.

In office longer than any other sheriff in the state, 70-year-old Garrett has told The News he'll retire to his little farm near the county seat of Centre when his term expires next year.

"Centre won't be Centre without Mack Garrett," said one voter, when she learned of the lengdary lawman's decision to quit.

Another said Garrett will be missed after 34 years in office "because he's the best we ever had around here."

Garrett admits to enjoying the praise, but he says no amount of flattery will convince him to change his mind because he's tired of working.

"There's a lot goes on and you don't have much private life," he said, in describing life at county jail where he's lived for decades with his wife, Villeta. "That's why I want to quit."

In addition to running the jail that houses Cherokee County prisoners, Garrett helps four deputies police about 17,000 people and 1,000 miles of county roads.

Citizens say Garrett has successfully enforced the law in the rural, northeastern county because he knows at least 14,000 residents personally. Garrett says that estimate is no exaggeration.

They also say he's able to sit in his office on Main Street and make more arrests than any lawman in the field and rarely serves a warrant. The times he's reportedly sat at his desk and picked up the telephone to make arrests are legendary.

When asked if he really tells suspects to meet him at the jail, the sheriff just laughs and says, "It works like that sometimes."

One voter explains the procedure this way: "He don't have to go get 'em. He can sit in his office and tell you who done it."

When asked if she would surrender to Garrett, another voter responded: "I would if Mr. Garrett called. He means business. If he has to come (for a suspect), it would be bad."

Garrett's wife says suspects usually surrender because he knows everything about them, "even their dogs' names."

The sheriff says it's been fun knowing changes when he talks about the changes in law enforcement over the years.

"You can't enforce the law anymore," he complains. "Everybody wants to jump on you and sue you. The courts want to convict sheriffs more than they want to convict the defendants."

Garrett says the rising crime rate is another reason he wants to quit, explaining that the nature of crime "is altogether different now."

He says drug-related crimes, burglaries and the passing of bad checks have been on the upswing in the past six years. Before that, he says investigations were limited mostly to drunk driving cases and an occasional homicide.

The sheriff also says he may be losing his grip "on the crime situation" because so many newcomers are moving into the county. He attributes numerous home burglaries to the building of Weiss Lake several years ago, when he says hoards of strangers started pouring into the county for recreation on the weekends.

Nor is Garrett optimistic the new sheriff can do much about rising crime, calling it a sign of the times nationwide: "The poor devils (who write bad checks) have got to have something to eat. They just hope the money will be in there (the bank) when the checks are cashed."

Mrs. Garrett encourages the sheriff to retire because she, too, is tired of the life.

"Oh, I'll miss it, I guess," she says in recalling the years she raised three sons at the jail. "I tell everybody my boys cut their teeth on jailhouse bars."

But she says she won't miss her husband's career "that much" because she's ready to retire to the farm where she doesn't plan "to do a blessed thing."

In the early years, Mrs. Garrett cooked every meal for the inmates. In recent years she turned the kitchen chores over to trusties, but she still plans menus and buys the groceries for no pay.

Despite the headaches of the job, Garrett recalls past campaigns with enthusiasm. Except for two unsuccessful bids in the mid-50s, the sheriff says the people re-elected him for "treating 'em all fair."

He says politics is "like a man and woman divorcing. You can't take sides."

Garrett says not taking sides is the key to success, particularly on issues he can't control. For example, workers at the independently-owned People's Telephone Co. have gone on strike several times during his reign. But he's never favored the company over the strikers when cut telephone lines disrupted service to customers "because they all vote."

Although she once forced him to leave the campaign trail for the birth of one of their children, Mrs. Garrett predicts the sheriff won't be tempted to run again.

However, some supporters say they're less sure. "I'm wondering if he won't really decide to run again at the last minute," says one.

VETERANS FLIGHT TRAINING PROGRAM

Mr. MURKOWSKI. Mr. President, as a member of the Senate Veterans' Affairs Committee I deeply regret the termination of the GI Bill education benefits for flight training.

In an effort to eliminate certain abuses and lower costs in this program, Congress decreased the cash reimbursement to veterans from 90 to 60 percent and provided eligibility for education loans to cover the remaining costs of the training.

The Veterans' Affairs Committee carefully reviewed the program, and concluded in its report that—

Flight training is a legitimate vocational objective. In certain States, such as Alaska and Hawaii, flight training is necessary to acquire the ability to get to and from a job and may be essential to the performance of the job.

It was for this reason that the committee recommended the continuation of the flight program with improved controls. This legislation was enacted into law only last October. I do not believe sufficient time has elapsed to evaluate the effect of the improvements in the program.

The veterans' flight training program has proven especially beneficial for the veterans of Alaska. The lack of roads and other conventional transportation modes underscore the importance of the program. It has provided the State with many qualified commercial pilots.

In many instances, flight training is a necessity for veteran employment. After graduation, at least 50 percent of the graduates must secure employment in the same type of work or a closely related field for the flight school to remain approved by the Veterans' Administration. In Alaska, our institutions approved for the training of veterans have excellent percentages for veterans finding employment related to their training—most hold a 100-percent employment rate.

The Senate Committee on Veterans' Affairs met the goal of saving $110 million in the Veterans' Administration budget without terminating the veterans flight training program. The Senate

Budget Committee and the full Senate concurred. However, the House of Representatives insisted on termination of the program in its version of the Omnibus Reconciliation Act of 1981.

Because of the adament, though mistaken, opposition to the program by a majority of the conferees and the mandated $110 million cost savings, we were unable to save the program. However, because of the insistence of myself and a few other conferees we were able to protect those enrolled in the program by August 31, 1981, by allowing them to continue to use the benefit as long as they remain continuously enrolled in the program.

Mr. President, this August 31, 1981, enrollment date is especially important to the veterans benefiting from this program. I would like to extend my personal appreciation to Senator CRANSTON and Senator RANDOLPH for their help in including this language.

VOLUNTEER FORCE CAN WORK

Mr. COHEN. Mr. President, recently there have been a number of articles expressing sharp criticism of the All-Volunteer Force.

I share some of the concerns which have been expressed about the ability of the volunteer military to meet our defense needs if there is an expansion of the force, but I have been troubled by some of the charges which have been leveled against the All-Volunteer Force. Debate on the issue is healthy, but the debate must be a fair one.

In the Friday, July 24, edition of the Washington Star, Senator ROGER JEPSEN, chairman of the Armed Services Committee's Manpower Subcommittee, did an excellent job of correcting some of the serious misstatements which have been made recently about the AVF. The article, "Volunteer Military Can Work," emphasized the difference between problems of retention and those of recruiting. As he pointed out, a draft will do nothing to help retain qualified career personnel. That is why the Jepsen-Exon pay bill provides pay increases targeted at key retention points.

Senator JEPSEN makes an important point in noting the significant improvements in quality of recruits in this fiscal year. Most important, he speaks of the needs to

restore the pride and distinct advantages that military service had long offered our youth. Let us create, not destroy, an environment where young people will choose to serve their country. It is just beginning to happen.

I commend the full text of this excellent commentary to the attention of my colleagues and ask unanimous consent that it be printed in the RECORD.

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

VOLUNTEER MILITARY CAN WORK

(By ROGER W. JEPSEN)

Jeffrey Record's op-ed piece "The Comic-Book Version of Defending America" cannot be allowed to stand unrebutted. By mixing the issues of recruiting and retention to advance his own ideology, Jeffrey Record succeeds in totally distorting the manpower picture.

The author commences his article by misleading the readers into a false belief that the All Volunteer Force (AVF) is responsible for the service retention problems. Nothing is farther from the truth. Apparently the reader is supposed to accept the nexus between the AVF and the exodus of skilled and experienced enlisted personnel who volunteer to serve their own country.

Eighteen months ago, a Navy ship was tied up and could not get underway because of a shortage of career personnel. This single occurrence had little to do with AVF, but rather with the fact that low pay, prolonged family separation and arduous working conditions are causing careerists to leave the service. A draft will bring people in the front door upon completion of their obligated service. Take for example the following facts: A petty officer first class (E-6) with ten years of service receives $943 a month in base pay. A chief petty officer (E-7) with 20 years service receives $1,219 in base pay.

INCENTIVE LACKING

Where is the incentive to remain in the service and endure the hardships, if you are only going to realize 10 years later $276 more each month? Further during this 10-year period you probably get to make a few nine-month deployments to the Indian Ocean or pull an 18-month unaccompanied tour overseas. Returning to a draft is not going to solve that problem.

To address the retention problem, the Senate Armed Services Committee on June 25, 1981, reported out a bill which will concentrate this year's pay increase on mid- and senior-grade enlisted personnel. The bill is designed to relieve pay compression and promote a positive career inducement by providing larger pay differentials between first-term and career members. Enhanced pay rates for middle and senior enlisted grades should provide a greater incentive for promotion, career advancement and retention.

Mr. Record alleges that since its inception the AVF has failed to attract sufficient numbers of service age youth into the military. In fact, the AVF did very well in its early years. In fiscal year 1976, the House Appropriations Committee stated: "All of the services are currently meeting their quantity goals and are doing so at higher quality levels than they have ever done before." The decline in quality began in 1976 with the recruiting cutbacks coupled with the slippage in military pay and termination of the G.I. Bill at the end of the year. Today all of the services are not only meeting their recruiting goals but with much higher quality. In fact, the worst year, fiscal year 1979, shows a shortfall of only 24,000 in a two-million man force. Last year the services exceeded their quota and this year they are right on target.

QUALITY IMPROVING

Next, the author turns his attention to the quality of today's young recruit. To foster his position he would have you believe that the Army is on the verge of destruction due to the large number of illiterates and high school dropouts flooding the ranks. Quality has been an issue of great concern, however, the statistics are showing great improvement. This year, 66 percent of the Army's entering males are high school graduates and only 27 percent are in the lowest mental group category. This is a far cry from the "more than one-half" as alleged by Mr. Record. Perhaps in another article he could explain how an equitable draft will insure that the number of illiterates and high school dropouts will be controlled. Or shall we be intellectually dishonest and say that quality constraints will no longer matter?

The AVF is not as representative as some, including myself, might hope, but it is no more "a force largely of the poor, unemployed, and socially disadvantaged" than its conscripted predecessor. One of the reasons for going to the AVF was because the disadvantaged were being drafted disproportionately in the Vietnam era while those with greater resources were able to find means of avoiding service.

Since its inception, a small number of advocates of conscription have been faulting the AVF because they do not want it to survive. They have resisted all attempts to make it work. The AVF has problems, but has time dulled our memories of the insurmountable problems and significant costs associated with our draft?

Whether the military will be served in the future by volunteers or conscripts, let us restore the pride and distinct advantages that military service had long offered our youth. Let us create, not destroy, an environment where young people will choose to serve their country. It's just beginning to happen.

OUR NEW FRIEND IN THE SENATE

Mr. COHEN. Mr. President, the June-July issue of Modern Maturity magazine recently published an article entitled, "Our New Friend in the Senate." The article pays tribute to my friend and colleague, Senator JOHN HEINZ.

It has been my privilege to serve with Senator HEINZ not only on the Senate Aging Committee, but on the House Select Committee on Aging as well, where he first earned his well-deserved reputation as a leading spokesman for the interests of the elderly. As chairman of the Senate Aging Committee, Senator HEINZ has continued to prove himself an effective and knowledgeable leader on a number of concerns to older Americans.

I look forward to continuing to serve under the leadership of Senator HEINZ on the Aging Committee, and I commend my colleagues' attention to the following article, which I ask unanimous consent to have printed in the RECORD.

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

OUR NEW FRIEND IN THE SENATE

(By Elliot Carlson)

At first glance, Senator John Heinz (R-Pennsylvania) seems an unlikely choice for chairman of the Senate Special Committee on Aging. He's young (42), rich (he listed assets last year of at least $21.3 million), and a relative newcomer to the Senate (he was elected just five years ago).

But Heinz is an old hand at grappling with the tough problems facing America's aged.

After entering the Senate in 1977, his first move was to go after a seat on the Special Committee on Aging. There were no openings at the time, but he kept trying. "I had to move heaven and earth to get (then Minority Leader) Howard Baker to appoint me in 1979," says Heinz, the heir to a fortune in one of the nation's largest food-processing corporations.

The move paid off last fall when Ronald Reagan won the Presidency and Republicans gained control of the Senate for the first time since 1954. As the ranking Republican available for the job, Heinz emerged as Committee leader (displacing Florida Democrat Lawton Chiles), and thus became the first GOP chairman of the Special Committee on Aging in its 20-year history.

Heinz traces his interest in the elderly back to his days as a freshman in the House of Representatives during the early 1970s. "My interest grew out of the frustration of another Congressman, David Pryor, who was trying to get the House to establish a committee on aging," he recalls. "He was meeting with absolutely no success and was told by the Democratic leadership that there

simply was no space available in the House for any committee on aging.

After Pryor left the House in 1972 (he is now a Democratic senator from Arkansas), Heinz continued the campaign for a House aging committee on his own. He finally succeeded in 1974. "Once we got the issue to a vote, we won easily," remembers Heinz. "I always felt that this was probably the most important thing I ever did."

Since then, Heinz has devoted a good deal of his legislative work to issues affecting the elderly. As a member of a Government Operations subcommittee, which for a time was the main House body dealing with the problems of older Americans, Heinz visited numerous senior centers and personally investigated many of the conditions that distress America's aged.

Now that he is head of the Special Committee on Aging, Heinz has stepped up his activity on behalf of the elderly. In one of his first moves in his new capacity, he joined Senator Chiles in introducing a resolution expressing the sense of the Senate that Social Security benefits remain exempt from Federal taxation. The measure is pending.

Heinz also scheduled a number of hearings in March and April to examine in detail the impact of the Reagan Administration's proposed budget cuts on older Americans. The Senator said he wouldn't take a position for or against the proposed cuts until his committee had a chance to study them.

But Heinz didn't hesitate to attack the budget-cutting proposal advanced by some members of the Senate Budget Committee that called for changing the current system of "indexing" major Federal benefit programs (including Social Security) to the Consumer Price Index (CPI), so that benefits would be less than 100 percent of the CPI.

"I think that would be a grave mistake," Heinz said in an interview. "Such a move would run counter to the promises Congress has made—and that Reagan himself has made—to older Americans."

While Heinz has generally supported legislation backed by groups representing the elderly, there have been exceptions. For example, last year he voted against a bill to provide hospital cost containment.

Heinz says he has his own approach to the problem of soaring health care costs. He plans to introduce a bill that would give Medicare patients the opportunity to take advantage of prepaid health plans. "Such an option would give the elderly a wider freedom of choice," says the Senator. "This would stimulate greater price competition."

GOVERNMENT COMPETITION

Mr. HAYAKAWA. Mr. President, on June 22, 1981, I introduced Senate Joint Resolution 93, which if passed, would reaffirm a longstanding national policy of reliance on the private sector for the goods and services needed by the Federal Government. I am happy to report that the Reagan administration fully supports the resolution.

Recently, in hearings held by the Small Business Subcommittee on Advocacy and the Future of Small Business which I chair, the Administrator of the Office of Federal Procurement Policy of the Office of Management and Budget summarized the administration's position as follows:

The Joint Resolution, as introduced, is a vigorous and welcome reaffirmation of the free enterprise system that has made this country strong. We believe it provides timely support for this Administration's quest for a new, revitalized approach to strengthening this country's economy. Economy and efficiency in government and reward of the private sector for initiative and productivity are necessary ingredients in our formula for economic renewal.

Last week, U.S. News & World Report published a fine article that summarizes this issue of Government competition with private sector firms. Mr. President, I ask unanimous consent to print the article in the RECORD and I highly recommend it to each of my colleagues.

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

WHEN UNCLE SAM GOES INTO BUSINESS FOR HIMSELF

Ronald Reagan, aiming to promote free enterprise and save taxpayers money, is launching the most determined drive in years to get Uncle Sam out of competition with private business.

If the President has his way, the U.S. soon will be relying less on federal workers and more on private contractors for a vast assortment of goods and services—from trash collecting to computer key punching.

Departments and agencies already are under White House orders to examine all of their activities to determine which can be handed over to the private sector. Among the first to report: The Small Business Administration, which discovered itself competing with commercial or industrial operators in 14 areas, including microfilming, graphic production and warehousing of forms and publications.

The business community, which for years has protested government's spread into traditionally private areas, has been quick to note that there are thousands of other government activities that seem ripe for farming out. Among them:

An Army depot at Tooele, Utah, rebuilds tires for National Guard units in several states.

A Department of Energy operation at Richland, Wash., requires private contractors as well as its own employes to use government facilities for such needs as printing, photofinishing and reproduction of engineering drawings.

Offutt Air Force Base near Omaha, Nebr., undertakes its own pest-control work.

Jerry W. Keown, part owner of an exterminating business in Omaha, complains: "Offut is in the defense business. We're in the pest-control business. There's no real good reason for them to be doing it. We can do it cheaper and better."

Such claims by business produce loud outcries from government workers whose jobs are on the line and who contend that the economic benefits of having work done by the private sector are more illusory than real. Moreover, public-employe unions argue that contracting out frequently is used by politicians in an effort to circumvent personnel ceilings. They add that it can jeopardize national security and that it encourages corruption.

At stake are billions of dollars in potential contracts or, in the view of federal workers, billions in potential salaries that could be lost.

Commerce Department figures show that federal contracts for all types of goods and services—from the procurement of missiles to the hiring of janitors—amounted last year to 117 billion dollars, nearly one fifth of federal spending.

About 400,000 government workers, meanwhile, were employed last year in nearly 12,000 commercial and industrial activities. They produced an estimated 19 billion dollars' worth of goods and services, most of which, according to the Defense Department, was exempt from private contracting on grounds of national security.

Still, government-performed work worth about 7 billion dollars is subject to cost-comparison studies and could be handed to outside contractors, says Darleen A. Druyun of the Office of Federal Procurement Policy.

Despite their enthusiasm for what Reagan has set out to do, business officials warn that other Presidents have tried to accomplish the same thing—and failed. They observe that every President since Dwight Eisenhower endorsed the idea of contracting out wherever possible, but few pressed the issue after encountering resistance from the bureaucracy.

Furthermore, as far as government competition with the private sector is concerned, the contracting-out issue barely scratches the surface, according to business people.

Private pharmacists, for example, claim that they are being harmed by a Veterans Administration policy requiring participants in a free-prescription-drug program to obtain their medicine from a VA facility or by mail directly from the VA.

David T. Hodgen, owner of a campground in Scotts Valley, Calif., contends that by charging unrealistically low fees, federal land-management agencies, such as the National Park Service, undercut private campground owners, who, he says, "are forced to charge fees that are not profitable and that affect the services they can offer."

Head-on challenges. Compounding the business community's frustration is the direct and indirect competition it feels when state and local governments use federal money to set up commercial and industrial-type activities.

Harold M. Kimble, the proprietor of a tool-renting shop in Cambridge, Ohio, argues that he may be driven out of business by a tool-loan program sponsored by the local community-development agency, which gets funds from the U.S.

Amber Stephenson, the owner of a day-care center in Gloucester County, Va., complains that local governments and nonprofit agencies use federal funds to set up and operate day-care facilities. "It is unfair to a private business for the federal government to fund a competitor," she says.

Adds Earl Hess, an official with the American Council of Independent Laboratories: "Most of the major land-grant universities in the country do soil testing for very nominal fees. Very few of the private labs even compete with them any more."

The government-competition controversy began heating up in April when the Office of Management and Budget sent memos to the heads of 37 executive agencies and departments reaffirming the government's reliance on the private sector for the acquisition of goods and services—a policy that had first been laid out by OMB's predecessor, the Budget Bureau, as far back as 1955.

Four agencies—the Defense Department, General Services Administration, Health and Human Services Department and VA—were singled out for special scrutiny. The OMB told the GSA it was "gravely" concerned that, despite a Carter administration directive some two years ago, "your agency has not reviewed a single in-house activity for possible conversion to contract performance."

Some results. The administration's get-tough policy may be paying off. For instance, the Agriculture Department turned up 230 in-house activities, including film developing, office cleaning and aircraft piloting, that could be contracted out. Annual operating cost: 244 million dollars.

Even before the administration laid out its policy, the Department of Education switched from government employes to private collection agencies for tracing holders of delinquent student loans. The change came after the department had been widely criticized for its past failure to collect such debts totaling hundreds of millions of dollars. With private collectors, whose track record for collecting owed money is better than that of their public-sector counterparts, officials expect to do better.

For now, the administration's focus is on commercial and industrial activities of the executive branch. Neither Congress, where public workers hold such jobs as barbers and tour guides, nor the judicial branch is affected.

Does the government save money by using private contractors? The answer appears to be yes in many—but not all—cases.

Not only does contracting out save money, supporters claim, but it gives the government better flexibility to terminate tasks that are no longer needed, and it generates tax revenue from the businesses that get the contracts.

A book by economists James T. Bennett and Manuel H. Johnson of George Mason University, Fairfax, Va., claims that governments at all levels can cut costs an average of 50 percent by contracting out for goods and services. Example: a National Weather Service facility at Washington's National Airport in 1979 hired a private firm, for $126,000 a year, to provide the same observation services that, as an in-house activity, would have cost taxpayers about $240,000.

Other evidence comes from a series of cost-comparison studies by the Defense Department over a 2½-year period. After studying 335 defense activities around the nation, the department found that 62 percent of the time it was more economical to contract out than to do the work in house.

As a result, the department converted 207 activities to contract arrangements—including bus, guard, food and laundry services and maintenance of buildings, vehicles, aircraft and microwave systems. The conversions resulted in the elimination of 7,800 positions and a three-year saving of 130 million dollars, or 17 percent less than the estimated in-house cost of 747 million.

Sometimes, the private sector cannot match the public sector in efficiency. For example, a 1979 study of gold-refining operations at the Treasury Department's Assay Office in New York showed in-house costs to be about a third less than the contractor's cost.

What happens in some cases, contends procurement official Druyun, is that the mere threat of contracting out stimulates efficiency among employes whose jobs might be eliminated. "The government workers at the Assay Office probably recognized the handwriting on the wall," she says. "They had to become as productive as possible, or else the work would be contracted out. So they're streamlining all the fat."

Kenneth Blaylock, president of the 25,000-member American Federation of Government Employees, dismisses studies that reflect unfavorably on the public sector's efficiency. He contends that it is impossible to fairly compare in-house costs with bids submitted by private contractors because government activities are usually top-heavy with management personnel.

Opponents of the administration's policy also say it fails to recognize the shortcomings of contracting out. They contend, for example, that private-sector workers may strike while government employes may not and that excessive reliance on private workers at military facilities could threaten national security.

Furthermore, asserts Representative Patricia Schroeder (D-Colo.): "Contracting out has been used by both Republican and Democratic administrations to get around personnel ceilings. It's supposed to be used for economies, not for that shell game."

Whether critics are right or not, it is clear they will be hard pressed to stop the administration from proceeding with its plan for turning more public work over to private industry.

THE RETIREMENT OF GEN. RICHARD H. ELLIS

Mr. ROTH. Mr. President, on Friday, July 31, Gen. Richard H. Ellis, Commander of the U.S. Air Force Strategic Air Command will retire after a distinguished career of service to the American people. For 4 years as SAC Commander and Director of the Joint Strategic Target Planning Staff, he has been on the cutting edge of our Nation's defense.

A native of Laurel, Del., General Ellis is a citizen soldier who rose to the top of his profession through determined leadership and hard work. A graudate of Laurel High School, Dickinson College, and Dickinson Law School. General Ellis entered military duty in September 1941.

During World War II, he served with the 3d Bombardment Group in Australia, New Guinea, and the Philippines, and flew more than 200 combat missions in the western Pacific area. He served as a pilot, squadron commander, and group operations officer, and in September 1944 became the group commander. In April 1945 General Ellis was assigned as Deputy Chief of Staff, Far East Air Forces, in the Philippine Islands and Japan. Recalled to active duty in October 1950, he was assigned first to Headquarters, Tactical Air Command, Langley Air Force Base, Va.; then as Deputy for Operations, 49th Air Division, Sculthorpe, England; and later as Chief, Air Plans and Operations Section, at Supreme Headquarters Allied Powers Europe (SHAPE).

From 1957 to 1969 General Ellis' assignments around the world increased in responsibility and complexity and in September of that year he was named Commander of the 9th Air Force with Headquarters at Shaw Air Force Base, S.C.

He was appointed Vice Commander in Chief of U.S. Air Forces in Europe in September 1970 and assigned as Commander 6th Allied Tactical Air Force, with Headquarters at Izmir, Turkey, in April 1971; then as Commander of Allied Air Forces, Southern Europe, with Headquarters at Naples, Italy, in June 1972; and Commander, 16th Air Force, Spain, in May 1973.

General Ellis served as Vice Chief of Staff, U.S. Air Force, Spain, in May 1973.

General Ellis served as Vice Chief of Staff, U.S. Air Force, from November 1973 to August 1975. On August 29, 1975, he was appointed Commander, Allied Air Force Central Europe, and on August 30, 1975, he assumed command of U.S. Air Forces in Europe. He became the Commander in Chief of SAC and Director of the JSTPS on August 1, 1981.

General Ellis is married to another Delaware resident, the former Margaret Parry Wolcott. They have three children: two sons, Josiah O. Wolcott III and Richard Hastings Ellis, Jr.; and a daughter, Mary Elsie Ellis.

The people of Dover and the Governor of Delaware, in May recognized General Ellis' accomplishments through a weekend of public tributes. It was my pleasure to share an evening with General and Mrs. Ellis and to be a part of their recognition.

I am sure that his many friends and colleagues who wear the Air Force blue with such distinction will regret his leaving but he has served us well and his record will be one for future officers to emulate.

QUARTERLY REPORT OF THE OFFICE OF TECHNOLOGY ASSESSMENT

Mr. THURMOND. Mr. President, as the President pro tempore of this body, I have received the quarterly report of the Office of Technology Assessment. This report is available for review by my colleagues in my office.

THE SCHEDULED TOUR OF THE SOUTH AFRICAN RUGBY TEAM TO THE UNITED STATES

Mr. THURMOND. Mr. President, I recently had an opportunity to read a press release from the Executive Secretariat of the Organization of African Unity (OAU) to the United Nations. It was a vicious, unfair attack on the scheduled tour of the Springbok rugby team to the United States. The Springboks hail from the Republic of South Africa, a pro-Western, anti-Communist nation that President Reagan recently praised as a trusted ally and friend.

The OAU statement criticized this nation for issuing visas and providing transit facilities to the Springboks en route to New Zealand. It also denounced the U.S. decision to allow the team to return to America in September to participate in three rugby matches in three American cities.

Mr. President, politics and sports do not mix very well. The Organization of African Unity has attacked the racial policies of the last white-ruled African country, and has extended its criticisms to the Springbok team. Such criticisms are unfair. The South African rugby team is multiracial, and all of its members were selected on the basis of merit. Furthermore, multiracial sports in South Africa has been a reality for a number of years.

Let us hope that fairness and friendship toward an ally prevail, and that Communist and other outside foreign agitation does not disrupt the visit of a famous rugby team.

ROBOTICS TECHNOLOGY

Mr. CANNON. Mr. President, now that our major preoccupation over the dimensions and direction of the Nation's budget and tax goals has been eased, we can devote more of our attention to the substantive elements of our country's drive for economic recovery. In this drive we must recognize the critical importance of industrial productivity. We have already encountered bruising evidence of what can happen to our strongest industries and largest employers when we allow foreign competitors to overtake us in productivity. Those results are easy to identify—but hard to remedy. Those results are lost jobs and bankrupt companies.

Whenever I look into the matter of industrial productivity I see another opportunity for technology development and application toward improvement in productivity. Today I want to applaud two independent activities which strike directly at the problem of industrial productivity. One of these is the convening

of a robotics workshop by our own Office of Technology Assessment, U.S. Congress. This will explore the issues related to robot technology with emphasis on those of interest to the Congress. I commend the Director and staff of the OTA for organizing this workshop.

The other is a recently formulated policy document of the Robot Institute of America which has been brought to my attention by the president of the institute. This is identified as policy document No. 2, dated March 1981. Its title is "Robotics Technology—A Major Component in the Solution of the U.S. Productivity Problem." It points up the key differences between the aggressive pursuit of this technology in Japan and outlines steps that U.S. industry and government should take to assure that robotics technology is developed and deployed to the maximum extent feasible to increase U.S. industrial productivity.

I commend the President and members of the Robot Institute of America and ask unanimous consent to have printed in the RECORD its policy document No. 2.

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

ROBOTICS TECHNOLOGY—A MAJOR COMPONENT IN THE SOLUTION OF THE U.S. PRODUCTIVITY PROBLEM

The purpose of this paper is to show how robotic technology can be a major component in reversing the current declining trend of U.S. productivity. A comparison is drawn between how Japan accepts, uses and promotes the technology and what should be done in the U.S. by industry and government. It is not our opinion that we emulate the Japanese but rather learn from them, as they learned from us, and apply, intelligently, the ideas that make sense. It should be recognized that the U.S. is the leader in the development of robotic technology and Japan is the leader in applying and using the technology.

The following is what should be done by industry and government to implement an aggressive program to infuse robotic technology in U.S. industry and surpass the Japanese:

INDUSTRY

(1) Make the firm decision for large scale incorporation of robotics in the production processes.

(2) Assign priority to robotic installation, recognizing it as a form of automation that is one of the quickest and least expensive ways of increasing productivity.

(3) Provide supervisory and engineering training that will assist them in understanding the advantages of robots and how to use them and accept the responsibility for participating in the retraining and upgrading of the displaced workforce.

GOVERNMENT

(1) Set national policies and goals that will permit rapid modernization of production facilities and the rapid installation of robots by establishing robotics as a major strategic industry.

(2) Restructure depreciation schedules so they are more compatible with the real obsolescence of industrial equipment.

(3) Immediately match or surpass foreign government incentive programs for robotic infusion.

(4) Provide government funds to assist in generic applied research for advancing robotic developments.

(5) Provide assistance for the retraining of displaced workers.

(6) Change tax laws to encourage capital accumulation, recovery and investment in innovative processes and products.

(7) Eliminate the adversary condition between government and industry and set a political climate to encourage cooperation toward national goals.

(8) Understand that failure to adopt new technology and invest prodigious amounts of capital in new plants, equipment and processes is a direct roadmap to loss of jobs and plant closings.

JAPAN USES ROBOTICS AS A MAJOR ECONOMIC WEAPON

The Robot Institute of America recently issued a background document on the subject of productivity and how it effects the United States' standard of living, inflation, employment, economic soundness, and loss of world export leadership. It covers the history of our productivity deterioration from factors that contributed to the current climate which, after six years of "problem defining and measuring" still leaves us without coherent national policies and goals. And in a broad sense, it lists the areas in which action must be taken.

The Institute felt such a document was necessary if all groups in the United States were to have at least an elementary knowledge of the problems they face. Little is said in this document that has not already been said by hundreds of industrialists, economists, executives, government officials and others. Placing all their papers side by side would reveal a remarkable similarity on what the problem is, how it developed, and how to solve it. The consensus that is not revealed is the sorting through of and the will to act in a cohesive, cooperative spirit that would put behind us our last few divisive years.

The Japanese have not been noted for their innovativeness. Rather, they have been excellent emulators. They are basically superb, thorough, and exceedingly energetic engineers. In fact, they have researched and used excellent managerial talents, copying our technology and products, to become our foremost economic adversary. The Robot Institute feels, therefore, that we should look at the things Japan did to achieve superiority and use their successful tactics to regain our leadership. It is now apparent that Japan has passed to an innovative mode from strict emulation. Examination of their strategy and motives reveals that next to strategic planning and national goal setting, adequate and new technology are their major strengths. Within that framework, robotics has emerged as their major weapon.

The Robot Institute of America asks the question, "If Japan Can . . . Why Can't We?" Let's look at what Japan has done:

Japan, like other countries, has inflation. But its causes are different and it has acted quickly and effectively to keep it under control; so far, the U.S. has failed to accomplish this.

The Chase Manhattan Bank Newsletter says, "Japan seems to be winning the battle against inflation." Consumer prices rose only 4.8 percent in 1979, 7.5 percent in 1980, and will project an increase of approximately 6.0 percent for 1981. These figures are parallel with both OPEC prices and OPEC events (war, hostages, etc.). And while most of Japan's consumer price increase has been due to oil, it has other domestic forces under control largely by massive increases in productivity, strategic cooperative planning, major doses of technology improvement, and capital investment.

"We have prevented imported inflation from becoming domestic homemade inflation"—Isamu Miyazaki, Vice Minister, Japanese Economic Planning Agency.

". . . there currently is very little homegrown inflation here"—Eric Hayden, Tokyo based Vice President, Bank of America . . . 99 percent of it (inflation) is from offshore."

"Japan does not have the wage/price spiral of other countries," states Tsotomu Nishimura, Chief Economist, Sumitomo Bank. (The 1979 wage increase was 6.9 percent, 7.3 percent in 1980, and the 1981 forecast by Mr. Miyazaki, Japanese Economic Planning Agency is 7.9 percent.)

More importantly, productivity is keeping pace—6 percent in 1980, considered a good year, and a forecast of 11.0 percent for 1981. Therefore, unit costs of production have remained relatively stable, accounting partially for the Japanese cost advantage in foreign trade. (Most charges of Japanese dumping turn out to be simply lower costs because of greater productivity.)

Assistant Secretary of Labor under the Carter administration, Arnold Packer, said, "The difference is we have labor leaders who insist on wage increases that far outstrip productivity, and the Japanese don't." According to Yoshihiro Inayama, Chairman, Nippon Steel, "Cost of living increases are not used in Japan, so wages do not rise automatically with price. The countries with the worst inflation are those that link wage increases to price increases."

Japan has also successfully restricted the growth of its money supply. In 1980, it was only 8.0 percent. Interestingly, Japan has horrendous national deficits ($67.9 billion in 1980) for a country half the population size of the U.S. The difference is that funds are borrowed from the Japanese people, who save 20 percent vs. 5 percent in the U.S. and Japan does not pay its deficits with printing press money. According to Mr. Hayden, Bank of America, in Japan, the people and the government save and in the U.S., the people and the government spend.

What specifically does Japan do to promote the use of technology in solving its inflation, productivity, and world trade problems? First, Japan sets naticnal goals and objectives, combined with consensus and priority as an integral part of the setting, followed by strategic planning for their implementation. Second, Japan takes a specific technology such as robotics (of which the U.S. was the founder and leader) and makes it a prime inclusion in its industrial operations, improving its own productivity and enhancing its world market position for its products. Japan presently has over 7,500 installed robots.

Japan, as a part of its own international and multinational plan, intends to market robots internationally starting with low cost, lower technology robots and working up into the more sophisticated robots as they enter and secure markets. (In late 1980, Fujitsu's new plant had a capacity to produce, yearly, more robots than are currently installed in the entire United States.)

Factors in the Japanese culture that promote robot acceptability are:

1. Guaranteed lifetime employment until age 55–60.

2. Payment of semiannual bonus from company, based on productivity and company profitability equal to 2-5 months of the worker's annual salary. Workers have not opposed robotics because its potential for increasing productivity and profitability enhances their bonus.

3. Assumption by Japanese companies of the responsibility for retraining and upgrading the skills of displaced employees.

4. MITI (Ministry of International Trade and Industry) has deliberately identified robot production as a major strategic industry, vital to Japan's national and international trade development. It regards the installation of robots as necessary to offset Japan's scarcity of labor, to reduce job labor content, and to enhance economies of scale in manufacturing.

MITI has not just talked. It has taken specific actions to implement its robot strategic plan:

a. With MITI direction, Japan Robot Lease was founded in April, 1980. It is jointly owned, 70 percent by the company members of the Japan Industrial Robot Association and 30 percent by ten, non-life insurance companies. The objectives of Japan Robot

Lease are to encourage and support robot installation by small and medium size Japanese manufacturing companies, thereby increasing their productivity. Because 60 percent of operating capital is furnished by government subsidy (Japan Development Bank loans), the leasing conditions will be more advantageous than regular leasing.

b. MITI has arranged for direct government low-interest loans to small and medium sized industry to encourage robot installation, to automate dangerous processes and to increase productivity. The Small Business Finance Corporation budgeted in February, 1980, 5.8 billion yen ($19,000,000 U.S.).

c. MITI has permitted manufacturers who install robots to depreciate 12.5 percent of initial purchase price in addition to regular normal depreciation.

5. The Japanese Industrial Robot Association indicates robot production in 1979 was 36.0 billion yen ($180,000,000 U.S.) and projects 195.0 billion yen ($975,000,000 U.S.) in 1985.[2]

6. Although auto production dominates in the use of robots, robots are well diversified across the industrial spectrum, both in arc and spot welding, painting, materials handling, machine tools and assembly.

JAPAN'S PLANS FOR THE NEXT DECADE

Future Japanese strategic plans call for:

1. Rapid expansion into high volume operations. This will permit quantity production of standard robots that will take advantage of economies of scale both in manufacture and use.

2. Increasing focus on "intelligent" robots which represented 9.9 percent of sales in the first half of 1980.

3. Increasing focus on development of batch manufacturing technology to permit cheaper product diversification.

4. Targeted generic research in vision and tactile sensing for greater flexibility and expansion of the robot user market.

5. Declaration by MITI that robotics is the technology that will permit Japan to hold its productivity lead.

WHAT SHOULD THE UNITED STATES DO?

Industry

1. Complete its feasibility studies and make the firm decision for large scale incorporation of robotics into its production processes.

2. Make large and long term commitment to the acceptance and inclusion of robotics. This will permit U.S. manufacturers to expand their manufacturing capability to supply the needs of U.S. industry and prevent the incursion of Japan into U.S. markets.

3. Accept the responsibility for retraining and upgrading its work force when displayed by or when augmenting robot usage.

4. Assign priority to the installation of robots, recognizing that robots are one of the quickest and cheapest ways to increase productivity.

5. Cooperate with worker groups to assist them in understanding the advantages of robots and accept them more easily. Assign priority of installation to dull, dirty, dangerous jobs. Work out plans to share the benefits of increased productivity. Emphasize that we must have the long term advantages of robot technology, but that they will not happen without near term dislocation of work force, some rather severe.

Government

1. Set national policies and goals that will permit rapid modernization of production facilities and the rapid installation of robots. Establish robotic production as a major strategic industry.

2. Structuring depreciation schedules that are more compatible with the real obsolescence of industrial equipment. Permit rapid write-off for more certain capital recovery.

3. Immediately match (or surpass) foreign government incentive programs for robot usage.

4. Encourage deployment by the Department of Commerce of some of the resources and authority of the Stevenson-Wydler Technology Innovation Act of 1980 to support generic research for tactile and visual sensing for advancing precision robotic developments suitable in a wide range of industrial processes.

5. Provide assistance for the retraining of displaced workers, including attention to our nation's public education system which reflects an appalling lack of basic math and science training required to upgrade unskilled workers for participation in more advanced industrial production processes.

6. Immediately change the tax laws to encourage capital accumulation, recovery, and investment in innovation processes and products.

7. Take immediate steps to eliminate the adversary condition between government and industry, and set a political climate to encourage cooperation toward national goals.

8. Understand that failure to adopt new technologies and invest large amounts of capital in new plants, equipment and processes is a direct roadmap to plant closings and loss of jobs. Technology (38%) and capital investment (25%) equate to over 63% of the driving force that creates new industries and jobs.

SOURCES

1. NBC, "If Japan Can, Why Cant' We?" 24 June, 1980, Lloyd Dobbins, Narrator.

2. Aron, Paul. Report on Robotics in Japan. New York: Daiwa Securities America, Inc. (1980).

AMBASSADOR MIKE MANSFIELD SUMMARIZES THE REAGAN FOREIGN POLICY

Mr. PERCY. Mr. President, our friend and very distinguished colleague, Mike Mansfield, U.S. Ambassador to Japan, has made an important statement on United States-Japanese relations. On July 22, he spoke before a Nikkeiren-sponsored seminar for top management attended by top-level Japanese executives. Ambassador Mansfield has summarized the Reagan foreign policy in an effective way and has explained its benefits and implications for United States-Japanese relations. He has pointed out the resilience of our friendship with Japan, which is the kind actually strengthened by adversity. Ambassador Mansfield is correct in saying that nothing has happened since the summit meeting of Prime Minister Suzuki and President Reagan which detracts in any way from the closeness of our relations.

I ask unanimous consent that Ambassador Mansfield's speech of July 22, 1981, be printed in the RECORD.

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

ADDRESS BY AMBASSADOR MIKE MANSFIELD

President Otsuki, distinguished leaders of the business community of Japan, it is always a pleasure for me to come to the region around Fuji-san. My home state in the U.S., Montana, is known as "Big Sky" country because of the vast expanses, the distant horizon and the great cloud-filled skies. Japan, with all its mountains, valleys and bustling big cities, is quite different, but here in the gentle sloping countryside between this world famous mountain and Suruga Bay, one can get a feeling for the "Big Sky" in Japan too.

It is also a pleasure to be with you today as you examine the changing international situation and seek to identify the measures which Japan and the U.S. should take in response to it. I would certainly not wish to prescribe programs or steps which other countries should take to advance their own interests, least of all Japan, where freedom of discussion and a democratic, political, economic and social structure allow for self-determination after free debate. Given the effects that policies taken by either of our countries have on the other, however, a few words about the foreign policy objectives of the Reagan Administration and how they relate to Japan may contribute to your discussions during these next few days and beyond.

THE REAGAN FOREIGN POLICY

Six months have now passed since President Ronald Reagan took office. During this period, the broad outlines of the foreign policy of his administration have become clear. Secretary of State Haig recently described the four basic elements of this policy as follows:

1. A new approach to East-West relations whereby we will insist on reciprocity and restraint on the part of the East.

2. A strengthening of our own defenses.

3. A commitment to rejuvenate our alliances and revitalize our relations with those with whom we share values.

4. The establishment of a just and responsible relationship with the developing world.

But as we know "4" is an unlucky number in Japan. Thus, I would like to add a fifth goal that is essentially domestic but which will have an exceedingly important impact on the success of our foreign policy—the reconstruction of the American economy. The Reagan Administration has set as its number one priority the restoration of non-inflationary growth and is succeeding.

A strong U.S. economy is an essential basis for exercising the kind of leadership in world affairs that our friends and allies, Japan included, expect. A strong U.S. economy is the dynamo that has generated the outstanding American social, cultural and scientific development so well known around the world. A strong U.S. economy has provided American citizens with a standard of living that has been equaled by few other countries. Indeed, without a strong U.S. domestic economy, we limit the means for working together with our friends toward greater prosperity throughout East Asia and the Pacific and toward maintenance of political freedom and military stability.

During the past several months, a veritable revolution—some call it the "Reagan Revolution"—in the funding and administration of U.S. Government programs has taken place, all aimed at putting our own economic house in order. In my view these steps are long overdue, and I welcome them. Federal spending is being cut, government regulation trimmed, taxes—including those that apply to business—reduced, and the responsibility for a number of social programs returned to the states. These measures will reaccelerate the economy by reducing inflation leading to increased investment and job creation. As inflation declines, so will interest rates decline in time.

THE US-JAPAN ALLIANCE

Where, then does Japan fit into the broad framework of U.S. foreign policy? As I have said on many previous occasions, there is no more important bilateral relationship in the world than that between the United States and Japan. The cornerstone of our policy in Asia and the Pacific is our relationship with Japan. Our trade ties have contributed to prosperity not only in Japan and the United States, but in other countries around the Pacific rim.

The defense relationship has contributed greatly to the strategic balance. And on the cultural and education level, Japan and the United States regularly welcome scholars, artists, scientists, and technicians from each other in a lively exchange of people and ideas that is a valuable learning experience for

both nations. Our relationship, which is based on common values and interests in the world, has been nurtured with understanding, good faith and mutual trust and confidence on both sides.

Over the years, this relationship has matured into a productive partnership to deal with the serious challenges which we face in common. This is what we mean when we in the United States refer to Japan as an ally. And Japan has demonstrated by its action that it understands not only the meaning of the word "ally" but also the responsibilities associated with such a relationship.

Our two nations are now firmly linked as equal partners. For example, we Americans have been particularly appreciative of the support we received in our efforts to have the hostages in Tehran freed, recognizing that of all our friends and allies Japan paid the greatest price for her support when the Iranians unilaterally cut off what has been 13 percent of Japan's petroleum imports. The role of Japan in invoking economic sanctions upon the Soviet Union following that country's invasion of Afghanistan provided another clear example of Japan's willingness to play an active and constructive role in the search for peace and stability in concert with the U.S. and other nations.

THE SUZKI VISIT

The strength of our relationship was recently demonstrated by the visit of Prime Minister Suzuki to Washington. In my view, that visit marked the most successful meeting ever held between a Japanese Prime Minister and an American President. The summit was preceded by the resolution of the automobile trade issue—a testimony to our ability to work out reasonable solutions to seemingly intractable biltaeral problems on the basis of mutual understanding.

In Washington, the Prime Minister and President Reagan concurred on the most important global and regional political and economic issues. They shared a common concern about the rapid growth of Soviet military power in this region of the world and the Soviet willingness to use their power in Afghanistan and elsewhere; they agreed that an appropriate division of defense roles for the United States and Japan is desirable; they concurred in the view that the industrial democracies should consult and cooperate more on defense, on improving the world economy and on development assistance to Third World countries; and they each resolved to maintain a free and fair trading system.

The summit was a clear demonstration of the close ties, which, to repeat, bind our two countries in the most important bilateral relationship in the world. I assure you that nothing has occurred since the summit which detracts in any way from the significance of this meeting between our top leaders or the closeness of our relations. And I can think of no more positive or auspicious way to usher in the two new administrations in Washington and Tokyo, and this new decade of the 80's as well, than this remarkable summit we experienced in May.

THE BILATERAL TRADE PICTURE

There has been much discussion in recent years of trade frictions between our two countries. Indeed, we have faced some difficult problems, both in my period as Ambassador and before. Undoubtedly we will face others in the future. But we have made great progress in our ability to resolve these problems, and in reaping the benefits of the largest overseas trading relationship in the history of the world.

One aim of the President's economic recovery program is to make American business more competitive, both at home and abroad. Recently the President's Special Trade Representative, William Brock, made this point clear when he stated to Congress on July 8, "a strong U.S. economy is our goal. Free trade, based on mutually acceptable goals and relations, is essential to the pursuit of that goal." I recognize that the U.S. has not been immune to protectionist pressures. None of us are. We all have to deal at times with political reality. But, as Ambassador Brock's statement to Congress makes clear, we are acutely aware that the maintenance of open markets is essential to our economic well-being and that protectionist tendencies need to be kept under control everywhere.

It is inevitable that the dynamic Japanese enterprises which you head and our equally dynamic American companies will compete in the market place. This is healthy, but it is neither inevitable nor necessary for commercial competition to result in political friction. However, our companies, as I am sure yours are, will be sensitive to discriminatory practices which distort the market place and place them at a competitive disadvantage. For a free-trading system to work, it must be truly free. The use of export credits and subsidies, tied aid to developing countries, discriminatory investment incentives and restraints in trade are all means for destroying both the fabric and trust upon which the free trade system is built.

It is not enough that legal barriers be removed, if extra-legal barriers and business practices made it very difficult for new suppliers and customers to enter the trading structure. It is not enough to lower tariff barriers if non-tariff barriers remain in place or new ones are erected. We made great progress in the multilateral trade negotiations in establishing a network of agreements for the removal of non-tariff barriers to trade. It is essential that these agreements be effectively implemented. This should be the objective not just of governments, but businessmen as well. For it is the businessman who will suffer most if the trading system collapses under the pressure of non-conformity with its rules and guidelines.

One of the more visible and more important of the agreements flowing out of the multilateral trade negotiations (MTN) was the opening of Nihon Telephone & Telegraph (NTT) procurement to foreign suppliers. As with the other MTN agreements, the manner in which the NTT agreement on procurement policies is implemented in practice will be the key to determining the success of this agreement. Our experience thus far with implementation of the NTT agreement has been particularly encouraging. We are optimistic that the understanding which NTT leaders are demonstrating of the problems facing U.S. businessmen in Japan will prove a model for other sectors of the Japanese economy.

I believe American companies increasingly recognize the need to familiarize themselves with the particulars of the Japanese market and preferences of Japanese consumers and to invest the time, money and effort needed to achieve success in Japan. Moreover, in my view, Japanese businessmen are becoming more internationally minded; they recognize that the prosperity of Japan's economy depends on the economic strength and vitality of Japan's friends and partners. As appreciation of the international aspects of economic affairs depends among Japanese businessmen, the need for continuing efforts to encourage imports and foreign investment is increasingly recognized.

Although I have been talking about our bilateral relationships, I must also mention the other great trading partner of our two countries, the industrial democracies of Western Europe. The growing interdependence linking the economies of Western Europe, Japan and the U.S. is such that the actions of one partner of this triangle cannot but have effect upon the economies of the other two; trading patterns between two affect the third. There is no doubt that the industrial democracies are faced with structural problems in a number of mature, basic industries, including steel, textiles and automobiles. It is equally clear that other sectors of the economy—machine tools, semiconductors, computers—are areas of future competition.

The recent visit of Prime Minister Suzuki to Europe has been particularly valuable in underlining the common interests of these three great economic entities and in pointing the way toward improved economic cooperation among them. I welcome the Prime Minister's leadership in this area and support his efforts to find mutually acceptable solutions to the problems confronting the industrialized democracies.

Energy is also an issue which requires Japan and the United States to work together. There is a major risk that the current softness in oil markets will give rise to unjustified complacency. Japan and the United States have both made remarkable steps in reducing their dependence on imported oil. There is every reason for this effort to continue since the United States and Japan have much to gain through energy cooperation, bilaterally and through assistance to Third Countries seeking to develop their own energy resources.

Japan's efforts on behalf of economic development are equally outstanding. The doubling of Japanese aid over the next five years will further economic development in deserving countries and contribute to global security.

INTERNATIONAL SECURITY

Of course, neither Japan nor the United States can afford to lose sight of the international security situation. The rapid buildup of the Soviet Union's military capability during the past two decades, during a period of so-called detente, and their willingness to use military forces directly, as in Afghanistan, or through surrogates as in Africa and elsewhere is disturbing. Unfortunately, the Northwest Pacific has not been spared this buildup. Troops and fortifications have increased on the occupied Northern Islands and there has been a quantum increase of North Korean offensive capability.

The Soviets have also enhanced their ability to threaten the West's oil lifeline in the Persian Gulf. They have substantially increased their naval forces in the Indian Ocean. Soviet, Cuban and other military advisors and forces are in place in an arc running from Afghanistan to Yemen and Ethiopia, and they have strengthened the already huge forces in the southern part of the Soviet Union which faces this area. In East Asia, the USSR has made the Soviet Pacific Fleet the biggest and best of its fleets. The USSR has established a beachhead in Vietnam and frequently uses some of the best anchorages in Asia at Cam Ranh Bay and Danang and the adjacent airfields.

It is no longer an uncommon sight to see Soviet warships and planes moving back and forth over the Japan Sea on their way between Vladivostok and Vietnam. The USSR also has a strong Indian Ocean naval force and very strong elements—up to 51 divisions or 25 percent of its land forces—along the Sino-Soviet border and the Soviet Far East. Approximately 26 percent of its Air Force is located in these same overall areas.

From 1945 to 1965 the United States was in good shape to protect several fronts unilaterally. Since that time, we have become aware of the fact that no one nation can stand alone but that all the nations of the West capable of so doing must stand together. We have had to depend more and more on our allies and friends.

In standing together, however, we each have certain responsibilities. The Reagan Administration is determined to fulfill its duty. For example, the United States will increase its defense budget more than $30 billion for

this year and next. The 7th Fleet has been strengthened to such an extent that we now maintain two carriers on duty in the western Indian Ocean guarding the back door to the Arab-Israeli area and the front door to the richest oil-producing nations in the world along the Persian Gulf. They are out there in our behalf and in Japan's because we know how vital Mideast oil is to your country.

In the new international situation that we face, the United States firmly believes Japan should, can and will do more—on its own responsibility as a sovereign nation—to ensure the defense of its own territory and surrounding sea and air space. The United States is not asking Japan to do more so that we can do less. Despite overall budget austerity, the Reagan Administration has sought $32 billion more in defense spending next year than had been planned by the previous administration and $200 billion more over the next five years. We recognize the constraints that Japan faces and are not asking Japan to do anything that would contravene its constitution, create major economic difficulties, or alarm neighboring countries. We recognize and appreciate the accomplishments Japan has already made. At the same time, we are convinced that the new challenges we face require a heightened emphasis on defense by the United States and its allies in Western Europe and Japan.

There has been much press discussion of the so-called gap between U.S. and Japanese defense thinking. I do not deny that we have some differences in regard to scale and timing. However, according to reports we have received from the Secretary of Defense, Mr. Weinberger, the Secretary of State, Mr. Haig, and the National Security Advisor to President Reagan, Mr. Allen, the recent visit by the Director General of the National Defense Agency to Washington was good and substantial. Reflecting the views of the President, those officials who met with Mr. Omura spoke with one voice. Since then the Cabinet has underlined this agreement. U.S. officials were clear in stating that we are not asking Japan to do the impossible and are aware of the limits Japan currently faces. Within that framework, however, the United States continues to anticipate a greater effort on the part of Japan.

We welcome and encourage a growing Japanese role in world affairs and look to Japan to contribute to the search for solutions to the many problems which confront us. We also recognize that the comprehensive and complex relationship between our two countries will not be without some rough spots, making it all the more necessray that a true dialogue be maintained and that a common vision of where we want this relationship to go be sought. I am convinced that we are moving, together, in the right direction, and that our partnership will continue to develop to the benefit not only of Japan and the United States but of all nations that share our values and aspirations.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The minority leader is recognized.

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

(Remarks of Mr. ROBERT C. BYRD at this point relating to the U.S. Senate are printed earlier in today's RECORD, by unanimous consent.)

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, I wish to report to the Senate the conferees on the tax bill are still hard at work. I expect they will break about now for dinner, briefly, and resume about 8:30. I think it is a good investment of the time of the Senate to wait and see what progress they make a little later in the evening.

RECESS UNTIL 9 P.M.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now stand in recess until the hour of 9 o'clock this evening.

There being no objection, the Senate, at 8:09 p.m., recessed until 9 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. WARNER).

Mr. BAKER. Mr. President, it is my intention shortly to check the progress of the conferees on the tax bill and to make a further statement in a few moments about the plans for the Senate tonight and tomorrow.

While we go about that process, 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.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, there are certain matters on the Executive Calendar and the Legislative Calendar that are cleared on this side for action by unanimous consent. I inquire of the distinguished minority leader first, of the Executive Calendar, if he is prepared to proceed to the items we are prepared to proceed to, all of those nominations under New Reports, plus the nominations under Department of Agriculture, Harold V. Hunter and Charles Shuman.

Mr. ROBERT C. BYRD. Mr. President, this side is not prepared to proceed on the nominations in the Department of Agriculture. Under New Reports, the minority is ready to proceed with those on page 2, page 3, page 4, and page 5.

Mr. BAKER. I thank the minority leader.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering nominations on the Executive Calendar beginning with New Reports on page 2 and including all of those nominations on page 3, page 4, and on page 5.

There being no objection, the Senate proceeded to the consideration of executive business.

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.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Charles L. Dempsey, of Virginia, to be Inspector General, Department of Housing and Urban Development.

ENVIRONMENTAL PROTECTION AGENCY

Kathleen M. Bennett, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency.

John P. Horton, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

NUCLEAR REGULATORY COMMISSION

Thomas Morgan Roberts, of the District of Columbia, to be a member of the Nuclear Regulatory Commission.

DEPARTMENT OF COMMERCE

Robert G. Dederick, of Illinois, to be an Assistant Secretary of Commerce.

Rear Adm. Herbert R. Lippold, Jr., NOAA, to be Director of the National Ocean Survey, National Oceanic and Atmospheric Administration.

FEDERAL COMMUNICATIONS COMMISSION

James H. Quello, of Virginia, to be a member of the Federal Communications Commission.

Henry M. Rivera, of New Mexico, to be a member of the Federal Communications Commission.

SMALL BUSINESS ADMINISTRATION

Frank S. Swain, of the District of Columbia, to be Chief Counsel for Advocacy, Small Business Administration.

GENERAL SERVICES ADMINISTRATION

Joseph A. Sickon, of Virginia, to be Inspector General, General Services Administration.

DEPARTMENT OF JUSTICE

Richard S. Cohen, of Maine, to be U.S. attorney for the district of Maine.

A. Melvin McDonald, of Arizona, to be U.S. attorney for the district of Arizona.

R. Lawrence Steele, Jr., of Indiana, to be U.S. attorney for the northern district of Indiana.

Thomas E. Dittmeier, of Missouri, to be U.S. attorney for the eastern district of Missouri.

Richard A. Stacy, of Wyoming, to be U.S. attorney for the district of Wyoming.

John C. Bell, of Alabama, to be U.S. attorney for the middle district of Alabama.

J. B. Sessions III, of Alabama, to be U.S. attorney for the southern district of Alabama.

Joseph J. Farnan, Jr., of Delaware, to be U.S. attorney for the district of Delaware.

James A. Rolfe, of Texas, to be U.S. attorney for the northern district of Texas.

Michael R. Spaan, of Alaska, to be U.S. attorney for the district of Alaska.

DEPARTMENT OF EDUCATION

Daniel Oliver, of Connecticut, to be General Counsel, Department of Education.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Robert A. Rowland, of Texas, to be a member of the Occupational Safety and Health Review Commission.

DEPARTMENT OF JUSTICE

Frank H. Conway, of Massachusetts, to be a member of the Foreign Claims Settlement Commission.

GOVERNMENT PRINTING OFFICE

Danford L. Sawyer, of Florida, to be Public Printer.

NOMINATION OF MICHAEL SPAAN TO BE U.S. ATTORNEY FOR ALASKA

Mr. STEVENS. Mr. President, on behalf of Senator MURKOWSKI and myself, it is a pleasure to ask that the nomination of Michael R. Spaan for U.S. attorney for Alaska be confirmed by this body.

I have known Mike for more than 9 years. He was my legislative assistant during the early stages of his legal career. I know him to be a man of high integrity with substantial legal and administrative ability.

Mike Spaan graduated from the law school at the University of California at Davis in 1972 in the top 10 percent of his class. He was made a member of the Order of the COIF.

After graduation, Mike moved to Alaska and was a law clerk for then Justice Robert C. Erwin of the Alaska State Supreme Court. In 1973, he joined my staff as supervisor of the legislative section. For the past 5 years he has been a partner in a major law firm in Alaska.

With this background, Mr. President, Mike possesses a comprehensive understanding of both the Government and private sectors, and with his knowledge of the unique problems facing Alaska, he is very qualified to serve as the U.S. attorney for the State of Alaska.

Senator MURKOWSKI and I strongly urge his confirmation.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nominees were considered and 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 unanimous consent that the President be immediately notified that the Senate has given its consent to those 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.

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. BAKER. Mr. President, on our legislative calendar, we have six items that are cleared for passage by unanimous consent. Calendar Order No. 242, Senate Joint Resolution 53; Calendar Order No. 243, Senate Joint Resolution 62; Calendar Order No. 244, Senate Joint Resolution 87; Calendar Order No. 245, Senate Joint Resolution 98; Calendar Order No. 246, Senate Resolution 178; Calendar Order No. 247, House Joint Resolution 141. I inquire of the minority leader if he is prepared to consider all or any part of the list I have just recited.

Mr. ROBERT C. BYRD. Mr. President, I am pleased to inform the majority leader that we are ready to proceed with the items enumerated.

WORKING MOTHERS' DAY

The joint resolution (S.J. Res. 53) to provide for the designation of September 6, 1981, as "Working Mothers' Day", was considered, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 53

Whereas more than sixteen million American women are employed outside the home and have children under the age of eighteen;

Whereas these working mothers are making unique and substantial contributions, to both the growth of the economy and the strength of the American family; and

Whereas working mothers deserve special recognition for fulfilling their exceptional responsibilities in the home and in the world of commerce: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is authorized and requested to issue a proclamation designating September 6, 1981, as "Working Mothers' Day", and calling upon families, individual citizens, labor and civic organizations, the media, and the business community to acknowledge the importance of the working mother and to express appreciation for her role in American society.

Mr. BAKER. I move to reconsider the vote by which the joint resolution was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL CYSTIC FIBROSIS WEEK

The Senate proceeded to consider the joint resolution (S.J. Res. 62) to authorize and request the President to designate the week of September 20 through 26, 1981, as "National Cystic Fibrosis Week."

Mr. DOLE. Mr. President, I take great pride in seeing this resolution designating the week of September 20 through 26, 1981, as "National Cystic Fibrosis Week", through the Senate. This resolution has the cosponsorship of over 30 distinguished Members of the Senate from both sides of the aisle, and will go far in the movement to generate public awareness of this terrible disease that touches the lives of thousands of American infants, children, and young adults.

Although this resolution is very simple in concept, its impact will be felt in ways that many of us who have never experienced the pain and trauma associated with the disease cannot understand. It means so much to victims of cystic fibrosis, as well as their families. Last year, a similar resolution was passed in the Senate, and I think we should make this an annual tradition for a worthwhile cause.

Setting aside a special week of the year devoted to making the public aware of the implications of cystic fibrosis facilities efforts to develop a base of knowledge and understanding through a process of public education activities. The dream of conquering cystic fibrosis can only be realized when research activities to find a cure have the support they deserve. Members of the Congress have an opportunity to vote for legislation designed to support research activities in this area through the National Institutes of Health.

Although medical science has not yet found a cure or long-term control for CF, advances in medications, therapy and diagnostic procedures have extended the life expentancy of cystic fibrosis victims from 10 to 21 years. Although the disease remains fatal, the periods of relative good health have been greatly increased, thereby allowing the person with CF to participate in a more normal lifestyle.

Mr. President the Cystic Fibrosis Foundation has been the leading force in the battle against CF. This disease is the leading genetic killer of children and young adults in America; however, it remains a mystery in attempts to discover a cure. There is also no practical method of identifying carriers of the CF genetic trait. Through the dedicated efforts of the Cystic Fibrosis Foundation, parents, friends, and physicians, as well as thousands of other concerned citizens from the public and private sectors, CF is beginning to gain the focus of attention that it should have.

Cystic fibrosis is a chronic, degenerative, genetic disease affecting the lungs and the digestive organs, as well as other major organs. It causes intermittent and progressive debilitation and eventual premature death. Its side effects include a severe cough, extreme shortness of breath, malnutrition, growth retardation, and eventual respiratory and heart failure. The process of delaying the effects of the disease involves daily, time-consuming, expensive treatment consisting of physical therapy and a multiplicity of medication. The need for constant care and the knowledge of early death create a high amount of emotional stress and severe financial strain on patient and family members alike.

There are about 1,600 new CF cases per year in the United States, and the annual cost of care for a cystic fibrosis patient is extremely high. Estimates of the cost of care for young adult victims exceed $17,000 per year, and individual expenditures can reach as high as $50,000 to $100,000 annually in the terminal years.

Last summer, my staff was privileged to have the experience of working with a young intern named Keith Jones, who suffered from cystic fibrosis. Although he knew that his days were numbered, Keith always looked ahead with optimism and set goals for himself, living life to the fullest during the time he was given. It was with great sadness that I heard about Keith's death earlier this year, but I will never forget the courage of this young man and the inspiration that he provided to members of my staff, as well as myself.

Since knowing Keith, Mr. President, this year's resolution designating "National Cystic Fibrosis Week" has taken on a more personal dimension, and I urge

my colleagues to support final passage of this resolution in the Senate.

Mr. JEPSEN. Mr. President, I am pleased to be a cosponsor of this resolution for it gives me the great opportunity to join with my distinguished colleague from Kansas, Senator ROBERT DOLE, the sponsor of the resolution, in a noble cause. We are here today to establish September 20th through the 26th as National Cystic Fibrosis Week.

This is but a small tribute in comparison to the many weeks, months and years that the victims of cystic fibrosis must endure from this crippling disease.

Cystic fibrosis is the No. 1 genetic killer of America's children, yet the public knowledge of this disease is limited at best.

Of the 1,500 to 2,500 children born each year with cystic fibrosis, many will face delayed treatment and death. Unfortunately, it is estimated that this killer disease will forever alter the quality of life of not only the immediate victims, but their families as well.

The passage of this resolution will, I hope, generate increased public knowledge, additional research, and the eventual cure of this killer disease.

Therefore, I am honored to be an original cosponsor of this resolution and I look forward to the week of September 20.

The joint resolution (S.J. Res. 62) was considered, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 62

Whereas cystic fibrosis is the number one genetic killer of children in America, and between one thousand five hundred and two thousand five hundred are born each year in this country with the disease; and

Whereas public understanding of cystic fibrosis is essential to enhance early detection and treatment of the disease and reduce the misunderstanding and confusion concerning the symptoms of cystic fibrosis; and

Whereas a national awareness of the cystic fibrosis problem will stimulate interest and concern leading to increased research and eventually a cure for cystic fibrosis: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of American in Congress assembled, That the week of September 20 through 26, 1981, is designated as "National Cystic Fibrosis Week," and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate ceremonies and activities.

Mr. BAKER. I move to reconsider the vote by which the joint resolution was agreed to.

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

The motion to lay on the table was agreed to.

COMMODORE JOHN BARRY DAY

The joint resolution (S.J. Res. 87) to authorize and request the President to designate September 13, 1981, as "Commodore John Barry Day," was considered, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 87

Whereas Commodore John Barry, hero of the American Revolution and holder of the first Commission in the United States Navy, was born on September 13, 1745, in County Wexford, Ireland;

Whereas Commodore Barry was commissioned to command the brig Lexington, the first ship bought and equipped for the Revolution, and became a national hero with the first capture of an enemy warship in actual battle;

Whereas following the Revolution, when the sovereignty of the new Nation was threatened by pirates, Commodore Barry was placed in command of the first ships authorized under the new Constitution and was named senior captain of the United States Navy in 1974;

Whereas Commodore Barry is considered as the father of the United States Navy; and

Whereas Commodore Barry was honored by the United States Congress in 1906, when a statue was commissioned and later placed in Lafayette Park, Washington, District of Columbia, and honored again some fifty years later when the Congress authorized a statue to be presented in his name to the people of County Wexford, Ireland: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate September 13, 1981, as "Commodore John Barry Day," as a tribute to the father of the United States Navy, and to call upon Federal, State, and local government agencies and the people of the United States to observe such day with appropriate ceremonies and activities.

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

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

The motion to lay on the table was agreed to.

WORLD FOOD DAY

The joint resolution (S.J. Res. 98) to authorize and request the President to issue a proclamation designating October 16, 1981, as "World Food Day" was considered, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 98

Whereas hunger and chronic malnutrition remain daily facts of life for hundreds of millions of people throughout the world;

Whereas children are the ones suffering the most serious effects of hunger and malnutrition, with millions of children dying each year from hunger-related illness and disease, and many others suffering permanent physical or mental impairment, including blindness, because of vitamin and protein deficiencies;

Whereas although progress has been made in reducing the incidence of hunger and malnutrition in the United States, certain groups, notable among native Americans, migrant workers, and the elderly remain vulnerable to malnutrition and related diseases;

Whereas the United States, as the world's largest producer and trader of food, has a key role to play in efforts to assist nations and peoples to improve their ability to feed themselves;

Whereas a major global food supply crisis appears likely to occur within the next twenty years unless the level of world food production is significantly increased, and the means for the distribution of food and of the resources required for its production are improved;

Whereas the world hunger problem is critical to the security of the United States and the international community;

Whereas a key recommendation of the Presidential Commission on World Hunger was that efforts be undertaken to increase public awareness of the world hunger problem; and

Whereas the one hundred and forty-seven member nations of the Food and Agriculture Organization and the United Nations designated October 16, 1981, as "World Food Day" because of the need to alert the public to the increasingly dangerous world food situation: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating October 16, 1981, as "World Food Day", and calling upon the people of the United States to observe such day with appropriate activities.

Mr. BAKER. I move to reconsider the vote by which the joint resolution was agreed to.

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

The motion to lay on the table was agreed to.

TWO HUNDREDTH ANNIVERSARY OF THE BIRTH OF ROBERT MILLS

The Senate proceeded to consider the resolution (S. Res. 178) to commemorate the two hundredth anniversary of the birth of Robert Mills.

Mr. THURMOND. Mr. President, the Senate is taking action today on Senate Resolution 178, a resolution introduced by my colleague from South Carolina (Senator HOLLINGS). This resolution commemorates the 200th anniversary of the birth of Robert Mills.

As many of you are probably aware, Robert Mills was one of America's finest architects. He was, in fact, the first American-born and American-trained architect, studying under Thomas Jefferson, Charles Bulfinch, and Benjamin Latrobe. As the preamble of Senate Resolution 178 explains, Robert Mills served as Architect of Public Buildings during Andrew Jackson's administration, designing such notable pieces of architecture as the Washington Monument, the Treasury Department, the Old Patent Office, and the Tariff Commission.

Robert Mills, I am proud to say, was a South Carolinian. Born in Charleston, Mills designed many of the beautiful structures in that port city and in other areas of the State. He also designed numerous canals, bridges, and monuments in our State.

Mr. President, I am pleased that the Senate is taking this opportunity to call attention to an individual of historic significance to our Nation and to the State of South Carolina. I am also pleased to add my name as a cosponsor of this resolution.

I ask unanimous consent that a copy of a letter from Mr. Charles H. Atherton, secretary of the Washington Met-

ropolitan Chapter of the American Institute of Architects, regarding this resolution be printed in the RECORD immediately following my remarks.

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

THE AMERICAN INSTITUTE
OF ARCHITECTS, INC.,
Washington, D.C., July 27, 1981.

Hon. STROM THURMOND,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR THURMOND: I was delighted to learn that Senator Hollings has introduced a resolution (S. Res. 178) honoring Robert Mills, and that it will soon be considered by members of the Judiciary Committee.

On behalf of the Washington Chapter of The American Institute of Architects, I want to urge your timely support of this resolution. As you know, the 200th anniversary of Mills' birth will occur on August 12, and it would be most appropriate to have the resolution enacted by that time.

Each citizen that visits this Capital sees a city that was greatly embellished by the architectural genius of Mills. The Treasury Department, the Old Patent Office, the Tariff Commission and perhaps the most beautiful memorial of all, the Washington Monument are eloquent testimony to his skills.

Like Mills' fellow citizens of South Carolina, we are justly proud of the rich architectural heritage he has left in this Capital and elsewhere for all to enjoy, and believe that a Senate Resolution in his honor is a most fitting expression of indebtedness on the part of all Americans.

With all best wishes.

Sincerely yours,

CHARLES H. ATHERTON,
Secretary,
Washington Metropolitan Chapter, AIA.

Mr. HOLLINGS. Mr. President, I would like to thank the distinguished chairman of the Senate Judiciary Committee for expediting the passage of Senate Resolution 178 which I introduced July 17 in order to commemorate the 200th birthday of Robert Mills. I also appreciate the leadership's cooperation in quickly scheduling this matter insofar as Mr. Mills' birthday falls on August 12, when this Chamber will be in recess.

Robert Mills, born in my hometown of Charleston, S.C., was this Nation's first native born and trained architect. Time does not permit me to list all of his achievements, but I would like to mention some of his more outstanding ones. This impressive list includes the Treasury, Patent Office, and Post Office buildings here in Washington; South Carolina College, which he designed at the age of 20; as well as the most notable edifice of this Nation's Capital—The Washington Monument.

Robert Mills still gives inspiration to those who have followed his pioneer footsteps in American architecture. He embellishes all those qualities which gave America its innovative and strong start as a nation of free people. We are honored to pay a bicentennial birthday tribute to such a great American.

The resolution (S. Res. 178) was considered and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

Whereas 1981 marks the two-hundredth anniversary of the birth of Robert Mills on August 12, 1781;

Whereas Robert Mills was the first American born and trained architect establishing a tradition of outstanding American architecture;

Whereas Robert Mills was born in Charleston, South Carolina, and was trained as a young man to be an architect under such notables as Thomas Jefferson, Charles Bulfinch, and Benjamin Latrobe, and soon set up a flourishing business in Philadelphia designing many churches and public buildings along the east coast of the United States;

Whereas Robert Mills was appointed Architect of Public Buildings in President Jackson's administration, a position in which he served for fifteen years, during which he designed and built the Treasury, Patent Office, and Post Office Buildings, whereby he powerfully established the Greek tradition of early American architecture, and designed the Washington Monument in Baltimore as well as his crowning success of the same name in Washington that stood as the highest structure in America at that time;

Whereas Robert Mills made many contributions to the construction of buildings in South Carolina, beginning with the design of South Carolina College when he was only twenty-one, followed quickly by the design of the Congregational Church in Charleston, and hospitals, including a fireproof insane asylum in Columbia, South Carolina, and using his innovativeness design and pioneered the building of canals, bridges, and monuments; and

Whereas in a time when America is foremost in architecture in the world, Robert Mills gives inspiration to his profession and exemplifies to his country that type of person who gave America its strong and innovative start;

Resolved, That the Senate remembers and pays tribute to the memory of Robert Mills on this the year of the bicentennial anniversary of his birth for his outstanding and significant contribution to architecture in America.

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

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

The motion to lay on the table was agreed to.

NATIONAL SCHOOLBUS SAFETY WEEK

The joint resolution (H.J. Res. 141) authorizing and requesting the President to issue a proclamation designating the period from October 4, 1981 through October 10, 1981, as "National Schoolbus Safety Week", was considered, ordered to a third reading, read the third time, and passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I have a few other items that I believe are routine in nature.

ORDER FOR TIME WITHIN WHICH TO REPORT S. 1080

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs have until September 18 to report S. 1080, the Regulatory Reform Act, or be deemed discharged from further consideration.

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

FINANCING PRESIDENTIAL ELECTION CAMPAIGNS

Mr. BAKER. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

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

The legislative clerk read as follows:

A resolution (S. Res. 202) to authorize payment for research and analysis with respect to financing of Presidential election campaigns.

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

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

Mr. BAKER. Mr. President, the Senate leadership recently appointed a Joint Leadership Task Force for the purpose of considering modifications to the Federal Election Campaign Act. This bipartisan study group will review both the Campaign Act and the Federal Election Commission, and based on its findings, make recommendations to the Committee on Rules and Administration on how campaign laws might be improved.

In conjunction with this effort to assess the impact of the campaign finance laws, I ask unanimous consent that the Senate approve a resolution to authorize research directed specifically at how current law and regulations affect the financing of presidential election campaigns.

Enactment of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, for the first time provided significant Federal funding for the conduct of campaigns to the Nation's highest office. These laws, in conjunction with the Federal Election Campaign Act of 1971, have imposed detailed disclosure and accounting requirements on Presidential candidates and their committees. Yet the effect of these laws on the conduct of Presidential campaigns, and their role in shaping the political institutions central to the electoral process have never been comprehensively studied.

Although the task force will focus on the campaign finance laws, it is not in a position to provide an in-depth examination and analysis of Presidential campaign funding. Additional research would be required for comprehensive review and contemplated modification of all campaign laws.

In accordance with the schedule designed by the leadership, the research authorized in the resolution would be delivered to the Committee on Rules and Administration by the opening of the second session of this Congress.

I believe that this timely study will prove beneficial not only to future Presidential candidates, but to all Members of Congress as well.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution with its preamble is as follows:

S. RES. 202

To authorize payment for research and analysis with respect to the financing of Presidential election campaigns.

Whereas enactment of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, in conjunction with enactment of the Federal Election Campaign Act of 1971, as amended, for the first time provided significant Federal funding for the conduct of campaigns for nomination and election to the Nation's highest office, while imposing detailed disclosure and accounting requirements with respect to Presidential candidates and their committees; and

Whereas no comprehensive study has ever been undertaken of how these laws and resultant regulations have affected the conduct of Presidential campaigns and directly or indirectly shaped the political institutions central to the electoral process: Now, therefore, be it

Resolved, That (a) payment is authorized from the contingent fund of the Senate in an amount not to exceed $115,000 for research to be conducted into the financing of Presidential election campaigns. The results of such research shall be reported to the Committee on Rules and Administration by January 1982.

(b) Payments under this resolution shall be paid from funds available in the contingent fund of the Senate upon vouchers approved by the chairman of the Committee on Rules and Administration. The Committee on Rules and Administration shall supervise any contract entered into under authority of this resolution.

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

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

The motion to lay on the table was agreed to.

STATUS REPORT—ECONOMIC RECOVERY TAX ACT OF 1981 CONFERENCE

Mr. BAKER. Mr. President, within the space of 5 minutes or so I expect to have a further report from the conferees on the tax bill and make a further announcement.

I wish to confer with the minority leader, however, before I suggest what further course the Senate should take tonight and perhaps tomorrow.

In the meantime, 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.

Mr. BAKER. Mr. President, with apologies to the Chair and all those who must remain, I must say that it appears that we are making some progress in terms of rearrangements for the further conduct of the business of the Senate. The conferees are at work. They are making good progress. I estimate that fully three-fourths of the items conferenceable between the House of Representatives and the Senate have been resolved, at least preliminarily.

There is a good chance, I think now, that the conferees may be able to finsh the conference report tonight.

In any event, it appears worth our investment of time to remain.

But there is no further business to transact, and rather than delay with quorum calls I shall recess the Senate.

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 4:30 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4242) to amend the Internal Revenue Code of 1954 to encourage economic growth through reductions in individual income tax rates, the expensing of depreciable property, incentives for small businesses, and incentives for savings, and for other purposes; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and has appointed Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. RANGEL, Mr. STARK, Mr. CONABLE, Mr. DUNCAN, and Mr. ARCHER as managers of the conference on the part of the House.

The message also announced that the House has passed the following bill and joint resolution, without amendment:

S. 1278. An act entitled the "Saccharin Study and Labeling Act Amendment of 1981"; and

S.J. Res. 64. Joint resolution designating August 13, 1981, as "National Blinded Veterans Recognition Day".

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4053. An act to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act; and

H.R. 4331. An act to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 167. Concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 3982.

The message further announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3982) to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 4074. An act to revise the laws pertaining to the Maritime Administration.

The enrolled bill was subsequently signed by the President pro tempore (Mr. THURMOND).

HOUSE BILL REFERRED

The following bill was read twice by unanimous consent, and referred as indicated:

H.R. 4053. An act to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act; to the Committee on Energy and Natural Resources.

HOUSE BILL READ THE FIRST TIME

The following bill was read the first time:

H.R. 4331. An act to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HEFLIN, from the Committee on the Judiciary, with amendments:

S. 537. A bill to aid State and local governments in strengthening and improving their judicial systems through the creation of a State Justice Institute (with additional views) (Rept. No. 97-175).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

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

James C. Miller III, of the District of Columbia, to be a Federal Trade Commissioner for the term of seven years from September 26, 1981.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND (for himself, Mr. HATCH, Mr. KENNEDY, Mr. BAUCUS, Mr. BUMPERS, Mr. DECONCINI, Mr. DENTON, Mr. LAXALT, and Mr. SPECTER):

S. 1554. A bill to amend the Bail Reform Act of 1966 to permit consideration of danger to the community in setting pretrial release conditions to eliminate surety bond, to permit pretrial detention of certain offenders, and for other purposes; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. THURMOND, Mr. DECONCINI, Mr. LEAHY, Mr. BAUCUS, Mr. LAXALT, Mr. HATCH, and Mr. SPECTER):

S. 1555. A bill to improve the effectiveness of Federal crime control in the area of sentencing, and for other purposes; to the Committee on the Judiciary.

By Mr. BAKER:

S. 1556. A bill for the relief of Patrick P. W. Tso, Ph.D.; to the Committee on the Judiciary.

By Mr. SYMMS (for himself and Mr. HELMS) (by request):

S. 1557. A bill to amend the Perishable Agricultural Commodities Act, 1930, to increase the ceilings on license fees, remove the exemption from branch fees, and increase the level of damages claimed which entitles a respondent to an opportunity for oral hearing; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH:

S. 1558. A bill to amend title 18 to limit the insanity defense and to establish a verdict of not guilty only by reason of insanity; to the Committee on the Judiciary.

By Mr. PELL:

S. 1559. A bill to amend the Social Security Act to provide for trust fund borrowing from general revenues when necessary to maintain an adequate level of reserves in the trust funds; to the Committee on Finance.

By Mr. GRASSLEY:

S. 1560. A bill to authorize a national soil conservation program utilizing incentives to landowners to install and maintain conservation measures meeting certain standards and to establish a pilot program to test the purchase of conservation benefits, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 1561. A bill to amend the Internal Revenue Code of 1954 to encourage land conservation expenditures by allowing an income tax credit for such expenditures; to the Committee on Finance.

By Mr. MURKOWSKI (for himself, Mr. STEVENS, and Mr. JACKSON):

S. 1562. A bill to provide comprehensive national policy dealing with national needs and objectives in the Arctic; to the Committee on Governmental Affairs.

By Mr. MATHIAS:

S. 1563. A bill to amend the Federal Aviation Act of 1958 to provide for designated "non-smoking" areas aboard aircraft; to the Committee on Commerce, Science, and Transportation.

By Mr. WEICKER (for himself, Mr. TSONGAS, Mr. CHAFEE, Mr. HOLLINGS, Mr. ROTH, Mr. BRADLEY, Mrs. HAWKINS, Mr. PELL, Mr. CHILES, Mr. KENNEDY, and Mr. WARNER):

S. 1564. A bill entitled the "American Tuna Protection Act"; to the Committee on Commerce, Science, and Transportation.

By Mr. MITCHELL (for himself, Mr. PACKWOOD, Mr. COHEN, Mr. TSONGAS, and Mr. KENNEDY):

S. 1565. A bill to amend the Tariff Schedules of the United States to provide for a lower rate of duty for certain fish netting and fish nets; to the Committee on Finance.

By Mr. METZENBAUM:

S. 1566. A bill to amend title XVIII of the Social Security Act to provide initiatives to increase the medicare assignment rate for physicians, and for other purposes; to the Committee on Finance.

By Mr. D'AMATO:

S. 1567. A bill for the relief of Jozo Karoglan and Ilana Karoglan, husband and wife, and their child, Matthias Karoglan; to the Committee on the Judiciary.

By Mr. CHILES:

S. 1568. A bill relating to the application of section 103(b) of the Internal Revenue Code of 1954 to certain bonds for harbor improvements; to the Committee on Finance.

By Mr. WALLOP:

S. 1569. A bill for the relief of Professor Ramarao Inguva; to the Committee on the Judiciary.

By Mr. DECONCINI (for himself and Mr. GOLDWATER):

S. 1570. A bill to provide for the establishment of a national cemetery in Maricopa County, Ariz.; to the Committee on Veterans Affairs.

By Mr. HEINZ:

S. 1571. A bill to permit the Secretary of Health and Human Services to enter into loan forgiveness agreements with physicians specializing in primary care or psychiatry on the condition that such physicians serve in health manpower shortage areas, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DENTON:

S. 1572. A bill for the relief of William A. C. Mellis and Jill Eastmead Mellis, husband and wife; to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 1573. A bill to amend the Water Resources Development Act of 1976 with respect to Lake Oswego, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DENTON (for himself, Mr. GOLDWATER, Mr. THURMOND, Mr. JEPSEN, Mr. CANNON, Mr. NUNN, Mr. HARRY F. BYRD, JR., Mr. QUAYLE, Mr. LAXALT, Mr. SIMPSON, Mr. GARN, Mr. SYMMS, Mr. NICKLES, Mr. ZORINSKY, Mr. DECONCINI, Mr. JOHNSTON, Mr. EAST, Mr. ABDNOR, Mr. MATTINGLY, Mr. HATCH, and Mrs. HAWKINS):

S. 1574. A bill to amend section 673b of title 10, United States Code, relating to the authority of the President to order members of the Selected Reserve of the Reserve components of the Armed Forces to active duty during periods other than war or national emergency; to the Committee on Armed Services.

By Mr. WALLOP (for himself, Mr. GARN, Mr. DOMENICI, Mr. HATCH, Mr. NICKLES, Mr. SIMPSON, Mr. WARNER, Mr. JOHNSTON, and Mr. STEVENS):

S. 1575. A bill entitled "The Combined Hydrocarbon Leasing Act of 1981"; to the Committee on Energy and Natural Resources.

By Mr. JEPSEN:

S. 1576. A bill to amend the Internal Revenue Code of 1954 to provide for the nonrecognition of gain on the sale of property if the proceeds are used to acquire a small business equity interest; to the Committee on Finance.

S. 1577. A bill to secure the right of individuals to the free exercise of religion guaranteed by the first amendment of the Constitution; to the Committee on the judiciary.

S. 1578. A bill to restrict the Federal Government from preempting or interfering with State statutes pertaining to spousal abuse; and for other purposes; to the Committee on Finance.

S. 1579. A bill to amend the Internal Revenue Code of 1954 to allow corporations to deduct all contributions made to a joint employee-employer day care facility; to the Committee on Finance.

S. 1580. A bill to amend the Internal Revenue Code of 1954 to provide a personal exemption for childbirth or adoption and to permit the taxpayer to choose a deduction or a tax credit for adoption expenses; to the Committee on Finance.

S. 1581. A bill to amend the Internal Revenue Code of 1954 to allow the taxpayer the choice of a tax credit or a deduction for each household which includes a dependent person who is at least 65 years old; to the Committee on Finance.

S. 1582. A bill to amend the Internal Revenue Code of 1954 to exempt from taxation certain trusts established for the benefit of parents or handicapped relatives, and to provide a deduction for contributions to such trusts; to the Committee on Finance.

S. 1583. A bill to amend the Internal Revenue Code of 1954 to provide a deduction for contributions made by a taxpayer to an individual retirement plan for the benefit of a nonsalaried spouse; to the Committee on Finance.

By Mr. LAXALT:

S.J. Res. 105. Joint resolution to designate October 1981 as "National PTA Membership Month."; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND (for himself, Mr. HATCH, Mr. KENNEDY, Mr. BAUCUS, Mr. BUMPERS, Mr. DECONCINI, Mr. DENTON, Mr. LAXALT, and Mr. SPECTER):

S. 1554. A bill to amend the Bail Reform Act of 1966 to permit consideration of danger to the community in setting pretrial release conditions, to eliminate surety bond, to permit pretrial detention of certain offenders, and for other purposes; to the Committee on the Judiciary.

BAIL REFORM ACT OF 1981

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

By Mr. KENNEDY (for himself, Mr. THURMOND, Mr. DECONCINI, Mr. LEAHY, Mr. BAUCUS, Mr. LAXALT, Mr. HATCH, and Mr. SPECTER):

S. 1555. A bill to improve the effectiveness of Federal crime control in the area of sentencing, and for other purposes; to the Committee on the Judiciary.

CRIMINAL SENTENCING REFORM ACT OF 1981

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

By Mr. SYMMS (for himself and Mr. HELMS) (by request):

S. 1557. A bill to amend the Perishable Agricultural Commodities Act, 1930, to increase the ceilings on license fees, remove the exemption from branch fees, and increase the level of damages claimed which entitles a respondent to an opportunity for oral hearings; to the Committee on Agriculture, Nutrition, and Forestry.

PERISHABLE AGRICULTURAL COMMODITIES ACT AMENDMENTS

● Mr. SYMMS. Mr. President, I am today introducing legislation to amend the Perishable Agricultural Commodities Act of 1930, and I ask unanimous consent that a letter of transmittal from Secretary of Agriculture Block be printed in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 23, 1981.

Hon. GEORGE H. W. BUSH,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for consideration by the Congress is a draft bill "To amend the Perishable Agricultural Commodities Act of 1930, as amended, to increase the statutory ceiling on license fees, to remove the limitation on branch fees, and to increase the level of damages claimed which require the opportunity for oral hearing."

The Department strongly recommends that this legislation be passed. Without a change in the current fee authority, the Department projects a program deficit of $700,000 in FY 1982.

The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading in the fresh fruit and vegetable marketplace and is designed to suppress unfair and fraudulent practices in the marketing of fruits and vegetables in interstate and foreign commerce. Licenses are the key to enforcement.

Fruit and vegetables are produced domestically on 174,000 farms. They are marketed domestically through 15,200 licensed traders into the hands of about 3,200 of the larger retailers. Farm value of the commodities is approximately $11 billion. The marketing bill totals $14 billion, giving a retail value of domestic production of $55 billion. Foreign trading, both imports and exports, is showing steady growth with current estimates of value approximating $2 billion.

The PACA, with its code of fair trading in the marketplace, has brought stability and order to the fruit and vegetable industry through the establishment of an administrative forum which permits prompt resolution of contract disputes and recovery of damages as an alternative to court action, and the protection of traders from persons who fail to live up to the fair play requirements.

Prior to enactment of the PACA, producers, sellers, and buyers were disadvantaged in conducting their business because unethical operators used unfair and fraudulent practices for personal advantage. Without this law, the inability to compete would return because unfair trading practices would again burden the marketplace:

(1) Farmers and traders would be denied their immediate forum for timely resolution of contract disputes and for recovery of money owed for produce.

(2) Recovery of damages resulting from breach of trading contracts through the courts would be costly as well as untimely due to already overburdened court dockets.

(3) Unfair traders will determine the amount they can deduct from sellers' invoices without fear of reprisal.

(4) Sellers will respond to this increased risk by raising selling prices, thus insuring against anticipated losses.

(5) The traders' response to this increased risk will conservatively add a 10 percent burden to the marketing bill with an increased cost to the consumer approximating $4.5 billion.

In 1980, $6 million was recovered by informal negotiations, an average of $6,200 per complaint. An additional $3.1 million was awarded in formal proceedings in which the Department mediated. Seventy-five percent of the 2,000 complaints received annually are disposed of informally. Formal proceedings require twice the turn-around-time as informal settlement.

Of the 19,000 requests for assistance in FY 1980, an estimated 11,400 counseling efforts involving contract responsibility eliminated the cause of complaint. Without the Act, these would probably have required formal resolution. Applying the average rate of recovery of $6,200 per informal proceeding, the value of this recovery to the industry can be projected at $71 million annually. Adding the present total recovery of $9 million yields aggregate recovery benefits because of the Act of $80 million. Projected costs of administration for FY 1982 are $3.2 million, thus benefits outweigh cost by a ratio of 25 to 1.

License fees paid by approximately 15,200 traders deposited into the PACA fund pay the bulk of the cost of administering the program. The cost of legal support services is paid from appropriated funds. It was, and has remained, the intent of the Congress that the major portion of the program be self-supporting. However, statutory limitations prevent the setting of license fees at levels sufficient to meet program costs which are rising primarily because of increased pay and travel costs and general inflation. At the same time, income has been reduced because of a decline in the number of firms requiring a license to trade.

Effective January 1, 1981, license fees were raised to the current statutory ceiling of $150, plus $50 for each branch in excess of nine, with a maximum fee of $1,000. Despite the increase in license fees, costs of operation will exceed income in FY 1981 by approximately $308,000. Most of the reserve fund will be used to pay this deficit. If the current fee authority remains unchanged, a shortfall of income of approximately $800,000 is projected for FY 1982. Without timely legislative authority to establish an adequate license fee structure, the PACA program will have to be terminated in FY 1982 since projected costs will exceed income and the reserve fund residue. If funding authority is enacted as recommended herein, orderly marketing of fruits and vegetables will be promoted by the continuing enforcement of the code of fair trading in the marketplace.

Specifically, the proposed legislation would:

(1) Increase the license fee ceiling to $400 for each license, plus $200 for each branch, not to exceed $4,000 in the aggregate, and repeal the present branch fee exemption. These changes are necessary to provide for continuation of the program and to permit the flexibility needed to establish a fee structure which will better distribute cost-sharing responsibility among licensed firms and yield sufficient revenue to pay costs of operation through FY 1986.

(2) Increase from $3,000 to $15,000 the level of damages which must be exceeded in a claim before an oral hearing must be held, if requested, in reparation proceedings.

With new fee authority, fees would initially be set at a base fee of $200 for each licensee, plus $100 for each branch operated, not to exceed $2,000 for any licensee. This fee structure would yield sufficient income to pay the costs of program operations until FY 1984 and make a contribution to restore the reserve fund. Flexibility for fee adjustment beyond this period is included in the amendment recommending new maximum fee levels to be utilized if program costs again rise above income levels.

Under the existing license fee structure which incorporates a one-to-nine branch exemption, only 2 percent of the licensees pay branch fees, and of the 12 percent who operate nine or less branch operations, many do a substantially larger volume of business (over $3 million annually) than many of the single unit operators. Distribution of the cost responsibility as proposed by repeal of the branch fee exemption would mean that 14 percent of the licensed firms with branch operations would pay branch fees in addition to the basic fee. It would also mean that those firms that have the most impact on the marketing of fruits and vegetables would bear a greater share of the cost responsibility for the program. Repeal of the branch fee exemption would yield additional revenue and enable the Department to maintain the basic license fee at a lower level.

Enactment of this provision will have a minimal cost impact on the 15,200 licensees. The fees are a tax deductible business operating expense. On the other hand, if the program were discontinued, there would be a substantial adverse impact on farmers, traders, and consumers.

One of the main activities of the Department under the PACA is the resolution of claims filed by injured persons for recovery of damages resulting from breach of trading contracts. When negotiations do not result in informal settlement, the parties present their case in a formal proceeding. The Act presently provides that an oral hearing on a reparation complaint must be held, if requested, whenever damages claimed exceed $3,000. The $3,000 level was established on February 15, 1972, based on the approximate wholesale value of a carlot of fresh fruits and vegetables on the New York City market. The $3,000 figure is no longer realistic and results in unnecessary costs to both the fruit and vegetable industry and the Department.

Accordingly, it is recommended that the Act be amended to increase the level of claimed damages requiring an oral hearing from those exceeding $3,000 to $15,000. For the period FY 1976 to FY 1979, 126 oral hearings were held based on the $3,000 level. Based on the facts in those cases, the proposed higher level of $15,000 would have eliminated about two-thirds of the oral hearings which we were required to hold. Hearing these cases without oral hearing by the shortened procedure method will result in bringing these matters to a speedier conclusion at a savings of costs to the Department, which will no longer have to fund the presiding officer's travel expenses. This saving will not come at the expense of depriving members of the industry of any rights since the shortened procedure method affords the parties full opportunity to submit evidence in support of their positions and to seek a trial de novo in a United States District Court if they feel aggrieved by the Secretary's final decision.

Enactment of this provision, which will impact on 15,200 licensees and 174,000 producers, will also result in some savings in the Department's litigation expenses. The benefit of eliminating the cost of travel for witnesses and principals of disputant firms, as well as witness fees, will accrue to the parties making use of the service.

Enactment of this legislation will have no significant effect on the quality of the human environment.

Current annual cost of the PACA program is $2.65 million. Projected annual cost of the program in FY 1982 is $3.2 million, and $3.9 million in FY 1983.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK,
Secretary.●

By Mr. HATCH:

S. 1558. A bill to amend title 18 to limit the insanity defense, and to establish a verdict of not guilty only by reason of insanity; to the Committee on the Judiciary.

INSANITY DEFENSE PROCEDURES

● Mr. HATCH. Mr. President, on March 26, 1981, I proposed legislation to abolish the independent insanity defense and substitute in its place a new "Mens rea" defense (S. 818, CONGRESSIONAL RECORD). Rather than inquiring into whether or

not a criminal defendant knew "right from wrong" or lacked "substantial capacity" or possessed an "irresistible impulse"—all questions for which our legal system is ill-equipped—the legislation that I introduced would establish as a new insanity defense that—

The defendant as a result of mental disease or defect lacked the state of mind required as an element of the offense charged.

Mental disease or defect would not otherwise constitute a defense to a criminal prosecution.

As a companion measure to S. 818, I am introducing legislation today to establish a new Federal criminal verdict of "not guilty only by reason of insanity" and to establish procedures for dealing with defendants obtaining such a verdict. Defendants acquitted because of insanity would no longer be freed on the same terms as other individuals acquitted of criminal activity.

The premise of this bill is that such individuals, whatever their formal criminal responsibilities, are clearly dangerous to the community and to other individuals. While they may not be deserving of the same sanctions that would be imposed against a guilty individual, neither are they deserving of the same freedoms that are the right of the individual who is found simply "not guilty." Entirely different consequences would flow from a determination of "not guilty only by reason of insanity" than from a determination either of "guilty" or "not guilty."

Under this proposal, if an individual was found "not guilty only by reason of insanity," he would immediately be committed to a suitable facility for examination by medical doctors. No later than 40 days after such commitment, he would be entitled to a hearing before the sentencing court which would have available to it his psychiatric and medical reports. If, after the hearing, the court found by "clear and convincing" evidence that the individual was suffering from a mental disease or defect as a result of which his release would create a "significant" risk of bodily injury to another person or serious property damage, the court would be required to continue the individual's commitment.

If the court did not make this finding, only then would the individual be discharged from the facility and free to return to society.

Following the initial hearing, a committed individual would be given a new hearing before the sentencing court whenever the director of the facility in which the individual was institutionalized certified to the court his finding that the individual no longer posed a significant risk of doing bodily injury or serious property damage.

At that point, the court could either order the immediate discharge of the individual or conduct a new hearing on the individual's mental condition. Upon the motion of the Government, the court would be required to conduct such a hearing. If the court found by a "preponderance" of the evidence that the individual was not likely to cause bodily injury or serious property damage, he would then be released.

Wherever possible, the Attorney General is instructed to release individuals not guilty only by reason of insanity to the appropriate State officials for institutionalization in State facilities.

A second provision of the proposed measure would address the disposition of defendants who have been found "guilty" of a crime but who nevertheless suffer from some mental disease or defect. This would complement the new, more rigorous insanity defense in S. 818—and repeated in section 16 of this measure.

Upon the motion of either the Government or the convicted individual, within 10 days after the verdict and prior to sentencing, the court may entertain a request for a separate hearing on whether or not to institutionalize a defendant in a medical facility, if it finds "reasonable cause" to believe that the individual may be suffering from a mental disease or defect. That is, is he suffering from a mental disease or defect not substantial enough to have warranted a "not guilty only by reason of insanity" verdict but nevertheless sufficient to warrant custody in a suitable facility for care and treatment. If, after the hearing, the court determined by a "preponderance" of the evidence that the individual was suffering from such a condition, it may order that he be institutionalized in a medical institution, in lieu of probation or imprisonment. This provision is designed to permit a more honest replacement of a primary function of the present insanity defense—the placement of individuals in facilities appropriate to their circumstances.

When the director of the facility in which the individual was hospitalized certified that the individual was no longer in need of such treatment, the sentencing court would proceed with final sentencing.

The defendant or his legal guardian may, upon their own motion, seek the release of the defendant from the custody of a medical facility, even in the absence of certification by the director of the facility. Such a motion may be filed, however, only after 180 days from the time that the sentencing court last determined that the individual should remain in such facility. The director may file a certification at any time.

Mr. President, currently there is no Federal procedure for committing individuals who acquitted by reason of insanity, although the District of Columbia does provide for the mandatory commitment of such individuals, D.C. Code 24–301(d) (1973). It is possible only for Federal officials to obtain institutionalization of exonerated individuals through State or local civil commitment procedures. This is plainly inadequate from either the perspective of community safety or the treatment of the individual. Only rarely are State and local officials willing to take the necessary responsibility for such individuals and initiate commitment procedures.

Let me conclude by making several brief remarks about why I have chosen to incorporate certain provisions in this measure.

First, although I believe that a stronger burden of proof can justifiably be placed upon the individual found not guilty only by reason of insanity prior to his release from a medical facility—perhaps a clear and convincing standard rather than a preponderance standard—I have chosen the latter standard because it represents one that already has gone a long distance from present Federal law where no distinctions whatsoever are made between individuals found not guilty and those found not guilty because of insanity.

I believe that it represents a responsible first step in recognizing that the individual found not guilty only by reason of insanity is not entitled to the same presumptions and incidents of innocence as others found simply not guilty.

Second, I have chosen a not guilty—but insane verdict rather than a guilty—but insane verdict, not because I believe any less strongly in the idea of individual accountability for one's wrongful activities, but because the latter verdict would have neutralized many of the benefits of the new insanity defense. The purpose of the new defense is primarily to avoid having to make essentially medical or psychiatric determinations about defendants—determinations for which they are totally ill-equipped—and substituting for these the single determination of whether or not the defendant possessed the state of mind or mens rea necessary for the commission of the offense—a determination that juries have traditionally performed.

A verdict of guilty but insane would basically require juries to make the determination that but for the defendant's insanity he would have possessed the requisite state of mind for the criminal offense. Thus, under the not guilty but insane formulation, the jury would be confronted with the relatively straightforward question of whether the defendant did or did not possess a criminal state of mind, eliminating in the process much of the need for competing psychiatric testimony. Under the guilty but insane formulation, however, they would have to inquire into precisely what the reasons were for the defendant lacking the requisite state of mind; if his mental condition was responsible, he would be found guilty regardless of its absence.

Not only would this involve the criminal conviction and possible incarceration of an individual who lacked criminal scienter, but it would reinvolve the jury in the same kind of medical-psychological determinations that the proposed insanity defense in S. 818 tries to avoid. Psychatric testimony would continue to play the same role in the criminal trial as it does presently, when the insanity defense was raised. The major strides that would be achieved by the reformed

defense would be largely neutralized by the procedural changes required by the guilty but insane verdict.

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

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

S. 1558

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 16. Insanity defense.

"(a) STATE OF MIND.—It shall be a defense to a prosecution under any Federal statute, that the defendant, as a result of mental disease or defect, lacked the state of mind required as an element of the offense charged. Mental disease or defect does not otherwise constitute a defense.

"(b) APPLICATION OF THIS SECTION.—This section applies to prosecutions under any Act of Congress other than—

"(1) an Act of Congress applicable exclusively in the District of Columbia;

"(2) the Canal Zone Code; or

"(3) the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

"§ 17. Determination of the existence of insanity at the time of the offense.

"(a) MOTION FOR PRETRIAL PSYCHIATRIC EXAMINATION.—Upon the filing of a notice, as provided in rule 12.2 of the Federal Rules of Criminal Procedure, the court, upon motion of the attorney for the Government, may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court pursuant to the provisions of section 20 (b) and (c).

"(b) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in rule 12.2 of the Federal Rules of Criminal Procedure on a motion by the defendant or by the attorney for the Government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a nonjury trial, the court shall find, the defendant—

"(1) guilty;

"(2) not guilty; or

"(3) not guilty only by reason of insanity.

"§ 18. Hospitalization of a person acquitted by reason of insanity.

"(a) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED PERSON.—If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (d) of this section. The court shall order a hearing to determine whether the person is currently suffering from a mental disease or defect and that his release would create a significant risk of bodily injury to another person or serious damage to property of another.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court shall order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 20 (b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 20(d), and shall be conducted not later than forty days after the date of the finding of guilty only by reason of insanity.

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the acquitted person is currently suffering from a mental disease or defect and that his release would create a significant risk of bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

"(1) such a State will assume such responsibility; or

"(2) the person's mental condition is such that his release would not create a significant risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of a facility determines that an acquitted person, hospitalized pursuant to subsection (d), has recovered from his mental disease or defect to such an extent that his release would no longer create a significant risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to such person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 20(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of evidence that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a significant risk of bodily injury to another person or serious damage to property of another, the court shall order his immediate discharge.

"§ 19. Hospitalization of a convicted person suffering from mental disease or defect.

"(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CONVICTED DEFENDANT.—A defendant found guilty of an offense, or the attorney for the Government, may, within ten days after the defendant is found guilty and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant. Such motion must be supported by substantial information indicating that the defendant may currently be suffering from a mental disease or defect and that he is in need of custody for care or treatment in a suitable facility for such disease or defect. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order a hearing on its own motion if the court deems that there is reasonable cause to believe that the defendant may currently be suffering from a mental disease or defect and that he is in need of custody for care or treatment in a suitable facility.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 20(b) and (c). In addition to the information required to be included in the psychiatric report pursuant to the provisions of section 20(c), if the report includes an opinion by the examiners that the defendant is currently suffering from a mental disease or defect but that such disease or defect does not require his custody for care or treatment, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best provide the defendant with the kind of treatment needed.

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 20 (d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of evidence that the defendant is presently suffering from a mental disease or defect and that he should in lieu of being sentenced to probation or imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence to the maximum term authorized by law for the offense of which the defendant was found guilty.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility determines that the defendant, hospitalized pursuant to subsection (d), has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing, and may modify the provisional sentence.

"§ 20. General provisions.

"(a) DEFINITIONS.—As used in this title—

"(1) 'insanity' means a mental disease or defect of a nature constituting a defense to a Federal criminal prosecution; and

"(2) 'suitable facility' means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant.

"(b) PSYCHIATRIC EXAMINATION.—A psychiatric examination ordered pursuant to this title shall be conducted by a licensed or certified psychiatrist, or a clinical psychologist and a medical doctor, or, if the court finds it appropriate, by additional examiners. Each examiner shall be designated by the court if the examination is ordered under section 17, 18, or 19. For the purposes of an examination pursuant to an order under section 19, the court may commit the person for a reasonable period not exceeding thirty days, in order to conduct such examination, or pursuant to section 17 or 18, the court may commit such person to the custody of the Attorney General for placement in a suitable facility for a reasonable period, but not to exceed forty days. Unless impracticable, the psychiatric examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension not exceeding fifteen days under section 19, or not exceeding twenty days under section 17 or 18, upon a showing of good cause that additional time is necessary to observe and evaluate the defendant.

"(c) PSYCHIATRIC REPORTS.—A psychiatric report ordered pursuant to this title shall be prepared by the examiner designated to conduct the psychiatric examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include—

"(1) the person's history and present symptoms;

"(2) a description of the psychological and medical tests employed and their results;

"(3) the examiner's findings; and

"(4) the examiner's opinions as to diagnosis, prognosis, and—

"(A) if the examination is ordered under section 17, whether the person was insane at the time of the offense charged;

"(B) if the examination is ordered under section 18, whether the person is currently suffering or in the reasonable future is likely to suffer from a mental disease or defect which would create a significant risk of bodily injury to another person or serious damage to property of another; or

"(C) if the examination is ordered under section 19, whether the person is currently suffering or in the reasonable future is likely to suffer from a mental disease or defect for which he is in need of custody in a suitable facility for care or treatment.

"(d) HEARING.—At a hearing ordered pursuant to this title the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to law. The person shall be afforded an opportunity to testify, to present evidence, to subpena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

"(e) PERIODIC REPORT AND INFORMATION REQUIREMENTS FOR SUITABLE FACILITIES.—(1) The director of the facility in which a person is hospitalized pursuant to section 18 or 19, shall prepare annual reports concerning the mental condition of such person, and shall make recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility, and copies of the reports shall be submitted to such other persons as the court may direct.

"(2) The director of the facility in which a person is hospitalized pursuant to section 18, 19, or 20, shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

"(f) ADMISSIBILITY OF A DEFENDANT'S STATEMENT AT TRIAL.—A statement made by the defendant during the course of a psychiatric examination pursuant to section 17 is not admissible as evidence against the accused on the issue of guilt in any criminal proceeding, but is admissible on the issue of whether or not the defendant suffers from a mental disease or defect.

"(g) HABEAS CORPUS UNIMPAIRED.—Nothing contained in section 18 precludes a person who is committed under such section from establishing by writ of habeas corpus the illegality of his detention.

"(h) DISCHARGE FROM SUITABLE FACILITY.—Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsections (e) of either section 18 or 19, counsel for the person or his legal guardian may, during such person's hospitalization, file a motion with the court ordering such commitment for a hearing to determine whether the person should be discharged from such facility. Such motion may be filed at any time except that no such motion may be filed within one hundred and eighty days after a court determines that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

"(i) AUTHORITY AND RESPONSIBILITY OF THE ATTORNEY GENERAL.—(1) Before a person is placed in a suitable facility pursuant to section 18 or 19, the Attorney General shall request the director of each facility under consideration to furnish information describing rehabilitation programs that would be available to such person, and, in making a decision as to the placement of such person, shall consider the extent to which the available programs would meet the needs of such person.

"(2) The Attorney General may contract with a State, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this title.".

(b) The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following:

"16. Insanity defense.
"17. Determination of the existence of insanity at the time of the offense.
"18. Hospitalization of a person acquitted by reason of insanity.
"19. Hospitalization of a convicted person suffering from mental disease or defect.
"20. General provisions.".●

By Mr. PELL:

S. 1559. A bill to amend the Social Security Act to provide for trust fund borrowing from general revenues when necessary to maintain an adequate level of reserves in the trust funds; to the Committee on Finance:

SOCIAL SECURITY BORROWING

● Mr. PELL. Mr. President, during the past few months a great deal of concern has been expressed in Congress and around the Nation about the impending financial shortfall which we face in our social security program between 1982 and 1985. Today, I am introducing legislation that offers a solution to this immediate problem and gives Congress time to carefully consider the question of how to insure the long-range viability of the program.

A report recently issued by the social security trustees identified the factors which have caused the shortfall that is expected to occur next year in the old age trust fund. It is not the so-called "greying" of America which has created this situation. Rather, annual double-digit increases in prices and a decline in real wage growth have created an imbalance in the system. The result is that if current trends continue, the amount necessary to pay benefits for retirees will exceed available income beginning in 1982.

Rumors about the financial instability within social security have hit the American people between the eyes. All of our citizens who are retirement age are worried that their monthly checks will be dramatically reduced or stopped altogether. But that is not all. Recent public opinion polls indicate that a majority of wage earners are convinced that the system will be bankrupt before they retire.

I believe, Mr. President, that it is the responsibility of the men and women in Congress to reassure our citizens by taking prompt and decisive action to correct the shortfall in the old age trust fund. However, I reject the idea that we must respond to this short-term cash flow problem by permanently reducing the economic security of those who need it most. Social security beneficiaries are the victims and not the source of the program's funding problem. We cannot and must not balance the system on their backs.

The projected imbalance in the old age trust fund is a direct result of the negative performance of our economy and a failure to accurately predict and, thus, plan for the high inflation and joblessness that has occurred in the past few years. My legislation proposes an uncomplicated solution to the immediate funding problem that will not penalize those who depend upon the program to maintain a bare bones standard of living.

The legislation would allow the Secretary of the Treasury to transfer money from general revenues to the old age trust fund to carry us through the current crisis. It would also guarantee that any loan made to the social security system would be automatically repaid with interest once the condition of the fund improves, as it is projected to do by 1986.

The old age trust fund is one of three social security trust funds that receives income from payroll taxes but it is the only one that is expected to experience an immediate shortfall. The medicare and disability trust funds are relatively healthy, but this condition could change if the economy does not improve. If the economy remains weak and if the Congress approves only an interfund transfer, it is doubtful that there would be enough reserves available to keep all three funds healthy.

My legislation gives the Secretary the flexibility to respond to changing economic conditions and to put this short-term problem behind us once and for all. I hope that this proposal will be adopted so that Congress may turn its attention to the long-range social security funding problem that is expected to occur in the 21st century.

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

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

S. 1559

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 201 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(1)(1) If in any month the assets of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund are insufficient to provide that such Trust Fund shall have assets equal to or greater than 14 percent of the amount disbursed from that Trust Fund during the twelve immediately preceding months, the Managing Trustee may borrow from the general fund in the United States Treasury, for deposit in such deficient Trust Fund, an amount not to exceed the difference between the assets of such deficient Trust Fund and 14 percent of the amount so disbursed from such Trust Fund.

"(2) If the assets of the deficient Trust Fund in any month equal or exceed 25 percent of the amount disbursed from that Trust Fund during the twelve immediately preceding months, all amounts that would otherwise thereafter he paid into that Trust Fund shall instead be paid into the general fund of the United States Treasury, except so much as shall be required to maintain the assets of the deficient Trust Fund at 25 percent of the amount so disbursed, until the loan under this subsection is repaid. Such loan shall be repaid

with interest at a rate equal to the rate which would be payable on investments under subsection (d) for the corresponding period of time.".

(b) Section 1817 of such Act is amended by adding at the end thereof the following new subsection:

"(j)(1) If in any month the assets of the Trust Fund are insufficient to provide that the Trust Fund shall have assets equal to or greater than 14 percent of the amount disbursed from the Trust Fund during the twelve immediately preceding months, the Managing Trustee may borrow from the general fund in the United States Treasury, for deposit in the Trust Fund, an amount not to exceed the difference between the assets of the Trust Fund and 14 percent of the amount so disbursed from the Trust Fund.

"(2) If the assets of the Trust Fund in any month equal or exceed 25 percent of the amount disbursed from the Trust Fund during the twelve immediately preceding months, all amounts that would otherwise thereafter be paid into the Trust Fund shall instead be paid into the general fund of the United States Treasury, except so much as shall be required to maintain the assets of the Trust Fund at 25 percent of the amount so disbursed, until the loan under this subsection is repaid. Such loan shall be repaid with interest at a rate equal to the rate which would be payable on investments under subsection (c) for the corresponding period of time.".●

By Mr. MURKOWSKI (for himself, Mr. STEVENS, and Mr. JACKSON):

S. 1562. A bill to provide comprehensive national policy dealing with national needs and objectives in the Arctic; to the Committee on Governmental Affairs.

NATIONAL NEEDS AND OBJECTIVES IN THE ARCTIC

(The remarks of Mr. MURKOWSKI on this legislation appear earlier in today's RECORD.)

By Mr. MATHIAS:

S. 1563. A bill to amend the Federal Aviation Act of 1958 to provide for designated "non-smoking" areas aboard aircraft; to the Committee on Commerce, Science, and Transportation.

"NO-SMOKING" AREAS ABOARD AIRCRAFT

Mr. MATHIAS. Mr. President, I am introducing a bill that basically codifies the Civil Aeronautics Board's nonsmoking regulations.

In 1973, the CAB approved a regulation requiring domestic airlines to provide designated "no-smoking" areas aboard aircraft after July 1, 1973.

In issuing this regulation, the Board found that the existing segregation rules voluntarily adopted by the airlines had been ineffective. The Board said that such rules were "largely unenforced" and "not an adequate remedy." According to the Board, its files were "replete with letters from passengers complaining that the carriers have not maintained the purported separation."

Since its adoption over 8 years ago, the regulations have been amended twice, in 1979 and December 1980. As amended, the CAB requires:

A no-smoking area for each class of service and for charter service.

A sufficient number of seats in the no-smoking areas of the aircraft for all persons who wish to be seated there. A carrier must provide a seat in the nonsmoking section to passengers who demand one, even if they are last-minute arrivals and even if the nonsmoking section must be expanded to accommodate them.

Special segregation of cigar and pipe smokers and a total ban when the aircraft's ventilation system is not fully functional.

The CAB also allows airlines to apply for permission to experiment with alternative methods of protecting nonsmokers from tobacco smoke to the maximum possible degree.

For the past 5 years, the Board has been involved in a rulemaking procedure with regard to its no-smoking regulation. Since that time the Board has received thousands of comments about possible alterations in the present rule.

Just 1 month ago, on June 26, the CAB issued a press release in which it announced its intention to refine its no-smoking rule and directed its staff to draft a revision in the old regulation. According to its press release—

The Board instructed its staff to prepare a rule that will not require airlines to expand the nonsmoking section for passengers who either do not hold confirmed reservations or who arrive after their guarantee of a reservation has lapsed. While the carriers would be required to expand the nonsmoking section, if necessary, they would not have to do so for standby passengers or those who do not check in on time.

At the same time, the Board emphasized that its forthcoming revision would not affect its general requirement for the segregation of smokers and nonsmokers. Despite its reassurance on the separation issue, it is conceivable that the Board could make additional changes in the rule to the detriment of the nonsmokers, such as a relaxation on the rule requiring segregation of cigar and pipe smokers.

My concern that the Board may issue a detrimental revision of the existing rule prompts me to introduce the bill before us. I am taking this action now because of the likelihood that the Board will issue its revision during August while the Senate is in recess. By doing so, I am putting the Board on notice that, should its revision affect adversely the interests of nonsmokers, I will press for the prompt consideration of the bill when Congress returns in September. In my view, any substantial alteration of the effective and existing rule should be undertaken only after careful congressional review. My bill is an appropriate vehicle for such review. I hope its consideration by Congress will not be necessary. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1563

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following:

"PROVISION OF DESIGNATED 'NO-SMOKING' AREAS ABOARD AIRCRAFT

"SEC. 418. (a) APPLICABILITY.—It is the purpose of this section to establish rules for the smoking of tobacco aboard aircraft. Each direct air carrier that holds a certificate of public convenience and necessity authorizing the transportation of persons, issued under section 401 and to commuter air carriers registered under this Act in that part of their operations using aircraft designated to have a passenger capacity of more than 30 seats (hereinafter called 'carriers') shall meet the requirements established under this section. Nothing in this Act shall be construed to require a carrier to permit the smoking of tobacco aboard aircraft.

"(b) SPECIAL SEGREGATION OF CIGAR AND PIPE SMOKERS.—The Secretary of Transportation (hereinafter the 'Secretary') shall adopt and enforce rules providing for special segregation of cigar and pipe smokers, and for such other procedures as may be necessary to avoid exposing persons seated in no-smoking areas to smoke from cigars and pipes.

"(c) NO-SMOKING AREAS.—The rules promulgated under this section shall require that carriers ensure that non-smoking passengers are not unreasonably burdened by breathing smoke and to that end shall provide at a minimum:

"(1) A no-smoking area for each class of service and for charter service;

"(2) A no-smoking section of at least two rows of seats;

"(3) A sufficient number of seats in the no-smoking areas of the aircraft for all persons who wish to be seated there;

"(4) Specific provision for expansion of no-smoking areas to meet passenger demand; and

"(5) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the non-smoking passengers are not unreasonably burdened.

"(d) BAN ON SMOKING WHEN VENTILATION SYSTEMS NOT FULLY FUNCTIONING.—Carriers shall prohibit the smoking of tobacco whenever the ventilation system of an aircraft is not fully functioning. A ventilation system shall be considered fully functioning only when all parts are in working order and operating at the capacity designed for normal service.

"(e) ENFORCEMENT.—The rules promulgated under this section shall require that each carrier shall take such action as is necessary to ensure that smoking is not permitted in no-smoking areas and shall enforce its rules with respect to the segregation of passengers in smoking and no-smoking areas.

"(f) MANUAL CONTAINING COMPANY RULES FOR SMOKING BY PASSENGERS ABOARD AIRCRAFT.—Each air carrier subject to this Act shall maintain an employees manual containing company rules for smoking by passengers aboard aircraft. Two copies of such manual shall be filed with the Secretary, and revisions and amendments shall be filed within 15 days following adoption by the carrier.

"(g) SECRETARY MAY MODIFY MANUAL RULES TO CONFORM THEM TO THE PROVISIONS OF THIS SECTION.—If the Secretary finds that any carrier rule set forth in the manual is at variance with any provision of this Act, the Secretary may by order modify such carrier rule to the extent necessary to conform the rule to the provisions of this section.

By Mr. WEICKER (for himself, Mr. TSONGAS, Mr. CHAFEE, Mr. HOLLINGS, Mr. ROTH, Mr. BRADLEY, Mrs. HAWKINS, Mr. PELL, Mr. CHILES, Mr. KENNEDY, and Mr. WARNER):

S. 1564. A bill entitled the "American Tuna Protection Act"; to the Committee on Commerce, Science, and Transportation.

AMERICAN TUNA PROTECTION ACT

● Mr. WEICKER. Mr. President, I am pleased to introduce today, along with

my colleagues, Senators TSONGAS, CHAFEE, HOLLINGS, ROTH, BRADLEY, HAWKINS, PELL, CHILES, KENNEDY, and WARNER, the American Tuna Protection Act. This legislation provides for the conservation and management of all tuna within the U.S. 200-mile economic zone established by the Fishery Conservation and Management Act (FCMA). It will fill a serious gap in the overall fishery management program of this Nation. Since the passage of the FCMA all species of fish except tunas have been under the exclusive jurisdiction of the United States.

The United States originally excluded tuna from the FCMA because it was felt that international management was the best way to conserve tuna stocks. Unfortunately, Mr. President, circumstances have changed. While the United States relied on the agonizingly slow or dormant international negotiation process, Canada, Mexico, and the great majority of Central and South American and western African nations have declared control over the catching of tuna within their economic zones.

Even so, the west coast tuna interests and the State Department have resisted past attempts to include tuna in the FCMA, declaring that such action would hurt our fishermen's chances to fish tuna claimed by foreign countries. Despite the protestations of many foreign nations, the State Department has managed to force open access to foreign tuna stocks, largely through use of embargoes. It is hard for me to believe that the State Department through the use of this highly effective tool, could not also negotiate equitable quotas of foreign tuna for U.S. fishermen.

The need for including tuna in our overall management scheme is exemplified by the Atlantic bluefin tuna. The Atlantic bluefin tuna is an oceanic schooling species highly adapted to living in water of varying temperatures, to swimming at fast speeds and to traveling over great distances. It ranges the entire breadth of the North Atlantic Ocean. In the western Atlantic it is found from Labrador southward along the entire east and gulf coasts of the United States extending through the Caribbean, and southward along the coasts of Brazil and Argentina. In the eastern Atlantic the bluefin occurs from Lofoten Islands in Norway southward along the European coast, extending throughout the Mediterranean and Black Seas, and then, along the coast of Africa to Sierre Leone, including the Azores, Maderia, Canaries and Cape Verde Islands.

Evidence is strong that there are at least two separate stocks of bluefin on either side of the Atlantic although this has not been proven beyond doubt. Tagging records of over 15,000 western Atlantic bluefin show that 3.000 were recovered from the western Atlantic while 24 were recovered in the eastern Atlantic.

The location of principal spawning grounds on both sides of the Atlantic and the differing times of spawning also support the concept of two separate stocks of bluefin tuna. The eastern Atlantic spawning grounds are the central Mediterranean Sea and the spawning season extends from April to mid-July. Spawning in the western Atlantic takes place mostly within the north-central part of the Gulf of Mexico from mid-February to June. The significance of the two stock theory is its bearing on the ability of the United States to manage bluefin within its own waters.

Japanese longline vessels fish for giant bluefin tuna in the Gulf of Mexico from March to June during the time of spawning congregation. This directed fishery increased greatly in 1974 after a shift in fleet effort away from the Mediterranean Sea and eastern Atlantic Ocean. The number of giant bluefin tuna that have been caught by the Japanese fleet in the northern Gulf of Mexico has been primarily within the U.S. fishery conservation zone. Their annual reported catches over a 5-year period from 1975 to 1979 average over 8,300 giants, although U.S. observers have consistently shown a higher rate of removal than that reported by the Japanese.

In recent years, Japanese vessels have also concentrated their fishing effort in waters off the northeast and middle Atlantic coasts. Longline fishing activity off these coasts (usually 20 to 200 miles from shore) is conducted during the late summer, fall and winter months by approximately 20 to 46 vessels. However, a half dozen longline vessels have fished there throughout the summer months.

The bluefin fishery in this area is conducted incidentally to operations targeted for bigeye and yellowfin tuna. Nevertheless, the annual catch of bluefin tuna amounts to between 4,000 and 16,000 school- and medium-sized bluefin. Canadian fishermen also purse seine for tuna in U.S. waters, catching 350 tons of bluefin per year under an informal agreement. Canada on the other hand, does not allow U.S. fishermen to fish for tuna in their waters.

Incidental to the tuna harvest, the Japanese longlines catch swordfish, marlin, sailfish, and sharks, and even though they are required to release all but tuna, most of the former species do not recover from the trauma of being hooked on a longline. The domestic Atlantic's bluefin fishery is comprised of commercial and recreational fishermen who use a variety of gear, including handline, purse seines, hook and reel, and harpoons. The fishing extends from the Gulf of Mexico to the Gulf of Maine. The purse seine fishery, which exploited mainly school- and medium-sized bluefin tuna, reached its peak catches in 1963 when over 5,500 tons (approximately 11 million pounds) were taken by vessels from both east and west coast ports.

Shortly after the peak fishing of the early and mid-1960's, medium-sized tuna, which were formerly abundant, became scarce. Soon catches declined, tag return rates became alarmingly high, and an imbalance of stock structure became evident. During this time, recreational failures continued to expand. As a result of this decline, only 2,000 to 3,000 or so giant bluefin tuna are allocated to U.S. fishermen. The great difficulty which has arisen during recent years with the bluefin tuna is the increased demand put on the species because of its value. Formerly, the greatest amount of fishing pressure put upon the bluefin by the Japanese has been in the eastern Atlantic and in the Mediterranean Sea.

The catches by Japanese longline vessels within the Mediterranean, in particular off Italy, had increased substantially from 1970 until 1974. Apparently, due to the increased political pressure being exerted upon Japan by the Mediterranean countries, especially Italy, the amount of fishing effort was reduced there. Concurrent with this, however, it was increased tremendously in the western Atlantic and, in particular, within the Gulf of Mexico. Essentially, the Japanese reduced their catch in the Mediterranean but increased it in the Gulf of Mexico, thereby stabilizing their catch but shifting their fishing from one side of the ocean to the other.

This occurred at a time when the various member nations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) were agreeing to restrict their catch limitations. In essence, the United States had reduced its catch by about 30 percent since 1975 as compared to the previous seasons. The Japanese have not only increased their catch of bluefin during this same period but substantially changed where the fishing took place.

Passage of this legislation will insure effective management of our tuna and billfish resources. We would also expect the Secretary of Commerce to immediately implement emergency legislation particularly for foreign fishing interests. These regulations would be determined by the health of the stock and the needs of the domestic fishermen. At the same time, U.S. fishermen will still be bound by ICCAT restrictions. It has been argued that the unilateral extension of fishery management authority to tunas is inconsistent with ICCAT provisions and threatens the continued existence of ICCAT. Neither assertion seems to have much merit.

In the first place, ICCAT "authority" extends only to the high seas. In the second, regardless of what actions member nations take with respect to their own waters, some form of authority is required in international waters. Moreover, there will in all events be a continuing need for the framework which ICCAT provides for joint research by nations having an interest in the resource.

It has also been argued that we should continue to extract voluntary reductions in catch by the Japanese longliners. This has not worked in the past. In recent years the Japanese fishing industry has volunteered token measures of self-restraint in order to delay the inevitable. When it became known that in the mid-1970's the Japanese were killing 10,000 or more giant bluefins in the Gulf of Mexico annually, there was a loud outcry from U.S. sportsmen and conservationists.

In response the Japanese from time to time announced self-imposed reductions. New information recently disclosed in Japanese industry reports indicates that such reductions were made only in one part of the gulf. East of 90 degrees the Japanese caught only 4,369 giant bluefins, which is more or less what they said

they would do, but west of 90 degrees they took an additional 3,372 fish. Thus, the total number of removals was 7,741 fish.

Present U.S. fishery policy encourages U.S. tuna boat operators to violate laws of nations that have included tuna in their own economic zones. This results in widespread resentment and retaliation against other segments of the U.S. fishing industry. It also operates as a disincentive for the U.S. industry to reach an accommodation with such other nations. Given the present level of hostility generated by past practice, it is unlikely that adoption of the proposed legislation will significantly deteriorate the negotiating posture of the U.S. industry. The U.S. position concerning highly migratory species was rejected by the nations concerned many years ago and is not incorporated in the text of the LOS treaty which generally reflects accepted international practice.

Mr. President, this important legislation is consistent with the worldwide approach to tuna management as spelled out in the Draft Convention of the Law of the Sea. It will remove a source of widespread resentment and will open the door to a more profitable, evenhanded approach to international negotiations on tuna management.

The only hope for the bluefin, as well as other tuna species such as yellowfin, bigeye and albacore is to remove foreign fishing interests from our waters and set up a management plan to insure future stocks for our own fishermen.

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

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

S. 1564

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended as follows:

(1) by striking out the words "except highly migratory species," from subparagraph (A) of paragraph (1) of subsection (b) of section 2 (16 U.S.C. 1801);

(2) by—

(A) striking out the words "birds, and highly migratory species" and substituting "birds"; and

(B) inserting "and" between the words "mammals" and "birds" in paragraph (6) of section 3 (16 U.S.C. 1802); and

(3) by striking out section 103 (16 U.S.C. 1813).●

● Mr. PELL. Mr. President, I am pleased to join Senator WEICKER and my other distinguished colleagues in sponsoring the American Tuna Protection Act. This legislation is important because it offers a solution to a serious problem confronting the United States—that is, the depletion of tuna and other fish stocks by foreign, particularly Japanese, tuna fishing interests in the American Fishery Conservation Zone.

Japanese longline vessels fish for tuna off the east coast of the United States at a range of about 80 to 140 miles and in the Gulf of Mexico. Japanese fishing causes serious problems for American fishermen in these areas. They are deprived of catch because no limits are imposed on the amount of tuna that foreign boats can harvest. Japanese activity particularly threatens the existence of the Atlantic bluefin tuna, an oceanic schooling species that spawns in the Gulf and migrates into the Atlantic along the coasts of New England and Canada.

The long lines used by the Japanese hook not only tuna but also significant quantities of other species of fish such as sword and marlin. For example, the Japanese sword bycatch equals the catch of American commercial sword fishermen. The Japanese are required to turn these fish back into the sea. However, it is often 18 to 24 hours before this is done. Exposure during this time causes many of the fish to die and, therefore, reduces the catch of American fishermen in these species as well. In the case of swordfish, only about 10 percent of the Japanese bycatch survive. The presence of Japanese vessels also causes serious conflicts with American commercial fishermen over gear. I know that this has been a problem for fishermen in my home State of Rhode Island.

When Congress enacted the Fishery Conservation and Management Act, many Members, myself included, agreed with the administration that tuna stocks could be managed and protected most effectively through international efforts. To date, those efforts have produced few concrete results. Moreover, in recent years many coastal nations such as Canada and Mexico have foresaken international management in favor of national control over tuna in their economic zones. In light of these developments, the Tuna Protection Act is necessary as a means of protecting a vital American resource.

This legislation, which follows the provisions of the Draft Convention on the Law of the Sea, does not automatically prohibit foreign interests from fishing for tuna in the American economic zone. Rather, it allows the United States to control their activities in order to conserve and manage tuna and other migratory species. It is my hope that passage of this legislation will signal American concern on this issue and serve as an incentive for other nations to negotiate agreements with the United States, permitting fair and reciprocal access to tuna.●

By Mr. MITCHELL (for himself, Mr. PACKWOOD, Mr. COHEN, Mr. TSONGAS, and Mr. KENNEDY):

S. 1565. A bill to amend the Tariff Schedules of the United States to provide for a lower rate of duty for certain fish netting and fish nets; to the Committee on Finance.

IMPORT DUTIES ON SYNTHETIC NETS

● Mr. MITCHELL. Mr. President, today I am introducing legislation which would greatly benefit commercial fishermen who use synthetic nets in their operations. My bill, which contains language identical to that introduced in the House of Representatives on June 23 by Representative GERRY STUDDS of Massachusetts, would reduce substantially the high import duty which our Government now levies on imported synthetic nets.

Since 1963, the tariff on imported synthetic nets has been 32.5 percent ad valorem plus 25 cents per pound of netting. This rate results in extremely high netting prices for U.S. fishermen who cannot obtain in this country synthetic nets of certain shapes and sizes, or nets made of synthetic fibers other than nylon.

A large Maine fishing vessel, for instance, may purchase over $15,000 in netting over a 12-month period. Because of the steep duty now required under the tariff schedules of the United States (TSUS), almost $5,000 of this $15,000 amount goes to Treasury in the form of import duties. On a U.S. tuna fishing vessel, the figures are even more dramatic. For the large and very expensive purse seine net used by Tuna fishermen, the duty alone can increase the selling price of the net by more than $70,000.

The measure I am introducing today would reduce this overly protective duty from its present level of 32.5 percent ad valorem plus 25 cents per pound to 17 percent ad valorem. This would place the duty rate in line with the 17.5-percent protective duty which currently applies to imported nets made of cotton. A 17-percent duty would continue to provide a moderate level of protection for domestic makers of fish netting, but would not have the same adverse effect on fishing vessel owners and operators which today results from the established duty.

The United States agreed, at the multilateral trade negotiations (MTN) concluded 2 years ago, to reduce gradually its duty on synthetic nets from the existing rate to a 17-percent ad valorem rate by 1989.

Specifically, the current policy of our Government is to collect 32.5 percent ad valorem, plus 25 cents per pound of net in 1981; 30.6 percent ad valorem, plus 21 cents per pound of net in 1982; 28.6-percent, plus 18 cents per pound of net in 1983; 26.7 percent ad valorem, plus 15 cents per pound in net in 1984; 24.8 percent ad valorem, plus 12 cents per pound of net in 1985; 22.8 percent ad valorem, plus 9 cents per pound of net in 1986; 20.9 percent ad valorem, plus 6 cents per pound of net in 1987; 18.9-percent ad valorem, plus 3 cents per pound of net in 1988; 17 percent ad valorem in 1989 and thereafter.

The bill which I am introducing today would set the duty level at 17 percent ad valorem as of January 1, 1982. This acceleration of the duty reduction is warranted at this time because of the numerous financial pressures which now weigh on the U.S. domestic fishing industry.

Chief among these pressures is the price of fuel. U.S. fishermen must now compete in the U.S. marketplace with foreign fishermen who pay artificially low prices for their fuel. These same foreign fishermen are permitted to import their product into the United States with little or no duty imposed. U.S. fishermen have difficulty prospering in this market

environment and, as a result, are hard put to pay the high prices for nets which the present duty level necessitates.

I urge all Members of the Senate who are interested in the health of our domestic fishing industry to join me and Senators PACKWOOD, COHEN, TSONGAS, and KENNEDY in seeking enactment of this important legislation.●

By Mr. METZENBAUM:

S. 1566. A bill to amend title XVIII of the Social Security Act to provide initiatives to increase the medicare assignment rate for physicians, and for other purposes; to the Committee on Finance.

INCREASE IN MEDICARE ASSIGNMENT RATE FOR PHYSICIANS

● Mr. METZENBAUM. Mr. President, the medicare program was designed primarily to help the elderly, most of whom subsist on fixed incomes. This year some 28 million Americans depend upon the program for essential medical services.

There can be no doubt that the medicare program has substantially improved the delivery of health care services to the Nation's senior citizens. But it is also true that serious problems have developed in the program's administration since its inception in 1965.

One of the most pressing difficulties facing older, disabled Americans living on fixed incomes is the growing refusal of physicians to accept assignment under the medicare program. When physicians refuse to accept assignment, patients become liable for any differences between the physician's fee and the fee deemed reasonable by medicare. Often, that difference is great enough to create significant financial hardship for many senior citizens.

There are a number of reasons why physicians are increasingly reluctant to accept assignment. Some, for example, have argued that medicare simply does not pay enough—the calculation of reasonable charges is usually lower than what they can actually receive from nonmedicare patients.

But the issue is not money alone, at least not in a direct sense. Many physicians argue that the present burden of paperwork, cash flow problems, and complicated negotiations over levels of reimbursement are a major disincentive for them to accept assignment.

Because the assignment system is not working as it should, older patients are faced with ever-growing financial demands on their diminishing financial resources. And once again, older Americans are finding themselves forced out of the health care market.

Mr. President, the fact is that medicare now pays less than 40 percent of health care costs for the elderly—a substantial drop from the level of just a few years ago. And since 1968, the percentage of physicians accepting assignment has declined.

Nationwide only about 50 percent of physicians regularly accept assignment, but in some States, the rate can be as low as 18 percent, depending on specialty and locality. In my State of Ohio, for example, the net assignment rate is only 36.5 percent. Clearly, Mr. President, something must be done to stem this decline, to provide the elderly with the medical services they require at fees they can afford and to eliminate the real problems that discourage fuller participation by the Nation's physicians.

Mr. President, the legislation I am introducing today makes a number of changes in the way medicare administers reimbursement to physicians for services rendered.

A major problem often raised by health care professionals is that the calculation of reasonable and customary charges is often based on outmoded data. As a result, screens and indices that are supposed to be adjusted for inflation lag too far behind inflation's actual pace.

My proposal addresses this problem from several different perspectives.

First, the secretary of HHS is directed to develop, in consultation with representatives of the medical community, an index that can be appropriately revised quarterly, instead of every 18 months as is now the case.

To facilitate the process of deriving reasonable and fair charges, the Secretary, in consultation with medical representatives, is directed to develop a relative value scale (RVS) that will be used to calculate payments to physicians enrolled in the program. The RVS may initially be more complex than the calculation of usual and customary fees now used, but it will provide for more equitable and standard fee schedules. The RVS will be designed to take into account the skill of the physicians, the complexity of the procedures that are used, the visits to the patient and any other factors deemed relevant to the calculation of the scale.

Once the RVS has been determined, dollar multipliers will then be used to calculate per centum increases and decreases in the fees paid by medicare in a rapid and efficient manner. Thus the legislation directly addresses the "inflation lag" that as in the past caused many physicians to refuse assignment.

Another factor that increases the cost of the medicare program is that, at present, there are certain financial incentives to physicians to treat elderly patients in the hospital instead of in their offices. To address that problem, this legislation in proposal directs the Secretary to include an overhead factor in calculating the fee. This factor can only be applied when patients are treated in the physician's office. The advantages of this factor are that costs to the program should be reduced, and there may also be a reduction in the number of expensive, technologically oriented tests applied.

Mr. President, as we are all aware, paperwork is a major burden for everyone involved in Government programs. For the elderly, processing medicare forms is often more objectionable, not to mention incomprehensible, than paying higher fees.

This bill attacks the paperwork problem by providing different, more efficient, programs for processing medicare claims. Each of the programs, alone or in combination, will reduce the burden of paperwork on both physician and patient, thereby reducing overhead costs and the saving for physicians the valuable time now spent in processing claims.

Under my proposal, carriers, who must process the bulk of the work in any case, will have primary responsibility for claim processing. The small increase in computation can be easily and rapidly handled by computers. In fact, what is proposed here has already been operating successfully in demonstration programs supervised by HCFA in different regions of the country.

In addition, all participating physicians will be issued standardized claim forms developed by HCFA in collaboration with health-care providers.

All of the procedure codes used to identify rates and charges will be standardized. Standard codes should result in faster claims processing, fewer errors, and fewer claims disapproved because of mistakes in applying the procedure codes. Furthermore, the forms will be designed in such a way as to make multiple listing possible. Thereby, physicians will find it easier and cheaper to bill the carriers.

Participating physicians may also install remote access, computer billing devices in their offices. The terminal will permit direct transfer of funds from the carrier to the physician's account. The cost of installation and rental of such equipment will be considered as a legitimate tax deduction.

Another source of difficulty for physicians has been slow claims processing, resulting in cash flow problems. This bill addresses this problem by requiring that uncontested physician claims be made by the carrier within 30 days. If a payment is delayed beyond this period, the carrier must pay to the physician 1½ percent interest per month on the outstanding amount due.

Another provision—and one that I consider very important—eliminates the need for a separate billing by the physician for the 20 percent of the fee that the patient is required to pay. Instead, the entire bill will be submitted by the physician directly to the carrier. The carrier will then reimburse the physician directly and collect the deductible amount due from the patient. This service will only be available to those physicians agreeing to participate in the program. It should reduce their overhead costs and result in a significant reduction in office paperwork routines.

The final section of this proposal also addresses a critical need—the education of practicing physicians and their staffs in gerontological medicine. It is now a well recognized fact that the medical and psychological problems of the elderly are different than those of younger age groups.

Mr. President, I believe that physicians who are willing to accept assignment as defined in this legislation, should be encouraged to pursue additional and continued training in geri-

atric medicine or other specialties directly related to the care of elderly patients.

Therefore, I am proposing that physicians be reimbursed for legitimate educational expenses, including the costs of attending relevant meetings, journal subscriptions and costs of travel.

To provide reimbursement, the Secretary will derive a formula for payment based upon the number of medicare patient-hours handled by the physician. There will be a "credit" or "unit" hour for each patient hour. The amount of reimbursement will be based upon the number of units accumulated. Furthermore, the assignment of units may be made, at the physician's discretion, to other members of full-time staff directly involved in patient care. The credit may only be applied to programs approved by the Secretary who must provide such lists upon request.

Physicians who agree to participate in this program must accept assignment on all occasions, and must agree to remain in the program for at least 12 months. They may withdraw at any time thereafter.

Finally, in order to direct patients to participating physicians, the Health Care Finance Administration (HCFA) will develop and publicize a directory, which will include the range of fee schedules of listed physicians. The directory will also provide information on the amounts the program will recognize for each service that will be charged to the patient or to their insurance. Making more visible these physicians who agree to accept assignment and spelling out the costs to the patient would add a degree of competition to the system of health care delivery.

Mr. President, the elderly of this country need a better break than they are today receiving. Something must be done to cut the spiraling, out-of-pocket expenses they must now incur to obtain adequate medical care under the medicare program.

The bill I have introduced does not attempt to redress all of the problems of medicare. But I believe that it can provide direct relief for health care providers and for the beneficiaries of their services. And I believe that this legislation will streamline the program considerably and in the long run, result in more effective and efficient use of the medicare program.

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

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

S. 1566

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

PAYMENT FOR PHYSICIANS' SERVICES

SECTION 1. (a) Part B of title XVIII of the Social Security Act is amended by adding at the end thereof the following new sections:

"PAYMENT FOR PHYSICIANS' SERVICES

"SEC. 1845. (a)(1) Payment for physicians' services under section 1832(a)(1) shall be made, except as otherwise provided under subsection (c), only to a participating physician, and in accordance with the provisions of this section.

"(2) For purposes of this section, the term 'participating physician' means a physician who enters into an agreement with the Secretary which shall provide that the physician shall be paid only on the basis of an assignment described in section 1842(b)(3)(B)(ii) for all services provided to individuals enrolled under this part. Such agreement shall be for a term of at least twelve months, and may be made automatically renewable from term to term in the absence of notice, given in writing at least 30 days prior to the end of the term, by either party of intention to terminate at the end of a term; except that the Secretary may terminate such agreement at any time (after such reasonable notice and opportunity for a hearing to the physician involved as may be provided in regulations) if the Secretary finds that the physician has failed substantially to carry out the agreement or is carrying out the agreement in a manner inconsistent with the provisions of this section or inconsistent with the efficient and effective administration of this part.

"(3) The Secretary shall from time to time publish a list of all participating physicians, and shall make such list, or portions thereof relating to specific localities, available to the public.

"(b)(1) The reasonable charge for physicians' services shall be the lesser of—

"(A) the charge determined under the fee schedule developed by the Secretary under this subsection, or

"(B) the actual charge.

"(2)(A) The Secretary shall develop a fee schedule for those physicians' services with respect to which benefits are payable under this part, based upon a relative value schedule developed in accordance with subparagraph (B). The fee amount for each particular service shall be determined by multiplying the relative value factor for such service by a dollar multiplier amount determined under paragraph (3), and by adding, in the case of services performed in the physician's office, a standard overhead amount which represents the costs incurred by physicians in securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office.

"(B) The Secretary shall develop the relative value schedule for physicians' services. Each particular service shall be assigned a value factor relative to other physicians' services, based upon the complexity of the service, the risk to the patient receiving the service, the time and skill required of the physician performing the service, and such other factors as the Secretary determines to be appropriate. In developing such schedule, the Secretary shall consult with appropriate representatives of the medical community, including representatives of physicians, other health care providers, and health care consumers.

"(3)(A) The Secretary shall determine the dollar multiplier amount for each twelve-month period (beginning on July 1 of each year) to be used in determining the fee schedule for such period. Such amount may vary for different localities, based upon variances in the costs associated with the performance of physicians' services in the locality. In determining such dollar multiplier, the Secretary shall consult with appropriate representatives of the medical community, including representatives of physicians, other health care providers, and health care consumers.

"(B) The dollar multiplier amount for the twelve-month period during which this section first becomes effective may not exceed an amount which would result in a fee schedule under which higher average payments would be paid under this part for physicians' services than would be paid on the basis of reasonable charges as determined under section 1842(b).

"(C) For any twelve-month period beginning after the period described in subparagraph (B), the dollar multiplier amount shall not exceed an amount equal to the dollar multiplier amount for the preceding twelve-month period, multiplied by the percentage by which the index developed by the Secretary under subparagraph (D) for the first quarter of the calendar year in which such period begins, exceeds such index for the first quarter of the calendar year in which such preceding twelve-month period began (rounded to the nearest dollar).

"(D) The Secretary shall develop an index for the purpose of measuring the rate of increase or decrease in the costs associated with the performance of physicians' services. Such index shall be published on a quarterly basis, and may vary for different localities.

"(4) The Secretary shall publish the fee schedule determined under this subsection, and shall make such list, or portions thereof relating to specific localities, available to the public.

"(c)(1) Payment under this part may be made for physicians' services, with respect to which benefits are otherwise payable under this part, performed by a physician who is not a participating physician, only in the case of emergency services, services provided outside the United States (but only as provided in section 1862(a)(4)), and in accordance with paragraph (2). The amount and manner of such payment for emergency services or services performed outside the United States shall be determined as if such services were performed by participating physicians.

"(2)(A) Any individual enrolled under this part may be directly reimbursed with respect to physicians' services rendered to such individual by a physician who is not a participating physician. The amount of the payment to such individual shall be the same as the amount of the payment which would have been made to the physician rendering the services if that physician had been a participating physician, less the amount of any deductibles or coinsurance which would be owed by the individual with respect to such services.

"(B) The Secretary shall encourage, through public advertising and other appropriate means, individuals enrolled under this part to utilize only those physicians who are participating physicians.

"(d)(1) The Secretary shall develop a uniform claims form for use by all participating physicians. Such form shall utilize a procedure terminology and codes based upon the fee schedule determined under subsection (b), and shall provide for multiple listing of patients if the physician desires to submit claims in that format.

"(2) In any case in which a carrier having an agreement with the Secretary under section 1842 is able to develop a system for making payments under this part to physicians utilizing direct account transfers, such carrier may institute such system, and any participating physician may bill the carrier and receive payments using a remote terminal access system for the transfer of funds.

"(3) All billing and payment procedures shall utilize an identification number for the individual enrolled under this part, which shall be the same number as the account number assigned to such individual for purposes of title II of this Act. The Secretary shall issue identification cards to all individuals enrolled under this part which shall include such identification number.

"(e)(1) Payments to participating physicians under this part shall be made by the Secretary or his fiscal agents under contract for the entire amount of the reasonable charge for physicians' services with respect

to which benefits are payable under this part, including any deductibles and coinsurance amounts for which the individual enrolled under this part may be responsible.

"(2) The Secretary shall—

"(A) collect any deductibles and coinsurance amounts owed by individuals enrolled under this part as provided in section 1846;

"(B) provide that billing for all or part of such deductibles and coinsurance amounts shall be made directly to an insurer in the case of an individual who has a medicare supplemental policy which meets the requirements of section 1882(a)(1), or which would meet such requirements but for the exclusion in such section for policies of employers or labor organizations; and

"(C) provide that billing shall be made directly to States for any portion of such deductibles and coinsurance amounts for which an individual is covered under a State plan approved under title XIX.

"(f) All payments to participating physicians under this part shall be made within 30 days after receipt of properly completed claims by the physician. In any case in which such payment is not made within such 30-day period, except in the case of amounts which are contested by the carrier or by the Secretary, interest shall be paid to such physician on the unpaid amount of such claim, beginning on the day following the end of such 30-day period, at a monthly rate of 1.5 percent. Such interest shall be paid by the carrier, or, in the case of claims submitted directly to the Secretary, by the Secretary.

"PAYMENT OF DEDUCTIBLES AND COINSURANCE AMOUNTS

"SEC. 1846. (a) Any amount owed by an individual for deductibles and coinsurance under this part shall be paid to the Secretary by such individual. Such payments may be made, at the option of the individual, by adding such amount to the premiums amount owed by such individual at six-month intervals, and then averaging such total amount owed over a six-month period, to be paid in the same manner as premiums are paid under section 1840.

"(b) Any failure to make timely payment of any amount owed by an individual for deductibles and coinsurance under this section, whether or not such individual chooses to add such amounts to the premiums owed as provided in subsection (a), shall be treated as a nonpayment of premiums for purposes of section 1838(b)(2) (relating to termination of coverage period), and any amount owed by an individual for deductibles and coinsurance shall be treated as an overpayment to such individual for purposes of this title.

"(c) Amounts paid to the Secretary for deductibles and coinsurance shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.".

(b) Section 1842(b)(3) of such Act is amended—

(1) in subparagraph (B), by inserting after "(B)" the following: "will take such action as may be necessary to assure that payment for physicians' services is made in accordance with section 1845, and, where not inconsistent with section 1845,";

(2) by striking out "physician or other" in the second sentence thereof; and

(3) by striking out the fourth and eighth sentences thereof.

(c) Section 1842(b)(5) of such Act is amended by striking out "except as provided in section 1870" and inserting in lieu thereof "except as provided in sections 1845 and 1870".

(d) Section 1838(b) of such Act is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting ", or"; and

(3) by inserting after paragraph (2) the following:

"(3) for nonpayment of deductibles or coinsurance as determined under section 1846.".

(e) The amendments made by this section shall become effective on July 1 of the first calendar year which begins after the date of the enactment of this Act.

EDUCATION PAYMENTS FOR PARTICIPATING PHYSICIANS

SEC. 2. (a) Title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"PAYMENTS FOR CONTINUING MEDICAL EDUCATION

"SEC. 1884. (a)(1) The Secretary shall make payments under this section to any participating physician (as defined in section 1845(a)(2)), or to any member of the staff of such physician, to reimburse such physician or staff member in whole or in part (as determined under subsection (b)) for qualified continuing medical education expenses (as defined in paragraph (2)) incurred by such physician or staff member.

"(2) For purposes of this section the term 'qualified continuing medical education expenses' means expenses actually incurred which—

"(A) would qualify as a deduction as a trade or business expense for such physician or staff member under section 162 of the Internal Revenue Code of 1954 if not paid for under this section;

"(B) are directly related to the care of individuals entitled to benefits under this title (as determined by the Secretary); and

"(C) are not incurred as a part of the program of a teaching hospital by a staff member of such hospital (including a hospital associated physician, resident, or intern).

"(3) Payments under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund, and the total of such payments in any fiscal year shall not exceed $20,000,000.

"(b)(1) The amount of the payment under subsection (a) shall be determined on the basis of a formula (which shall take into account the limitation on the amounts available for such payments) devised by the Secretary whereby each participating physician shall accumulate reimbursement credits based upon the number of patient hours accumulated by such physician in treating individuals entitled to benefits under this title. The amount of payments for which such physician is eligible shall be determined on the basis of the amount of reimbursement credits accumulated by the physician, and the amount of credits accumulated shall be reduced according to the amount of payments made under this section to the physician.

"(2) In the case of a group practice, the number of credits accumulated by the participating physicians within such group may be pooled and disbursed as the members of such group determine to be appropriate.

"(3) Credits accumulated by a physician or group practice may be used to qualify for payments to full-time members of the staff of such physician or group practice, who are directly involved in patient care or treatment, as such physician or group practice determines to be appropriate.

"(c) Any physician or staff member requesting payment under this section shall provide such information as the Secretary may require in order to determine the validity of such request and the amount of such payment.".

(b) The amendment made by subsection (a) shall apply with respect to services provided by participating physicians as defined in section 1845(a)(2) of the Social Security Act and only with respect to expenses incurred by such a physician or his staff after such physician has become a participating physician.

REPORT TO CONGRESS

SEC. 3. The Secretary of Health and Human Services shall report to the Congress not later than 24 months after the date on which the amendments made by this Act become effective with respect to the impact of such amendments on costs of the medicare part B program, benefits to medicare patients, physician and patient satisfaction with the medicare program, and abuses and errors associated with such program, and shall include in such report any proposals for further changes in reimbursement procedures under such program.

By Mr. D'AMATO:

S. 1567. A bill for the relief of Jozo Karoglan and Ilana Karoglan, husband and wife, and their child, Matthias Karoglan; to the Committee on the Judiciary.

RELIEF OF THE KAROGLAN FAMILY

● Mr. D'AMATO. Mr. President, The tradition of political asylum in the United States was established to protect all individuals who fear for their lives or liberties because of personal convictions, religious beliefs of political affiliations. The United States has long sheltered those who have fled their native countries because of threats of persecution, torture or even assassination. We have consistently offered the protection of our Government and have embraced those international accords which have affirmed this right of political asylum.

It is for these reasons that I have sponsored, with my distinguished colleague Representative JACK KEMP, a bill for the relief of a Croation nationalist Jozo Karoglan, and his wife and child. The Yugoslav Government has consistently shown harsh treatment and persecution to Croation nationalists; their threats extending beyond their borders.

Mr. Karoglan has left Europe with his family in the wake of pressure and coercion to cease his nationalist activities, and the eventual threat of assassination if he did not relent. It is my hope that this Congress will reaffirm its dedication to the principles of asylum and freedom of political association in approving this bill for Mr. Karoglan.

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

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

S. 1567

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 212(a)(14) of the Immigration and Nationality Act, Jozo Karoglan and Ilana Karoglan, husband and wife, and their child, Matthias Karoglan, shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper num-

ber, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas which are made available to natives of the country of the aliens' birth under section 202 of such Act.●

By Mr. CHILES:

S. 1568. A bill relating to the application of section 103(b) of the Internal Revenue Code of 1954 to certain bonds for harbor improvements; to the Committee on Finance.

ACQUISITION OF TERMINAL AND WHARF FACILITIES AT THE PORT OF TAMPA

● Mr. CHILES. Mr. President, the bill I am introducing today would permit the issuance of tax exempt revenue bonds for the acquisition of existing terminal and wharf facilities at the Port of Tampa. This legislation embodies the provisions of S. 2548 of the 96th Congress and H.R. 2122 currently pending in the House.

The Port of Tampa is a fast growing, vitally important facility that currently ranks as the seventh largest port in the Nation. Much of the port's activity involves phosphate and phosphate products. In fact, some 50 percent of all shipments through the port are phosphate related.

As trade in general and phosphate trade in particular has increased, congestion has become an increasingly serious problem resulting in greatly increased demurrage costs for shippers and their customers. To illustrate, just last year ships were taking up to 15 days in port when only 3 days would be required with proper facilities and no congestion. Competition in the phosphate industry is very intense, especially from foreign suppliers, and the increased demurrage costs presently occurring at the Port of Tampa are giving rise to concerns that increasing freight differentials and delays threaten the port's reputation as reliable phosphate supplier to overseas customers.

The legislation I am introducing would allow the Tampa Port Authority to purchase existing dock and terminal facilities. The port authority would renovate and rehabilitate the facilities and then could lease them back to the prior owner with the participation of at least one other substantial user.

The revenues generated by rental and wharfage payments would not only serve to amortize the bonds issued by the port authority to acquire the facilities, but would also help provide for future port expansion. Thus, this legislation would help the port authority improve port facilities, help solve its demurrage problems, and provide for its future growth and development.

But the Port of Tampa is not the only entity to benefit from this legislation. Both the State of Florida and the Federal Government would benefit. The State would gain added revenues from sales taxes on the improvement and expansion of the facilities and from severance taxes on phosphate production that could take place due to improved port facilities. The Federal Government would benefit because of reduced demurrage deductions and increased sales of phosphate and fertilizers. Also, the Federal Government would receive capital gains taxes on the sale of the facilities.

Clearly, then, this bill provides across-the-board benefits. Government will receive added revenues, the Port of Tampa will improve its shipping capacity and provide for its future growth, demurrage costs and port congestion will be reduced, and the American overseas trade outlook will brighten. Thus, I would urge my colleagues to support this legislation.●

By Mr. DECONCINI (for himself and Mr. GOLDWATER):

S. 1570. A bill to provide for the establishment of a national cemetery in Maricopa County, Ariz.; to the Committee on Veterans' Affairs.

NATIONAL CEMETERY IN ARIZONA

● Mr. DECONCINI. Mr. President, on behalf of myself and Senator GOLDWATER, I am introducing today a bill to establish a national veterans' cemetery at the site of the Arizona State Cemetery, located 17 miles north of Phoenix at Cave Creek and Pinnacle Peak Roads.

The initial legislation which led to the establishment of what was to become the National Cemetery System was enacted in 1862 and was intended to provide places of burial for soldiers who died in military service during the Civil War. By 1870, 62 national cemeteries had been established in close proximity to Civil War battlefields and hospital sites. Although the National Cemetery System has been expanded through the years to include 107 cemetery sites, the vast majority are located in the East and South. For instance, Virginia has 14 national cemeteries, excluding Arlington, while many Western States have none.

Originally, the National Cemetery system was administered by the Department of the Army. However, jurisdiction for the cemeteries was transferred to the Veterans' Administration in 1973 upon enactment of Public Law 93-94. It is important to note that one provision of that act directed the Administrator to conduct a comprehensive study on a number of issues relating to national cemeteries, one of which was the concept of establishing regional cemeteries. As you know, that concept was ultimately adopted as VA policy. While the VA has attempted to redress the imbalance in the location of our national cemeteries, the fact remains that a disproportionate few are located in the West.

It is my firm belief that every veteran who has served his country honorably has the right to burial in a national cemetery within reasonable proximity to his/her domicile. Statistics indicate that survivors are adverse to burial sites beyond a 75-mile radius of their residence. Yet the closest cemetery available for interment of Arizona veterans is located in Riverside, Calif.—a distance of approximately 300 miles from Phoenix, where half of the Arizona population resides.

In the absence of a national cemetery in Arizona with available burial space, the Arizona Veterans' Memorial Cemetery Board of Directors, along with the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars, worked tirelessly to ensure the establishment of a State veterans' cemetery so Arizona veterans could be buried near loved ones. As a result of their efforts, the State of Arizona, on June 27, 1976, authorized and later appropriated moneys for the development of a parcel of land in Maricopa County to be used for a veterans' cemetery. The site contains 836.34 acres which will accommodate burial space for up to 500,000 veterans.

The initial phase of the cemetery plan was completed in early 1979, and the first three interments took place on March 14, 1979. As of July 27, 1981, 1,225 veterans and their dependents have been buried at this site.

After enactment of the veterans' State cemetery grant program in 1978, Public Law 95-476, the State of Arizona applied for Federal assistance for its cemetery program. I was extremely gratified when in May 1981, the Veterans' Administration released a grant award in the amount of $104,125 to cover the Federal share of the costs involved in the construction of the administration building at the State cemetery. It is anticipated that Federal participation in this program will increase as the cemetery site is further developed.

Despite this Federal assistance, both Senator GOLDWATER and I, as well as all of the veterans of Arizona, believe that this cemetery should be incorporated as part of the National Cemetery System, and I urge my colleagues on the Senate Veterans' Affairs Committee to give this legislation their favorable consideration. If this cemetery is established as a national cemetery, it will become one of the largest in the system both in terms of land area that is available and the number of interments that can be accommodated. It will also help to redress the imbalance in the distribution of our national cemeteries throughout the Nation.●

● Mr. GOLDWATER. Mr. President, it gives me great pleasure to join with my colleague, Mr. DECONCINI, in seeking designation of the Arizona Veterans' Memorial Cemetery as a national cemetery, to be administered by the Veterans' Administration. For as many years as I can recall, there has been interest in establishing a national cemetery in my State.

Back in 1975, for example, I joined with then Senator Paul Fannin in sponsoring legislation on this very subject; unfortunately, the Senate was not given the opportunity to consider the bill. The need for a national cemetery still exists and, in fact, is needed now more than ever. Arizona's national cemetery has been filled for a very long time and veterans who die in Arizona must now be buried in either California or New Mexico if their families choose to use veterans' rights.

The State of Arizona appropriated funds which were supplemented by the contributions of Arizona veterans to cre-

ate the present veterans' cemetery near Pinnacle Peak. But, these well-intended efforts are just not sufficient. The cemetery is in need of much improvement, and these improvements can only come about with full funding support from the Federal Government. This country owes the men and women who served it in uniform a tremendous debt, and the least we can do for our veterans is to provide a final resting place that is an appropriate reflection of this Nation's gratitude.●

By Mr. HEINZ:

S. 1571. A bill to permit the Secretary of Health and Human Services to enter into loan forgiveness agreements with physicians specializing in primary care or psychiatry on the condition that such physicians serve in health manpower shortage areas, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH IMPROVEMENT ACT OF 1981

● Mr. HEINZ. Mr. President, I rise today to introduce the Health Improvement Act of 1981. This bill would create an optional loan forgiveness program for recent graduates of medical and osteopathic schools, specializing in primary care or psychiatry, who choose to locate their private practice in health manpower shortage areas.

Mr. President, as we move away from a national policy of providing scholarships, medical school capitation support, and low-interest loans for medical education, toward one of market-rate loans and debt burdens carried singularly by the medical students and their families, we are simultaneously creating some adverse incentives for recently graduated doctors. The skyrocketing costs of medical education results, of course, in the need for most medical students to borrow large sums of money for their education. I am informed by financial aid officers in a number of the five medical schools in my own State of Pennsylvania that many first-year medical students anticipate educational debts of $50,000 or more.

Although no one denies that physicians, in view of their high future income potential, should pay the lion's share of the costs for their professional training, the dangers we run—and the incentives we create—by not buffering debts of this magnitude, are twofold. First, high debts tend to draw physicians into higher paying specialties and geographic areas where there is greatest potential to pass their indebtedness onto patients and insurance—away from primary care specialties and medically underserved areas. And second, staggering tuition and fees discourage financially disadvantaged and minority students from aspiring to careers in medicine.

The Health Improvement Act is a simple mechanism designed to keep our national commitment to assuring accessibility of quality health care for all Americans, and to enable recently graduated physicians who might otherwise opt for a more lucrative practice, to pursue a primary care or psychiatric specialty.

The Health Improvement Act incorporates a number of important provisions designed to accomplish this dual goal.

First, the bill would provide forgiveness for an increasing percentage of the physician's Federal direct loans or guaranteed loan obligations incurred during the course of the individual's medical education for up to 6 years, in exchange for a postgraduate choice to serve as a primary care provider or a psychiatrist in a health manpower shortage area.

Second, the act would provide that those physicians who exercise this option agree to serve the medicaid population and accept assignment under the medicare program.

Third, the bill provides a graduated schedule of loan forgiveness for up to 6 years, acting as an incentive to keep the physician in the underserved area for many years.

There are some very important differences between the loan forgiveness program established by the Health Improvement Act and the National Health Service Corps, which is currently the primary vehicle for reducing geographic and specialty maldistribution of physicians.

First, the National Health Service Corps provides primary care physicians, psychiatrists, and other health professionals to areas classified as health manpower shortage areas. Most of the National Health Service Corps recipients receive full tuition and stipend support while in medical school, for which they owe service on a year for year basis, and are paid a salary by the Federal Government during their pay-back years.

The Health Improvement Act is available to primary care physicians and psychiatrists who open private solo or group practice in an underserved area.

Second, under the National Health Service Corps, the medical students' decision to pursue a primary care of psychiatric specialty and to practice in an underserved area are made when the medical students need financial assistance prior to or during their medical education. In addition to requiring students to make premature career choices, the National Health Service Corps commits the Federal Government to subsidizing the education of students 4 to 7 years prior to the time they will be practicing physicians, and prior to the time when future manpower needs are known.

Under the Health Improvement Act, a commitment will be required only at the time physicians complete their training—at the time when all medical students, regardless of financial need, are making their specialty and geographic location decisions.

Third, under the National Health Service Corps, the health manpower shortage area designation is removed only after a community or individual files a request for removal with the Secretary.

Under the Health Improvement Act, once a physician shortage in the health manpower shortage area has been filled by a private practitioner, the health manpower shortage area designation would be removed to prevent unnecessary subsidization of additional personnel.

Fourth, the average length of service in the National Health Service Corps is 3 years.

The Health Improvement Act provides a graduated scale of loan forgiveness for physicians who remain in underserved areas for longer periods of time.

Fifth, the annual average National Health Service Corps scholarship cost is $15,629, and the average salary cost per National Health Service Corps member is $40,300.

The Health Improvement Act is cost effective, allowing a maximum payment of $25,000 per year per physician for 6 years only.

Finally, Mr. President, it must be emphasized that the Health Improvement Act interferes in no way with the budgetary savings achieved by the Labor and Human Resources Committee under reconciliation. No significant funding is authorized for the Health Improvement Act's loan foregiveness program until fiscal year 1985—when National Health Service Corps physicians serving in underserved areas complete their obligations.

Mr. President, the Federal Government has made a commitment to the poor, the elderly, and the geographically isolated. The National Health Service Corps is just one example of that commitment to accessible health care for all Americans. The Health Improvement Act is designed to continue that commitment in a much more cost-effective way than the NHSC.

Furthermore, the Federal Government has long played a major role in the assurance of quality health care. Denying a medical education to extremely qualified individuals simply because they are from low-income backgrounds impedes our pursuit of quality health care services.

The Health Improvement Act is one facet of a number of long-range reforms needed to check the rate of increases in health care costs. Encouraging primary care services in other additional ways, including making competitive changes in our medicare and medicaid reimbursement mechanisms, will lead to lower costs to the Federal Government.

A detailed factsheet on the Health Improvement Act is included with the introduction of this bill.

I commend the Health Improvement Act to the attention of my distinguished colleagues. Mr. President, I ask unanimous consent that both the bill and a factsheet thereon be printed in the RECORD.

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

S. 1571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That (a)(1) subpart III of part C of title VII of the Public Health Service Act is amended by adding at the end thereof the following new section:

"LOAN FORGIVENESS AGREEMENTS

"SEC. 745. (a) Notwithstanding any other provision of law, in the case of any individual—

"(1) who has received a degree of doctor of osteopathy or doctor of medicine and who completed the requirements for such degree after April 30, 1982, at an institution awarding such degree;

"(2) who has completed required periods of advanced professional training, including internships and residencies;

"(3) who has a specialty in family medicine, internal medicine, general practice, obstetrics and gynecology, pediatrics, or psychiatry;

"(4) who obtained one or more loans under—

"(A) this subpart or subpart I of this part;

"(B) Part B or Part E of the Higher Education Act of 1965 to assist such individual with tuition and reasonable living expenses while enrolled in a school of osteopathy or medicine; or

"(C) any other Federal loan program providing such individual with assistance for tuition and reasonable living expenses while enrolled in such a school; and

"(4) who enters into an agreement with the Secretary which complies with subsection (g) to practice that individual's profession for a period of at least two years in an area in a State designated as a health manpower shortage area under Section 332;

the Secretary shall make payments in accordance with subsection (c)(1), for and on behalf of that individual, on the principal and the interest on any loan of that individual referred to in clause (2) of this subsection which is outstanding on the date the individual begins the practice specified in the agreement described in clause (4) of this subsection.

"(b) Any individual who entered into an agreement described in subsection (a)(4) may elect to renew that agreement for a one year period which shall be consecutive with the period for which such agreement was made. An individual may renew an agreement made under subsection (a)(4) for a total of four consecutive one year periods. If an individual elects to renew an agreement under this subsection, the Secretary shall make payments for and in behalf of the individual in accordance with subsection (c)(2).

"(c)(1) The payments referred to in subsection (a) shall be made by the Secretary as follows:

"(A) Upon completion by the individual for whom the payments are to be made of the first year of practice specified in the agreement that the individual entered into with the Secretary under subsection (a)(4), the Secretary shall pay 80 per centum of the principal and the interest due in that year, not to exceed 8 per centum of the aggregate interest and principal, of all loans of the individual referred to in subsection (a)(3) which are outstanding on the date that the individual began such practice.

"(B) Upon completion by the individual for whom the payments are to be made of the second year of such practice, the Secretary shall pay 85 per centum of the principal and the interest due in that year, not to exceed 8½ per centum of the aggregate interest and principal, of all loans of the individual described in subsection (a)(3) which are outstanding on the date that the individual began such practice.

"(2) The payments referred to in subsection (b) shall be made by the Secretary as follows:

"(A) Upon completion by the individual for whom the payments are to be made of a third consecutive year of practice specified in the agreement that the individual renewed under subsection (b), the Secretary shall pay 90 per centum of the principal and the interest due in that year, not to exceed 9 per centum of the aggregate principal and interest, of all loans of the individual described in subsection (a)(3) which are outstanding on the date that the individual began such practice.

"(B) Upon completion by the individual for whom such payments are to be made of a fourth consecutive year of practice specified in the agreement that the individual renewed under subsection (c), the Secretary shall pay 95 per centum of the principal and the interest due in that year, not to exceed 9½ per centum of the aggregate principal and interest, of all loans of the individual described in subsection (a)(3) which are outstanding on the date that the individual began such practice.

"(C) Upon completion by the individual for whom such payments are to be made of a fifth consecutive year of practice specified in the agreement that the individual renewed under subsection (c), the Secretary shall pay 95 per centum of the principal and the interest due in that year, not to exceed 10 per centum of the aggregate principal and interest, of all loans of the individual described in subsection (a)(3) which are outstanding on the date that the individual began such practice.

"(D) Upon completion by the individual for whom such payments are to be made of a sixth consecutive year of practice specified in the agreement that the individual renewed under subsection (c), the Secretary shall pay 95 per centum of the principal and the interest due in that year, not to exceed 10½ per centum of the aggregate principal and interest, of all loans of the individual described in subsection (a)(3) which are outstanding on the date that the individual began such practice.

"(3) In any year, the amount of payments that may be made under this section with respect to loans referred to in subsection (a)(3) for and on behalf of any individual may not exceed $25,000, and the total amount of payments under this section for and on behalf of any individual may not exceed $130,000.

"(d) Notwithstanding the requirement of completion of practice specified in subsection (c), the Secretary shall, on or before the due date thereof, pay any loan or loan installment which may fall due within the period of practice for which an individual may receive payments under this paragraph upon the declaration of such individual at such time and in such manner as the Secretary may prescribe (and supported by such evidence as the Secretary may reasonably require) that the individual is then engaged in the practice specified in the agreement described in subsection (a)(4), and that the individual will continue to be so engaged for the period required (in the absence of this subsection) to entitle the borrower to have made on the individual's behalf the payments provided by this subsection for such period; except that not more than the allowable per centum payment as described in subsection (c) may be paid pursuant to this subsection.

"(e) An individual who fails to fulfill an agreement with the Secretary entered into under subsection (a)(4) shall be liable to reimburse the Secretary for any payments made pursuant to subsections (c) and (d) in consideration of such agreement.

"(f) Notwithstanding the obligation of the Secretary to assume loan repayments specified in subsection (c), the death, severe and long lasting disability, or bankruptcy of the individual for whom such payments are to be made, or a finding by the Secretary upon reasonable evidence that such individual is not providing quality care, shall discharge the obligation of the Secretary to make such repayments.

"(g) Any individual who enters into an agreement with the Secretary under subsection (a)(4) must give appropriate assurances to the Secretary that the individual—

"(1) in the case of an individual specializing in family medicine, internal medicine, general practice, obstetrics and gynecology, or pediatrics, will accept assignments under section 1842(b)(3)(B) of the Social Security Act with respect to individuals eligible for benefits under title XVIII of such Act, and will participate under the State plan (of the State in which the individual practices) approved under title XIX of such Act;

"(2) in the case of an individual specializing in psychiatry, will accept a reasonable number of assignments (which the Secretary shall prescribe) under section 1842(b)(3)(B) with respect to individuals eligible for benefits under title XVIII of such Act, and will participate to the extent (of the State in which the individual practices) approved under title XIX of such Act.

"(h)(1) The Secretary shall enter into not more than—

"(A) five hundred agreements under this section for the fiscal year ending September 30, 1985;

"(B) seven hundred and fifty agreements under this section for the fiscal year ending September 30, 1986;

"(C) one thousand agreements under this section for the fiscal year ending September 30, 1987;

"(D) seven hundred and fifty agreements under this section for the fiscal year ending September 30, 1988.

"(2) Renewal of loan agreements under subsection (b) shall not be considered to be agreements for purposes of the limitation contained in paragraph (1).

"(i) There are authorized to be appropriated to carry out the purposes of this section—

"(1) $12,500,000 for the fiscal year ending September 30, 1985;

"(2) $31,250,000 for the fiscal year ending September 30, 1986;

"(3) $56,250,000 for the fiscal year ending September 30, 1987;

"(4) $75,000,000 for the fiscal year ending September 30, 1988.".

(2) Section 735(c)(1) of such Act is amended by inserting "who prior to May 1, 1982, has completed the requirements for the degree of doctor of osteopathy or doctor of medicine at an institution awarding such degree 'before' under which the Secretary agrees".

(3) Section 741(f) of such Act is amended by adding at the end thereof the following new paragraph:

"(6) The Secretary may not enter into an agreement under paragraph (1) with an individual receiving a degree of doctor of osteopathy or doctor of medicine who has not, prior to May 1, 1982, completed the requirements for such degree at an institution awarding such degree.".

(4) Section 332 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"(i)(1) Not later than January 1, 1984, the Secretary shall establish by regulation a list for each health manpower shortage area designated under this section which specifies the number and types of health professionals needed to fulfill health manpower shortages such area.

"(2) By January 1, 1984, the Secretary shall establish by regulation criteria for revoking the designation of health manpower shortage areas under this section whose health manpower shortages have been fulfilled by (A) National Health service Corps private practice physicians, or (B) physicians entering into an agreement with the Secretary under section 745.

"(3) Any revocation by the Secretary of the designation of a health manpower shortage area under this section in accordance with the criteria established under paragraph (2) shall not effect any agreement entered into by an individual under section 745 who has entered into practice in such area. Any such individual may renew such agreement for the maximum length of time specified in subsection (b) of such section and may fulfill his obligations under the agreement by continuing to practice in such area without regard to the revocation of the designation of such area under this section.".

FACTS ABOUT THE HEALTH IMPROVEMENT ACT OF 1981

What is the purpose of the Health Improvement Act of 1981?

To continue our national commitment to meet the health care needs of all Americans including those living in areas of geographic isolation and high poverty with scarce medical resources.

To encourage recent graduates of medical and osteopathic schools, in the face of high debt burdens, to pursue a career in primary care or psychiatry in a health manpower shortage area, through a more cost effective Federal incentive than provided by current law.

To encourage primary care physicians and psychiatrists not only to begin practice in a health manpower shortage area, but also to stay and continue serving the needs of the underserved community for many years.

To, during this time of reorienting Federal resources from low interest direct loans and scholarships to Federal loan guarantees of market rate loans, enable financially disadvantaged individuals to pursue a career in primary care medicine or psychiatry.

What would the Health Improvement Act do?

The Health Improvement Act would provide a program by which the Federal government would forgive a portion of the loans incurred by a newly graduated primary care physician or psychiatrist during the course of his or her medical or osteopathic education, if the physician opts to serve in a health manpower shortage area. As a further incentive to these physicians to continue their practice in the underserved area, the percentage of their loans to be forgiven will be gradually increased over a six year period of service.

Who is eligible to participate in the Health Improvement Act of 1981?

(1) Physicians who complete their medical or osteopathic education after May 1, 1982, who pursue a practice in primary care—family medicine, pediatrics, obstetrics and gynecology, internal medicine, general practice—or psychiatry, and are willing to practice for a minimum of two years in a health manpower shortage area.

(2) Communities that meet the qualifications of a health manpower shortage area as defined by Section 332 of the Public Health Service Act, and apply to be designated as such.

Who benefits from the Health Improvement Act of 1981?

(1) Residents of rural or urban areas, designated as health manpower shortage areas, who otherwise would go without, or be compelled to travel great distances to obtain, adequate health care services.

(2) Elderly residents of health manpower shortage areas who are eligible for Medicare.

(3) Poor residents of health manpower shortage areas who are eligible for Medicaid.

(4) Graduates of medical or osteopathic school who wish to specialize in primary care or psychiatry, or practice in an underserved area, but, because of high educational debt loads may otherwise opt to pursue a more lucrative specialty or to establish practice in a more lucrative geographic specialty.

How would the graduated loan forgiveness program work?

For the first year of the physician service in an underserved area, he or she could have up to 8 percent of his or her total debt burden (principal and interest) forgiven; in the second year, up to an additional 8.5 percent; in the third year, up to an additional 9 percent; in the fourth year, up to an additional 9.5 percent; in the fifth year, up to an additional 10 percent; and in the sixth year, up to an additional 10.5 percent. In no year could the amount of debt forgiven exceed $25,000.

Does the Health Improvement Act set any overall limits on the amount of a physician's education loans that could be forgiven?

Yes, under the Health Improvement Act, a participating physician could not have more than 55.5 percent, or $130,000, whichever is lower, of his or her total debt (principal and interest) forgiven over six years of service.

What is the average debt load of a physician graduating from medical or osteopathic school after May 1, 1982?

Although the debts vary from State to State, and according to tuitions charged by the various educational institutions, it will not be unusual for young physicians to face a debt load of $40,000 or more, at an interest rate of 18 percent, with only a 10-year pay-back period.

What kinds of loans are subject to forgiveness under Health Improvement Act of 1981?

Only loans incurred for tuition and reasonable living expenses during medical and ostepathic schools are subject to forgiveness. Loans eligible to be forgiven are:

(1) Health Education Assistance Loans;
(2) Health Professions Student Loans;
(3) National Direct Student Loans;
(4) Guaranteed Student Loans; and
(5) Other Federal direct loans or loan of guarantee programs.

What is the service obligation under the Health Improvement Act?

A physician participating in the Health Improvement Act must agree to serve for a minimum of two years, and may continue to have his or her loans forgiven in exchange for service of up to six years. The Secretary of HHS is given the right to seek reimbursement from the borrower, should the borrower fail to complete the agreement for which payments have been made.

What else would the physician have to do to participate in the Health Improvement Act?

Any physician who agrees to serve in a health manpower shortage area in exchange for loan forgiveness must also agree to serve Medicaid patients and participate in the Medicare program.

When can primary care physician elect to participate in the Health Improvement Act program?

Any time after graduation from a Medical or osteopathic school, after May 1, 1982.

What is the difference between current law and the Health Improvement Act?

Currently, the National Health Service Corps is the principal Federal program designed to meet physician shortages in medically underserved areas. First, this program provides federally employed physicians and other health professionals to areas classified as health manpower shortages areas. Most of the National Health Service Corps recipients receive full tuition and stipend support while in medical school for which they owe service on a year-for-year basis. Second, the medical students' decisions to pursue a primary care specialty and to practice in an underserved area are made when the medical students need financial assistance prior to or during their medical education.

In addition to requiring students to make premature career choices, the NHSC commits the Federal government to subsidizing the education of students four to seven years prior to the time they will be practicing physicians, and prior to the time when future manpower needs are known. Third, under current law, the health manpower shortage area designation is removed only after a community or individual files a request for removal with the Secretary. Fourth, the average length of services in the NHSC is three years. Fifth, the annual average National Health Service Corps scholarship cost is $15,629, and the average salary cost per NHSC member is $40,300.

The Health Improvement Act is for primary care physicians who open private solo or group practice in an underserved area. Second, a commitment will be required only at the time physicians complete their training—at the time when all medical students, regardless of financial need, are making their specialty and geographic location decisions. Third, once a physician shortage in the health manpower shortage area has been filled by a private practitioner, the health manpower shortage area designation would be removed to prevent unnecessary subsidization of addtional personnel. Fourth, it provides a graduated scale of loan forgiveness for physicians who remain in the underserved areas for longer periods of time. Fifth, it is cost effective, allowing a maximum payment of $25,000 per year per physician for six years only.

What is the cost of the Health Improvement Act of 1981?

The Health Improvement Act would authorize the following sums to be appropriated for the loan forgiveness program:

	Million
Fiscal year 1985	$12.5
Fiscal year 1986	31.25
Fiscal year 1987	56.25
Fiscal year 1988	75.

●

By Mr. HATFIELD:

S. 1573. A bill to amend the Water Resources Development Act of 1976 with respect to Lake Oswego, and for other purposes; to the Committee on Energy and Natural Resources.

RESTORATION OF LAKE OSWEGO NONNAVIGABLE STATUS

● Mr. HATFIELD. Mr. President, today I am introducing legislation which I hope will finally restore Lake Oswego, a privately built and maintained reservoir in Oregon, to its traditional status as a nonnavigable water of the United States. I join in this endeavor the distinguished Representative from Oregon's First District, Mr. AUCOIN, who has already introduced similar legislation in the House of Representatives.

We previously introduced legislation in the 95th Congress that was intended to resolve this matter of nonnavigability of the lake. Unfortunately, the final version of that legislation has only served as partial remedy. The current law exempts Lake Oswego from navigability provisions under the Rivers and Harbors Act of 1899. It falls short, however, by not preventing the Federal Energy Regulatory Commission (FERC) from finding the lake navigable under conditions of the Federal Power Act. The FERC has recently exercised its authority under the Federal Power Act and is ordering that the Lake Oswego Corp., the entity that owns and operates Lake Oswego Dam, powerhouse, and diversion facilities, file for a Federal power license for

the operation of the dam at the foot of the lake.

I believe the FERC order is inappropriate for several reasons. First, this reservoir has no access by any water craft to or from any navigable water of the United States, yet the FERC used one instance from the lake's history to find this reservoir to be a navigable water. I disagree with this conclusion. The lake has been landlocked for many years and there is absolutely no interstate commerce on Lake Oswego. Second, Lake Oswego Dam is structurally sound and in total compliance with State and local health and safety standards. Finally, the licensing requirement will cause unnecessary hardship for the Lake Oswego Corp. and local residents. The licensing process will undoubtedly add substantial operating and maintenance costs for the lake. The ultimate cost of complying with FERC regulations is estimated to cost Lake Oswego millions of dollars of unnecessary expenditures. Licensing this dam, which has a power generating capacity of less than 1 megawatt, will thus declare it a navigable waterway and make the lake subject to a whole host of additional regulations and expensive requirements.

Mr. President, this very small, yet very safe structure is not the type of water diversion facility that the Congress intended to regulate when it enacted the Federal Power Act or the Water Resources Development Act of 1976. It is our hope that the Congress will move, with all dispatch, to enact this bill to finally put an end to needless regulatory harassment that presently threatens the vitality and efficient management of Lake Oswego.

Mr. President, I ask unanimous consent that the text of the bill be entered into the RECORD.

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

S. 1573

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 162 of the Water Resources Development Act of 1976 is amended by inserting the following at the end thereof: "Lake Oswego shall also be treated as nonnavigable for purposes of part I of the Act of June 10, 1920 (41 Stat. 1063 and following; 16 U.S.C. ch. 12, subchapter I).".●

By Mr. DENTON (for himself, Mr. GOLDWATER, Mr. THURMOND, Mr. JEPSEN, Mr. CANNON, Mr. NUNN, Mr. HARRY F. BYRD, JR., Mr. QUAYLE, Mr. LAXALT, Mr. SIMPSON, Mr. GARN, Mr. SYMMS, Mr. NICKLES, Mr. ZORINSKY, Mr. DECONCINI, Mr. JOHNSTON, Mr. EAST, Mr. ABDNOR, Mr. MATTINGLY, Mr. HATCH, and Mrs. HAWKINS):

S. 1574. A bill to amend section 673b of Title 10, United States Code, relating to the authority of the President to order members of the Selected Reserve of the Reserve components of the Armed Forces to active duty during periods other than war or national emergency; to the Committee on Armed Services.

EXECUTIVE MOBILIZATION AUTHORITY ACT OF 1981

● Mr. DENTON. Mr. President, on July 9, 1981, I introduced S. 1458, the Executive Mobilization Authority Act. I introduced this bill in an effort to form a consensus committed to act in a suitable and realistic manner to enhance our prospects for peace with security of our vital interests. At that time, I solicited the advice of my distinguished colleague on means to improve the content of this legislation.

Today, as a result of discussions with fellow Senators, administration, and Department of Defense officials, I am reintroducing the Executive Mobilization Act. This revised measure incorporates several changes designed to provide a stronger impetus in addressing the critical role of our Reserve Forces in total force planning. The principle of the legislation remains unchanged: The pressing need to bring reality and credibility to the total force concept by providing timely, more flexible Presidential authority to mobilize a portion of our Reserve Forces in emergency situations where such action is determined to be the most effective response for defusing a crisis situation.

Mr. President, I wish to express my gratitude to my colleagues for their support and counsel in improving this legislation. I feel strongly that the broad bipartisan cosponsorship which this measure has received is indicative of the studied, realistic approach which this body has taken toward effecting a substantive increase in our national security.●

By Mr. WALLOP (for himself, Mr. GARN, Mr. DOMENICI, Mr. HATCH, Mr. NICKLES, Mr. SIMPSON, Mr. WARNER, Mr. JOHNSTON, and Mr. STEVENS):

S. 1575. A bill entitled "The Combined Hydorcarbon Leasing Act of 1981"; to the Committee on Energy and Natural Resources.

PRODUCTION OF OIL FROM TAR SANDS AND OTHER HYDROCARBON DEPOSITS

● Mr. WALLOP. Mr. President, the perception of the importance of energy today shows signs of changing markedly from what it was a year ago. The energy problem that was so recently being billed as a crisis appears to be regarded as solved. The dominant message in the daily headlines describing the energy glut and insinuating that the once formidable power of OPEC has been broken, reinforces that perception. This is a dangerous misapprehension. Despite fleeting appearances, the days of easy availability have not returned. No one knows how long the surplus will last; it is largely contingent upon the Middle East situation. It should be instructive that many OPEC producers have adopted a policy of restricting production in order to keep prices up. Meanwhile, U.S. domestic production will continue to decline, though at a slower rate because of decontrol, barring any major new discoveries. In short, Mr. President, we must not let our guard down, but must continue to explore all of our options. One promising option is tar sands.

I am pleased to introduce on behalf of myself and Senators GARN, DOMENICI, HATCH, NICKLES, SIMPSON, WARNER, JOHNSTON, and STEVENS, a bill to facilitate and encourage the production of oil from tar sand and other hydrocarbon deposits. It would amend the Mineral Leasing Act of 1920 to remove one of the principal causes preventing any progress from being made in developing some 30 to 45 billion barrels of oil contained in the Nation's tar sand deposits which occur in 22 States, with the bulk of it on Federal land in Utah.

The problem it would resolve is the moratorium on Federal leasing of tar sand deposits because of the Interior Department's inability to differentiate heavy oil from tar sand. Leases for oil and gas deposits are presently issued under section 17 of the Mineral Leasing Act, and tar sand leases are authorized pursuant to section 21 of that statute. Leases issued under these two sections are mutually exclusive; an oil and gas lease carries no right to any of the deposits covered by a section 21 lease and a section 21 lease carries no rights to deposits of oil and gas. The bill introduced today would resolve the problem by redefining "oil" to provide that henceforth a single oil and gas lease will entitle a lessee to develop all the nongaseous hydrocarbons in the area covered by the lease, except coal, oil shale, and gilsonite.

It further provides that the holders of oil and gas leases in certain areas containing known tar sand deposits will be entitled to convert their existing leases to the new combined hydrocarbon lease. This will end the controversial stalemate over the development rights of such lessees, mainly small independents, who obtained section 17 oil and gas leases in areas where the resource is so constituted that the Secretary has been unable to determine whether it is heavy oil developable under such leases or tar sand, developable only under a section 21 lease. Unfortunately the Secretary has not issued any such leases for 16 years because of this definitional problem. However, in order to obtain this conversion privilege a lessee must, within 2 years of enactment of this legislation, submit a plan of operations for secretarial approval demonstrating the technical and economic feasibility of developing the resource covered by his lease in a diligent and environmentally acceptable manner. A similar conversion privilege is also afforded valid mining claims in special tar sand areas. In addition, the converted lease will carry a flat 12.5-percent royalty instead of continuing the Secretary's existing authority under section 21 to establish a lower initial rovalty in such leases.

In those portions of special tar sand areas not covered by existing oil and gas leases expected to be converted, the Secretary must issue new combined hydrocarbon leases solely on a competitive basis, but these leases will also carry a 12.5-percent royalty and a 10-year primary term.

All new leases in specal tar sand areas

will enjoy special incentives to encourage and facilitate the production of this important resource, such as a larger size lease, 5,120 acres, and an exemption from the statewide acreage limitation applicable to existing oil and gas leases. The Secretary is also directed to give special attention to the need to reduce royalties on tar sand production in appropriate circumstances under his existing authority under section 39 of the act. Even though tar sand is defined for post production royalty purposes, the bill makes it clear that nothing in it is to affect the taxable status of tar sand production under the windfall profit tax and other Federal tax legislation.

In response to environmental concerns expressed because some of the tar sand resource in Utah is located in or near units of the national park system, the bill provides that the Secretary shall only apply the provisions of the bill in Glen Canyon National Recreation Area and other areas where mineral leasing is already permitted under existing law when it is in accord with an approved minerals management plan and will not significantly adversely affect the administration of the units or other adjacent units of the national park system.

Mr. President, I believe this bill, which is virtually identical to a bill passed a few weeks ago in the House by a recorded vote of 416 to 0, is an essential first step in the development of our Nation's tar sand resource. It does equity to existing oil and gas lessees whose development efforts have been stymied because of the ambiguous and outmoded provisions of the 1960 amendments of section 21.

It does so on terms that I believe appropriately recognize the national interest in widening our energy pool. It corrects previous errors and stimulates the technology and investment needed to help launch a tar sand industry in this country. It is in keeping with the administration's expressed intention of streamlining regulations and laws governing the production of energy and restoring a free market in energy. I believe this bill will accomplish the objective. I hope that the Energy and Natural Resources Committee will hold hearings on the bill when we return from our recess in September and promptly report it so it can be enacted in this session.●

● Mr. GARN. Mr. President, I am pleased to join with Senator WALLOP in introducing this measure. I am also very pleased to note the support of a number of distinguished original cosponsors, as this speaks to the significance of the bill we are introducing.

Mr. President, this is a bill to promote the development of an important national energy resource, tar sands. I am of the opinion that the energy crisis is not over yet, that we are not yet relieved from the strategic obligation to pursue every economically and environmentally feasible energy alternative at our disposal, so as to preserve the maximum degree of self-sufficiency and independence in the energy sector.

The tar sand resources in the State of Utah can make a significant dent in our longstanding dependence on foreign oil. The Utah Energy Office has estimated that the State's tar sands deposits contain up to 26 billion barrels of oil, some 93 percent of the Nation's reserves of this particular resource. Present technological assumptions calculate that 10 to 20 percent of this oil may be recovered, which would allow for operation of a 100,000-barrel-of-oil-per-day facility for almost 100 years. At the same time, the environmental considerations associated with tar sands processing appear to be much less imposing than those associated with development of other synthetic fuels. It is also important to note that the crude oil produced from tar sands is more readily adaptable to existing refining processes than other synthetic fuel products. In short, there are a number of advantages inherent in the tar sands resource that recommend its promotion as a prominent synthetic fuel.

Mr. President, there are numerous other reasons to get tar sands development underway. It is important to recognize that hundreds of thousands of dollars have been invested by private industry to explore the feasibility of commercial tar sands development. Investment in equipment and process development has been made in preparation for the time when the Federal Government would open the way for development of the resource itself.

That is where this bill comes in. Mr. President, for almost 17 years there has been a moratorium on leasing of tar sands on public lands. The primary obstacle has been defining the nature of the tar sand resource so that when it is processed to produce crude oil, it would be possible to differentiate this product from the product found in normal oil reserves found in the same tract of land. To date, no resolution has been found which would remove the dangerous legal implications surrounding this confusion. Instead, we are proposing to approach tar sands development from another angle: the combined hydrocarbon lease.

The combined hydrocarbon lease would enable tar sands to be developed by allowing existing oil and gas leases to be expanded, or converted, into leases which also encompass the right to process tar sands which are located on these existing leases. That is the essence of this bill, and it is an approach that the State of Utah has used in promoting the development of tar sands located on State-owned lands. I believe, Mr. President, that it is a very timely development for this bill to come before the Senate when we have an administration committed to making the widest possible use, within economic and environmental constraints, of our domestic energy resources. The willingness of the Reagan administration in this respect, combined with the receptive attitude of officials in the State of Utah toward a healthy rate of synfuels development, constitute a ripe political setting for the development of this important resource.

In conclusion, Mr. President, I would also like to emphasize the economic setting we are now looking at. We have decontrolled the petroleum market. We have taken the first difficult steps toward harnessing the runaway Federal budget. We are in the process of finalizing enactment of a crucial set of tax relief proposals. The removal of the leasing bottleneck which this bill is designed to accomplish will be in complete harmony with the broad thrust of the President's energy and economic policies. I am enthusiastic about the bill's prospects for successful passage through the Senate, and I am equally enthusiastic about the prospects for tar sands getting a chance to stand the fair test of the marketplace.

With the advantages inherent in the tar sands resource, the congenial political and economic climate and the interest of private industry, I join with Senator WALLOP in introducing this important bill and recommend it to the favorable consideration of the full Senate.●

By Mr. JEPSEN:

S. 1576. A bill to amend the Internal Revenue Code of 1954 to provide for the nonrecognition of gain on the sale of property if the proceeds are used to acquire a small business equity interest; to the Committee on Finance.

SMALL BUSINESS CAPITAL GAINS ROLLOVER

Mr. JEPSEN. Mr. President, I rise to introduce the Small Business Capital Gains Rollover bill. This provision would allow the deferral of capital gains on the sale of an asset if the proceeds are reinvested in a small business within 12 months of the date of sale.

This measure would amend the Internal Revenue Code by adding a new section 1041 which would permit a taxpayer who sells or exchanges any property to defer paying tax on the gain from the sale providing the proceeds are invested in a qualified small business corporation within 1 year. If the taxpayer does not invest the entire proceeds of the sale in an equity interest in a qualified small business corporation, he will recognize gain up to the amount of the sale proceeds which were not so invested.

This election would be made by filing a statement of election with the Secretary of the Treasury within the statutory period for filing the return for the taxable year in which the property was sold.

This legislation will not cover any bonds or loans and will apply to small business corporations which have received $1 million or less in money or property for stock, as a contribution to capital and as paid-in surplus. Property would be valued at its adjusted basis to the corporation at the time it was received, and its value would be reduced by any liability to which the property was subject or which was assumed by the corporation. Qualified small business corporations could not receive more than 15 percent of their gross receipts as passive investment income during the year the taxpayer invests in the business or in the following 3 years. Passive investment would mean income from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Mr. President, our Nation is currently facing a crucial test of the very essence of our structure—the free enterprise system.

On November 4, the voters saw a U.S. economy that was devastated by inflation, low productivity and high unemployment and which was increasingly unable to compete internationally. Free enterprise was crippled by Government regulation and taxes and stunted by high interest rates. According to information published by the National Association of Manufacturers, America's productivity—the measure of output per hour of work—increased from 1967 through 1977 at an annual average of only 1.6 percent. In 1978, productivity experienced growth of only 0.3 percent and actually declined 0.9 percent in 1979, and 0.6 percent in 1980. In contrast, during the 1967–77 decade, productivity increased 105 percent in Japan, 69 percent in West Germany and France, and 60 percent in Italy. Among the world's industrialized nations, the United States has the lowest ratio of capital investment to gross national product and the highest percentage of obsolete manufacturing facilities.

The voters told us to loosen the reins and give free enterprise a chance. We must now show the 80 percent of the world which lives under an authoritarian system that free enterprise can work. The key to revitalization of the free enterprise system is the livelihood of our Nation's 10 million small businesses.

As President Reagan stated:

> The imagination, skills and willingness of small business men and women to take necessary risks symbolize the free enterprise system of the American economy and must be encouraged.

These small firms generate 66 percent of all new jobs, and have been responsible for over half of all U.S. inventions since World War II. This Yankee ingenuity can be the catalyst of our economic recovery if small business is allowed to compete.

Inflation makes it difficult for small businesses to get started, because it is difficult for the savings to be accumulated to provide risk capital. Government spending and borrowing crowd out private borrowing and push up interest rates. Unfortunately, in this struggle for funds, it is the small businesses who come in last. Unwise tax laws force the absorption through merger of new businesses into old, and the vast paperwork burden which is thrown at businesses of all sizes creates nonproductive burdens which most firms cannot bear.

We must abate the movement toward concentration in U.S. business by promoting investment in small businesses. Current tax laws make it more profitable for small businesses to merge into large corporations than to reinvest in another small business.

Mr. President, the free enterprise system can survive only if we protect and promote competition. To do this we must provide incentive for investment in smaller, more competitive businesses. This bill will help to accomplish that purpose.

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

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

S. 1576

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

SECTION 1. NONRECOGNITION OF GAIN ON ANY PROPERTY SOLD WHERE SMALL BUSINESS EQUITY INTEREST ACQUIRED.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 of the Internal Revenue Code of 1954 (relating to nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1041. SALES OF PROPERTY WHERE INTEREST IN QUALIFIED SMALL BUSINESS CORPORATION ACQUIRED.

"(a) NONRECOGNITION OF GAIN.—

"(1) IN GENERAL.—If any property is sold by the taxpayer and, within the 1-year period beginning on the date of such sale, any equity interest in any qualified small business corporation is purchased by the taxpayer, gain (if any) from such sale shall, at the election of the taxpayer, be recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of such equity interest.

"(2) ELECTION.—The election under paragraph (1) shall be made by filing, not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs, with the Secretary a statement (in such manner as the Secretary may by regulations prescribe) of such election.

"(b) DEFINITIONS.—For purposes of this section—

"(1) EQUITY INTEREST.—

"(A) IN GENERAL.—The term 'equity interest' means any common or preferred stock.

"(B) DEBT EXCLUDED.—The term 'equity interest' does not include any interest—

"(i) with respect to which the payment of money or other property is required solely by reason of the passage of time, or

"(ii) the repurchase of which may be required of the issuer solely by reason of the passage of time.

"(2) QUALIFIED SMALL BUSINESS CORPORATION.—

"(A) IN GENERAL.—The term 'qualified small business corporation' means a small business corporation (within the meaning of section 1244(c)(3)) which meets the passive investment income limitation of subparagraph (B).

"(B) PASSIVE INVESTMENT INCOME LIMITATION.—

"(i) IN GENERAL.—A corporation shall not be treated as a qualified small business corporation for any taxable year if, for the taxable year or any of the 3 taxable years after such taxable year, the passive investment income of such corporation is more than 15 percent of its gross receipts.

"(ii) DEFINITIONS.—For purposes of clause (i), passive investment income and gross receipts shall be determined as provided in subparagraph (C) of section 1372(e)(5), as if the corporation were an electing small business corporation.

"(C) CONTROLLED GROUPS.—

"(i) IN GENERAL.—In the case of a controlled group, all persons which are members of such group at any time during the calendar year shall be treated as 1 taxpayer for such year.

"(ii) CONTROLLED GROUP DEFINED.—For purposes of clause (i), persons shall be treated as members of a controlled group if such persons would be treated as a single employer under the regulations prescribed under section 52(b).

"(c) SPECIAL RULES.—For purposes of this section—

"(1) EXCHANGE TREATED AS SALE.—An exchange by the taxpayer of property for other property shall be treated as a sale of the first property, and the acquisition of any equity interest on the exchange of property shall be treated as a purchase of such equity interest.

"(2) LIMITATION ON STOCK SALES.—In the case of any equity interest in a qualified small business corporation which is evidenced by stock (other than stock in a small business corporation as defined in section 1371), subsection (a) shall apply to the sale of such stock only if such sale would, if such stock had been purchased by the issuing corporation in such sale, be treated as a redemption within the meaning of paragraph (1), (2), or (3) of section 302(b), including the application of section 302(c).

"(d) REDUCTION OF BASIS.—Where the purchase of any equity interest results under subsection (a) in the nonrecognition of gain on the sale of any property, the basis of such equity interest shall be reduced by an amount equal to the amount of gain not so recognized on the sale of such property. Where the purchase of more than one equity interest is taken into account in the nonrecognition under subsection (a) of gain on the sale of a property, the preceding sentence shall be applied to each equity interest in the order in which each such equity interest is purchased.

"(e) STATUTE OF LIMITATIONS.—If the taxpayer during any taxable year sells any property at a gain, then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire before the expiration of the 3-year period beginning on the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing any equity interest which the taxpayer claims results in nonrecognition of any part of such gain,

"(B) the taxpayer's intention not to purchase any equity interest within the 1-year period described in subsection (a), or

"(C) the failure by the taxpayer to purchase any equity interest within such period; and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 1016 of such Code (relating to adjustments to basis) is amended by striking out "and" at the end of paragraph (21), by striking out the period at the end of paragraph (22) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(23) in the case of any equity interest the acquisition of which resulted under section 1041 in the nonrecognition of gain on the sale or exchange of property, to the extent provided by section 1041(d).".

(c) CONFORMING AMENDMENT.—The table of sections of part III of subchapter O of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1041. Sales of property where equity interest in qualified small business corporation acquired.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply to sales or exchanges after December 31, 1981.

By Mr. JEPSEN:

S. 1577. A bill to secure the right of individuals to the free exercise of religion guaranteed by the first amendment of the Constitution; to the Committee on the Judiciary.

VOLUNTARY PRAYER AND RELIGIOUS MEDITATION ACT OF 1981

Mr. JEPSEN. Mr. President, the purpose of this bill is to insure and protect the right to the free exercise of religious expression as guaranteed under the first amendment to the Constitution of the United States.

It is appropriately titled the Voluntary Prayer and Religious Meditation Act of 1981. This legislation first appeared as title IV of the Family Protection Act which I introduced on June 17, 1981.

The Voluntary Prayer and Religious Meditation Act of 1981 is designed to reverse the last 19 years of Supreme Court decisions and subsequent case law regarding the constitutionality of State-sponsored religious exercises in the public schools.

The bill directs its attention to the first amendment to the Constitution, specifically the "Free Exercise Clause."

The first amendment states that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

The Supreme Court has prohibited State involvement in school prayer or other religious activity strictly on the establishment clause.

Mr. President, as I noted in my remarks on July 17, 1981 on this subject—

Our forefathers framed the Constitution to insure that all Americans enjoyed the freedom of worship and the free exercise of prayer. However, in 1962, the U.S. Supreme Court ruled that both nondenominational prayer and Bible reading without comment conflicted with the first amendment prohibiting the establishing of religion. At the time of the decision, 26 states permitted Bible reading in schools and 13 permitted the recitation of the Lord's Prayer.

Mr. President, I note for the record since the Senate's inception in the late 1700's, this Chamber has begun each day's activities by asking God's blessing. Yet, throughout this country, public school children are being denied that privilege.

In a novel manner, this bill reinstates the individual's right to the free exercise of religion based on the free exercise clause of the U.S. Constitution, which for some reason or other, the Supreme Court decided to either ignore or make subordinate to the establishment clause.

A strong case must be made for the free exercise of religious expression whether public or private. Such expression is a fundamental freedom which should not be benignly denied in order to protect other freedoms equally fundamental.

This bill directly confronts the religious freedom and establishment clause issue through congressional statutory law.

Finally, this bill provides that any individual aggrieved by a violation under the bill may bring a civil action in the appropriate district court of the United States, or in any State court of competent jurisdiction, for damages or for such equitable relief as may be appropriate, or both.

In short, a parent or guardian representing a student who is being denied the opportunity (right) to participate in religious exercises would have standing to bring a civil action in Federal or State district court.

Mr. President, additional remarks and background information on this issue can be found following my remarks on June 17, 1981, to the Family Protection Act. The Library of Congress has written several outstanding briefs and outlines on this issue. I highly recommend that each Member advise their staff to make part of their files the work by the Library of Congress.

Specifically, I recommend Report No. 81–34A entitled "Religious Activities in the Public Schools and the First Amendment—Judicial Decisions and the Congressional Response," by Mr. David Ackerman, legislative attorney, American Law Division, February 2, 1981.

Mr. President, I anticipate that much discussion and debate will result from this bill. I look forward to such discussions and I am optimistic as to the strength and soundness of the goals we seek to accomplish.

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

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

S. 1577

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 "Voluntary Prayer and Religious Meditation Act of 1981".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) America is a nation founded on freedom;

(2) essential to freedom of the free exercise of the inalienable rights guaranteed to all by our Creator;

(3) in order to preserve such rights it is equally essential that the Constitution be broadly interpreted in matters of individual freedoms; and

(4) the free exercise of religious expression whether public or private is a fundamental freedom which should not be benignly denied in order to protect other freedoms equally fundamental.

(b) In order to secure the right of individuals to the free exercise of religion guaranteed by the first amendment of the Constitution, the Congress pursuant to its authority under the necessary and proper clause of section 8, article I, of the Constitution, enacts the provisions of this title.

DEFINITION

SEC. 3. As used in this title—

(1) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(2) the term "voluntary prayer or religious meditation" includes individual prayer and devotional reading from religious literature initiated by members of the group, provided that any person so desiring is excused from participating in such prayer and devotional reading.

VOLUNTARY SCHOOL PRAYER AND RELIGIOUS MEDITATION RIGHT PROTECTED

SEC. 4. (a) Each individual shall have the right to participate in the free exercise of voluntary prayer or religious meditation in any public building or in any building which is supported in whole or in part through the expenditure of Federal funds.

(b) No department or agency of the United States, of any State, or of any political subdivision of a State, shall abridge the right of free exercise of voluntary prayer or religious meditation in any public building or any building which is supported in whole or in part through the expenditure of public funds.

CIVIL ACTIONS AUTHORIZED; JURISDICTION AND RELIEF

SEC. 5. (a) Any individual aggrieved by violation of this title may bring a civil action in the appropriate district court of the United States, or in any State court of competent jurisdiction, for damages or for such equitable relief as may be appropriate, or both.

(b) The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(c) Each district court of the United States, and each State court of competent jurisdiction, shall provide such equitable relief, including injunctive relief, as may be appropriate to carry out the provisions of this title.

(d)(1) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge), who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(2) It shall be the duty of the judge designate pursuant to this subsection to assign the case for hearing within thirty days of filing with the court. A hearing of the case must be held within one hundred and eighty days upon the proper filing of the case with the court.

SAVINGS PROVISION

SEC. 6. The provisions of this title shall supersede all the provisions of the Federal law that are inconsistent with the provisions of this title.

By Mr. JEPSEN:

S. 1578. A bill to restrict the Federal Government from preempting or interfering with State statutes pertaining to spousal abuse, and for other purposes; to the Committee on Finance.

SPOUSE ABUSE CENTERS

Mr. JEPSEN. Mr. President, I am introducing a bill which would restrict the Federal Government from preempting or interfering with State statutes pertaining to spousal abuse.

The purpose of this legislation is threefold. This is a basic statement of principle, intended as a guideline for future Federal policymaking, that family relationships are fundamentally beyond the scope of Federal influence.

This bill would also guarantee that existing statutes of the individual States which deal with domestic violence situations are not intended to be nullified or superseded by any Federal bureau, agency, commission, study recommendation, or other body, either in policy directives or in recommendations of any other kind.

Finally, this bill would facilitate the establishment of tax-exempt, private voluntary associations/corporations to provide treatment to care for the victims of domestic violence. The associations thus facilitated would, however, be

barred from using Federal funds for their nonprofit functions.

Violence in the family has been the subject of concern and controversy for some years. First child abuse, then spouse abuse, and, most recently, abuse of elderly have become highly publicized and emotional issues. Experts are beginning to suggest that these problems are more severe and widespread than many have assumed, and, furthermore, that family violence may be learned and transmitted from one generation to the next. These findings have led many to push for Federal intervention in the problem. Accompanying this public outcry, however, has been a deep concern over the short- and long-term effects of the Federal Government becoming so intimately involved in family affairs.

Because of the increased pressure on the Federal Government to intervene in the area of domestic violence, the Federal Government recently has attempted to implement several legislative proposals. During the 95th Congress, identical domestic violence bills were introduced in both Houses of Congress which would have set up a Federal office on domestic violence which would have allowed discretionary grants to be used for shelters and other domestic violence projects. Although the Senate approved this legislation, the House version was defeated on the House floor, and therefore the measure died.

During the 96th Congress, legislation dealing with domestic violence was again introduced in both Houses of Congress. Although this time the bills were successful in the initial votes on both the House and Senate floor, the Senate failed to vote on the final conference report, and therefore, the measure again died.

In the meantime, however, several agencies initiated activities in the area of domestic violence, such as designating domestic violence as a funding priority in certain programs, and participating in intra- and inter-agency coordination and evaluation of Federal domestic violence-related programs and services. However, perhaps partly due to the changing political view on the role of the Government in family affairs, two of these programs—the Office on Domestic Violence in the Department of Health and Human Services and the family violence program in the Department of Justice—were discontinued earlier this year.

Mr. President, 44 States have recently passed legislation dealing with the problems of spouse abuse and have set up domestic violence shelters and counseling programs. Many States have drastically revised their criminal codes to provide for easier arrest and persecution of the abuser; and civil remedies have been implemented to evict the abuser from the residence rather than leaving it up to the victim to flee.

In short, programs at the local and State levels which are already intact, have been able to effectively work with individuals who have become the victims of domestic violence.

Mr. President, "The best government is that government closest to home." This bill, which would provide incentives for State and local communities to develop spouse abuse centers, would be a boon to those of us who are truly concerned about the plight of the victims of spouse abuse and who firmly believe that this task can best be done at the local level.

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

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

S. 1578

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) no Federal law, program, guideline, agency action, commission action, directive, or grant shall be construed to abrogate, alter, broaden, or supersede existing State statutory law relating to spousal abuse or domestic relations.

(b) Subsection (c) of section 501 of the Internal Revenue Code of 1954 (relating to list of exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(23) A corporation, trust, or other organization organized under the law of a State or of the District of Columbia and operated exclusively for the purpose of providing treatment and care for individuals who suffer physical or psychological abuse from a spouse, parent, or other member of such individual's family or household, no part of the net earnings of which inures to the benefit of any private shareholder or individual.".

(c) The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1980.

By Mr. JEPSEN:

S. 1579. A bill to amend the Internal Revenue Code of 1954 to allow corporations to deduct all contributions made to a joint employee-employer day care facility; to the Committee on Finance.

TAX DEDUCTIONS FOR DAY CARE FACILITIES

Mr. JEPSEN. Mr. President, I introduce today a bill which allows a corporation which contributes funds to cooperative day care facilities that are established by and for the use of employees, an equal deduction from taxes if the facility meets specified minimum requirements.

There is certainly no doubt that with the growing number of households where both parents work, and the growing number of single-parent households, the need for day care facilities is increasing. Department of Labor statistics show that 53 percent of children under age 18 had mothers in the labor force in March 1980, up from 39 percent in 1970. Among preschool age children, the proportion whose mothers worked or looked for work rose from 29 to 43 percent between 1970 and 1980. Among school age children, 6 through 17, the proportion whose mothers worked or looked for work grew from 43 percent in 1970 to 57 percent in 1980. The number of children under age 6 whose mothers were in the labor force grew from 5.6 million to 7.5 million from 1970 to 1980. The number of children age 6 to 17 grew from 20 million to 23.2 million over the same span of years.

During the last Congress, my colleague from California, Mr. CRANSTON, addressed this problem by noting that—

Without any doubt . . . a majority of mothers of children under the age of 18 are in the labor force and the percentage of working mothers—particularly mothers of younger children is growing every year. Yet, our witnesses clearly indicated that there has been no corresponding growth in the availability of licensed child care for the children of these parents. Indeed, quite the contrary is true.

Although funding for day care centers was a matter of consideration before the last Congress, cost estimates for such programs were set at between $90 million and $150 million annually. Such prohibitive costs could not be covered under the current budget restrictions.

Mr. President, the bill that I am introducing today provides a remedy for those parents who daily seek a reliable form of day care for their children. This bill would encourage employers to take an active interest and become involved in the family needs of their employees, without bringing the Government directly into the matter at all, except in a minor tax capacity.

Additionally, this bill would encourage decentralized, local management whereby the direct beneficiaries of the day care facility would be able to determine the use of available funds.

Ultimately, this bill would have the beneficial potential of creating closer labor-management relations.

Mr. President, because there is a need for quality day care, many corporations and firms would welcome an opportunity to provide such facilities on their premises and, certainly, their employees would welcome an opportunity to keep their children near their place of work.

This legislation contributes to the solution of a very real problem, and it is my hope that the Senate will act favorably on this bill in the near future.

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. 1579

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of section 162 of the Internal Revenue Code of 1954 (relating to charitable contributions and gifts excepted) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply with respect to amounts paid or contributed by the taxpayer to a day care center which meets the requirements of section 501(c)(23).".

(b) Subsection (c) of section 501 of such Code (relating to list of exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(23) a corporation organized and operated in the United States exclusively for the purpose of providing day care for children, no part of the net earnings of which enures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on

behalf of any candidate for public office, and which—

"(A) has applied for (and such application has not been rejected),

"(B) has been granted (and such granting has not been revoked), or

"(C) is exempt from having,

a license, certification, registration, or approval as a day care center under the provisions of applicable State law.".

(c) In the case of a day care center described in section 501(c)(23) of the Internal Revenue Code of 1954—

(1) the Secretary of the Treasury may not promulgate any criterion of eligibility for exemption from tax under section 501(a) of such Code which is not described in paragraph (23) of section 501(c) of such Code,

(2) no certification or approval by the Internal Revenue Service shall be required as a condition for such tax exemption, and

(3) no agency or department of the United States Government may require compliance with any rule or regulation by such a center as a condition of such tax exemption.

(d) The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1980.

By Mr. JEPSEN:

S. 1580. A bill to amend the Internal Revenue Code of 1954 to provide a personal exemption for childbirth or adoption and to permit the taxpayer to choose a deduction or a tax credit for adoption expenses; to the Committee on Finance.

TAX DEDUCTION FOR EXPENSES INCURRED IN ADOPTION OF A CHILD

Mr. JEPSEN. Mr. President, the purpose of this bill is to amend the Internal Revenue Code of 1954 to provide a personal exemption for childbirth or adoption and to permit the taxpayer to choose a deduction or tax credit for adoption expenses.

This legislation is the product of several legislative proposals which I have introduced during the 96th and 97th Congresses, which seek to address what I believe is the greatest burden and disincentive to the adoption process: Namely the cost of adoption.

With the exception of the tax credit provision which is provided by the bill, this is essentially the same provision which I introduced on July 17, 1981 as section 207 of the Family Protection Act.

Specifically, the bill would amend Code section 151 to allow an additional $1,000 personal exemption for a taxpayer in the year that a child is born to or adopted by the taxpayer. An additional personal exemption of $3,000 would be allowed in the case of a child born to the taxpayer, which child is handicapped. In the case of the adoption of a child who is a member of a minority race or ethnic group, or a child who is over age 6, or a handicapped child an extra $3,000 exemption would be allowed under the section. The additional exemption would be allowed only to married individuals filing joint returns. If the exemption reduces a taxpayer's tax liability to zero, the extra amount could be carried over to the following year.

In addition, the bill would add a new Code section 221 which would allow the election of either a deduction or tax credit for expenses incurred in the adoption of a child.

The deduction or tax credit specifically would allow adoption expenses greater than $500, but not more than $3,500 or $4,500 in the case of an international adoption. Adoption expenses would include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses directly related to the legal adoption of a child. Illegal expenses could not be deducted. International adoptions include adoptions in foreign countries, or involving a child who is a citizen of a foreign country who was brought to the United States to be adopted or whose placement for adoption was reasonably foreseeable. Reimbursed expenses or otherwise deductible expenses could not be deducted under this section.

Mr. President, the Senate recently adopted an amendment I offered to the tax bill which provided a deduction for adoption expenses for special needs children. In order that my view on tax deductions for adoptions can be appropriately restated, I ask that my remarks and the discussion which followed on July 28, 1981, pertaining to amendment No. 315 which appeared on page 17811 through 17815 of the RECORD be appropriately printed.

Furthermore, Mr. President, I respectfully refer interested parties to a legislative summary on this issue which appeared as part of my remarks to the Family Protection Act in the RECORD for July 17, 1981.

I thank the Chair, and urge my colleagues to join me in this effort.

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

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

S. 1580

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

SECTION 1. EXEMPTIONS FOR CHILDBIRTH OR ADOPTION

(a) IN GENERAL.—Section 151 of the Internal Revenue Code of 1954 (relating to allowance of deductions for personal exemptions) is amended by adding at the end thereof the following new subsection:

"(f) ADDITIONAL EXEMPTION FOR CHILDBIRTH OR ADOPTION.—

"(1) IN GENERAL.—An exemption of $1,000 for each child born to, or adopted by, the taxpayer during the taxable year.

"(2) BIRTH AND ADOPTION OF CERTAIN CHILDREN.—In the case of—

"(A) a child who is born to the taxpayer and who is handicapped (within the meaning of section 190(b)(3)), or

"(B) the adoption of a child—

"(i) who is a member of a minority race or ethnic group, or

"(ii) who has attained the age of 6 before the beginning of the taxable year for which the additional exemption allowed by paragraph (1) is claimed, or

"(iii) who is handicapped (within the meaning of section 190(b)(3)),

'$3,000' shall be substituted for '$1,000' in paragraph (1).

"(3) JOINT RETURN.—The additional exemption allowed by paragraph (1) for any taxable year shall not be allowed to an individual who is not a married individual (as defined in section 143) or to a married individual (as defined in such section) who does not make a joint return of tax with his spouse for the taxable year.

"(4) CARRYOVER OF UNUSED DEDUCTION.—In the case of a taxpayer for whom the exemption allowed by paragraph (1) for a taxable year reduces his tax liability to zero, and in the case of a taxpayer whose liability for tax under this chapter (determined without regard to the additional exemption allowed by paragraph (1)) is zero, the additional exemption allowed by paragraph (1) for that taxable year, or that portion of such exemption which is properly attributable to a reduction of the taxpayer's liability for tax under this chapter below zero, shall be carried over to the following taxable year and shall be treated, for such following taxable year, as an additional exemption allowed by paragraph (1) for that taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to taxable years beginning after December 31, 1980.

SEC. 2. ADOPTION EXPENSES.

(a) DEDUCTION.—

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. ADOPTION EXPENSES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction the amount of the adoption expenses paid or incurred by the taxpayer during the taxable year.

"(b) LIMITATION ON DEDUCTIONS.—

"(1) MINIMUM DOLLAR AMOUNT.—No deduction shall be allowable under subsection (a) for the first $500 of adoption expenses paid or incurred with respect to the adoption of any child.

"(2) MAXIMUM DOLLAR AMOUNT.—The aggregate amount allowable as a deduction under subsection (a) for all taxable years with respect to the adoption of any child shall not exceed $3,500 ($4,500 in the case of an international adoption).

"(3) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowable under subsection (a) for any amount for which a deduction or credit (other than the credit allowable under section 44F (relating to adoption expenses)) is allowable under any other provision of this chapter.

"(B) GRANTS.—No deduction shall be allowable under subsection (a) for any adoption expense paid from any funds received under any Federal, State, or local program.

"(C) ELECTION TO TAKE CREDIT IN LIEU OF DEDUCTION.—This section shall not apply in the case of a taxpayer who, for the taxable year, elects to take the credit against tax provided by section 44F (relating to adoption expenses). The election shall be made in such manner and at such time as the Secretary shall prescribe by regulations.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ADOPTION EXPENSES.—The term 'adoption expenses' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child by the taxpayer and which are not incurred in violation of State or Federal law.

"(2) INTERNATIONAL ADOPTION.—The term 'international adoption' means an adoption—

"(A) occurring under the laws of a foreign country, or

"(B) involving a child who was a citizen of a foreign country who—

"(i) was brought to the United States for the purpose of adoption, or

"(ii) came to the United States under circumstances with respect to which the necessity for the child's placement in adoption proceedings was reasonably foreseeable.".

(2) CONFORMING AMENDMENTS.—

(A) Section 62 of such Code (defining adjusted gross income) is amended by inserting after paragraph (16) the following new paragraph:

"(17) ADOPTION EXPENSES.—The deduction allowed by section 221.".

(B) The table of sections for such part VII is amended by striking out the item relating to section 221 and inserting in lieu thereof the following:

"Sec. 221. Adoption expenses.
"Sec. 222. Cross references.".

(b) CREDIT.—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by inserting before section 45 the following new section:

"SEC. 44F. ADOPTION EXPENSES.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the adoption expenses paid or incurred by the taxpayer during the taxable year.

"(b) LIMITATIONS.—

"(1) MINIMUM DOLLAR AMOUNT.—The first $500 of adoption expenses paid or incurred with respect to the adoption of any child shall not be taken into account under subsection (a).

"(2) MAXIMUM DOLLAR AMOUNT.—The aggregate amount allowable as a credit under subsection (a) for all taxable years with respect to the adoption of any child shall not exceed $3,500 ($4,500 in the case of an international adoption).

"(c) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.

"(d) DEFINITIONS.—For purposes of this section, the terms 'adoption expenses' and 'international adoption' have the meaning given such terms under section 221(c).".

(2) CONFORMING AMENDMENTS.—

(A) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting at the end thereof the following new item:

"44F. Adoption expenses.".

(B) Section 6096(b) of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44E" and inserting in lieu thereof "section 44E, and section 44F".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred in connection with any adoption which becomes final after December 31, 1980.

By Mr. JEPSEN:

S. 1581. A bill to amend the Internal Revenue Code of 1954 to allow the taxpayer the choice of a tax credit or a deduction for each household which includes a dependent person who is at least 65 years old; to the Committee on Finance.

S. 1582. A bill to amend the Internal Revenue Code of 1954 to exempt from taxation certain trusts established for the benefit of parents or handicapped relatives, and to provide a deduction for contributions to such trusts; to the Committee on Finance.

S. 1583. A bill to amend the Internal Revenue Code of 1954 to provide a deduction for contributions made by a taxpayer to an individual retirement plan for the benefit of a nonsalaried spouse; to the Committee on Finance.

TAX DEDUCTIONS OR EXEMPTIONS RELATING TO MEMBERS OF FAMILIES

Mr. JEPSEN. Mr. President, all too often, low- and moderate-income families are forced to put their elderly parents into subsidized nursing homes. This, even though studies show that many of these older citizens would be much better off at home. There are a number of reasons this occurs, but the primary one is cost.

Many individuals simply cannot afford to keep their parents living with them because of the financial strain. I am therefore introducing a bill to allow a family a tax credit or a tax exemption if they take upon themselves the responsibility of caring for an older relative.

As health care costs continue to skyrocket, tax subsidies cannot attempt to match the amount of money required to keep an elderly dependent at home. But it is certainly a more cost-effective, more humane solution than putting an elderly loved one in a federally regulated, subsidized, institution.

In addition, I am also introducing a bill to allow the establishment of parental trust accounts. These would operate in a manner similar to individual retirement accounts. Under my bill, a deduction of up to $3,000 for contributions to the PTA would be allowed, as long as the trust were established to care for a qualified beneficiary.

No part of the trust could be used for any purpose other than providing care for any qualified beneficiary, paying administrative expenses of the trust, or making a mandatory distribution. The trustee of the trust must be a bank or similar institution or a person satisfactory to the Secretary of the Treasury. No beneficiary of the trust can be a beneficiary of any other qualified parental trust account.

As I mentioned earlier, these changes cannot possibly account for all of the expenses involved in caring for an elderly dependent. But it is a help. It would be more cost effective and it would enable many older individuals desiring to live at home to remain there.

The final provision I am introducing today deals with individual retirement accounts. As you know, Mr. President, Congress made a number of changes regarding IRA's during consideration of the President's tax bill. Unfortunately, a very important change was overlooked.

Under present law, individuals can only make contributions to an IRA based on their own employment or that of their spouse, if the spouse is also employed. This totally ignores the important role a homemaker plays and implies that this work is worthless. My bill would allow an individual to make contributions to an individual retirement account on behalf of his or her spouse.

In order to take advantage of this provision the spouse could not have any earned income of his or her own. For the purpose of computing the amount of the spouse's contribution to the IRA, the spouse would be deemed to have compensation equal to the compensation included in the working spouse's gross income for the taxable year.

The maximum deduction for each individual would remain as under current law—the lesser of 15 percent of compensation or $1,500—with the exception that if the spouse were handicapped, the maximum deduction would be $3,000.

In the past, when efforts have been made to help people deal with a particular problem, the Federal Government has always responded by setting up a new program or establishing a new agency. Many of us believe that the proper response should be to give people a chance to come up with their own solutions. My bill attempts to do just that.

Instead of subsidizing health care institutions, we are helping people choose the alternative—allowing elderly individuals to stay at home. Instead of insuring that social security is the only retirement available to individuals, we are giving them additional opportunities to set up their own retirement programs.

I do not profess to believe that my bills will solve all of the problems facing older Americans or their families. But they do provide viable alternatives to the current system. For any of my colleagues desiring additional information on these provisions or a complete explanation of the measures, I refer you to title II, sections 203, 204, and 205 of the Family Protection Act which appears in the June 17, 1981, CONGRESSIONAL RECORD.

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

There being no objection, the bills were ordered to be printed in the RECORD, as follows;

S. 1581

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by inserting before section 45 the following new section:

"SEC. 44F. ELDERLY DEPENDENTS.

"(a) GENERAL RULE.—In the case of an individual who maintains a household which includes as a member a dependent who, as of the close of such individual's taxable year, has attained the age of 65, there shall be allowed, as a credit against the tax imposed by this chapter for the taxable year, a credit of $250.

"(b) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.

"(c) SPECIAL RULES.—For purposes of this section, the special rules set forth in para-

graphs (1), (2), (3), and (4) of section 44A (f) shall apply with respect to the credit allowed by subsection (a).".

(b) Part VII of subchapter B of chapter 1 of such Code (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. ELDERLY DEPENDENTS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual who maintains a household which includes as a member a dependent who, as of the close of such individual's taxable year, has attained the age of 65, there shall be allowed a deduction of $1,000.

"(b) SPECIAL RULES.—Paragraphs (1), (2), (3), and (4) of section 44A(f) shall apply with respect to the deduction allowed by subsection (a).

"(c) ELECTION TO TAKE CREDIT IN LIEU OF DEDUCTION.—This section shall not apply in the case of a taxpayer who, for the taxable year, elects to take the credit against tax provided by section 44F (relating to elderly dependents). The election shall be made in such manner and at such time as the Secretary shall prescribe.".

(c)(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately after the item relating to section 44C the following new item:

"Sec. 44F. Elderly dependents.".

(2) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 221. Elderly dependents.
"Sec. 222. Cross references.".

(3) Section 6096(b) of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44E" and inserting in lieu thereof "section 44E, and section 44F".

(d) The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1980.

S. 1582

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. CONTRIBUTIONS TO QUALIFIED PARENTAL OR HANDICAPPED RELATIVE CARE TRUST.

"(a) GENERAL RULE.—In the case of an individual there is allowed as a deduction the sum of the amounts paid or contributed by that individual for the taxable year to or under a trust described in section 645 established by that individual to provide care for a qualified beneficiary (within the meaning of section 645(c)(2)).

"(b) MAXIMUM DEDUCTION.—The amount allowable as a deduction under subsection (a) for any taxable year may not exceed $3,000 with respect to payments to or contributions under a trust established for a single beneficiary.".

(b) Subpart A of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1954 (relating to general rules for taxation of estates and trust) is amended by adding at the end thereof the following new section:

"SEC. 645. QUALIFIED PARENTAL OR HANDICAPPED RELATIVE CARE TRUST.

"(a) EXEMPTION FROM INCOME TAXES.—

"(1) EXEMPTION FOR TRUST.—Except as provided in paragraph (3), a qualified parental or handicapped relative trust shall be exempt from taxation under this subtitle.

"(2) EXEMPTION FOR BENEFICIARY.—Except in the case of a mandatory distribution provided for in subsection (b), any amount distributed during the taxable year by a qualified parental or handicapped relative care trust shall not be included in the gross income for the taxable year of the qualified beneficiary to or for whose benefit such amount is so distributed to the extent that such amount is received by any individual—

"(A) who is not the spouse of the grantor of such trust, or

"(B) whose relationship to such grantor is not described in paragraphs (1) through (8) of section 152(a),

for the purpose of providing care for such beneficiary.

"(3) TRUST FUNDS TO BE TAXED ON DISTRIBUTIONS.—Except in the case of a mandatory distribution provided for in subsection (b), a qualified parental or handicapped relative care trust shall be treated as having taxable income for the taxable year in an amount equal to the sum of the amounts distributed by the trust during the taxable year, reduced by any portion of such distributions included in the gross income of a beneficiary for the taxable year under paragraph (2).

"(b) MANDATORY DISTRIBUTIONS.—

"(1) TO PARENT UPON ATTTAINMENT OF AGE 64.—In the case of a trust established for the benefit of a parent of the grantor, the amount in the trust shall be distributed to the beneficiary not earlier than the close of the taxable year in which the beneficiary attains age 64.

"(2) DEATH OF BENEFICIARY.—If the qualified beneficiary of a qualified parental or handicapped relative care trust dies, the amount in the trust shall be distributed to—

"(A) in the case of a qualified beneficiary who is a parent of the grantor, the surviving spouse of the beneficiary, or, if there is no surviving spouse, the grandchildren of the beneficiary, or, if there are no grandchildren of the beneficiary, to the grantor, or

"(B) in the case of a trust established to provide care for a qualified beneficiary who is a handicapped relative, to the children of such beneficiary, or if there are not such children, to the grantor.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED PARENTAL OR HANDICAPPED RELATIVE CARE TRUST.—The term 'qualified parental or handicapped relative care trust' means any trust—

"(A) which is created and governed by a written instrument under which—

"(i) it is impossible, at any time before the termination of the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of care for any qualified beneficiary of the trust, the payment of administrative expenses of the trust, or a mandatory distribution required under subsection (b), and

"(ii) the grantor of the trust has no reversionary interest in any portion of the trust (other than in the case of a mandatory distribution required under subsection (b)(2)) which may take effect in possession or enjoyment before the death of all qualified beneficiaries of the trust or before all beneficiaries of the trust cease to be qualified beneficiaries of such trust;

"(B) the trustee of which is a bank (as defined in section 401(d)(1)) or any person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the purpose of the trust; and

"(C) no beneficiary of which is a beneficiary of any other qualified parental or handicapped relative care trust.

"(2) QUALIFIED BENEFICIARY.—The term 'qualified beneficiary' means a parent of the grantor or any individual—

"(A) who bears a relationship to the grantor described in paragraphs (1) through (8) of section 152(a); and

"(B) who, under regulations prescribed by the Secretary, at the time such trust is established, is unable to engage in any substantial gainful activity because of a medically determinable mental or physical impairment which can be expected to be of long-continued and indefinite duration.".

(c) (1) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking out the last item and by inserting in lieu thereof the following:

"Sec. 221. Contributions to qualified parental or handicapped relative care trust.
"Sec. 222. Cross references.".

(2) The table of sections for subpart A of part I of subchapter J of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 645. Qualified parental or handicapped relative care trust.".

(d) The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1980.

S. 1583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (a) of section 219 of the Internal Revenue Code of 1954 (relating to deduction for retirement savings) is amended by inserting "or for the benefit of his spouse" immediately after "benefit".

(b) Paragraph (2) of section 219(c) of such Code (relating to married individuals) is amended to read as follows:

"(2) MARRIED INDIVIDUALS.—In the case of an individual who claims a deduction under subsection (a) for payments made for the benefit of his spouse—

"(A) The maximum deduction under subsection (b)(1) shall be computed separately for the individual and his spouse. For the purpose of making the computation for the spouse, the spouse shall be treated as having compensation includible in gross income for the taxable year equal to the compensation includible in such individual's gross income for the taxable year.

"(B) The deduction provided by subsection (a) shall be allowed for payments made for the benefit of such individual's spouse only if the individual and his spouse file a joint return of tax for the taxable year.

"(C) In the case of payments made for the benefit of a spouse who is handicapped within the meaning of section 190(b)(3), '$3,000' shall be substituted for '$1,500' in subsection (b)(1) and (b)(7).

"(D) No deduction shall be allowed under subsection (a) for payments for the benefit of a spouse for any taxable year for which—

"(i) the spouse has earned income includible in gross income, or

"(ii) a deduction would not be allowed if the spouse were the individual making the payment for the spouse's own benefit because of any limitation or restriction which would apply if the spouse were the individual making the payment.

"(E) This section shall be applied without regard to any community property laws. For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).".

(c) The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1980.

ADDITIONAL COSPONSORS

S. 10

At the request of Mr. ROTH, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 10, a bill to establish a Commission on More Effective Government, with the declared objective of improving the quality of Government in the United States and of restoring public confidence in Government at all levels.

S. 517

At the request of Mr. BENTSEN, the Senator from North Carolina (Mr. HELMS) 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. 635

At the request of Mr. HEINZ, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Montana (Mr. MELCHER), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 635, a bill to effect certain reorganization of the Federal Government to strengthen Federal programs and policies for combating international and domestic terrorism.

S. 888

At the request of Mr. DURENBERGER, the Senator from Wyoming (Mr. WALLOP) 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. 895

At the request of Mr. MATHIAS, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 895, a bill to amend the Voting Rights Act of 1965 to extend certain provisions for an additional 10 years, to extend certain other provisions for an additional 7 years, and for other purposes.

S. 1131

At the request of Mr. DANFORTH, the Senator from Kansas (Mrs. KASSEBAUM) 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. 1365

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

S. 1423

At the request of Mr. HATCH, the Senator from Colorado (Mr. ARMSTRONG) was added as a cosponsor of S. 1423, a bill to revise provisions of the Federal Mine Safety and Health Act of 1977, and for other purposes.

S. 1436

At the request of Mr. D'AMATO, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 1436, a bill to amend the Securities Exchange Act of 1934 to require uniform margin requirements in transactions involving the acquisition of securities of certain U.S. corporations by foreign persons where such acquisition is financed by a foreign lender.

S. 1448

At the request of Mr. MATHIAS, the Senator from Montana (Mr. BAUCUS), the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. RIEGLE), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Tennessee (Mr. SASSER) were added as cosponsors of S. 1448, a bill to provide for the issuance of a postage stamp to commemorate the 70th anniversary of the founding of the Girl Scouts of the United States of America.

S. 1476

At the request of Mr. DURENBERGER, the Senator from Montana (Mr. BAUCUS), the Senator from North Dakota (Mr. BURDICK), the Senator from Nebraska (Mr. EXON), the Senator from Wisconsin (Mr. KASTEN), the Senator from Ohio (Mr. METZENBAUM), the Senator from South Dakota (Mr. PRESSLER), the Senator from Arkansas (Mr. PRYOR), the Senator from Michigan (Mr. RIEGLE), the Senator from Nebraska (Mr. ZORINSKY), the Senator from Michigan (Mr. LEVIN), and the Senator from South Dakota (Mr. ABDNOR) were added as cosponsors of S. 1476, a bill to provide standby authority to deal with petroleum supply disruptions, and for other purposes.

S. 1528

At the request of Mr. PROXMIRE, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1528, a bill to amend the Social Security Act to provide for improved management of the social security trust funds and increase the return on investments to those funds.

S. 1536

At the request of Mr. CHILES, the Senator from Georgia (Mr. NUNN) was added as a cosponsor of S. 1536, a bill to amend the Social Security Act to insure adequate short- and long-term financing of the old-age, survivors, and disability insurance program and the medicare program.

SENATE JOINT RESOLUTION 67

At the request of Mr. INOUYE, the Senator from Oregon (Mr. PACKWOOD), the Senator from Michigan (Mr. RIEGLE), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Ohio (Mr. GLENN), and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of Senate Joint Resolution 67, a joint resolution to establish "National Nurse-Midwifery Week."

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATION, 1982

AMENDMENT NO. 526

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

Mr. DOLE submitted an amendment intended to be proposed by him to the bill (H.R. 4035) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1982, and for other purposes.

PRICE SUPPORT AND PRODUCTION INCENTIVES FOR FARMERS

AMENDMENT NO. 527

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

Mr. TSONGAS (for himself and Mr. QUAYLE) submitted an amendment intended to be proposed by them to the bill (S. 884) to revise and extend programs to provide price support and production incentives for farmers to assure an abundance of food and fiber, and for other purposes.

ELIMINATION OF SUGAR TITLE FROM THE FARM BILL

● Mr. TSONGAS. Mr. President, when we return in September, we will begin consideration of the 1981 farm bill (S. 884). Today, Senator QUAYLE and I are submitting an amendment to eliminate the sugar title from the farm bill. As proposed, the sugar program is a prime example of the special interest politics that several Members have pledged to eradicate. I am pleased to join with Senator QUAYLE in a bipartisan effort to delete these provisions for a sugar loan program from the farm bill.

The sugar title sets the loan rate for raw cane sugar for the 1982–85 crop years at no less than 19.6 cents per pound. Over the last several months, the world market price for sugar has ranged from 15 to 19 cents per pound. To insure that the Government does not lose money at the 19.6-cent level, the market price for sugar would have to be maintained at around 25 cents per pound. This rate would be maintained through duty and import fees.

The USDA has calculated that over the next 4 years, the sugar title could cost the American consumer nearly $5 billion. Every penny increase in the price of raw sugar adds over $300 million a year to the cost of consumer sweeteners. The provisions are highly inflationary and totally unnecessary.

Over the years, sugar producers have often sought high price supports for sugar and have thwarted the Government's attempt to protect consumers. In recent months, as a result of high prices, sugar processors and producers have enjoyed near record profits. Sugar processors and producers contend that without the loan program, they will face severe economic hardships. They point to the closings of a small number of sugar beet and sugar cane factories in the past few years as an example.

The truth of the matter is that these factories have closed because they were antiquated and ill-equipped facilities. It is not the responsibility of the U.S. Government to protect inefficient operations. Should the absence of a loan program create extreme hardships for the industry, the Secretary of Agriculture retains the discretionary authority under section 301 of the Agriculture Act of 1949

to implement a loan program as high as 90 percent of parity.

Under the provisions of the sugar title, a processor can get a loan from the Commodity Credit Corporation below market rates, with their sugar as collateral. If the loan is not repaid within the same fiscal year, the sugar would be forfeited to the Government. If the loan forfeitures occur, the cost to the Federal Government could run into the millions of dollars. Mr. President, the sugar industry is dominated by large corporations with enormous resources. These loans below market rates are hardly a protection for a struggling industry.

If anyone is struggling in this Nation, Mr. President, it is the American consumer. Title IX of the farm bill is inconsistent with the objectives of the administration and the 97th Congress. Congress has supported the President's approach in trying to lighten the burden of taxes and inflation on the consumer. This proposed increase in Federal spending—which will hurt the American consumer cannot be justified.

Our amendment has the support of the following organizations: Common Cause, Community Nutrition Institute, Congress Watch, Consumer Federation of America, Independent Bakers Association, International Longshoremen's Association, American Bakers Association, Association for Dressings and Sauces, Biscuit and Cracker Manufactures Association, Chocolate Manufacturers Association, Flavor and Extract Manufacturers Association, International Association of Ice Cream Manufacturers, National Bakery Supplier Association, National Food Processors, National Association of Fruits, Flavors & Syrups, National Preservers' Association, National Restaurant Association, National Soft Drink Association, Pickle Packers International, Inc., Process Apples Institute, Retail Bakers of America, Sugar Workers Council of North America, and the U.S. Cane Sugar Refiners' Association.

Mr. President, we need a strong farm bill that serves the needs of the entire Nation and not just a few special interest groups. I urge support for our amendment.●

DELETING THE SUGAR PROVISION FROM THE 1981 FARM BILL

Mr. QUAYLE. Mr. President, today I am joining with my colleague from Massachusetts (Mr. TSONGAS) in submitting an amendment to S. 884, the 1981 farm bill, which would delete the proposed mandatory price support program for domestically produced sugar.

At a time when the Congress and the administration are working to respond to the demands of the people for less Federal intervention in their lives, fewer Government programs, and economic recovery actions, it is highly inconsistent to mandate a loan program for domestic sugar.

The 19.6-cent loan rate included in the farm legislation reported by the Senate Committee on Agriculture would place a heavy burden on consumers and could result in taxpayers picking up a subsidy of millions of dollars a year.

Every 1-cent increase in the price of sugar is estimated to add, at a minimum, over $300 million a year to consumer sweetener costs. The present spread between the market price and the higher price that a loan program would require would add over $2.4 billion a year more to consumer costs. This certainly is not the way to fight inflation.

Mr. President, I certainly share my colleague's deep concern regarding the impact of the sugar provision on consumers. However, my support for deleting title IX also is based on my sincere belief that we must move to encourage a free market system in agriculture with less government involvement.

There is no demonstrable need for this subsidy program. The Reagan administration did not request a sugar provision in its farm bill. In fact, it is incompatible with the President's economic program.

Secretary of Agriculture John Block underscored this fact when he testified this spring before the Senate Agriculture Committee. The Secretary stated:

Sugar prices today are high. They are well above any support we might even anticipate establishing. I am sure we have some authority under old laws to set some loan levels and do some things if the need should arise.

I really think the sugar industry is in pretty good shape operating in a free market system right now.

The Secretary does indeed have discretionary authority under section 301 of the Agriculture Act of 1949, as amended, to provide some loan levels if the need should arise. In addition, there are other safeguards for the domestic industry relating to foreign competition through various tariffs and quotas.

Mr. President, in recent months this Congress and the administration have responded dramatically to the mandate given by the people for a new beginning in our economic policies. We have voted historic reductions in Federal spending and approved a much-needed 3-year program of tax reductions. If would be inconsistent with this new beginning to permit a newly mandated Federal loan program for a handful of sugar producers to stand.

We therefore urge the deletion of the sugar provision and invite other Senators to join us in this necessary legislative effort.

SENATE CONCURRENT RESOLUTION 26—CONCURRENT RESOLUTION RELATING TO EDUCATION PROGRAMS IN SCIENCE AND TECHNOLOGY

Mr. NUNN submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

S. CON. RES. 26

Whereas the Soviet Union has demonstrated a long-term commitment to scientific and technological education (10 years compulsory schooling in Mathematics and Science, to include 3 years Arithmetic, 2 years Algebra, 10 years Geometry, 2 years Calculus, 5 years Physics, 4 years Chemistry, 1 year Astronomy, 5½ years Biology);

Whereas the United States' thrust in science and technology has diminished (1 year Algebra, 1 year Geometry, and 1 year in some science);

Whereas the traditional technological superiority enjoyed by the United States is dwindling due to the disparity in the commitment;

Whereas the communications and electronics industry pervades all aspects of American life, produces gross profits of over $200 billion per year, and employs more personnel than any other industry in America;

Whereas the fields of communications and electronics are at the core of advancing technology;

Whereas American society needs a continuous flow of trained individuals oriented to and knowledgeable in the area of science and technology;

Whereas the Armed Services are procuring increasingly complex and sophisticated equipment but are receiving persons with little or no scientific or technological orientation;

Whereas it is in the best interest of the United States to reverse the trend of declining U.S. technological superiority and continue to lead in all areas of science and technology;

Whereas the maintenance of leadership in science and technology requires greater emphasis on education, particularly for American youth;

Whereas the United States, unlike the Soviet Union which dictates the educational and occupational direction of its youth, must motivate and inspire our youth to enter the fields of science and technology;

Whereas it is in the best interest of the United States to encourage the public and private sectors (educational institutions, businesses, foundations) to provide students at all levels with opportunities to visit and/or work in non-academic environments as part of their curriculum;

Whereas it is in the best interest of the United States to support the establishment of a National Science Center dedicated to that core of advancing technology, communications and electronics.

Whereas such a National Science Center would promote the interest of the public at large in science and technology, tie the academic, corporate and governmental worlds together to reach a common goal, and thus become a national asset: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the Congress should encourage educational programs in the area of science and technology; and that the Congress encourages the establishment of a National Science Center for Communications and Electronics.

SENATE RESOLUTION 199—RESOLUTION TO AUTHORIZE "NATIONAL PRODUCTIVITY IMPROVEMENT WEEK"

Mr. NUNN (for himself, Mr. BENTSEN, and Mr. EAST) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 199

Whereas the desire of American citizens to maintain a decent standard of living has been seriously hampered by the damaging effects of continued economic inflation; and

Whereas a positive stance to reduce inflation involves a total commitment by all private and public sectors of the United States economy, and

Whereas increases in the rate of productivity in industry, business and government

can have a substantial role in reducing inflation, and

Whereas many different techniques, systems and incentives are available which could significantly enhance productivity growth, and

Whereas an awareness of the critical need of productivity improvement will promulgate wider application of productivity improvement methods, and thereby help eliminate the inflationary cancer which threatens our nation, now, therefore, be it

Resolved, That it is the sense of the Senate that the President of the United States by proclamation designate the week of October 5 through October 11, 1981 to be "National Productivity Improvement Week," for the purpose of providing for a better understanding of the debilitating effects of stagnating productivity on the economic well-being of the United States, for an increased public awareness of the potential for significantly reduced inflation offered by productivity growth, and for encouraging the development of methods to improve individual and collective productivity in the public and private sectors.

NATIONAL PRODUCTIVITY IMPROVEMENT WEEK

● Mr. NUNN. Mr. President, for the past 2 years it has been my pleasure to offer on behalf of the American Institute of Industrial Engineers a Senate resolution designating a week in October as "National Productivity Improvement Week." The importance of providing a better understanding of the debilitating effects of stagnating productivity on the economic well-being of the United States continues to be one of our Nation's most serious economic issues. For this reason, I am pleased to submit this resolution which expresses the sense of the Senate that the President of the United States by proclamation designate the week of October 5 through October 11, 1981, to be "National Productivity Improvement Week" for 1981.

As you know, without labor productivity gains, increases in hourly wages must inflate unit labor costs, and these costs add fuel to our continuing inflationary crisis. Productivity improvements reduce the inflationary impact of hourly wage increases.

Simply put, productivity growth can reduce inflation. Not only can it help to wind down the wage-price spiral, but it can also serve to improve the security of American jobs. Over the last 10 years, it is estimated that declining U.S. competitiveness has cost an estimated $125 billion in lost production and more than 2 million industrial jobs. This is directly related to the fact that, while American productivity growth has declined since 1967, our foreign competitors, such as Germany and Japan, have consistently attained average productivity gains at least three or four times that of the United States.

There are numerous ways in which productivity growth may be encouraged, such as increased rates of capital investment, reduced energy costs, and improved research and development efforts. Any successful solution to our productivity crisis, however, will require a clear appreciation of both the serious effects of declining productivity growth, as well as the potential that a reversal of this trend holds for significantly reducing the inflationary crisis that grips our economy.

Mr. President, I am therefore pleased that once again the American Institute of Industrial Engineers, whose members are actively engaged in management of plant design and engineering, systems engineering, production and quality, energy conservation, performance and operations standards, material flow system and operational research, has continued their public information campaign to promote a better understanding of the critical aspects of productivity improvement. Efforts such as these are to be commended and encouraged, and I am pleased to join in the cosponsorship of this resolution designating October 5 through 11, 1981, as "National Productivity Improvement Week." I am hopeful that the Senate will act expeditiously on this resolution.●

SENATE RESOLUTION 200—RESOLUTION RELATING TO THE SCHEDULED MEETING OF THE INTERPARLIAMENTARY UNION IN HAVANA, CUBA

Mr. HOLLINGS (for himself and Mr. HARRY F. BYRD, JR.) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 200

Whereas the Government of Cuba has military forces or advisers in many trouble spots throughout the world, including Angola, Ethiopia, and Yemen, and is involved in activities in El Salvador and Nicaragua in conflict with the interests of the United States;

Whereas the Government of Cuba not only continues, but deepens, its dependence upon Soviet arms and aid;

Whereas the Government of Cuba has expelled large numbers of its nationals, deliberately causing an enormous influx of refugees into the United States during a short period of time;

Whereas the Interparliamentary Union, an organization consisting of members of parliaments or other national legislatures from about 90 countries, including the United States, is scheduled to meet in Havana, Cuba, from September 15 to 23, 1981; and

Whereas the United States Olympic Committee refused to participate in the 1980 Summer Olympic Games held in Moscow as a protest to the invasion of Afghanistan by the Soviet Union; and

Whereas the House of Representatives on January 24, 1980, and the Senate on January 29, 1980, went on record in favor of nonparticipation in the Moscow Summer Olympic Games because of the unacceptable international behavior of the host country: Now, therefore be it

Resolved, That the Senate hereby expresses its disapproval of United States participation in the meeting at Havana, Cuba, of the Interparliamentary Union to be held from September 15 to 23, 1981.

SCHEDULED MEETING OF INTERPARLIAMENTARY UNION IN HAVANA

Mr. HOLLINGS. Mr. President, I rise today to introduce a resolution putting the Senate on record against U.S. participation in the upcoming Interparliamentary Union meeting scheduled for Havana, Cuba, this September.

The kind of imprimatur that such a meeting puts on the host country—interpreted by some almost as an international Good Housekeeping seal of approval—is altogether inappropriate in this instance, given the aggressive record of the Castro regime.

The morning paper reports Secretary of State Alexander Haig's report to the Senate Armed Services Committee yesterday that Cuba is importing a flood of arms directly from the Soviet Union. Arms deliveries in the first 7 months of 1981 are double the amount brought into Cuba during all of 1980. We have long known, of course, that Cuba has willingly put itself at the disposal of Soviet Russia, opening its borders to Soviet military personnel, submarines, missiles, weapons of a wide diversity, and communications equipment to monitor us and feed the information networks of our adversaries.

The Secretary made it clear in his report yesterday that some of this weaponry is being reexported to Nicaragua and El Salvador, further fueling the flames of turmoil in Latin America. Cuba has, since Castro's coming to power, fomented revolution and terror throughout Central and South America. I ask unanimous consent that an article from this morning's Washington Post be printed in the RECORD at this point of my remarks.

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

SOVIET ARMS SHIPMENTS TO CUBA ARE RISING, HAIG TELLS SENATORS

(By Don Oberdorfer)

Secretary of State Alexander M. Haig Jr. said yesterday that the Soviet Union is shipping arms to Cuba in near-record quantities, and that Moscow has given "unsatisfactory" replies to U.S. objections.

Haig volunteered his concern about the Cuban shipments in a closed-door session of the Senate Armed Services Committee while justifying U.S. arms sales abroad and the need for congressional approval of increased funds to facilitate them. The text of Haig's prepared remarks was made public by the State Department.

According to Haig, "Soviet military deliveries" to Cuba in the first seven months of this year were more than twice the volume received during all of 1980. Haig suggested that "with moderate additions" the final total for this year will be the largest since 1962, the year of the Cuban missile crisis.

Haig did not give figures in his published testimony, but told The Boston Globe in an interview that 40,000 tons of "sophisticated" Soviet weapons had been shipped to Cuba so far this year.

Haig told reporters on Capitol Hill that most of the new weaponry is believed to be earmarked for modernization of Cuba's regular armed forces or for arming the new "territorial militia" that President Fidel Castro is forming with the expressed purpose of defending against a U.S. invasion. The militia was originally announced last year but was not actually organized until the Reagan administration came to power in January

Haig said there is "solid evidence" that some of the Soviet weaponry has made its way from Cuba to Nicaragua and the insurgent forces in El Salvador.

According to Haig, U.S. discussions with the Soviets on the matter, while unsatisfactory to date, have not been terminated.

Using a phrase that has been used to suggest military pressure or force, Haig added, "There are other aspects of going to the source which are under consideration now in respect to the Cuban situation, and those reviews will continue. And that's all I feel it prudent to mention today."

Haig cited the Soviet shipments to Cuba as a "dramatic illustration" of increasing Soviet activity in the developing world which justifies greater U.S. efforts. Haig told the committee that the Soviet Union last year spent $16 billion for arms to the developing world while the United States transferred $10 billion to such countries.

Haig appealed for congressional action on the security assistance program, which is part of the foreign assistance bill, saying that its status in Congress is "alarming." House Democratic leaders have refused to schedule the aid bill until they are assured of necessary Republican votes to put it through.

The aid program has operated without passage of a full-scale bill for the past two years, a "shortsighted approach" which could have "serious consequences" if repeated this year, according to Haig.

In a related development, Pentagon sources said Cuban MIG21 fighters were twice turned back by U.S. Navy F14s southeast of Florida this month when it appeared that the Cubans might be headed for the U.S. aircraft carrier Independence. The sources said the interceptions were over international waters and the planes got no closer than 60 miles from the carrier.

Mr. HOLLINGS. In addition, Cuban military forces intrude in the far corners of the world, such as Angola, Ethiopia, and Yemen. To further exacerbate relations between our two countries, Castro opened the emigration floodgates, pouring down a tide of boat people on our southern coast, in such a way as to make orderly handling of them impossible. And now we hear that the Cuban dictator is charging the United States with germ warfare against his island.

What Fidel Castro stands for is contrary to all that we stand for, and contrary to the peaceful and prosperous development of the Western Hemisphere. If the new world was called into being to redress the inequities of the old, surely Castro has done his best to plant the seeds here of everything we have striven to overcome. The march to freedom he would stamp out with the stultifying ideology of communism. The ongoing, hemispherewide advance toward economic progress he would smother with the heavy hand of Marxian economics. The broadening expectations of the people of the Americas he would stifle with every totalitarian tool that he can devise himself or import from his Soviet friends.

Mr. President, as a member in good standing of the Interparliamentary Union, I understand the good that our conferring with other parliamentarians accomplishes. I realize the decision on Cuba is not the responsibility of the Interparliamentary Union group from the United States and our distinguished chairman, the Senator from Vermont. It was not their decision. I do not have any idea that they expect particularly to meet with Mr. Castro. But I understand, also, that there are times when conferring with potential adversaries accrues to America's advantage. Indeed, I would recommend as necessary such dialog, because there are times when the executive branch cannot be in touch with some countries, as when diplomatic relations may be for one reason or another ruptured or downgraded. And it is because of this general policy that U.S. nonparticipation in the Havana proceedings would be all the more poignant.

There is no reason for the legislative branch to even seem to be putting a stamp of approval on Fidel Castro at this time. Castro presides over a thoroughgoing dictatorship at home and responds to the beck and call of his Soviet masters overseas. I think that because of the IPU's record of conferring and going the extra mile. American nonparticipation in the Havana meeting would make the point all the more tellingly. It would demonstrate to the world our abhorrence of the regime Mr. Castro has inflicted upon the people of Cuba, and it would provide hope that one day that regime will endure no longer.

America refused to participate in the 1980 summer Olympic games in Moscow because of the Soviet invasion of Afghanistan. I supported that not out of any illustion that our refusing to play would somehow persuade the Soviets to get out of Afghanistan. Rather it was one measure of our disapproval. I wish it had been accompanied by more positive American initiatives. My colleagues will remember both Senate and House going on record overwhelmingly in favor of staying away from those games in January of 1980.

As for Cuba, I offer this resolution not from any overblown idea of what it can accomplish. But it is a restatement of American principle for the freedom and integrity of this part of the world, and its purpose is to keep our U.S. IPU delegation from inadvertently helping build the credibility of Fidel Castro. Additionally, it will help keep shining the hopes of our North and South American citizens for a better tomorrow by focusing the spotlight of world opinion on the excesses of today.

Accordingly, I introduce this resolution asking my colleagues to go on record in disapproval of U.S. participation in the meeting in Havana, and I hope they will join me in this reaffirmation of the most basic principles for which our country must always stand.

Mr. HARRY F. BYRD, JR. Mr. President, recently, the Senator from South Carolina (Mr. HOLLINGS) submitted a resolution which seems to me to have a great deal of merit and should have the attention of the Senate. The resolution submitted by Senator HOLLINGS—the Senator from Virginia is a cosponsor—expresses the sense of the Senate with respect to a scheduled meeting of the Interparliamentary Union in Havana, Cuba, in September.

The resolution points out that the U.S. Olympic Committee, last year, refused to participate in the 1980 summer Olympic games held in Moscow as a protest to the invasion of Afghanistan by the Soviet Union. The resolution also points out that the House of Representatives, last year, and the Senate, last year, went on record in favor of nonparticipation in the Moscow summer Olympic games because of the unacceptable international behavior of the host country, namely, Russia.

Mr. President, we know of the aggressiveness of Castro's Cuba. Just yesterday, Secretary of State Haig told the Senate Committee on Armed Services that Russia, this past year, greatly increased its military supplies to Cuba. The Secretary of State told the Committee on Armed Services yesterday that Cuba has stepped up its activities in the Western Hemisphere. We know, of course, of what Cuba has done in the way of sending troops to Angola and other areas of the world. We know that Castro has oppressed the people of Cuba. We know that Cuba is only a very short distance from the United States. Yet, it is a Communist, Marxist, Russian-dominated area.

It seems to me that it would be unwise for the Congress of the United States to send an official delegation to Cuba for the Interparliamentary Union. The Interparliamentary Union is a fine organization. I believe it is helpful for our country to participate, under normal conditions, in the activities of the Interparliamentary Union. However, I should dislike to see the United States participate in a conference in Castro's Cuba under the conditions existing today.

The executive branch has put an embargo on trade with Cuba, and I believe that the Congress of the United States would be going contrary to the best interests of our Nation and contrary to the wishes of the American people if it should participate officially in a conference in Cuba at this time.

NOTICES OF HEARINGS

SUBCOMMITTEE ON WATER AND POWER

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of public hearings before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

On Friday, September 11, beginning at 1 p.m., the subcommittee will receive testimony on S. 933, a bill to authorize rehabilitation of the Belle Fourche irrigation project, and for other purposes. The hearing will be held at the city hall in Newell, S. Dak.

On Saturday, September 12, beginning at 9:30 a.m., the subcommittee will rereceive testimony on S. 1553, a bill to authorize the Secretary of the Interior to proceed with the development of the web pipeline, to provide for the study of South Dakota water projects to be developed in lieu of the Oahe and Pollock-Herreid irrigation projects, and to make available Missouri basin pumping power to projects authorized by the Flood Control Act of 1944 to receive such power. The hearing will be held at the city auditorium in Pierre, S. Dak.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Committee on Energy and Natural Re-

sources, Subcommittee on Water and Power, room 3104 Dirksen Senate Office Building, Washington, D.C. 20510.

For further information regarding these hearings, you may wish to contact Mr. Russ Brown of the subcommittee staff at 224–5726.

ADDITIONAL STATEMENTS

ECONOMIC RECOVERY TAX ACT OF 1981

● Mr. MOYNIHAN. Mr. President, on Wednesday I voted for the tax cut bill—the Revenue Act of 1981. I did so primarily because taxes are too high. And they have been too high for nearly two decades. In an era of inflation the last significant individual tax cut was in 1964, a measure President Kennedy first proposed. I raised this issue when I ran for the Senate 5 years ago, I voted for a tax cut last August in the Finance Committee, that bill never reached the Senate floor, I again voted for a tax cut in the Finance Committee on June 25, and I cast my vote for a tax cut on Wednesday.

This bill passed. And it should have passed. In 1980 Federal taxes were 20.3 percent of gross national product. This year they will be 21.1 percent. In 1982 even with this tax cut they will be 20.4 percent which is simply back to last year.

Inflation has been called the cruelest tax of all, and it is. It has to be offset. Clearly the time has come to cut individual tax rates, as this bill does and beyond that to index these tax rates in order to insulate them from the ravages of inflation.

That is why I supported a floor amendment that will automatically increase personal exemptions and tax brackets as the consumer price index increases. This will prevent taxpayers from being pushed into higher tax brackets merely because wages have gone up to match prices.

I also voted for this bill because it contains, at long last, many of the reforms I have worked for since my election to the Senate.

One of the most flagrant loopholes in the Tax Code is the so-called commodity tax straddle which has allowed the wealthy to create paper losses and thus avoid paying millions of dollars in taxes.

The Treasury Department has cataloged thousand of instances of this abuse including one individual with a 1-year income of nearly $11 million who paid not 1 cent of tax.

I sponsored the provision included in the tax cut bill which closes this loophole and which will save the Treasury over $1 billion of lost revenue next year.

In each of the last two Congresses I have introduced legislation that would eliminate the so-called marriage penalty. Many couples find that their taxes increase after marriage. A couple with both spouses working and each earning $15,000 must pay the IRS $1,000 more than they would if they were single. The bill we have passed will reduce this penalty but not eliminate it. A step in the right direction and thus deserving of support. I will continue to work for the complete elimination of the marriage penalty.

Since 1978 I have been a prime sponsor of bills to allow all taxpayers to deduct their contributions to charity. Currently only those who itemize their personal deductions may do so. This tax cut bill incorporates my provision. It will not only correct a major inequity in the tax code, 80 percent of the direct benefit will accrue to taxpayers with incomes below $30,000 but it will stimulate private giving to charitable institutions. This is especially important because of the major reduction in the Federal Government's contributions to the arts, humanities, and sciences.

Finally it has long been my view that any tax reform package must include substantial incentives for investment. This Nation's productive capacity has become outmoded and inefficient in large measure because of our low rate of savings and investment. This bill will increase investment by reducing the top tax rate for investment income from 70 to 50 percent, making it the same as the maximum rate on wages.

These are the reasons I voted for this bill. But any measure as large and complex as this one must have some less attractive features. Here the most disappointing of these is that the tax cuts are not targeted more toward poor and middle-class taxpayers. Those who pay most of the taxes and need the cut the most.

This bill is also flawed by the many concessions to special interests which at times made it appear that a great auction of the Treasury was going on.

I voted in committee and on the Senate floor to target the tax cut more to middle-class taxpayers and I opposed unfair concessions to oil companies and large estates and the creation of new opportunities for tax sheltering.

On balance though I think we have a good bill, worthy of support. And that we have provided Americans the first hope in many a year that their taxes will go down.

Mr. President, I ask that a table showing the distribution of the tax cut by income be included in the RECORD.

The table follows:

ECONOMIC RECOVERY TAX ACT OF 1981[1]

DISTRIBUTION OF INDIVIDUAL INCOME TAX[2] REDUCTIONS BY INCOME

Income	Percent of taxes paid today	Percent of total reduction		
		1982	1983	1984
Under $5,000	(−0.1)	0.2	0.2	0.2
$5,000 to $10,000	2.2	2.7	2.5	2.4
$10,000 to $15,000	5.7	5.6	5.4	5.4
$15,000 to $20,000	8.0	7.7	7.7	7.8
$20,000 to $30,000	20.4	19.4	20.5	20.7
$30,000 to $50,000	29.9	29.4	31.4	31.3
$50,000 to $100,000	18.0	17.1	18.2	18.4
$100,000 to $200,000	8.4	7.6	7.4	7.5
Over $200,000	7.4	10.4	6.8	6.1
Total	100.0	100.0	100.0	100.0

[1] As amended by the Senate Finance Committee.
[2] Individual income tax note reductions and deduction for 2-earner couples.

Source: Economic Recovery Tax Act of 1981, report of the Senate Comm ttee on Finance on H.J. Res. 266, Rept. No. 97–144, July 6, 1981.●

REPORT TO THE PRESIDENT OF THE U.S. SENATE ON FISCAL YEAR 1981 CONGRESSIONAL BUDGET

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate a status report on the budget for fiscal year 1981 pursuant to section 311 of the Congressional Budget Act. Since my last report the Congress has cleared for the President's signature House Joint Resolution 308, urgent health and human services supplemental appropriations for 1981.

The status report follows:

REPORT TO THE PRESIDENT OF THE U.S. SENATE, FROM THE COMMITTEE ON THE BUDGET—STATUS OF THE FISCAL YEAR 1981 CONGRESSIONAL BUDGET ADOPTED IN H. CON. RES. 115

REFLECTING COMPLETED ACTION AS OF JULY 23, 1981

[In millions of dollars]

	Budget authority	Outlays	Revenues
Revised Second Budget Resolution level	717,500	661,350	603,300
Current level	715,195	660,962	611,900
Amount remaining	2,305	388	8,600

BUDGET AUTHORITY

Any measure providing budget or entitlement authority which is not included in the current level estimate and which exceeds $2,305 million for fiscal year 1981, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in H. Con. Res. 115 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and which would result in outlays exceeding $388 million for fiscal year 1981, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 115 to be exceeded.

REVENUES

Any measure that would result in revenue loss exceeding $8,600 million for fiscal year 1981, if adopted and enacted, would cause revenues to be less than appropriate level for that year as set forth in H. Con. Res. 115.●

QUESTIONS AND ANSWERS ON SOCIAL SECURITY AND CIVIL SERVICE RETIREMENT PROGRAMS

● Mr. EXON. Mr. President, there has been a great deal of discussion recently about the social security system and its future. Many of my constituents have asked me questions which reflect their great concern about social security. Those who qualify for the civil service retirement program have also raised questions about this retirement system's future.

I have subsequently put together a series of the most commonly asked questions, along with my answers, relating to social security and civil service retirement.

I ask that the information be printed in the RECORD.

The information follows:

QUESTIONS AND ANSWERS RELATING TO SOCIAL SECURITY AND CIVIL SERVICE RETIREMENT

Q. How is the social security program funded?

A. Social Security is really four programs, three of which are financed by taxes paid on the basis of a person's wages or self-employed income. These programs are (1) the old-age and survivors insurance program, called OASI: (2) the disability insurance program; and (3) the hospital insurance program which is Part A of Medicare.

These three programs are financed by a payroll tax on earnings—currently 6.65 percent for employees and 6.65 percent for employers on a worker's earnings up to $29,755. A specific portion of the taxes are earmarked for a separate trust fund for each program, and benefits under one program cannot be paid from one of the other trust funds. One program, Part B of Medicare, which pays for doctor's bills, is financed by monthly premiums paid by people enrolled in the program and general revenues.

Q. What happens to the social security taxes that are paid?

A. The social security payroll taxes are collected by the Internal Revenue Service from employers, who pay their share and the employees' share which is withheld from wages, and from self-employed people. The taxes are then credited to separate trust funds for the three social security programs. These trust funds are managed by the Secretary of Health and Human Services, the Secretary of the Treasury, and the Secretary of Labor.

Q. What happens to the tax money paid into the social security trust funds?

A. Virtually all of the social security taxes received every year are used to pay benefits in the same year. Social security is thus a pay-as-you-go program. It is financed under a policy known as "current-cost financing." Because current social security taxes are almost immediately paid out to current beneficiaries, the trust funds really serve primarily as a contingency reserve against unforeseen increases in benefits or declines in revenues.

Q. Is there a problem with social security that leads so many to say that it is running out of money?

A. Yes, there is a problem. One part of the problem is very critical. Current projections show that the old-age and survivors trust fund will not have enough money to pay benefits by mid-1982 and, if economic conditions worsen, the fund could be exhausted late this year. So action must be taken by the Congress this year to correct this problem.

The other part of the problem is serious but not critical. One way to determine whether social security is financially sound is to project revenues to the trust funds, and benefits to be paid, over the next 75 years. Looking at social security this way, it has been determined that there is a deficit but time is on the side of correcting this part of the problem.

Q. In looking at the critical problem just mentioned, just how bad are things and what can be done about them?

A. The real problem is with the OASI, the old-age and survivors insurance program. For each of the next 5 years (1981–1985), it is projected that this program will pay far more in benefits than it receives in income. In fact, without some action by the Congress, sometime in 1982 there will be no money in that fund to pay benefits.

However, for the disability and hospital insurance programs, income is expected to exceed benefit payments substantially in each of these years.

Consequently, one possible way to solve the critical, short-run problem is to borrow among these three trust funds to assure that OASI benefits continue to be paid. This action would not alter either the amount or timing of benefits, or the payroll taxes now in the law. At the very least, this would give the Congress the time to consider further measures.

Of course, one could modify benefit increases or reduce benefit amounts. Or, one could raise additional payroll taxes or other funds to finance Social Security.

All of these solutions would require action by the Congress.

Q. Why is there a problem with the main social security trust fund, the OASI fund?

A. The major problem stems from a combination of factors. One of the major difficulties is that, over the past few years, there has been higher unemployment and also a decline in the gain in real wages than was anticipated. Among other things, this has severely reduced the amount of social security taxes being paid into the trust fund.

A second problem relates to the provision in the social security law which increases monthly benefits every year at the same rate as prices increase. As long as prices and wages rise at close to the same rate, this isn't a problem. But over the past few years, prices have jumped dramatically and at a far greater rate than wages. This has led to higher monthly benefits than what was anticipated when the present tax rates were written in the law, and certainly more benefits being paid from the trust fund than taxes being paid into it.

Q. What kind of guarantee exists that there will be enough money in the social security trust funds for me when I am eligible to retire?

A. The only true guarantee is that, since the Social Security program was enacted in 1935, each President and the Congress has shown a deep and continuous commitment to social security beneficiaries. For over 40 years each President has recommended, and each Congress provided, sufficient revenues to pay benefits over a long period of time. It is also true that for more than 40 years Social Security has met all its obligations and no one entitled to social security benefits has failed to receive them. But in the long run the financial soundness of Social Security rests on the determination of the President and the Congress to follow through on financial commitments.

Q. Will there be benefit reductions in social security before I am old enough to retire?

A. There may be. However, at this time, both the President and the Congress are only studying what to do about social security, and reducing benefits is only one of several possibilities for helping to correct the financial deficits in one of the social security trust funds. Recently, the Senate unanimously stated that the Congress would not approve immediate or inequitable reductions in benefits for early retirees or cut benefits more than necessary to save the system's finances.

Reducing benefits is not a pleasant prospect for anyone, but if Federal spending must be cut because of the country's present economic problems, it is reasonable to ask why every segment of our society should not bear some of these cuts. It should also be remembered that for most of the last 40 years, economic conditions were very favorable, and the social security program was expanded during those years to include more and more benefit categories as well as increases in benefit amounts. Now, economic conditions have turned around. And there are other government programs which provide assistance to people now receiving certain types of social security benefits. The question might be asked whether social security should pay benefits in these areas any longer.

Q. Does a person ever get back in social security benefits what he or she paid in social security taxes?

A. Most people by far get back what they paid into social security. For example, if a person paid the maximum taxes between 1937 and 1980, the total contribution would be $12,790.10. If that person was a man and became 65 in 1981, his monthly benefit would be $653.80. If he had a spouse who was 65 in 1981, the spouses benefit would be $326.90. The total monthly benefit for this couple would be $980.70.

As can be seen, at this monthly benefit rate, the couple would recover its taxes in about 15 months. Even considering the employer share of the taxes as really being on behalf of the employee, the total taxes would be recovered in 30 months and this is not taking into consideration the automatic annual benefit increases in social security. Of course, during these months, the couple would be receiving Medicare protection as well.

Q. How many people get social security benefits and how many people pay social security taxes?

A. About 36 million people received monthly cash benefits under the old-age and survivors insurance and disability insurance programs. These benefits total about $11 billion each month. The average monthly benefit for a retired worker is $363; for a disabled person, the average monthly check is $395.

About 95 percent of all the people age 65 and over are covered under Medicare.

About 115 million workers in the United States paid social security taxes last year on their earnings or self-employment income.

Q. What kind of benefits does the social security program pay?

A. As might be expected, the social security programs pay benefits for different situations. The old-age and survivors insurance program (OASI) pays monthly cash benefits after a worker retires. Benefits are paid to the worker, his or her spouse, and the worker's younger children. Should a worker die, the surviving spouse and children are paid monthly benefits. This particular part of social security is often overlooked, but it enables a worker to be assured that, after a few years in covered employment, his or her family will be protected should death occur before retirement years.

The disability insurance program pays monthly benefits to a worker, his or her spouse, and younger children should the worker become severely disabled and no longer can work. Should the worker recover or successfully return to work, benefits would stop.

The hospital insurance program, Part A of Medicare, pays for hospital and related care for people age 65 or over and for the long-term disabled.

Q. How does a person get benefits from the social security taxes which he or she pays?

A. Benefits are *not* paid on the basis of social security taxes. Instead, the worker's earnings (wages or self-employment income) on which the social security taxes are based are credited toward future benefits. A record of each person's earnings is kept by the Social Security Administration using the person's social security number. A separate "account" such as one might have at a bank or savings and loan institution is not kept. Benefits are then calculated under a complex formula that takes into account a worker's age, past earnings, and years of employment.

Q. Couldn't the financial condition of the social security program be helped a great deal by requiring Federal workers to be under social security?

A. Yes, it could be—at least for the next few years—because the initial taxes which Federal workers would pay into the system would be more than the benefits that would

be paid to Federal retirees during those first few years. As time went by, however, more and more Federal retirees would be collecting benefits. Whether bringing these workers under social security would have a long-range financial benefit would depend on a number of factors, including how the Civil Service Retirement system might be changed and how that system was combined with social security to cover gaps in protection for Federal workers and to eliminate duplicate coverage.

Some people believe that Federal workers, as well as State and local government employees who are not now covered under social security, should be brought into the system not only because it would help the financial condition in the next few years but also because all Americans should have a stake in the country's primary retirement system. Others say that while this might be a worthwhile goal, it should be considered on its own merits and not as a means just to pump money into the special security trust funds.

Q. Couldn't a lot of social security money be saved by cutting down on the number of social security workers on the social security payroll?

A. Not really. About 85,000 Federal employees administer the social security program. The vast majority of these employees work for the Social Security Administration, which has its headquarters in Baltimore, Maryland, as well as 10 regional offices, 6 payment centers and over 1,300 local offices located throughout the United States. (Nebraska has 10 social security offices—6 of which are primary district offices.) The total administration expenses for administering social security—which includes the salaries paid to Federal employees who do the work—amount to about 2 percent of the social security taxes collected. In other words, about 98 cents of every social security tax dollar collected is paid back in benefits.

Q. What is SSI and is it part of the Social Security program?

A. SSI is the Supplementary Security Income program. It provides a basic level of income for aged, blind, and disabled people who have very little income. Although SSI is run by the Social Security Administration, it is not part of the regular social security program.

In the first place, SSI is paid for by general tax revenues and not from social security trust funds or any other special funds. Thus, a person does not have to work under social security in order to get SSI benefits. Second, SSI was run by the States until 1974 and was called "old-age assistance and aid to the blind and disabled." However, Congress changed the law so that the program would be run primarily by the Federal Government, and this responsibility was given to Social Security.

Applications for SSI are filed in social security offices and claims are processed by Social Security. Many people receive both monthly social security and SSI checks, but the programs are separate. Even the colors of the checks are different—the social security checks are green and the SSI checks are gold.

Q. What is the Civil Service Retirement system and how does it relate to social security?

A. The Civil Service Retirement system (CSR) is the retirement program for Federal civilian workers, those who work for Members of the Congress and for the Congress itself, and U.S. Senators and Representatives.

CSR is not related to social security. In fact, Federal workers who are working under CSR are not covered under social security while working in a Federal position. Rules about retirement age, determining the amount of a monthly pension, disability protection, and so forth are quite different under CSR and social security.

Q. How is the Civil Service Retirement system funded?

A. Participation in Civil Service is mandatory for Federal employees and requires a payroll contribution fixed by law, which currently is 7 percent, of the worker's total salary. Members of the Congress contribute 8 percent of their pay; congressional staffs and Federal workers on hazardous duty contribute 7.5 percent of their pay. A Federal worker's employing agency then matches the worker's contribution on a dollar-for-dollar basis. The amount comes from the agency's budget.

However, the Federal worker's contribution and the matching amount paid by the employing agency are far from adequate to pay future benefits for current workers; and they do not cover the cost of benefit payments being made to present annuitants. As a result, Federal general revenues must be appropriated each year to cover the benefits and administrative expenses that are greater than the contributions paid. In Fiscal Year 1980, for example, the general revenue amount was 45.6 percent of total Civil Service Retirement funding for that year.

Q. What happens to the worker's contribution and the employing agency's matching amount?

A. In practice, the Civil Service Retirement program operates on a pay-as-you-go basis. Contributions paid by Federal workers and the employing agency's matching amount are credited to a special trust fund as income, and all CSR benefits plus administrative expenses are paid from that fund.

However, as previously noted, these funds are not nearly enough to pay benefits in any given year and money must be appropriated from the general treasury to make up the difference. Retired Federal workers, their survivors, and disabled workers thus received benefits that are subsidized by the rest of the American people.

Q. What kind of benefits are paid under the Civil Service Retirement program?

A. The basic benefit categories are: retirement benefits; survivors' benefits; and disability benefits. Retirement benefits are generally based on a combination of the worker's age and length of service. Survivor's benefits are based on the same factors for the worker who died, but also depend in some respects on the number of children who survive the worker. Disability benefits are also paid under the program.

As of the end of 1980, there were slightly over 900,000 retired annuitants receiving benefits under CSR and 343,000 receiving disability benefits.

Q. How does the Civil Service Retirement system (CSR) compare to social security?

A. It is very difficult to compare the two programs. The reason is that they were designed for different purposes. CSR was intended to be the sole source of retirement protection for Federal workers while social security was designed primarily to provide a floor of protection that people could build on by their own savings, by a company pension plan, and so forth.

Apart from the differences in purpose, there are so many other differences between CSR and social security that comparison of their value or worth is virtually impossible. Even their costs are different. For example, Federal workers pay a percent of their total salary into CSR, while workers covered under social security pay a lower percent on wages up to a certain dollar ceiling. On the other hand retirees under both programs are treated differently from a tax standpoint; social security benefits are tax-exempt; CSR benefits are not.

But there are advantages to CSR. For one thing, a Federal worker can generally retire at a much earlier age than other workers and, after retirement, receive cost-of-living raises in benefits that are far superior to workers in the private sector.●

WARE'S INDIANS: MASSACHUSETTS CHAMPIONS

● Mr. TSONGAS. Mr. President, Ware, Mass., has again lived up to its national reputation as "The Town That Can't Be Licked." Just as Ware was able to whip economic disaster during the 1930's, the Ware High School baseball team whipped all opposition this year to become Division III Massachusetts State champions. The team and the town's people are proud of this first State championship for the Ware High Indians.

Ware High did not become champs overnight. Through the leadership and fine coaching ability of George Robidoux, Ware High made it to the State finals last year only to be defeated in a close game. This year under the tutelage of Dave Robidoux, George's son, and assistant coach Tom Orszulak, Ware High not only won its division with a 22–2 record, but went on to beat Palmer High for the western Massachusetts title, and Matigon of Cambridge in the State semifinals. The Indians took the State championship by defeating Blackstone/Milville by a score of 6–4.

The Robidoux father/son team has worked over a 12-year period to bring Ware High this championship. There have been many fine players over the years, but the 1981 team was indeed exceptional. In fact, this team placed an unprecedented seven out of nine starters on the western Massachusetts all-star team.

The 1981 championship squad was led to the State title by a talented group of seniors whose spirit and enthusiasm gave the team that little extra needed to gain the championship. Among them was the team's ace pitcher Kevin Lavallee. The "Boomer," as he is called by his teammates, had a record of 10–1, with an ERA of 0.49 in 1981. During his high school career he struck out an amazing 294 opponents in just 159 innings. He also was a powerful hitter with a batting average of .346, 7 homeruns and 30 RBI's.

Another team leader was second baseman Pete Orszulak. Pete was described by Coach Robidoux as "the best athlete on the baseball team." He played varsity football, basketball, and baseball in each year of his 4 years at Ware High, a feat accomplished by very few athletes in the high school. Pete had a career batting average of .393 and was a defensive standout.

The team was blessed with fine on-the-field leadership in the person of all-star catcher Greg Taggart. Greg batted .411 in 1981 and had only one passed ball in the 24 games he caught. Greg not only excelled on the baseball field but in the classroom where he graduated second in his class.

The first base position was anchored by senior all-star Dana Kent, considered by many fans to be the most pleasant surprise of the season. Dana did not

start a game for the 1980 baseball squad but ended up hitting .444 in 1981. Dana's best performances were during the tournament game where he batted a sizzling .600, going 9 for 15.

Sean McQuaid, a senior left fielder, stabilized an inexperienced outfield with many fine defensive plays during the year. Sean hit a solid .273 in 1981 and had six game-winning hits—a team record.

The last of the group of seniors was Sean Madigan. Despite a 3-year absence from baseball, Sean returned to the varsity in 1981 and ended the season with a .311 average. Known by his teammates as "Mad Dog," Sean inspired the team with his hard-nosed play and constant enthusiasm.

The juniors on the team were led by third baseman/pitcher Billy Joe Robidoux. Billy Joe was 6–0 as a pitcher and hit an astonishing .584 on his way to shattering his own school record for most hits in a season (43) with 47 hits in 24 games. Billy Joe's fine performances in the district and State tournaments were acknowledged when he was voted the "Most Valuable Player" of the tournament.

Junior shortstop Chip Malbeouf, in his first year on the varsity squad, was considered by team followers to be the offensive and defensive spark plug of the team. From his leadoff position Chip batted .371 and drove in 19 runs. Chip's all-star performance far exceeded the expectations of his coach and the Ware fans.

Another key performer on the Ware team was junior/pitcher outfielder Brian St. Onge. Brian had many key relief performances during the tournament, pitching up four saves and finishing the season with a record of 5–1. In addition to being selected to the all-star team in baseball, Brian is also a member of the western Massachusetts all-star basketball team.

Rounding out the starters for this year's championship team was centerfielder Steve "Koko" Kocur. Steve batted .381 during the tournament games and is an outstanding centerfielder. Many of his acrobatic catches in the outfield squelched opponents' rallies and were greatly appreciated by the Ware fans, witnessed by their standing ovations.

Mike Kutt, a junior reserve outfielder, played well when he was called on. He batted .400 as a pinch hitter and displayed promise as an outfielder.

David Desforges, a junior pitcher/infielder was 1–0 on the mound and batted .375. Dave is expected to be a key member of next year's pitching staff.

The only sophomore on the Ware squad was reserve catcher Sean Slattery. Sean batted a team-leading .615, including a game when he had six hits in six at-bats. Sean has a bright future and fits right into the proud Indian tradition of excellence.

Complementing the successful efforts of the team were the dedicated performances of third base coach Mike Dowd and manager Dave Gaugler.

Mr. President, on August 15, 1981, the Ware Sports Booster Association, under the leadership of Athletic Director Paul Orszulak, will honor the Ware High baseball team with a chicken barbecue at the Knights of Columbus grounds. An elaborate program is planned. A tape recording of the tournament games' highlights, as broadcast over radio station WARE will be played. Don Prohovich, a former Ware High athletic superstar and now coach of the Harwich Mariners in the Cape Cod League, will return to his hometown and be the keynote speaker. The team will receive a special resolution passed by the Massachusetts State House of Representatives. A major highlight of the evening will be the presentation of championship rings to each varsity player and the coaches. Local merchants, industries, clubs, organizations and town residents have contributed over $3,000 for this worthwhile memento.

Mr. President, I want to add my congratulations to the division III State Championship Ware High baseball team for a job well done this year and wish them all the best for a successful season in 1982.●

MAGINOT MENTALITY

● Mr. COHEN. Mr. President, I would like to share with my colleagues an excellent editorial from a recent edition of the Boston Globe entitled "Maginot Mentality."

I believe there is a growing consensus in the Congress regarding the need to spend our defense dollars more efficiently. In order to convince our constituents of the need to strengthen our national defense by increasing defense spending, we must show the defense budget is not exempt from the same sort of scrutiny that other Government agencies are receiving.

This article, Mr. President, makes many worthwhile observations about the need to get our money's worth in defense spending, and I commend it to my fellow Senators for their consideration.

The article follows:

MAGINOT MENTALITY

W. C. Fields expressed the dominant American attitude toward military spending in "The Bank Dick" in 1940. As Egbert J. Souse, prominent ne'er-do-well in the town of Lompoc, Fields visits the Black Pussy Cat Cafe one morning to inquire of the bartender:

"Say, was I in here last night and did I spend a twenty dollar bill?"

Informed that he did, Fields roars: "Boy, is that a load off my mind. I thought I'd lost it!"

For more than three decades, a bipartisan consensus in Congress has supported the unwritten motto of the Pentagon: when in doubt, spend. John Kennedy's discovery of a "missile gap" in the 1960 campaign rescued the motto from the skepticism of the Eisenhower era, with its businesslike, bigger-bang-for-a-buck philosophy. Lyndon Johnson and Richard Nixon pursued the motto to its grotesque end in the jungles of Vietnam. Jimmy Carter and Gerald Ford each promised to "get a handle" on the Pentagon budget, but inflation—both a symptom and a cause of military spending—helped throttle their careers.

Ronald Reagan cheerfully campaigned on the more-is-better talisman, as if increased outlays for weapons would not affect inflation. Besides ignoring the political and moral costs of increasing the world's arms supply, he disregarded the truism that bombs and bullets are, by definition, nonproductive and inflationary.

The 1980s will clearly be an era of more military spending. The task for both Congress and the Reagan Administration is to avoid a Maginot mentality. In 1927, the French General Staff and defense minister Andre Maginot fought the previous war by building a huge, expensive chain of intricate underground fortifications along the German border. In 1940, as W. C. Fields was enjoying his more-is-better philosophy, the Nazi blitzkrieg simply skirted around the Maginot Line, conquering France in six weeks.

Politically, the Reagan Administration enjoys a cushion in Congress, a probably majority of those who buy the Pentagon's more-is-better line. When in doubt, this Congress will spend. The dialogue on military spending, therefore, needs a strain of patriotic dissent, free from the ritualistic responses of the recent past.

"Since Vietnam, Democrats have found it difficult to talk about military issues," says Sen. Gary W. Hart (D-Colo.). "That war shattered our moderate consensus on defense. It polarized the nation into hawks, who wanted to spend any amount on defense, and doves, who wanted to cut any amount from defense. Those distinctions still prevail, and, too often, Democrats are considered antidefense."

In his 1980 re-election campaign, Hart emphasized the military issue. His television ads portrayed him emerging from an Army tank. Coloradans discovered that their senator had joined the Naval Reserve. His campaign was criticized by liberals with whom Hart had worked when he was George McGovern's campaign manager in 1972.

Having paid that price in criticism, Hart is now working in the Senate to achieve a new bipartisan consensus on arms spending. Several of his recruits are of the same post-Vietnam generation in Congress: Sens. William Cohen (R-Me.), Christopher Dodd (D-Conn.), Bill Bradley (D-N.J.) and Arlen Specter (R-Pa.). In the House, Reps. Newt Gingrich (R-Ga.) and William Whitehurst (R-Va.) are asking the basic questions that seek to change congressional thinking about military spending.

"It is not a quantitative question, but a qualitative one," says Hart. "We must commit greater resources to defense than we have. There are areas where we must spend more, such as military pay, readiness and naval shipbuilding."

In examining what kind of ships the Navy should be building, Hart suggests that replicating World War II's fleet is foolish.: "Unlike the Japanese Imperial Navy, the Soviet Navy is primarily a submarine navy. Can one fight a submarine navy with big carriers loaded with attack aircraft? The answer is—at best—probably not."

Fortunately for the Reagan Administration and Congress, a new book sums up in 200 cooly-presented pages the responsibility they must face together. James Fallows of The Atlantic, onetime speechwriter for President Carter, has written "National Defense,' a guide to how the trillion dollars of the taxpayers' treasure should be spent in the next half-decade.

In examining manpower and weapons policy, Fallows sees the very size of the military budget as one of its obstacles. Big-spending prospects produce a "culture of procurement," he says, "which draws the military toward new weapons because of their great cost, not in spite of it."

This is a lesson that nearly every Secretary of Defense learns. Robert S. McNamara, after his term at the Pentagon, said "Congress has bought defense the way women buy perfume. If it costs more, they conclude it must be better." Melvin R. Laird last year warned

the incoming Administration: "The worst thing that could happen is for the nation to go on a defense spending binge that will create economic havoc at home and confusion abroad and that cannot be wisely dealt with by the Pentagon."

Caspar Weinberger enjoyed a reputation in California as "Cap the Knife," a diligent cost-cutter on social welfare programs. He needs help from Congress if he wishes to avoid "throwing money at" military problems.

Sen. Hart and his cohorts may provide that by shifting the spending argument from quantity to quality, from how much to how effectively. "We don't want to argue whether more is better or less is better," Hart says, "we want to change ways of thinking until we agree that smarter is better."●

ELDER JOHN RILEY

● Mr. METZENBAUM. Mr. President, on August 1, the members of the Church of God in Christ in my State of Ohio will observe "Elder John Riley Night." I want to add my voice to the many others that will be raised on that occasion in recognition of the 40 years of outstanding service that Reverend Riley has given to his church and his community.

I have known Reverend Riley for many years and I can testify that he is a man who has made the principles of his faith a part of his daily life. Reverend Riley believes in giving—giving unselfishly of himself to make this world a better place for others.

John Riley cares about the young people of this country. He has worked with and for them through the Boy Scouts of America and the YMCA.

He cares about the unemployed. And so he has served on the board of trustees of Cleveland's OIC and as a member of OIC's National Clergy Support Committee.

He cares about the sick. And so he has given his time and energy to the American Red Cross, the Heart Association, the March of Dimes and Forest City Hospital.

And, Mr. President, Reverend Riley believes passionately in the principle of full equality for all Americans. He has been a strong spokesman for civil rights and an active member of the Urban League and the NAACP.

Mr. President, I believe that a great part of the strength of our country is derived from the freely given work of individuals like Rev. John Riley, who take upon themselves the burden of community service. I am very pleased, therefore, to join Bishop Robert S. Fields and the many friends of Reverend Riley in expressing gratitude and admiration to a man who has, in the words of Bishop Fields, "spent the major part of his life in service to God and his fellow man."●

NOTICE OF DETERMINATIONS BY THE SELECT COMMITTEE ON ETHICS

● Mr. WALLOP. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD this notice of a Senate employee who proposes to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. Dennis P. Sharon, a member of the staff of Senator GOLDWATER, to participate in a program sponsored by a foreign educational organization, "Tamkang University School of American Studies in Taipei, Taiwan," from August 17 to 24, 1981.

The committee has determined that participation by Mr. Sharon in the program in Taiwan, at the expense of Tamkang University, to discuss the military and strategic situation in the Western Pacfic, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received requests for a determination under rule 35 which would permit the following named individuals to participate in a program sponsored by Soochow University, in Taipei, Taiwan from August 3–11, 1981:

Mr. Jerry W. Cox, of the staff of Senator DANFORTH; Dr. Jan H. Kalicki, of the staff of Senator KENNEDY; Mr. Edwin C. Graves, of the staff of Senator HUDDLESTON; Mr. Winslow Wheeler, of the staff of Senator KASSEBAUM; Mr. David G. Shoultz, of the staff of Senator HAWKINS; Mr. Vernon C. Loen, of the staff of Senator ABDNOR; Mr. Bruce Lindsay, of the staff of Senator PRYOR; and Mr. Sanford G. Kinzer, of the staff of Senator LEAHY.

The committee has determined that participation by Messrs. Cox, Kalicki, Graves, Wheeler, Shoultz, Loen, Lindsay, and Kinzer in the program in Taiwan, at the expense of Soochow University, to discuss economics and international relations, is in the interests of the Senate and the United States.●

ROSS DOYEN BECOMES PRESIDENT OF THE NATIONAL COUNCIL OF STATE LEGISLATURES

● Mr. DOLE. Mr. President, Ross Doyen of Concordia, Kans., will be installed today as president of the National Council of State Legislatures.

Ross Doyen has been a close friend, and there is no doubt in my mind that he will prove to be an outstanding leader for the NCSL, just as he has been for the Kansas State Senate since 1975, when elected president of that body.

Both Houses of Congress and the President of the United States have laid the groundwork for State governments to reestablish their traditional role in our political system. Legislatures throughout the Nation will, in their upcoming sessions, vote on issues of great importance—issues that have for too long been decided here in Washington.

Mr. President, the Senator from Kansas welcomes this change, and looks forward to the next period in American history. This will be an era in which modern Americans regain control of their lives, an era in which State and local governments will once again have the voice that they should never have lost.

This Senator salutes the National Council of State Legislatures on its successful convention in Atlanta, and offers his best wishes to its new president, Ross Doyen, of the Kansas State Senate.●

TRIBUTE TO PAT McCARRAN

● Mr. LAXALT. Mr. President, I rise before you today to pay tribute to a great Nevadan, a respected and beloved Member of this body, and a great American, Pat McCarran.

The Nevada Legislature, sitting in its 61st session, voted to name August 8 'Pat McCarran Day." In honor of that day, and in honor of the great man to the Nevada Legislature has so recognized, I would like to make a few short remarks today about the contributions Pat McCarran made to his State and his Nation.

Patrick Anthony McCarran was born in Reno, Nev., on August 8, 1876. He attended Nevada public schools and graduated from the University of Nevada in 1901. A farmer and rancher, Pat McCarran was first elected to the Nevada Legislature in 1903. After studying law, he was admitted to the bar in 1905 and served as district attorney in Nye County, Nev., from 1907 to 1909. He served as an associate justice of the Nevada Supreme Court from 1913 to 1917 and was named chief justice in 1917 and 1918.

Pat McCarran was first elected to the U.S. Senate in 1932 and was reelected three times. The inscription on his statue in the U.S. Capitol reads, "Lawyer-Judge-Senator—A True American from Nevada." That, to my mind, is an eloquent tribute to a man whose life touched the lives of so many others. He was a distinguished jurist before he began the career for which he was most known. He became a U.S. Senator who both championed the needs of Nevada and was a real servant to the Nation.

Pat McCarran knew well that the economy of Nevada and the well-being of its citizens depended, in great part, on a strong mining industry. In the U.S. Senate, he introduced or supported legislation which stabilized the price of silver, allowed stockpiling of strategic metals, and provided incentive payments and depletion allowances for the industry.

The major industry of Nevada, tourism, came under fire in the early 1950's. There were allegations of criminal influence in the gaming industry and attempts were made to legislate against legalized gambling in a roundabout manner by imposing a heavy tax on the gross receipts of gambling places. Pat McCarran, defending the right of the State to legalize, regulate, and control gambling without the undue interference of the Federal Government, played a vital role in killing this proposal.

In addition to being a vocal and effective supporter of his State, he became a national figure as chairman of the U.S. Senate Judiciary Committee. It was during his chairmanship that the Judiciary Committee passed legislation which resulted in the Administrative Procedures Act, the act which governs agency pro-

mulgation of rules and regulations. He was a major sponsor of legislation to reorganize and streamline the executive branch through careful analysis of agency goals and functions. He sponsored the McCarran-Ferguson Act, which gave jurisdiction over insurance matters to the State governments. In short, he was a strong advocate of responsible, reasonable government which serves all the people, not small but vocal special interests.

Mr. President, I salute Pat McCarran. And I echo the words of Senator William S. Knowland of California.

I think quite truthfully, that it will be a long time, if ever, before this Chamber again sees the like of Pat McCarran.●

REMARKS OF SENATOR PELL AT DEVRY INSTITUTE OF TECHNOLOGY

● Mr. DIXON. Mr. President, recently my distinguished colleague from the State of Rhode Island (Mr. PELL) gave an address at the graduation ceremonies of the DeVry Institute of Technology in Chicago.

In his remarks, Senator PELL calls on us to remember the enormous benefit our Nation receives from the Federal Government's investment in higher education programs.

I commend the distinguished Senator's remarks to my colleagues and ask that the full text of Senator PELL's speech be printed in the RECORD at this point.

The remarks follow:

REMARKS BY SENATOR CLAIBORNE PELL

Mr. Frey, Father Long, President Edmonds, Faculty, Families, and most important, you students.

First may I say what a fine job of representation Senators Percy and Dixon do for you. It is my particular pleasure to work very closely with Senator Percy as his Ranking Minority Member, and may I add what a truly fine and excellent Chairman of the Foreign Relations Committee is Chuck Percy.

It is a great pleasure to be with you today and participate in this your golden anniversary. I have always been tremendously impressed with the educational programs of the Bell & Howell Education Group, and to take part in these ceremonies today and to share the spirit of enthusiasm that is prevalent today, is extremely exciting.

Today is a milestone for all of you who are graduating. You are now about to enter one of the most exciting and promising fields in our nation, electronics. Electronics is one of the major growth industries in this nation, and the training you have received at the DeVry Institute will prepare you well for entry into that field. And it is a field that is vital to this nation. In the 1980–81 Edition of the Occupational Outlook Handbook, the Department of Labor stated that "an astronaut, a doctor, a mechanic, and a business executive all have something in common—without electronic devices they would be unble to do much of their work. Without the thousands of people working in electronic research and production, space exploration would be impossible and doctors would not have modern electronic equipment to help them diagnose and treat many diseases. Mechanics rely heavily on electronic testing equipment to locate malfunctioning engine and machine parts, while business executives depend on electronic computers to provide more and better information . . . and reduce the cost of their operations." I think it is safe to say that the world of electronics affects all of us in a very profound manner. And now you are part of that world.

All of you who are graduating today have just benefited from an opportunity that is essential if we are to prosper as a nation. You have just experienced the chance to learn, to acquire knowledge, and to personally advance yourselves. Without these chances, our nation and our people would be static. Without our diverse system of education, which is able to meet the appetites for learning of all our people, our country would not be the technologically advanced democracy that it is. Our system of education is a good one, and your presence here today is evidence of that. As one who has been involved with educational matters during all of my twenty years in the Senate, I know the true value of education to the prosperity and growth of a nation. I have always supported programs to advance education, and I intend to continue that support as long as I am in the Senate.

Now that you have received your diploma, the doors of personal advancement will begin to open. You will enter a field where the possibilities of employment are almost limitless. It is a rapidly expanding field, and one in which change is commonplace. And because of the reality of constant and continued change, you will come to appreciate even more the crucial difference that knowledge and learning make to the progress of this nation.

Everyone associated with the Bell and Howell Education Group is involved with a unique type of learning. It is learning devoted to mastering a technical specialty. It is important learning, and it is especially beneficial to our nation. Because of this, I have always believed that technical learning should also enjoy the support of our government, especially through student financial assistance. Students who attend schools like the DeVry Institute should be eligible for all of the Federal student assistance programs, and I will continue to support and work for that goal.

I would like to add, though, that a basic premise of such assistance is that the students repay their loans as quickly as possible—and that the schools exercise all their best effort and diligence to ensure prompt repayment of the taxpayers' money.

Those who are graduating today will soon become productive members of a swiftly changing world. The pace by which this world changes is at times dizzying. The realities and lynchpins of today oftentimes become obsolete by tomorrow. Areas of knowledge and technology are advancing so quickly that many of you are going to have to go back to school several times in the years ahead to keep pace with the state of the art of your chosen occupation.

Over the years the Federal Government has taken the steps to see that funds would be available to students who desired that additional schooling and training. However, in the years ahead, a major question is whether those funds will continue to be available.

In this regard, we should remember that, over the past twenty-three years, we have developed a Federal student assistance policy that provides scholarship aid, work aid, and loans to millions of American students. Today, every American student who has the desire and the ability to pursue postsecondary education is eligible for at least one of these types of Federal assistance. During this past year, 2.8 million students received a Pell Grant; 645,000 students received Supplemental Grants; 990,000 students received Work-Study jobs; 914,000 students received Direct Student Loans, and 2,300,000 students received Guaranteed Student Loans. All of these programs have removed serious financial burdens to educational opportunity.

Our Federal policy today equalizes educational opportunities and marshals the creative energies of our nation's postsecondary educational institutions to address specific national needs. This policy opens wide the doors of postsecondary education to our citizens, and encourages their advanced schooling. It is a good and noble policy. However, it is a policy in jeopardy.

Today in Washington we are facing a new breed of national policy makers who are calling for a halt to this policy. They are saying that we have had too much, that our policies have gone too far. And through these new restrictive policies, they are effectively closing the doors of postsecondary education to millions of our citizens.

These policy makers, by calling for cutbacks in student aid, seemingly ignore the importance of advanced education to our nation. The investment the Federal government makes in the education of her people is a capital investment. Its benefits are long term. A better education means greater opportunities in the job market and the chance for increased earning power. The payoff should be clear to all. We get a nation of better informed, better prepared, and more talented citizens.

But there are those who would overlook that payoff. They get caught up instead in the contemporary rhetoric of Federal budget cutting. And much of this rhetoric completely ignores what these budget cuts are all about. It ignores the human dimension of these cuts, the dreams deferred and the goals set aside by millions of our people who find that they cannot afford to advance themselves through education.

For one who has been involved in the creation and expansion of these Federal student assistance efforts, the past few months in Washington have been extremely frustrating. During these months, we have been required to consider major changes in student aid programs. These changes have been proposed by the Reagan Administration in its efforts to balance the budget and bring Federal spending under control. In my opinion, these proposed changes in student aid programs are penny wise and pound foolish.

Let me tell you what some of these changes are, and what I see as their effect.

First, there have been changes proposed to completely alter the Pell Grant program, a program which I consider the single achievement of which I am most proud as I look back on my career in the United States Senate. It is a program which has enabled millions of young people from low- and middle-income families to attend college. With its enactment, the doors of educational opportunity opened widely. Yet, many of the changes we are considering certainly raise the question as to whether those doors will remain opened.

All of the changes being discussed concerning the Pell Grant program would make it more difficult for American families to be eligible for these grants. The changes would require students and families to finance a larger portion of their education than they currently have to out of their own pockets, and the changes would not take into account the ravaging effect inflation has had on these families' disposable income. The impact these changes would have is devastating.

If these changes were adopted, 190,000 students at independent postsecondary institutions and about 410,000 students at public postsecondary institutions would be knocked out of the Pell Grant program. These 600,000 students would not be eligible to receive a grant. I think such a development would be a national tragedy.

And the changes proposed for the Guaranteed Student Loan program are equally as damaging. These changes would totally repeal the Middle Income Student Assistance Act, which made every American student

eligible for the Guaranteed Student Loan program, and they run the risk of driving commercial lenders completely out of the program. These changes have the potential of forcing more than 500,000 students out of the program, and about 600,000 students, because they would receive smaller loans because of these changes, would have no choice but to go to a lower cost school or no school at all.

Under the most recent forecasts that we have received in the Senate Subcommittee on Education, the combined effect of these changes in the Pell Grant and Guaranteed Student Loan programs would be that college enrollments would decrease by 500,000 to 750,000 students. In my opinion, no nation can afford to waste such a large amount of talent.

For to my mind, the real strength of our nation is determined by the sum total of the education and character of our people. Thus, when I see massive, unplanned increases in defense spending being called for at the same time that essential student aid programs are being severely cut, I am concerned about whether or not we are really strengthening America.

Our strength cannot be measured solely in terms of aircraft carriers, bombers, or missiles. At home and abroad our leadership must be based upon more than the size of our arsenal of weapons. Ultimately, it must surely depend upon our people, and upon their capacity to build, sustain, enrich and enhance this society, which is the longest surviving democracy in the history of the world. That is why I believe it is as important to support programs that provide for the education of our people as well as that provided for the defense of our people. When one portion of this essential equation is supported and the other is not, I believe we make a serious mistake.

But those who graduate today are fortunate. You have completed your education under the existing Federal student assistance programs. Many of you have received the benefits of these programs. Student aid has been extremely important to many of you. Without it, a good number of you may not have had a chance to take part in the programs this wonderful institution has to offer. However, it is quite possible that unless the current mood in Washington changes, these programs will not be there to help your brothers, your sisters, your children, or even yourselves if you find it necessary to go back to school. We cannot allow that to happen.

As you leave this institution to become productive members of society, try not to forget the benefits this institution provided you, and how you were able to finance those benefits. Remember that student aid programs were important to you, and support them so that they can be important to those who follow you. G. K. Chesterton once said that "I do not believe in a fate that falls on men however they act; but I do believe in a fate that falls on them unless they act." Unless we act, we could see the end of Federal student assistance programs as we know them today. But if we act, as taxpayers, as advocates, as voters, and let public officials know the true worth of these programs, and the support they have in communities throughout this nation, we can make sure that these programs will exist for students in the future.

These programs have helped you. As you leave this institution, I hope you can commit yourself to supporting these programs in the future. Benjamin Disraeli said of England over 100 years ago that "upon the education of the people of this country the fate of the country depends." That is as true of our nation today as it was of England then. Student aid programs are essential if we are to be a strong, viable, educated, humane society. With your help and support, we can make the decisions that will ensure a prosperous fate for America, and a life of learning for her citizens.

Thank you for providing me with this chance to participate in this extremely important day with you. And good luck to all the graduates in whatever endeavors you may undertake from this day on.●

AID TO CYPRUS

○ Mr. PELL. Mr. President, today I was informed that the administration has reprogramed $1.5 million earmarked for refugee aid to Cyprus for use in connection with the Sinai peace force. This action comes on top of a decision earlier this year to reprogram $1 million from the Cyprus account for us in Liberia.

These combined reprogramings represent almost a 17 percent reduction in the already modest $15 million authorized and earmarked for use in providing assistance to the refugees displaced during the Turkish invasion of Cyprus in 1974 using American-supplied arms. Our aid to Cyprus is an earnest of America's commitment to a just and early settlement of the Cyprus problem. Withdrawing even a portion of that aid sends entirely the wrong signal to the people of Cyprus about the strength of that commitment, particularly in light of the huge increases in military aid programed for Turkey.

I wish very much that the administration would reconsider this decision. At the very least, I would hope and expect that the reprogramings made to date will not serve as a precedent in the future for considering aid to Cyprus as a convenient contingency fund for other purposes.●

AGENT ORANGE WORK GROUP FORMED

● Mr. CRANSTON. Mr. President, in December 1979 President Carter established the Interagency Work Group on Phenoxy Herbicides and Contaminants in order to assure that there would be active coordination and consultation between various Federal departments and agencies in connection with all Federal research efforts in matters related to agent orange. That work group issued seven reports, including analysis and comment on new scientific studies and other information on the health effects of exposure to agent orange as well as updates on certain previously available study results and Federal agent orange-related activities. The work group also offered constructive comments on the scientific protocol for the recently initiated epidemiological and followup study on the individuals who participated in the actual spraying operations in Vietnam, called ranch hand. With regard to the health-related concerns of Vietnam veterans about agent orange, the work group served as a very valuable source of expertise and counsel for the Congress, the executive branch, and the public.

Because I believe Vietnam veterans concerned about agent orange exposure deserve a high level of responsiveness from the Federal Government, I have advocated that the activities of this special work group continue. On February 27, 1981, I wrote to the President's Assistant for Policy Development, Mr. Martin Anderson, to urge that generally the work group be reauthorized and specifically designated as the body responsible for assuring that the VA, as required by section 307(c) of Public Law 96–151, consults and coordinates with other Federal entities in connection with the conduct of its agent orange study. Also, this was a matter about which I questioned the new Administrator of Veterans' Affairs, Mr. Robert Nimmo, during his confirmation hearing on July 9.

I am pleased to inform my colleagues that, since the committee's confirmation hearing, the administration's response in connection with my recommendations on the continuation of the work group has been encouraging. On July 22, I received a letter from Mr. Anderson in which he described the formation on July 17 of an agent orange working group of the Cabinet Council on Human Resources as a successor to the interagency work group. Although it is not yet clear to me what plans the President has for funding and staffing the newly constituted working group or what specific responsibilities will be assigned to it, the news of its formation was welcome. I intend to contact Mr. Anderson in connection with my remaining questions and to follow very carefully the progress made by the new working group.

Mr. President, I ask unanimous consent that my February 27 letter to Mr. Anderson and his July 22 response to me be printed in the RECORD at this point.

The letters follow:

THE WHITE HOUSE,
Washington, D.C., July 22, 1981.

Hon. ALAN CRANSTON, *Ranking Minority Member, Committee on Veterans Affairs, Washington, D.C.*

DEAR SENATOR CRANSTON: I am writing in response to your request for information relating to this Administration's determination to meet its responsibilities for assuring that the provisions of Section 307(c) of Public Law 96–151 are fully implemented.

Section 307(c) mandates the full coordination of Federal agency studies of the possible health effects of dioxin, one of the components of the "Agent Orange" defoliant, used in Vietnam.

In order to assure the Federal efforts in the area of dioxin-related research involve the widest range of Federal agencies, we have proposed to rename and expand the membership of the former Interagency Working Group on Phenoxy Herbicides and Contaminants.

The newly formed Agent Orange Working Group will be a working group of the Cabinet Council on Human Resources (see attachment).

We believe that the above actions will significantly expand our ability to carry out the statutory responsibilities of Section 307 (c) of Public Law 96–151, and underscore the seriousness of our concern for an issue of great importance to Vietnam veterans and their families.

Sincerely,

MARTIN ANDERSON,
Assistant to the President for Policy Development.

THE WHITE HOUSE,
Washington, D.C., July 17, 1981.

Memorandum for: Secretary Richard Schweiker, Chairman pro-tem, Cabinet Council on Human Resources.

From: Robert Carleson, Executive Secretary of Human Resources, Cabinet Council.

Subject: Agent Orange Working Group.

The Secretariat of the Human Resources Cabinet Council has established an Agent Orange Working Group. The lead agency will be HHS, and participating members drawn from:

Department of Defense.
Department of Agriculture.
Department of Health and Human Services.
Department of Labor.
Environmental Protection Agency.
Veterans Administration.
Action.
Office of Management and Budget.
Council of Economic Advisers.
Office of Science and Technology.
Office of Policy Development.

U.S. SENATE,
Washington, D.C., February 27, 1981.

MR. MARTIN ANDERSON,
Assistant to the President for Policy Development, The White House, Washington, D.C.

DEAR MARTIN: I am writing in connection with a matter that is of great importance to our Nation's Vietnam veterans and a deep concern of mine on the Veterans' Affairs Committee—Agent Orange. As you know, Agent Orange, the defoliant used by our Armed Forces in Vietnam, was contaminated by dioxin, one of the most toxic substance ever identified by the scientific community.

On December 11, 1979, President Carter established, through his Assistant for Domestic Affairs and Policy, an interagency work group to assure that all Federal efforts in the area of dioxin-related research are fully coordinated and that there is a wide and ongoing consultation among all the agencies involved. The President appointed the then-Department of Health, Education, and Welfare—an agency well-equipped, in my view, to deal with the difficulties involved and one not generally perceived as having an interest to defend in these matters—as the work group's chair agency.

On December 20, 1979, the Veterans' Health Programs Extension and Improvement Act of 1979 (Public Law 96-151) was enacted with provisions, in section 307(a), mandating the VA to design and conduct an epidemiological study on Agent Orange. In addition, for purposes of assuring that any dioxin-related study conducted by the Federal Government would be scientifically valid and conducted efficiently and objectively, section 307(c) of this law required the President to assure that the VA study is fully coordinated with all other Federal agencies' studies regarding the health effects in humans of dioxin exposure and that all appropriate consultation and coordination take place among the heads of Federal agencies involved in the design, conduct, monitoring, or evaluation of such dioxin studies. For your reference, I have enclosed a copy of section 307 of Public Law 96-151.

Since the interagency work group on dioxin (formally the Interagency Work Group on Phenoxy Herbicides and Contaminants) was created, it has issued six progress reports dealing with the many dioxin-related activities of the Federal agencies, including long-term research proposals and various clinical projects of a shorter length, which may help to provide the answers we seek about the possible health effects of exposure to substances containing dioxin. In addition, the work group has itself reviewed and commented on certain of these research proposals. I believe these reports and comments have been of definite value to the agencies involved in terms of the rapid dissemination of useful information, to the Congress in terms of providing members with succinct, periodic updates, and finally, to the public, in terms of widespread concern that the studies be as objective and useful as possible and that no unnecessary delays occur in the Federal Government's pursuit of answers in this area. I also believe that the work group could appropriately serve as the means of the President carrying out his statutory responsibility under section 307(c) of Public Law 96-151.

In light of the immediacy of the issues involved—the VA will, after great delay, shortly sign a contract for the design of the protocol for its study—and their great importance to Vietnam veterans and their families and to the health of many other segments of our population, I believe that the President should reauthorize the interagency group under the chairmanship of the Secretary of Health and Human Services, designating the group as the body responsible for assuring that the provisions of section 307(c) of Public Law 96-151 are fully implemented. Such a designation—accompanied by the appropriate delegation of the authority—would enhance the authority of the group and give greater weight to its recommendations as well as provide needed assurance of full implementation of those provisions.

I would very much appreciate hearing from you at your earliest convenience about these matters and learning of your response to my recommendations.

With warm regards,
Cordially,

ALAN CRANSTON,
Ranking Minority Member.

COMMENTS

SEC. 307. (a)(1) The Administrator of Veterans' Affairs shall design a protocol for and conduct an epidemiological study of persons who, while serving in the Armed Forces of the United States during the period of the Vietnam conflict, were exposed to any of the class of chemicals known as "the dioxins" produced during the manufacture of the various phenoxy herbicides (including the herbicine known as "Agent Orange") to determine if there may be long-term adverse health effects in such persons from such exposure. The Administrator shall also conduct a comprehensive review and scientific analysis of the literature covering other studies relating to whether there may be long-term adverse health effects in humans from exposure to such dioxins or other dioxins.

(2)(A)(i) The Study conducted pursuant to paragraph (1) shall be conducted in accordance with a protocol approved by the Director of the Office of Technology Assessment.

(ii) The Director shall monitor the conduct of such study in order to assure compliance with such protocol.

(B)(i) Concurrent with the approval or disapproval of any protocol under subparagraph (A)(i), the Director of the Office of Technology Assessment shall submit to the appropriate committees of the Congress a report explaining the basis for the Director's action in approving or disapproving such protocol and providing the Director's conclusions regarding the scientific validity and objectivity of such protocol.

(ii) In the event that the Director has not approved such protocol during the one hundred and eighty days following the date of the enactment of this Act, the Director shall (I) submit to the appropriate committees of the Congress a report describing the reasons why the Director has not given such approval, and (II) submit an update report on such initial report each sixty days thereafter until such protocol is approved.

(C) The Director shall submit to the appropriate committees of the Congress, at each of the times specified in the second sentence of this subparagraph, a report on the Director's monitoring of the conduct of such study pursuant to subparagraph (A)(ii). A report under the preceding sentence shall be submitted before the end of the six-month period beginning on the date of the approval of such protocol by the Director, before the end of the twelve-month period beginning on such date, and annually thereafter until such study is completed or terminated.

(3) The study conducted pursuant to paragraph (1) shall be continued for as long after the submission of the report under subsection (b)(2) as the Administrator may determine reasonable in light of the possibility of developing through such study significant new information on the long-term adverse health effects of exposure to dioxins.

(b)(1) Not later than twelve months after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of the Congress a report on the literature review and analysis conducted under subsection (a)(1).

(2) Not later than twenty-four months after the date of the approval of the protocol pursuant to subsection (a)(2)(A)(i) and annually thereafter, the Administrator shall submit to the appropriate committees of the Congress a report containing (A) a description of the results thus far obtained under the study conducted pursuant to such subsection, and (B) such comments and recommendations as the Administrator considers appropriate in light of such results.

(c) For the purpose of assuring that any study carried out by the Federal Government with respect to the adverse health effects in humans of exposure to dioxins is scientifically valid and is conducted with efficiency and objectivity, the President shall assure that—

(1) the study conducted pursuant to subsection (a) is fully coordinated with studies which are planned, are being conducted, or have been completed by other departments, agencies, and instrumentalities of the Federal Government and which pertain to the adverse health effects in humans of exposure to dioxins; and

(2) all appropriate coordination and consultation is accomplished between and among the Administrator and the heads of such departments, agencies, and instrumentalities that may be engaged, during the conduct of the study carried out pursuant to subsection (a), in the design, conduct, monitoring, or evaluation of such dioxin-exposure studies.

(d) There are authorized to be appropriated such sums as may be necessary for the conduct of the study required by subsection (a).●

HELSINKI ACCORDS AND THE SOVIET UNION

● Mr. PELL. Mr. President, this morning's New York Times featured a very thoughtful editorial on the Helsinki accords and the Soviet Union's failure to live up to its obligations under that agreement.

In the Helsinki Final Act, signatory states agreed that in the field of human rights and fundamental freedoms, they would act in conformity with the purposes and principles of the Universal Declaration of Human Rights. In addition, the Helsinki accords recognized the right of private citizens to take an active role in monitoring their governments' adherence to the human rights standards set forth in the agreement and the Declaration of Human Rights.

Nonetheless, the recent trial of Feliks Serebrov brings to 47 the number of individuals in the Soviet Union tried and imprisoned for attempting to monitor the Soviet Union's performance in meeting its human rights obligations under the Helsinki accords.

Although it has been tragic to see the hopes of Helsinki obliterated by the Soviet Union's crackdown on human rights spokesmen and the invasion of Afghanistan, the time and effort that went into formulating the Helsinki accords was anything but wasted. As the New York Times points out, the agreement gave all the participating nations the undeniable right to inquire into each other's performance in the area of human rights. Thus, at the various review conferences after Helsinki, the Soviet's disgraceful record in this field has been a legitimate topic for discussion, and the Soviet's cruel and repressive treatment of their own citizens has been bared for all the world to see.

The spirit of Helsinki will remain alive as long as we in the West remember those like Feliks Serebrov who are fighting for human rights behind the Iron Curtain.

Mr. President, I ask that the editorial from this morning's New York Times entitled "Helsinki Rights, Soviet Wrongs" be printed in the RECORD.

The editorial follows:

HELSINKI RIGHTS, SOVIET WRONGS

A circle has been cruelly closed in Moscow with the recent furtive trial of Feliks Serebrov. A 50-year-old factory worker, he is the last active member of a group that monitored the grotesque abuse of Soviet psychiatry for political purposes. Mr. Serebrov was charged with "anti-Soviet agitation" and now faces four years of hard labor and five more of internal exile. That brings to 47 the number of Helsinki monitors imprisoned by the Soviet Union. In Czechoslovakia, the most slavish of satellites, 16 monitors are in jail and 10 more await trial.

So much for the good faith of President Brezhnev's signature on the Helsinki accords six years ago this week. They promised to guarantee "the right of the individual to know and act upon his rights." But in perverse practice, it has become a criminal act for a Soviet (or Czechoslovak) citizen to ask the state to comply with the law. How dare these monitors intervene in the internal affairs of their own countries!

But these brazen violations discredit the Soviet Union, not the impulse that shaped the Helsinki agreements. Signed by 35 European and North American nations, they amounted to a calculated swap. In the absence of peace treaties, the Soviet Union wanted some formal Western acceptance of its expanded postwar boundaries and of the partition of Germany. For its part, the West obtained a Soviet pledge to open its empire to the somewhat freer movement of people and ideas.

The Helsinki Final Act did spur some cultural and commercial exchanges. But that would probably have happened without agreement. At the heart of the accord was a generous vision: that a less threatened Soviet leadership would deal more confidently with the world and less harshly with its internal critics. Those hopes were quickly dampened by the Kremlin's crackdown on prominent dissidents and all but buried in the East-West chill that followed Afghanistan.

Was the effort then worthless? Not quite. For the accords gave all participating nations the undeniable right to inquire into each other's performance on human rights. Of itself, that was a modest advance in the history of international accountability. It also encouraged agitation for greater freedom in Communist countries.

At successive Helsinki review conferences the disgraceful record of Soviet tyranny has been held up to view and Soviet spokesmen have had to struggle to explain why it is an offense for their citizens to take Mr. Brezhnev at his word. No real explanation was offered at the just-adjourned conference in Madrid. But when it reconvenes in October, the matter of the imprisoned Soviet monitors is sure to be raised again and again.

What would truly nullify the promise of Helsinki is Western indifference to the courageous few who have been branded as psychotics and criminals for finding inspiration in the accord. The ordeal of Feliks Serebrov will have no meaning if he is not defended in the only court still open to him.

On this human rights issue, at least, the Reagan Administration has not wobbled. It needs only to keep clear that it speaks not for diplomatic advantage but for universal principle and conscience.●

ARIZONA STATE LEGISLATURE ENDORSEMENT OF SANDRA O'CONNOR NOMINATION

● Mr. GOLDWATER. Mr. President, it is my great pleasure to announce that the Arizona State Legislature has given its official and overwhelming endorsement of the nomination of Sandra O'Connor to the U.S. Supreme Court. I have just today received from Rose Mofford, secretary of state of Arizona, the text of the concurrent resolution urging our body to swiftly confirm Sandra O'Connor's nomination.

The resolution passed the Arizona House on July 23 by 51 ayes and only 2 nays and passed the Arizona Senate on July 24 by 29 ayes and only 1 nay, indicating that the single-issue opposition to Mrs. O'Connor's nomination has virtually disappeared.

I ask that the text of the resolution and the certification of the resolution may appear in the RECORD.

The resolution and certification follows:

STATE OF ARIZONA
DEPARTMENT OF STATE

I, Rose Mofford, Secretary of State, State of Arizona, do hereby certify that the annexed document is a true, correct, and complete copy of House Concurrent Memorial 2001, Thirty-Fifth Legislature, Second Special Session, 1981; that I am the official of the State of Arizona in custody and control of the original of said document and the legal keeper thereof.

In witness whereof I have hereunto set my hand and affixed the great seal of the State of Arizona. Done at Phoenix, the Capital, his 27th day of July, 1981.

ROSE MOFFORD,
Secretary of State.

HOUSE CONCURRENT MEMORIAL 2001

To the President and the Senate of the United States of America:

Your memorialist respectfully represents:

Whereas, President Reagan has displayed great wisdom and foresight in the laudable nomination of the Honorable Sandra Day O'Connor to the United States Supreme Court; and

Whereas, Judge O'Connor is an eminently qualified jurist, having served as a trial court judge and presently serving as an appellate court judge; and

Whereas, Judge O'Connor has obtained extensive experience in many areas of the law as a Deputy County Attorney of San Mateo County in California, as a civilian attorney for the Quartermaster Market Center in Frankfurt/M, West Germany, as an Assistant Attorney General of Arizona and as a private practitioner of law; and

Whereas Judge O'Connor first distinguished herself as a legal scholar at Stanford University where she served on the Board of Editors of the Stanford Law Review and from which she graduated in the Order of the Coif; and

Whereas, Judge O'Connor served with great distinction in the Legislature of the State of Arizona as a Senator and demonstrated her inherent leadership capabilities as Majority Leader of the Arizona State Senate; and

Whereas, Judge O'Connor has an outstanding record of service and experience in each of the executive, legislative and judicial branches of state government; and

Whereas, Judge O'Connor has willingly and with great devotion and fervor given of herself in the service of her nation and community for which she was greatly honored as the Phoenix Advertising Club "Woman of the Year" in 1972, the recipient of the National Conference of Christians and Jews Annual Award in 1975 and the recipient of the Arizona State University Distinguished Achievement Award in 1980; and

Whereas Judge O'Connor also possesses the attributes of an outstanding wife and mother; and

Whereas, Judge O'Connor would take to the United States Supreme Court all of the admirable qualities mentioned above.

Wherefore your memorialist, the House of Representatives of the State of Arizona, the Senate concurring, prays:

1. That President Reagan will take pride in his sensational nomination of the Honorable Sandra Day O'Connor to the United States Supreme Court.

2. That the United States Senate will act swiftly to confirm the nomination of the Honorable Sandra Day O'Connor to the United States Supreme Court.

3. That the Secretary of State of the State of Arizona transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, the Chairman of the Judiciary Committee of the United States Senate, the members of the Judiciary Committee of the United States Senate and to each Member of the Arizona Congressional Delegation.●

SOVIET INVASION OF CZECHOSLOVAKIA

○ Mr. PELL. Mr. President, August 21 marks the 13th anniversary of the Soviet Union's brutal invasion of Czechoslovakia. On that Soviet "Day of Shame," August 21, 1968, Soviet-led tanks and troops extinguished the flames of freedom and liberty which had begun to burn so brightly in Prague that spring.

During 1968, the Czech and the Slovak peoples tried to humanize the Communist system under which they had lived for 20 years. This was a purely internal matter which threatened no other nation; it was clearly within their rights as a sovereign nation. Yet the Soviet Union, in clear violation of the United Nations Charter, took it upon itself to send 600,000 Warsaw Pact troops into Czechoslovakia under the banner of

"proletarian internationalism" and forcibly prevent the people of Czechoslovakia from shaping their own future.

It should be noted that although no Russian soldiers were required to impose communism on Czechoslovakia in 1948, more than half a million Soviet-led troops were needed 20 years later to keep Czechoslovakia within the Soviet sphere. That says something, Mr. President, about the continuing appeal of communism to those people who have been forced to live under it. So, too, does the fact that the Russians still feel it necessary to maintain a garrison of some 80,000 troops in Czechoslovakia today.

My own deep interest in Czechoslovakia dates back to my days as a Foreign Service officer in 1948 when I opened the American Consulate General in Bratislava shortly after the Communist coup.

Ever since, I have followed events in Czechoslovakia with particular concern and visited there as often as I could, including just before and just after the Russian invasion in 1968. In addition, my work on the Commission on Security and Cooperation in Europe, of which I was cochairman, has kept me closely involved with affairs in Eastern Europe.

I was encouraged for a short time in the mid-1970's by the Soviet Union's signature of the Helsinki Final Act. By signing that document, the Soviets agreed that "no consideration may be invoked to serve to warrant resort to the threat or use of force." However, the Soviet invasion of Afghanistan in December 1979, showed that Soviet aggression against its neighbors continues to be a real threat to world peace.

Similarly, the present Government of Czechoslovakia has failed to live up to the obligations it accepted when it signed the Helsinki accords. In particular, the continued imprisonment of Vaclav Havel and other leaders of the "Charter 77" movement and the Committee for the Defense of the Unjustly Persecuted makes a mockery of the human rights provisions in the Helsinki agreement.

Both the Soviet Union and the present regime in Czechoslovakia must be put on notice that the world is watching to see how they live up to their obligations under agreements like the United Nations Charter and the Helsinki accords. Continued failure to live up to their agreements will have a major impact on future relations with the West. In particular, both governments must start respecting the human rights of people living within their borders, and the sovereign rights of nations along their borders. There cannot be any repetition of the tragic events of August 21, 1968.●

NO MORE FOOD STAMPS FOR STRIKERS

● Mr. HELMS. Mr. President, there is a significant provision included within the reconciliation bill which is worthy of note as we proceed to final action on this bill.

For many years, many citizens have expressed outrage at the policy which has allowed employees to receive food stamps after having walked off their jobs on strike. The Department of Agriculture estimates that taxpayers paid about $20 million per month during the coal strike earlier this year to provide strikers with food stamps.

I am pleased that both the Senate reconciliation bill and the House Republican substitute contained identical language which I offered to make such strikers ineligible to participate in the food stamp program.

This reform is sure to improve the public's perception of the program whose integrity has been greatly damaged by the current policy of providing food stamps to strikers.

The underlying philosophy supporting this change should be clear: Any worker who walks off the job to go on strike has given up the income from that job of his own volition. A person making such a choice, and participating in a strike, must bear the consequences of his decision without assistance from the taxpayers who provide the funds for the food stamp program. Public policy demands an end to the food stamp subsidization of all strikers who become eligible for the program solely through the temporary loss of income during a strike.

The public has been demanding this change for many years. I am pleased that the reconciliation process has brought this desire to fruition.

Mr. President, Senators will be interested in an article from the Hartford Courant of July 14 by Jay S. Siegel, a Hartford attorney and former chairman of the American Bar Association's section of Labor and Employment Law, outlining in more detail the significance of this change.

I ask that the article "When Taxpayers Subsidize Strikers" be printed in the RECORD.

The article follows:

WHEN TAXPAYERS SUBSIDIZE STRIKERS

(By Jay S. Siegel)

The proposed renewal of the federal food stamp program barring payments to strikers looks like it could wind up on the president's desk. The Senate and House are meeting in conference and there is some likelihood the final bill will include such a provision. Hopefully, the conference leaders will have the courage to eliminate this special interest arrangement which has been both unfair to employers and an unwise fiscal drain on the program.

The issuance of food stamps to persons who have voluntarily gone out on strike to obtain a personal economic advantage raises two basic issues. The first one, which so far has been overlooked in the debate on Capitol Hill, involves whether strikers should have to accept the risks attendant with their own decision to engage in such conduct. The second concerns whether food stamp payments are a proper use of the general tax revenues in such circumstances.

The National Labor Relations Act clearly guarantees employes the right to strike for economic improvements. It has long been accepted in sophisticated labor-management circles as one of the permitted weapons at the disposal of organized labor and the employes which it represents, to exert economic pressure on management. On the other side of the coin, employers can seek to obtain economic advantage in a less costly collective bargaining agreement by refusing to agree to the demands of the union and the employes. In this case, however, the company has to accept the risk of substantial interference with its operations when the employes withhold their services and go out on strike.

No penalty is imposed under our national labor policy upon either the union or the employes for exercising their right to strike, or the employer's concomitant right to take a strike. However, when it comes to accepting the risks that accompany the exercise of those rights, there is clearly a double standard. The employer gets no economic subsidy in the form of payments from general tax revenues to minimize his losses but many employes do get such assistance in the form of food stamps under the government's current program.

The rationale offered by those supporting such help is that the employes and their families will have no money coming in because of their loss of wages due to the strike and, therefore, society in general, and the government in particular, has an obligation to step in and see that they are able to maintain a minimum standard of food, clothing, and shelter.

What is actually happening, however, is that in so doing, government substantially removes the financial risk of the strike from the shoulders of employes and transfers it to the taxpayers. Further, it lightens the burden of union officials who know they will not have to entirely finance a strike for their members since the government is willing to do so under the food stamp program.

Employers rightly claim that payment under such conditions is basically unfair and that, since the strike form of "economic warfare" is sanctioned by our national labor policy, the government should remain neutral and allow each side to bear its own risks, if they decide to exercise the rights permitted by the labor laws.

In the case of strikers, when they meet at the union hall, on the eve of the expiration of their labor agreement, and are asked to go out on strike, food stamps gives them assurance of a "safety net," courtesy of the U.S. government, if they decide to walk out. Insidize a personal effort at economic self-impunity, to turn to the government to relieve them from the adverse consequences of their own decision.

The machinist who makes $5 an hour and decides that he or she wants to go out on strike to obtain a $1-an-hour increase should not be asking the nation's taxpayers to subsidize a personal effort at economic self-improvement. Nowhere in the labor laws does the right to strike carry with it the right to do so risk free. Subsidization of such endeavors through the food stamp program is a misguided use of the general tax revenues which have been contributed by citizens from every income group.

It is estimated that $30 million a year can be saved by removing strikers from eligibility for food stamp payments. Approval by the Congress and acceptance by the president of such change would be a sound step toward restoring the integrity of the program, and place the matter in its proper perspective to help achieve fairer utilization of the tax revenues which everyone in our society has become increasingly loathe to pay.●

RULINGS BY FEDERAL JUDGES

● Mr. EAST. Mr. President, Representative JOHN ASHBROOK has performed an important service in alerting the public to the threat to representative government posed by high-handed Federal judges. In the August 1981 issue of Reader's Digest, Mr. ASHBROOK criticizes arbitrary rulings by Federal judges who substitute their ideological whim for settled precedent and custom.

President Reagan has promised to appoint judges who will interpret the laws and Constitution as written and intended by their authors. The Founding Fathers intended for Congress and our State legislatures to make our laws, not unelected Federal judges. At a time when violent crime is on the increase and law-abiding citizens live in fear of remorseless savages who rob, rape, and murder, the Federal courts are busy inventing new criminal rights which stymie law enforcement. Mr. President, I ask that Mr. ASHBROOK's article be printed in the RECORD.

The article follows:

ARE JUDGES ABUSING OUR RIGHTS?

(By Rep. JOHN ASHBROOK)

Federal marshals clapped handcuffs on University of Georgia Prof. James A. Dinnan last summer and hauled him off to prison. What could this 50-year-old academician possibly have done? Dinnan had served on a faculty committee that voted 6 to 3 against promoting a young woman assistant professor.

The woman sued, alleging sex discrimination. In pre-trial proceedings, Dinnan readily described the criteria he used in his decision but refused to say how he had voted. For that refusal, federal Judge Wilbur D. Owens, Jr., held him in civil contempt and ordered him to pay $100 a day for 30 days and then spend 90 days in jail unless he answered the question.

Released three months later, Dinnan discovered that he faced another jail term if he refused to reveal his vote in further proceedings. Vowing to move to another country first, Dinnan proclaimed, "If academic freedom is not the right to judge one's peers free from outside pressure or intimidation, then what is it? Once the courts control the schools of America, you're headed toward totalitarianism."

Dinnan's protest is among the growing number of complaints nationwide that many judges are overreaching their constitutional authority. We have, declares Harvard professor emeritus Nathan Glazer, developed an "imperial judiciary" in which judges "now reach into the lives of the people, against the will of the people, more than ever in American history." States the Los Angeles Times: "More and more judges have developed an itch for more and more power, and they are scratching it at every opportunity."

Today, should a judge find that there has been a denial of due process or equal protection, he can overrule the President and Congress as well as state and local legislatures. He can seize a school system, prison or mental hospital, appropriate public funds, and set policy. Examples abound:

In Atlanta, parents, outraged by "head shops" pushing drug paraphernalia aimed at youngsters, persuaded the Georgia legislature to outlaw such sales. But last December a federal judge voided the statute as "vague," even though similar wording has been upheld in laws outlawing counterfeiting, gambling and bootlegging paraphernalia. So drug paraphernalia reappeared in the head shops.

Outside Albany, N.Y., high school students sought to hold a voluntary prayer session in their classrooms before the start of the school day. Outlawing the practice as "too dangerous to permit," federal Judge Irving R. Kaufman argued that it "might indicate the state has placed its imprimatur on a particular religious creed."

In Parma, Ohio, voters chose to require a referendum on all zoning variances. A federal judge treated this vote as evidence, along with other city actions, of intentional racial discrimination and ordered the community to provide low-income housing.

Decisions of this sort have altered the nation's basic governmental structure. They have stripped power from elected officials and transferred it to appointed judges who serve for life.

Keeping judges in their proper sphere is an old problem. Tyrannical and lawless judges in part caused rebelling Englishmen to draw up the Magna Carta in 1215. In 1625 English statesman Francis Bacon warned: "Judges ought to remember that their office is to interpret law and not to make or give law." The judicial role under the U.S. Constitution has been a problem from the start, with judges reaching for power and colliding with Presidents and Congress.

Voter reaction against the "activist" Supreme Court under Chief Justice Earl Warren was a major factor in the 1968 Presidential election of Richard Nixon. Nixon appointed four Justices during his first term, but in many respects the Court's activism actually accelerated. All the busing decisions, the voiding of the abortion laws of 46 states and the overturning of death-penalty statutes are products of the Supreme Court under Chief Justice Warren Burger, who succeeded Warren in 1969. When it comes to voiding acts of Congress, the Burger Court has been the most activist ever.* In 11 years it has voided 37 Congressional enactments compared with 29 such actions by the Warren Court in a 16-year period.

Concern over the High Court's use of its powers is shared even by some of the Court itself. Justice William H. Rehnquist accuses the present activist majority of "fashioning for itself a legislative role resembling that once thought to be the domain of Congress." Justice Byron White has said that the fact "that the Court has ample precedent for the creation of new constitutional rights should not lead it to repeat the process at will."

For generations, the federal judiciary upheld the position that education is a field reserved for the states. Then, in 1969, the Warren Court decreed that the due-process clause gave federal judges the right to oversee public-school discipline, supplanting elected legislators and school boards.

In 1975, the Burger Court expanded the trend by overturning an Ohio law allowing school principals to suspend disruptive students for up to ten days. Such actions have contributed to an epidemic of violence in the nation's high schools. Columnist James Kilpatrick reported the story of a St. Louis teacher who gave this explanation for choosing early retirement: "The courts have made it just about impossible to suspend or expel a disruptive child. I'd had all I could take."

No mandates have stirred more controversy than those directing school busing. In 1971 the Supreme Court declared that a local federal judge had seemingly unlimited power to force a racial balance to his satisfaction. Soon judges were ordering large-scale busing.

Over the past two decades, Supreme Court Justices have written a code of criminal procedure overwhelmingly favoring criminal defendants. In one case, two Bronx, N.Y., policemen saw a man start across the street, glance nervously at them, then turn and hurry off, hugging a vanity case. After giving chase, they cornered him, and found a pistol in the vanity along with heroin packaged for street sale. But the New York Court of Appeals judges ruled that the police had to exclude the evidence, and they dismissed the indictment—thus freeing the pusher—because the officers did not have "probable cause" for arrest. One dissenting judge protested: "Such a conclusion borders on the absurd. The officers had every right, if not the obligation, to pursue the defendant in order to investigate this highly suspicious conduct." Last December the Supreme Court declined to hear the prosecutor's petition that the ruling imposes "an unreasonable burden on our police."

The federal judiciary ruled (in 1936) against police interrogation if the suspect objects. When police could interrogate, they solved 91 of every 100 murders; today the percentage of unsolved murders has tripled to an all-time high.

State legislatures have sought repeatedly to deter murder by imposing the death penalty. Again and again they have been thwarted by a Supreme Court that arbitrarily changes the rules. In 1972 five Justices decreed that the death-penalty laws of 41 states were unconstitutional because they left to the uncontrolled discretion of judges or jurors whether defendants should be imprisoned or die. Thirty-six states promptly enacted new laws making death mandatory for specified categories of murder and other crimes. Then the Justices did a U-turn in 1978, holding Ohio's death-penalty law invalid because it failed to give the sentencing judge enough discretion.

Many legal authorities feel today's rampant judicial activism deprives the American people of the right to be governed by elected representatives. For checks and balances on judges, we must look to the other branches of government and to the electorate. Congress has two clear ways to curb judges:

1. The Constitution gives our elected legislators power to remove whole classes of cases from court jurisdiction. At least 20 bills to do so are pending. Last May Prof. Charles E. Rice of Notre Dame University Law School testified: "It would be a healthful corrective. Supreme Court decisions in several areas are distortions of the constitutional intent. It is the duty of Congress to remedy this wrong. The Court might learn a salutary lesson and avoid future excursions beyond its proper bounds."

2. The 14th Amendment, under which the Supreme Court has invaded most state functions, specifically names Congress the supreme definer and guardian of the rights it creates. Chief Justice Earl Warren, for example, declared that Congress can supplant the rules for police interrogations his Court handed down.

At stake in the struggle to control our high-handed judiciary is nothing less than the sanctity of law itself in our constitutional system. As the distinguished legal historian Raoul Berger asks, "How long can public respect for the Court survive if people become aware that the tribunal which condemns the acts of others as unconstitutional is itself acting unconstitutionally?"●

*Chief Justice Burger has been a frequent dissenter from many of the so-called "Burger Court's" most activist decisions.

GIRL SCOUTING

● Mr. DECONCINI. Mr. President, it is my privilege to join with Senator MATHIAS in recognizing the achievements of millions of girls and women who have participated in Girl Scouting over the last 70 years. The legislation which I rise to cosponsor with Senator MATHIAS authorizes a commemorative postage stamp to honor the 70th anniversary of the founding of the Girl Scouts of the United States of America. In the State of Arizona there are over 47,000 Girl Scouts and over 3 million current members around the world.

Girl Scouting brings girls together from all over the world. These girls learn

to share and grow together. The Scouting program provides girls with new opportunities which enable them to acquire varied skills. Scouting instills in girls a strong sense of responsibility—responsibility to themselves and to their community. Girl Scouting teaches girls to set high standards for themselves. Both my wife and my daughter, Denise, benefited from their experiences as Girl Scouts, and I hope every young girl can have these same opportunities.

Girl Scouting has a proud heritage and bright future. I believe that the outstanding achievements of the Girl Scouts should be commemorated through the issuance of a stamp. This honor is long overdue the excellent organization founded 70 years ago by Juliette Gordon Low.●

THE MONTANA AIR POLLUTION STUDY

● Mr. BAUCUS. Mr. President, in June of this year the Montana Air Quality Bureau published the final report of its Montana Air Pollution Study (MAPS). The objective of this undertaking was to examine in a sound, scientific fashion the relationship between air pollution and the health of people in Montana. In light of the current review of the Clean Air Act, I would like to call attention to the significant results of this 4 year, $1.5 million study.

While we all have an intuitive belief that dirty air results in illness, the MAPS project provides valuable data supporting this understanding. For example, the report confirms the hypothesis that increased air pollution levels result in impaired lung functioning. In addition, the study points toward the involvement of air pollution in lung cancer and respiratory disease. Unfortunately, the effects of "public health enemy number one," cigarette smoking, make conclusive proof impossible.

These results underscore the importance of maintaining a strong Clean Air Act which places public health as its primary objective.

Although the 116 page final report is technical in nature, I do believe that many of my colleagues in the Senate would be interested in reading the "Summary of Conclusions." Therefore, I ask that it be included in the RECORD following my statement.

Finally, I would like to congratulate project coordinator Stephen Medvec, project managers Michael Roach and Hal Robbins, and the many others who participated in the study for their fine efforts.

Thank you.

SUMMARY OF CONCLUSIONS

INTRODUCTION

The Montana Air Pollution Study (MAPS) is a major four-year study by the Air Quality Bureau of the Montana Department of Health and Environmental Sciences of the effects of air pollution on human health in several of Montana's urban areas. Funded initially by the 1977 Montana Legislature for two years and then extended by the 1979 session for an additional two years, MAPS was completed in June 1981 at a cost of $1.5 million.

The 1977 Montana Legislature requested that air pollution-health effects studies be implemented in the cities of Anaconda, Billings, Butte, and Missoula, as well as in the towns of Columbia Falls, Colstrip, East Helena, and Hardin. Bozeman and Great Falls were added during the initial study design to provide data from relatively unpolluted areas for comparative purposes. The study areas are located for the most part in mountain valleys or river canyons, where prolonged periods of air stagnation are common during the late fall and winter. Potential air pollution sources in the study areas include, among others, automobiles, paved and unpaved roads, agricultural tillage, wood home heating, smelters, oil refineries, open-pit mines, pulp paper plants, and industrial tailings. The following health effects studies were performed during the project: lung (pulmonary) function testing of school children and persons with respiratory diseases, screening for the presence of possible carcinogenic substances in the air and in children's urine in the Butte-Anaconda area, and a mortality study to determine numbers of deaths possibly related to air pollution in three counties during the period 1970–75.

RESULTS

Pulmonary function testing

Results of comparative pulmonary function tests conducted in Anaconda, Billings, Butte, Great Falls, and Missoula during the 1978–79 school year showed that Great Falls children, who were exposed to the least urban air pollution levels, had the best pulmonary performance. In contrast, children from Missoula, with the highest particulate levels, and Anaconda, with the highest sulful dioxide levels, had the worst pulmonary performance. Billings and Butte children were found to have readings between the two extremes. A separate analysis of various socio-economic factors in the study cities revealed that those factors were not responsible for differences in pulmonary ability demonstrated among the five cities. The study also revealed that in most cases females reacted more adversely to air pollution than males.

An analysis of pulmonary function measurements among Missoula children during the 1978–79 and 1979–80 school years showed consistently that as particulate levels in the air increased, pulmonary performance decreased. No significant decrease in the children's pulmonary ability was demonstrated following exposure to extremely high levels of volcanic ash in a separate analysis of of data collected one week after the eruption of Mount Saint Helens on 18 May 1980.

In 1978–79, an eighteen-month study of 84 Missoula adults with chronic obstructive pulmonary disease (COPD) was conducted. Results also showed decreasing pulmonary performance, as well as notable increases in coughing, wheezing, and shortness of breath, with increasing air pollution levels.

Carcinogenic screening in Butte-Anaconda

Measurement of the mutagenic potential of substances has become a standard procedure throughout the world to assess the carcinogenicity of substances; i.e., their potential for causing cancer. The Ames test predicts whether a substance will be carcinogenic on the basis of its mutagenicity to certain strains of bacteria. The MAPS project adopted this specific methodology to assess cancer risk in the Butte-Anaconda area.

In 1978–79, urine testing was conducted at three elementary schools in Anaconda and Butte, where lung cancer rates are high, and at one school in Bozeman, where lung cancer rates are low. Eleven Butte children out of 80 sampled had mutagen levels considered to be significantly elevated. This is the first time elevated mutagen levels have been demonstrated in the urine of non-smokers. No Anaconda children reached these levels, and the levels of mutagen among Bozeman children were not significant. The Butte children with elevated mutagen levels lived relatively near Front Street, a major east-west thoroughfare running parallel to the railroad tracks. It is suspected that these students are exposed to high levels of poly-aromatic hydrocarbons, among them benzo-(a)pyrene, known carcinogens that are derivatives of diesel exhaust and other products of combustion. The different mutagen levels between Anaconda and Butte test groups support the existing assumption that the two communities differ in distribution of carcinoma types and risk patterns between men and women.

Mortality study in three counties

A 1974 review of Montana's vital statistics revealed that some counties had abnormally high death rates from asthma, chronic bronchitis, emphysema, cerebrovascular disease, and lung cancer, especially within the 40–65 age group. After an analysis of the data had been completed, Deer Lodge, Lake, and Silver Bow Counties were selected for a more detailed investigation of possible causes for the high death rates. Although strong suspicion remains that exposure to ambient air pollution may have contributed to high death rates among residents of the three counties from lung cancer, respiratory diseases, and cerebrovascular disease, it cannot be proven conclusively because of the variable of undocumented smoking habits. There may be a synergistic effect from air pollution exposure and smoking.

CONCLUSION

Prior to undertaking this study, pollution researchers, such as Drs. Benjamin Ferris of Harvard University and Ian Higgins of the University of Michigan, were of the opinion that a correlation between increased air pollution and decreased lung performance could not be demonstrated at air pollution levels found in Montana. MAPS, however, has confirmed the hypothesis that increased air pollution levels cause a decrease in lung functioning.●

TWENTY-FIFTH ANNIVERSARY OF THE GREAT PLAINS CONSERVATION PROGRAM

● Mr. PRESSLER. Mr. President, August 7, 1981 will mark the 25th anniversary of the Great Plains conservation program. During the last quarter of a century, this program has been one of the most successful and cost-effective programs that the Government has ever established.

In 1956, President Eisenhower signed into law the Great Plains conservation program which was to maintain the soil and water resource base in 10 Great Plains States by helping farmers, ranchers and others install conservation plans. The program offered technical assistance and long-term contractual cost-sharing programs in an effort to improve economic and social stability to the Great Plains area. A study of the number of participants and benefits that have resulted from the program show how successful the program has been.

The Great Plains conservation program serves 518 counties in 10 Great Plains States and over 13,000 ranchers and farmers are assisted annually. In 1980, there were 58,000 contracts covering more than 110 million acres. During the 25-year history of the program, con-

tracts have been written covering half of the eligible land in the 10 States.

In my State of South Dakota, the Great Plains conservation program serves 47 counties, covering most of South Dakota. During the 25 years of the program, 3,755 contracts have been written and over 10 million acres have been under contract. In South Dakota, contracts have been agreed to totaling over $20 million in cost-share obligations under this program.

Through the Great Plains conservation program, many soil and water conservation projects have been funded. Some of the projects funded are windbreaks, terraces, livestock water pipelines and establishing permanent vegetative cover. These projects have done a great deal to reduce erosion and conserve valuable topsoil, but the job is far from complete. Wind erosion continues to be a serious problem in Great Plains States, despite significant gains—in 1981, 12.5 million acres in the Great Plains were damaged by wind erosion. In South Dakota alone, in the 3-month period from March to May 1981, over 1.3 million acres were damaged by wind erosion. Because of this continued erosion problem, the program has been extended until 1991, and it is hoped that further progress can be made during the next 10 years.

Mr. President, I take this opportunity to compliment the people involved in the Great Plains conservation program on their good work during the last 25 years. I would also like to complement the farmers and ranchers who have participated in the program for their efforts to conserve our Nation's most valuable resource—topsoil.●

THE CONSERVATION ETHIC

● Mr. BAUCUS. Mr. President, the Secretary of the U.S. Department of the Interior is the Nation's chief conservation officer. Over 700 million acres of public lands—one-third of the land mass of the United States—fall within his custodial responsibilities. This includes our national parks, wildlife refuges, public rangeland, several wilderness areas, and a vast array of wetlands, rivers, lakes, and streams.

Since the Secretary of the Interior has control over such a vast amount of land, what he thinks, what he does, and what he neglects to do has an enormous impact on public land policy.

Traditionally, Secretaries of the Interior have been strong and outspoken advocates of the conservation ethic. In the past 20 years, for example, we have had the positive leadership of Stewart Udall, Wally Hickel, Rogers Morten, and Cecil Andrus. They shared the same philosophy and sought the same goals. Whatever differences they had were matters of degree, not principle. I think it accurate to say they would have very little to share with Secretary Watt except the same title.

Yet while Secretary Watt's record to date has been bleak, he cannot be accused of not at least knowing the rhetoric of conservation. Indeed, some 14 years ago in a speech given in Dayton, Ohio, the Secretary had the following thoughts:

> Because of carelessness and unconcern, America has experienced the effects of decisions which were made by governmental bodies and private parties without regard or concern as to its effects on the people or on the environment. Roads have been built without consideration of wild animal life or the economic impact on a farmer or town. City dumps and city sewers have been treated like society's illegitimate children and now the effects of our past unconcern is haunting us with water and air pollution problems.
>
> We have learned from experience that some activities under certain circumstances can disrupt the balance of nature and cause unpredictable and irreversible effects upon nature. We can no longer afford to disregard the effects of our activities on nature. Time has run out—we no longer have the resources to spend for single purposes. Our land, water and air must be managed so that their use will bring benefit to man and his environment, both in the long and short run.

Regrettably, the Secretary's record in the past 7 months indicates that he has not paid close attention to his own words. Rather than managing our national lands so that "their use will bring benefits to man and his environment both in the long and short run," we have been treated to a program of consumption at any cost.

This policy of apparent exploitation rather than conservation can be seen by examining a number of the Secretary's recent actions.

An announcement was made on April 6, 1981, that pre-Federal Land Policy and Management Act of 1976 leaseholders on wilderness study areas will no longer be held to a nonimpairment standard as a condition for mineral exploration. Instead a more relaxed no unnecessary or undue degradations standard will be used.

By opening up wilderness study areas to mineral exploration under a standard that allows degradation of the resource, the Secretary may render these areas unsuitable for wilderness designation, thereby forever losing their wilderness value.

In the area of personnel, he fired all Presidential appointees, regardless of experience and ability.

Secretary Watt has launched a broad-based attack on protection of endangered species. His proposed budget reduces funds for endangered species listing, 33 percent; recovery, 20 percent; enforcement, 13 percent; and State acquisition of habitats, 100 percent.

Acquisition programs under the land and water conservation fund were cut 92 percent—by $120 million to $45 million.

The two water resource planning agencies, Water Resources Council and Office of Water Research and Technology, were cut 100 percent to $71.8 million, and replaced by a proposed Office of Water Policy, funded at $2.5 million within the Office of the Secretary.

The Fish and Wildlife Service took a reduction in force of 531 positions in its 5,127 to 4,596—including 194 positions in resource conservation program—from habitat preservation programs.

Secretary Watt has also scuttled the critical issues management system (CIMS) established by Secretary Andrus which was designed to subject all major secretarial actions to intradepartmental review and comment.

Two weeks after taking office, Secretary Watt abolished the Heritage Conservation and Recreation Service (HCRS). The HCRS has, as one of its many duties, the duty to preserve places of historic interest.

On May 21, 1981, Secretary Watt announced his plan to reorganize the Office of Surface Mining. The number of field offices will be cut almost in half, from 42 to 22. All five regional offices will be abolished and replaced with two technical service centers.

It is true the Office of Surface Mining has been a difficult office to deal with in the past. But at the same time, serious concerns are raised when the Secretary can make decisions of such magnitude without the involvement of State governments.

Secretary Watt announced plans to upgrade the existing park concessions at the expense of acquiring new parklands.

While the need to upgrade the existing concessions is real, this need cannot be satisfied at the expense of acquiring more parklands.

Since 1960, visitation to national parks has increased almost 400 percent. During the same period, increase in national park acreage has been only 40 percent. If these trends continue, it is obvious that we will need to acquire more land for national parks.

Professional resource management encompasses an increasingly broad spectrum of disciplines. Yet all these disciplines share the common objective best articulated in the National Wildlife Federation Creed.

> To support sound management of the resources we use, the restoration of the resources we have despoiled, and the safekeeping of significant resources for posterity.

Watt's ideas and aims are not just some different opinions. Rather, they are a conscious effort to directly change decades of legislation, environmental regulations, and philosophy.

Now, I do not wish to go on record as anti-industry or antieconomy or antigrowth. But rather, I feel we should look into and study the many questions dealing with our resource management. Public involvement is critical for solid, long-term environmental decisions.

To run the risk of paraphrasing Secretary Watt, the new conservation requires a political machinery for formulating public policy. This is a task which often involves a difficult choice between conflicting public interest and private demands. The politics of conservation work best when community leaders and interested citizens have an opportunity to openly debate resource management policies with the total environment in mind.

I hope Secretary Watt will come to this realization soon. If not, in his own words from 1967, "unpredictable and irreversible effects" on our environment

may result which we simply cannot afford. If it becomes evident that Secretary Watt cannot come to this realization, I hope President Reagan will have the wisdom and foresight to alter Mr. Watt's, apparently, reckless abandonment of good resource management any way he sees fit.●

THE FUTURE OF DEMOCRACY IN THE PHILIPPINES

● Mr. CRANSTON. Mr. President, I met this week with leaders of the Movement for a Free Philippines, headed by Philippine Senator Raul Manglapus, to discuss their deep concern about the polarization among the Philippine people and about U.S. policy toward the Marcos regime. The leaders of the Free Philippines Movement fear that continued contempt for democracy displayed by Philippine President Ferdinand Marcos—combined with the apparent blindness of the Reagan administration to that contempt—will strengthen radical forces in the Philippines at the expense of moderate reformers.

Moderate Filipinos were especially outraged by the improvised, ill-thought-out toast delivered publicly by Vice President GEORGE BUSH to Marcos several weeks ago. Immediately after Marcos was returned to the Presidency in an election which made a mockery of the democracy, Vice President BUSH declared, "We love your adherence to democratic principle—and to the democratic process."

President Marcos has remained in power over the last 16 years through constitutional amendment and manipulation, imposition of martial law, and politically rigged elections so tightly controlled that in the most recent Presidential campaign, the principal opposition party, the Movement for a Free Philippines, concluded it could not even run a candidate.

While the Reagan administration is on record as favoring a diminution of our public pressure for human rights and democratic freedoms, I believe our national interests require that this policy not be carried to excesses. Remarks like those of Vice President BUSH threaten our interest in a free, strong, and secure Philippines.

Unlimited U.S. backing of Marcos serves to radicalize the many Filipino patriots who are pro-Western and who believe in democracy, but who oppose President Marcos. To date, these moderate forces have resisted calls from leftist extremists to confront Marcos more directly. Our own national security interests obligate us to do what we can to deter such radicalization.

Where will the U.S. Government stand with Marcos' successors and with the Philippine people if we adopt the Reagan administration policy of totally ignoring Marcos' abuses? I fear that such mindless unqualified U.S. support to Marcos could endanger our future relations with the Philippines and possibly place at jeopardy our vital bases at Subic Bay and Clark Airfield.

I also share the concern of Marcos' moderate opponents over the significance of efforts underway to negotiate a United States-Philippine extradition treaty. Our country should be on guard against attempts by Marcos to use this treaty to extradite back to the Philippines leaders of the democratic opposition who have taken refuge in the United States. I share their fears that Marcos may try to press criminal charges that he has lodged against his political opponents. Under such circumstances, it could be left to the discretion of the State Department to bar extradition of Marcos' exiled political opponents back to Philippine prisons. I have communicated to the Reagan administration my deep concern that any extradition treaty must contain ironclad safeguards against political abuses by the Philippine authorities.

I reiterate my concern that our national interests are ill served by rigid ties to dictatorial regimes. Dictators make poor allies and hold little promise of long-term stability. And as Senator Manglapus recently wrote in the New York Times, "rightwing dictatorships, by driving the moderate opposition underground, are the fastest breeders of radical movements." ●

SPINAL CORD RESEARCH

● Mr. HEINZ. Mr. President, I would like to bring to the attention of my colleagues a letter that I recently wrote to Health and Human Services Secretary Dick Schweiker requesting that his Department study and set priorities for research to realize the remarkable promise of recent development in the field of spinal cord regeneration.

Mr. President, this study was previously mandated by Public Law 96-538, title V, section 501.

I ask that the text of my letter to the Secretary of HHS be printed in the RECORD at this point.

The text of the letter is as follows:

Senator John Heinz today called on Health and Human Services Secretary Richard Schweiker to have his department study and prioritize research funding to "realize the remarkable promise of recent developments in the field of spinal cord regeneration."

"The ultimate goal of this research is to give us the ability to restore the injured human spinal cord so that paralyzed patients can regain feeling and motor control over their limbs," Heinz said in a letter to Schweiker.

"This goal has eluded scientists for centuries," he added. "But researchers have recently discovered startling new indications which suggest the key to regeneration lies in the spinal column where the nervous system has shown evidence of attempts to restore itself."

Heinz mentioned his letter to Schweiker at a cornerstone laying ceremony for the new John Heinz Institute for Rehabilitation Medicine. The institute, a project undertaken by the community-based Allied Services organization, was named in honor of the senator because of his longtime involvement in efforts to improve the quality of life for the handicapped.

He noted in his letter to Schweiker that the last Congress mandated the study and a five-year plan on how to marshal the resources for this research. Currently some 200,000 Americans are confined to wheelchairs as a result of suffering spinal cord injuries and another 10,000 people are expected to swell their ranks in 1981.

Further emphasizing the importance of this study, Heinz said that the cost of treatment and care for a person with a spinal cord injury is a devastating expense. The life-time cost for one victim, he said, can amount to more than half a million dollars.

"While the research task of this study is enormous, the promise holds is immeasurable," he said. "We must support this vital research that will someday make a tremendous difference in the lives of thousands of Americans."●

U.S. DEFENSE POLICY: THE NEED FOR SUBSTANTIVE POLICY REVIEW

● Mr. GARN. Mr. President, the Reagan administration has committed itself to revitalize the strength of our Nation's Armed Forces and to restore the health of our country's economy. Much progress has been made toward achieving these objectives during the past several months.

These challenges entail a good many difficult choices and decisions. A substantive and thoughtful public review of the issues involved is an essential part of the effort to maintain strong bipartisan political support for the initiatives undertaken by President Reagan. Two recent contributions to this review, the CBS–TV five-part special on defense and James Fallows' book, "National Defense," falls short in measuring up to the standard we should seek in conducting this debate.

Mr. President, the August Armed Forces Journal includes two articles which review the CBS and Fallows' analyses. The first of these articles, "Ripples and Waves in the National Security Tidal Basin," by Mr. Benjamin F. Schemmer, is a hard-hitting, no-nonsense critique which deserves widespread public distribution in order to counter the distorted picture being painted in some quarters concerning our Nation's defense policy. Mr. Schemmer articulates a view which is characterized by a favorite theme of mine, namely, "while one is entitled to one's own opinion, one is not entitled to one's own facts."

A second article, "The Pen vs. the Tube: Fallows vs. CBS," by R. James Woolsey picks up on the danger we face in this country by an overreliance on TV as the most important source of information on national policy questions. This certainly is distressing, given the shallow and misleading quality of the CBS program.

Mr. President, I ask that these articles from the Armed Forces Journal be printed in the RECORD, and I commend them to the attention of my colleagues.

The articles are as follows:

RIPPLES AND WAVES IN THE NATIONAL SECURITY TIDAL BASIN

(By Benjamin F. Schemmer)

The hot topic in American journalism today is "national defense." As Ronald Reagan and Defense Secretary Caspar Weinberger begin to "rearm America," our TV sets, newspaper op-ed pages, and favorite magazines warn us that the trillion and a half dollars they plan to spend defending us over the next five years won't buy much more security because the Pentagon inevitably will foul things up.

That's true. Just like our lawyers, our stockbrokers, and (less occasionally) our

doctors. (I'm still trying not to pay for a set of chest X-rays which a local hospital took when I went to the emergency ward one day for a bad gash in my knee.) A trillion and a half dollars is a lot of money, and it makes good copy at a time when the public wonders if new tanks will come only at the expense of social security and welfare checks; it makes even better copy when the tanks and planes and submarines don't quite work as advertised, but cost from a million to a billion dollars each.

Defense has become such a popular topic that CBS TV News late in June devoted an unprecedented five consecutive, prime-time, one-hour specials to the subject.

Regretfully, many of the pundits bringing you all this insight into how well the President and his generals are going to defend you don't know their ass from their elbow. Take Dan Rather's "hype" on CBS TV Evening News on Wednesday, June 17th for Richard Threlkeld's "complete investigation" of the military/industrial complex that CBS aired at 10 o'clock that night. He showed a dramatic clip of the Air Force's F–16 fighter with this voice-over: "The planes used by the Israelis to bomb Iraq were US F–16s, developed by General Dynamics. They are widely acknowledged to be the world's best fighter-bombers; they are also the most expensive, technologically sophisticated and requiring massive maintenance."

Airmen the world over must be wondering whom CBS polled to conclude that the F–16 is the "world's best fighter-bomber"—good though it is. Dispassionate pilots debate such issues to no end, and even General Dynamics has never flaunted such a claim for the F–16—although it may now that Dan Rather has pronounced it Gospel.

CBS VERSUS THE FACTS

But while that description of the F–16 is debatable, CBS' flat statement that it is also the world's "most expensive" fighter-bomber is not: it is just plain wrong. In fact, the F–16 may be the world's cheapest fighter-bomber. (Northrop's F–5 costs us less, but the US doesn't use it except in small numbers to simulate Soviet Mig-21s for realistic air-to-air training.) An F–16 bought in this year's defense budget costs about $14-million in so-called fly-away prices (without spare parts or amortizing research and development costs); an Air Force F–15 costs about $28-million; the Navy's F–18 costs about $34-million; the British-German Tornado (its embassies here claim) costs about $23-million.[1]

CBS must have worked hard to make that error: ones that far off base don't come easy. I can't think of anyone anywhere in the world who would call the F–16 the world's "most expensive" fighter-bomber.

CBS was right on, however, when it said the F–16 is "technologically sophisticated." That's one reason it performs so well. Every time it (and the F–15 and F–18) flew at the Paris Air Show in June (usually just before or after the French demonstrated their new Mirage 2000 and Mirage 4000 delta-wing fighters), the president of Dassault Aviation must have turned to his chief engineer and asked him, "What's wrong with you?" (As Time magazine's aerospace specialist, Jerry Hannifin, said of the Mirage when we watched it mush around in wide, high-speed turns one day, "I think the French have finally perfected the F–102." Hannifin was referring to the delta-wing US interceptor which first flew in 1953 but is now being used for target practice.)

[1] Even adding inflation projected for the years ahead, the cost of the US planes will decrease from 23 percent to 50 percent because of "learning curve" effects as more are built and, in some cases, more efficient production rates are acheived.

As for the F–16's "massive maintenance," the plane had the third lowest maintenance man hours per flight hour of all eight USAF first line fighters or bombers last year. And that was its first year of operational use. Its design goal is 25 maintenance man hours per flight hour—once the plane and its spare parts pipeline are "mature": in its first year of operational use ending last September 30th, the F–16 beat that goal by 17 percent.

So why did CBS use the description, "massive maintenance"? Was it to back up Dan Rather's contention, when he introduced Threlkeld's "complete investigation" that what is "disturbing" about the "one-point-three trillion dollars" we will spend to defend ourselves in the next five years, "besides the cost, is that many of the weapons we're already building don't work as well as they're supposed to"?

THE JAIL CELL DOGFIGHTS

Later in the broadcast, Threlkeld cited results of the Air Force/Navy "ACEVAL" tests at Nellis Air Force Base, NV, six years ago to contend that "high technology is not much help" in the air-to-air combat arena, suggesting that we should be aiming for "quantity over quality." He called ACEVAL "the most realistic dogfight in American history."

That's not what the pilots flying those tests said of it. The final chart of their briefing said simply, "ACEVAL Bottom Line: The tests did not achieve the objective of quantifying the influence of numbers versus performance on the outcome of the engagements." In fact, the pilots objected repeatedly and strenuously that the dogfights were limited to day-only visual flight rules, thus totally negating the impact of all-weather radar and weaponry which the "technologically sophisticated" F–15, F–14, and F–18 carry, and which the F–16 will. (At no time in the tests, for instance, was the F–14 ever allowed to use the full capability of its long-range radar, around which the plane is designed; or even turn it on until it got within the "ring" for close-in engagements. Thus, its long-range Phoenix missiles [which account for much of the plane's unique capabilities and cost] were of no advantage whatsoever. To the contrary, they became dead weight, degrading the plane's ACEVAL performance.)

The ACEVAL pilots also objected because they were not allowed to "engage" their opponents until the "enemy" had been visually identified (a rule of engagement that Robert McNamara and Lyndon Johnson imposed on US aircrews flying over North Vietnam, and one reason the US spent three years, 22 billion dollars, and 3,091 lives—after the Paris peace talks began—to bring home 566 American prisoners of war from the dungeons of Hanoi.) The visual identification requirement further nullified any advantage of the technology that differentiates planes like the F–14, F–15, and F–16 from ones like the F–5 and Mirage 2000; their radars were blinded and their long-range missiles rendered inert by the very rules under which the planes were tested against "small, simple, and cheap" ones like the F–5.

Finally, Threlkeld failed or forgot to note, the Nellis tests were flown literally over the runways from which the planes took off—thus the extra range built into America's "sophisticated" fighter-bombers counted for naught.

THE JAIL CELL TESTS

"The most realistic dog fight in American history"? I doubt that CBS could produce one pilot who flew those tests who would do much more than puke at the statement. The most common way they describe ACEVAL is that it was like trying to evaluate a pistol against a rifle by firing them within the confines of a jail cell.

CBS' widely touted in-depth study of your national security rates about a B+ for theater, a D for journalism, and an F for accuracy. (Time magazine said it got 30 percent of the viewing audience, "a virtually unheard of performance for a documentary." It hailed the CBS series as "thoughtful" and "incisive." That's cause for concern, since a separate Time article in the same issue noted that "more people [71 percent] believe that network television does a better job of providing accurate, unbiased news than anyone else," and that "a sizable portion of the television-news audience reads no newspapers or magazines and learns what little it knows of events from television alone.")

Toward the close of Richard Threlkeld's "investigation" that evening into horror stories about the way the Pentagon buys weapons, he told us, "But we couldn't find a single instance of the Pentagon ever recommending canceling one of its programs!"

THEY COULDN'T FIND WHAT?

Who does CBS use for "investigators"? Doesn't the network have anyone run even a superficial check of its "facts"? (CBS' own regular Pentagon correspondent, Ike Pappas, a knowledgeable reporter, never even appeared in the series.) One phone call from Threlkeld or his writers to even the most obvious sources would have produced a top-of-the-head list of scores of major programs the Pentagon has cancelled in recent years (on its own, not just because of Congressional or White House objections)—the Army's Cheyenne helicopter, its IMAAWS Infantry Manportable Anti Tank Assault Weapons System (right after contracts to develop it were awarded last fall), its Roland air defense missile (a decision Harold Brown made last fall, but which Caspar Weinberger has since reversed); the Navy's F-111B, Captor mine (another Brown decision reversed by Weinberger), and the Marine Corps' AV–8B jump jet (a Brown decision which Congress overruled three years running); the Air Force's B–1 (Brown recommended that Carter kill it in favor of air launched cruise missiles), Medium Range Mobile Ballistic Missile, Manned Orbiting Laboratory, KC–10 cargo tankers (a Brown decision overruled by Weinberger), or A–10 close support planes (a Brown decision overruled by Congress and later by Weinberger).

CBS could have done an entire program on the money the Pentagon has spent developing weapons which it later decided to cancel outright or quit buying far earlier than expected. That subject would have been worthy of comment: One reason defense costs so much is that under tight defense budgets, there has been little "constancy of purposes" in the way we buy things. Even when weapons work as advertised (the F–16, Roland, KC–10, our nuclear subs, and the AV–8B are but a few examples), we buy so few of them at such low productions rates or abort the projects so prematurely that the individual cost for what few weapons do reach the field soars higher than the apogee of some satellites.

CBS' special series on "Defense of the US" was unprecedented: Never has a network invested so much prime time to ruin its own reputation. To some, it was ironic that CBS set its new standard for defense reporting right after naming former Defense Secretary Harold Brown to its board of directors: to others, it was poetic justice. He must be catatonic.

THE NEW GURUS ON NATIONAL DEFENSE

But CBS has no monopoly on bum dope. You'll be reading a lot of it about national defense in the months ahead: and some of the worst dope will come from people who know better, but are just as loose with their "facts."

Retiring Comptroller General Elmer Staats said in a widely quoted swan song early this year that the Army's new M–1 Abrams tank

was to have cost $507,000 in 1972, but "now costs $2.8-million." Priced on the same basis as the 1972 number, the M-1 now costs $568,900 per tank. Staats was off by a factor of five—and he was Congress' "watchdog" on government procurement! (When he announced with great fanfare some years ago a new "uniform cost accounting system" for government contractors, we asked Staats what it would cost to implement the system, and what it would save the taxpayer. Neither he nor his staff had an answer to either question: apparently they never considered those issues.)

Former CIA Director Stansfield Turner wrote in the New York Times Magazine recently on "Why We Shouldn't Build the M-X." It was a provocative, thoughtful piece, well written—and punctuated with gross errors. Turner said, for example, that building bases for the M-X would "require, according to some estimates, 40 percent of the country's total cement production for three years." He must have gotten his numbers from the same sources who persuaded him in mid-1978 that the Shah of Iran would remain in power for another decade. Turner was off by a factor of eighty. The largest number I can track down that anyone has ever estimated for M-X cement needs is about one-half of one percent of US production. Turner is writing a book, the Times told us, on "military strategy." It ought to be hilarious.

But the subject is not funny.

President Jimmy Carter's chief speech writer has just come out with a widely quoted and now best-selling book called National Defense. Like so much of the rash of "reporting" now making print on national security matters, James Fallows fails to heed an admonition which Joe Califano cites in his book, Governing America, to those who would try to understand American politics. Califano cautions: "Try to tell the difference between tides, waves and ripples."

Most of Fallows' book is about a lot of ripples. His horror stories of how the Pentagon screwed up its last five or six two-car funerals (the M-16 rifle, F-16 fighter, etc.) are fascinating, engagingly written—but not new, or even that important.

TIDES AND WAVES VS. RIPPLES

It's the tides and waves that should concern America.

How can we get our allies to contribute a proportionate share of their national treasures to their own defense in Western Europe? If Japan refuses to increase its defense spending above nine-tenths of one percent of its gross national product, while we spend over five percent of ours helping to guarantee Japan's petroleum lifeline, would Japan consider an alternative? Like investing 4 percent of its gross national product finding a way to gasify or liquefy coal economically (something Congress has authorized $81 billion in capital investment for us to try doing, and for which it's already appropriated $19 billion). Japan could then use all those empty ships returning from delivering millions of Datsuns to America to haul coal back to Japan—so we can buy it back as synthetic coal liquids. If the U.S. really wants to sell China arms so it can continue tying down 47 Soviet divisions along its border, but without risk of having Sinkiang Province bumped off one dark night, why not ask China—as a friendly quid pro quo—to recognize South Korea—and thus let us redeploy some of the forces now tied down there to where they could better protect our Persian Gulf oil supplies?

Those are the kinds of national defense issues we should expect Presidential speech writers to be addressing; those are the kinds of strategic initiatives which could ease our defense burden by multi-billions of dollars. Fallows doesn't touch on them; instead, he assaults us with relative trivia—for which his publisher wants you to pay six cents a page.

Fallows' indictment of the "ripples" which the Pentagon's way of doing business has caused in our national defense (valid though much of it is) would ring truer had he given equal time to the tidal waves which micromanagement by the White House and Congress have caused (and continue to cause) in national security affairs. A President should be concerned about multi-billion dollar issues like M-X vs. Trident subs, or the B-1 vs. cruise missile—issues where survival is at stake. But Fallows doesn't tell us of the years his boss, Jimmy Carter, spent micromanaging a $6½ million defense issue in a $40 million international flap—all over a little commercial air terminal in Iceland. Accounts vary, even among those closest to the fiasco, but they add up to a story like this.

CARTER'S ICELANDIC DIPLOMACY

Soon after Carter took office and asked NATO's 15 nations to contribute more to their common defense, Carter turned down a $6½-million Pentagon request to build a civil air terminal at Keflavik, Iceland—so that nation's civil air carrier, Icelandic Airways, wouldn't have to process its passengers through the small (and slightly dingy) U.S. Navy terminal there. The Icelanders, he objected, could build their own terminal or continue using ours: If it was good enough for the U.S. Navy, it ought to be good enough for the Icelanders.

Carter scoffed at arguments that the Icelanders have a deep-rooted and strong disinclination, to say the least, to things military; couldn't afford the air terminal out of their meager $600-million annual government budget; represented one of NATO's most critical allies (because of its location right in the center of the Greenland-Iceland-United Kingdom gap, through which Russia's Northern Fleet and Backfire bombers would have to pass before they could interdict the trans-Atlantic resupply of NATO); and had not asked for U.S. aid in a long, long time. Pentagon and State Department planners considered the $6½-million air terminal a bargain in international good will, and a way of demonstrating to the Icelanders that their reluctant membership in NATO had its peacetime dividends too. (Not inconsequentially, it would also let the Navy improve security at Keflavik, which was about to become an increasingly sensitive base. NATO's first AWACS Airborne Warning and Control System planes would be deployed there, and scores of long range anti-submarine patrol planes would be operating from Keflavik in periods of tension.)

Defense Secretary Harold Brown waited almost a year and then appealed to Carter to let the civil air terminal go ahead; its cost, he reported painfully, would now be $11½-million; the Icelanders had come up with a better design, or whatever. Carter wrote on this appeal something like, "I've already said No!" Brown's NATO advisors persuaded Brown to go back to the President still again; by the time he did, the terminal's cost was up to $23-million. Carter reacted quickly: "No!" During Carter's last months in office, Brown resubmitted the proposal for a fourth time; the cost had grown to almost $40-million. To the Pentagon's surprise, Carter approved the project with a hand-scrawled "OK," signed, "JC." But he told one of his military assistants: "Make sure Harold understands that I'm still against this. The only reason I'm approving it is that he's never argued with me four times on the same issue before, so I guess it must be important to him."

That's a weird way to decide important national security issues. Writing so pejoratively about the way the Pentagon handles them, Fallows might have shared with his readers some insight on what happens when those decisions reached the desk of the President he served as chief speech writer.

THE OAKLAND RAIDERS AUDITORS

Like CBS, Fallows spends a lot of time indicting the F-16 for its sophistication and complexity, along with its F-15 "high cost" Air Force counterpart and its sister fighters in the Navy, the F-14 and F-18. Fallows relies openly (as CBS seems to have done, without saying so) for much of his insight into the complex problem of tactical air warfare on a Pentagon document prepared by a Defense Department analyst named Franklin C. Spinney, formally entitled "Defense Facts of Life"—a 56-page single-spaced tome, with 87 briefing charts attached, whose thesis is summarized: "The evidence presented reveals that:

"Our strategy of pursuing ever increasing technical complexity and sophistication has made high technology solutions and combat readiness mutually exclusive."

Fallows apparently never asked Spinney's Pentagon boss for his view of all Spinney's "facts": Former Assistant Defense Secretary Russell Murray II might have told Fallows that one of the big mistakes he made between 1977 and early 1981 was not heeding the advice of a deputy who told him he ought to listen to the briefing Spinney was giving on his behalf throughout the Pentagon to (as Spinney himself put it) "anyone who would listen." A few weeks before he left office, Murray now acknowledges, he finally listened to Spinney's briefing. He was slightly chagrined. Many, perhaps most, of Spinney's facts were solid; but a great many of them, Murray says, were "irrelevant"; some of them didn't support the conclusions drawn; other equally important facts might have supported dramatically different conclusions.

Spinney gave his briefing a few weeks ago to the four star officer who commands the U.S. Air Force Tactical Air Command, General Wilbur Creech. Creech told him that the four-hour briefing was fascinating and contained lots of useful data; but, Creech said, he wasn't quite sure how it related to his real world problem of trying to field a fighter-bomber force that could cope with a Soviet air threat which outnumbers NATO Europe 2,800 to 1,500 in combat airplanes rapidly becoming as modern as ours. Spinney apparently didn't know either; he told Creech, in effect, "That's your problem, General."

To Air Force generals, comments like that aren't very funny. If they could buy combat aircraft as fast as the Soviets have been producing them in recent years (one every 10 hours, compared with a new Air Force plane once every 70 hours), they could re-equip the United States Air Force in Europe every seven months, or completely modernize their entire active inventory every 18 months.

Creech cites an analogy to the Spinney report: cost analysts looking at the Oakland Raiders football team. They would tell the coach and owner: "I am not responsible for war-fighting strategy; you are. I am telling you, these are the cost trends." Cost analysts looking at the Raiders would likely say to the owner, "Get rid of your quarterback and wide receivers, and buy more guards." Were the owner to answer, as might be expected, "But I can't win in this league with more guards," an analyst would tell him: "Don't bother me with those kinds of details; you ought to get rid of the quarterback and your wide receivers—they cost too much and break too often."

"SIMPLE" VS. "COMPLEX"

But whatever Spinney's prescription is, Fallows would have the United States design its fighter forces around it—simple, cheap, non-radar carrying planes like the Korean War F-86, planes the U.S. could buy in vast quantities and fly often because they are

simple to maintain and thus generate more combat flights than "hangar queens" like the F–15.

Spinney and Fallows ought to read a little more history. The F–86 had an accident rate which varied from eight to 26 times higher than today's F–15: In its first seven years of use, the Air Force lost 1,972 of them—just in accidents. (The "complex" F–15, which incidentally has 188 fewer "black boxes" than the plane it is replacing, has the lowest accident rate of any fighter ever produced, and the "sophisticated" F–16 has the lowest accident rate of any single engine fighter ever produced.) In one single year, 1954, the Air Force lost 437 F–86s—one and a half a day—because pilots couldn't bring the simple little Mother down to a safe landing: that's one-third of all the F–16s and about half of all the F–15s the Air Force hopes to buy, ever. That year the F–86 had an accident rate of 61 planes lost for every 100,000 hours flown; the F–15 averages 5.18. (For three years in a row, the Air Force lost more than one F–86 a day in major accidents.)

As for "sortie rates" (how many missions any one plane can fly in a given day or month), Spinney and Fallows (and the other "fighter Mafia" analysts they both quote widely, like former Pentagon whiz kid Pierre Sprey) would really have the Air Force go back to World War II's propeller-driven P–47 Thunderbolts or P–51 Mustangs, not even the Korean War F–86 jet. A fascinating thesis—simple is good, more simple is better. The fact is that F–15s regularly fly two to three sorties per plane per day in realistic wartime "surge" exercises in Germany, in weather that grounds $45-million civil air liners. The highest World War II sortie rate which Europe's 9th Tactical Air Force P–51s and P–47s ever attained was less than one mission per plane per day. During the Battle of the Bulge, when Omar Bradley and George Patton prayed for all the air support they could get, 9th Air Force averaged only about one half a sortie per plane per day. At one juncture in the war, it flew barely one-tenth of a sortie per plane per day; at another juncture, the planes didn't get off the ground for nine days in a row.

One reason those simple planes flew so few sorties is that the weather was bad: the P–51s ad P–47s couldn't take off, couldn't find their targets; or couldn't return safely to base. Bad weather rendered them inert. Spinney and Sprey and Fallows forget one thing that "sophisticated" airplanes have going for them: their radars and complex avionics let them take off, land, and attack targets when the weather is bad. The battlefields of western Europe (and, as Desert One proved, even ones in the Persian Gulf) are not noted for their idyllic climates: few Germans sport sunburns; most Iranians have complexions scarred by desert wind and dust or savage winters.

UBIQUITOUS JOURNALISM

Like plasmodial slime mold, the impressions created by all of this new defense "reporting" will stick around for a long time. Born of the same kind of fictional alchemy that created the monster Frankenstein, Turner's cement estimate, for instance, is already taking on a life of its own. An article in the June 22nd issue of New York magazine, "$1.5 Trillion for Defense?" reads like a seven-page summary of Fallows' book, with a few new facts. One of them reads in full, "Construction of the MX complex would tie up 40 percent of the nation's concrete capacity for three years." What the hell: if Stansfield Turner said so, it must be true. (Not that many Americans, after all, are aware that Turner's four years as CIA Director almost made the phrase "American intelligence" the biggest contradiction in the English language.) New York didn't credit Turner with the cement estimate, so investigative reporters looking into the Pentagon's corner on the cement market now have two hard sources to cite. The Washington Post sometimes doesn't even require one.

The New York article, like a similar Texas Monthly June feature on the F–16 ("The Plan the Pentagon Couldn't Stop"), reads straight Fallows. It's very attractively laid out. A big sell line across one two-page spread tells you, ". . . The top military brass likes sophisticated weapons, but technology has become the new Maginot line . . ." Someone named Michael Kramer by-lined the New York piece; a Michael Ennis wrote the Texas Monthly one. Neither magazine identified who they are, but their articles read as if Fallows has cloned himself. Fallows is ubiquitous. A big interview in a recent issue of People magazine ("Is the Reagan Defense Boom a Bust? It's flying too high on Technolgy, warns Jim Fallows"); a feature article in the Boston Globe excerpts his book; Atlantic Monthly ("America's High Tech Weaponry") and Washington Monthly—all have helped turn his modest work into the Holy Writ. (Fallows is Washington editor of the former and a contributing editor to the latter.) The only thing surer now than getting your IRS 1040 form on time is that, like it or not, James Fallows' National Defense is going to be quoted for a long time. It just made the best-seller list.

I've never met the man, but I wish my publisher would hire him as an ad salesman: the guy really knows how to type books. (Guess what's first on the New York "Defense Reading List" that ends its June 22nd feature? You got it: "The very best overall critique of America's defense posture is National Defense by James Fallows . . .")

Fallows isn't the only new Moses of the defense world whose tablets you'll be reading for months to come. Former Pentagon analyst Pierre Sprey, father of the simple little airplane (the lightweight fighter that became the "complex" F–16) and mastermind of the close support A–10 (which the Air Force is now trying to fix so it can operate in bad weather), was quoted eight times in the New York article and 19 times in Texas Monthly.

AND NOW, AN OBJECTIVE VIEW . . .

Editors who don't have time to bog down in all those facts that Fallows, Turner et al. are throwing at them will owe a special debt to the Center for Defense Information, a tax exempt project of the "Fund for Peace." It's just what they need if they want to editorialize about all this money Reagan is stacking up on top of Ground Zero (Turner used all the cement, so we'll have to make the National Military Command Center invulnerable by hiding it underneath a million dollar bills). A 12-page newsletter it circulated late in June had this headline across the front page: "Military Budget Up $80 Billion in Two Years." Just below that was a box summarizing the facts inside: "The first paragraph [bulleted, to get your attention] read in full: "The Department of Defense is embarking on a vast spending spree of over $1.5-Trillion in the next five years. Most of this money will not be spent on the defense of the U.S." Although I haven't read every word of the newsletter yet (I'm out of No-Doz), I honestly could not find, after scanning it carefully three times what the Center for Defense Information thinks the Pentagon will spend that money for. But the boxes on its inside pages give you a quick feel for its analysis: "Frightening Waste in Defense" and "Runaway Costs" decorate page three; "Vast Opportunities for Savings" tops page 5; CDI's "List of Unjustified Nuclear Weapons Programs" grabs you on page 7 (a modest $12.5-billion); "Future Economic Dangers," "The Wrong Kind of Navy," "Damaging the Economy," and "Need for Arms Limitation" round out the analysis.

If Ben Bradlee repackages the thing right, he could have another Pulitzer prize on his hands. The only thing I could find missing from the document was one digit about how Russian forces have changed in the past decade.

Today's "production lead times" mean that it now takes from 18 months to two years, once an order is placed, to get the first new simple weapon off the assembly line and on its way to the troops. But long before the new Reagan defense budgets produce their first new bolt, CBS and Fallows are creating the subconscious impression that Caspar Weinberger ordered the wrong one, too many of them, and has run out of warehouses to store the ones sent him last week. Americans are likely to soon wonder, "We've spent all this money beefing up our armed forces. Isn't it time to throw our money down some other rat hole?" Your daily newspapers really haven't told you that the first new money Weinberger asked for last January, a $3.04-billion "supplemental" for the Fiscal Year 1981 defense budget now underway, still hasn't been fully approved by Congress.

CBS, Stanfield Turner, Pierre Sprey, Elmer Staats, and James Fallows are just a few of the "authorities" reporting to you today on national defense issues who would have you believe that war now boils down to an issue of quantity versus quality, and that to win one now, we have only to buy more less expensive weapons.

They don't tell you where we will find or how we will pay all the extra pilots needed to fly all those extra simple airplanes, or where we will find the airfields to park them in Western Europe, or that bachelor quarters for an F–86 pilot cost just as much as for an F–15 pilot.

They tell you horror tales of the F–15's and F–16's engine reliability and maintenance problems: they don't tell you that those problems with the "complex" F–100 have been reduced by a factor of two to 10 in the past two years. (The F–100 engine is complex: but at eight-to-one, it has the highest thrust-to-weight ratio of any aircraft engine in the world, one reason the planes it powers perform so well.) They tell you that on an average day in 1978, 44 percent of the Air Force's F–15s were not fully ready for combat. They don't tell you that under the tight defense budgets of recent years, no one budgeted enough spare parts for them, while Congress cut much of the spares support which the Air Force did request; they don't tell you that today, F–15s are fully mission capable over 64 percent of the time, or that only one Air Force plane now has a higher combat readiness rate, or that the F–15 is now more combat ready than the fighter it replaces.

They don't tell you that one reason Navy officers prefer to hunt Soviet submarines with the costly DD–964 destroyer is that the much simpler little FFG–7 frigate can't carry a sonar big enough to do much more than locate schools of fish. They don't tell you that nuclear ballistic missile submarines cost a lot, for one thing, because the 41 boats were built to last; they just finished their 2,000th combat patrol, almost 50 each totaling more than 100,000 days—275 years—under water since 1981. They don't tell you that many skipers of those boats will tell you they have never been detected by a Soviet submarine, surface ship, or aircraft, their boats cost a lot because they are also very quiet, virtually undetectable; their Russian counterparts don't cost as much to build, but trail "signatures" about as silent or invisible as four-alarm fires.

Fallows, Turner, and CBS give you a simplistic view of an enormously complicated problem in a world that is uncertain, uneasy, and unpredictable. When confronted by extremes, Aristotle once wrote,

the prudent man chooses the middle ground.

CBS, Turner, and Fallows have not.

You deserve to be better informed on trillion and a half dollar issues like national defense.

THE PEN VERSUS THE TUBES FALLOWS VERSUS CBS

(By R. James Woolsey)

Two early summer attempts to interpret the entire U.S. defense effort have been widely acclaimed. In five hours of prime time recently, CBS News gave us a visual cornucopia of nuclear explosions, a devastated Omaha, military maneuvers, carrier aircraft operations, and goose-stepping Russians. At about the same time, *Atlantic* editor James Fallows published a short volume titled merely *National Defense*. Since neither Fallows nor the CBS producers are defense specialists, we thus have the elements of a head-to-head competition between the best of what generalists in written journalism and in the electronic media can produce of an overall look at defense issues. After you spend several hours with CBS and several with Fallows' book—to amend slightly Sen. Howard Baker's famous question—what do you know and why do you know it?

CBS gave us five installments, carrying—more or less—the following five messages: (1) nuclear war here would be awful; (2) nuclear war would be awful in Europe too; (3) it's not clear whether the people in the All-Volunteer Force are smart enough; (4) the Navy's new F–18 aircraft is expensive; and (5) the Russians are neither very aggressive nor 10 feet tall.

In each case the issues discussed were heavily driven by the visual demands of television. For example, in the first installment much time was spent on Omaha's simulated destruction (by a particularly large nuclear weapon—for maximum effect) and on the agony of a decision whether to launch nuclear weapons on warning. To illustrate such matters one can show films of burning dolls and of earnest officers going through drills. But the questions that are now central in government decision-making about nuclear issues— e.g., whether to build, or how to base, the M–X missile and the B–1 bomber in order to make our forces able to survive a Soviet strike—were barely mentioned or ignored.

Similarly, nearly an hour was spent on the Navy's F–18 aircraft with virtually no mention being made of its role as a Marine Corps fighter, what alternatives the Marines would have if it were cancelled, or the role of Marine aviation. In recent years it has never been planned for the F–18 to fill more than one-quarter of the Navy's fighter slots (now it is not planned for that role at all)—it is to be a Navy attack aircraft (i.e., carrying air-to-ground weapons) as well as a Marine fighter, and much of the controversy about it recently has centered on its ability to fill these two rather different roles and the alternatives available if it is not built.

In a 90-second evening news slot, one can understand avoiding many major issues in order to focus on a tangential but hot item of news, but if you are spending an hour on nuclear war or on the F–18, you have to work some to avoid the major questions that decision makers are actually addressing.

What was up? Was CBS perceiving and communicating with us about underlying vital issues unknown to those clods in government? I think not. Rather, I think it is clear that the CBS effort was primarily one of consciousness-raising, not of providing information. The producers wanted us to have a heightened feeling about such things as the horror of nuclear war and the great cost of new weapons, and the skillful visual montages were constructed to those ends. Only the manpower installment didn't have a particular therapeutic frame of mind toward which it was trying to steer us, and this made it the most balanced of the five.

Fallows' objective is different. He takes us, explicitly, on his own recent journey of discovery of the defense world. He says clearly that he has reached some tentative conclusions, but he is normally careful to spell out counter-arguments against his positions when he finds them reasonable. His most fascinating chapter, ironically titled "Employees," is as fine a piece of writing on the military manpower issue—indeed on any contemporary defense issue—as I've ever seen. This chapter must be equally troubling to the 1960s-vintage liberal who denigrates the role and contribution of people in military service and to the free-market economist who cleaves to the view that military service is a job like any other, and that military people merely respond to market economic forces.

Fallows' two case studies of weapon systems gone awry through needless complexity are compelling. The M–16 rifle story, as originally uncovered and told by the House Armed Services Investigating Subcommittee (no doves there), is indeed a crime. And of all the things a lightweight fighter such as the F–16 doesn't need, nuclear attack capability should head the list. But Fallows draws, I think, too grand a set of conclusions from his examination of defense technology—e.g., that ICBMs aren't today very accurate, that smaller/simpler/cheaper weapons, bought in large numbers, are almost always the best choice.

There are a number of important jobs the military has to be able to do—to shoot down Soviet Backfire bombers, e.g., or track new and quiet Soviet submarines—for which equipment that can perform sophisticated tasks is, unfortunately, essential. (With proper use of modern electronics we can, if we handle it right, have sophisticated capability that is simple to operate and maintain, however.) What is crucial is to have weapons that can be used flexibly and can be adapted to innovative uses by imaginative commanders. Certainly having large numbers of weapons helps—but even in the case of tactical aircraft, it is far from true that simplicity and large numbers are a panacea. If you give up on having capable radars and avionics, as Fallows seems to suggest, you're not going to be able to fly and fight in bad weather, for example. Europe, and much of the rest of the world, has lengthly periods in which decent flying weather is very rare.

But it is true that we have overindulged our appetite for theoretical technical perfection on more than one occasion. It's a useful debate and Fallows joins it reasonably. He says why he reaches his conclusions and lets the readers, indeed encourages them, toward mental argument with the author.

Is this a necessary difference between electronic and writing journalism? Does television somehow inherently regard us merely as subjects whose emotions need to be torqued, while only a writer can regard us as an intellectual companion? Maybe not, but CBS News—in what must have been a carefully considered decision—settled upon the role of operating a sort of electronic Esalen Institute. After reading Fallows you want to get together with him to compliment him on some things and argue with him on others. After seeing the CBS series, on the other hand, you shrug and walk away—you wouldn't try a dialogue, they'd just figure you were, like, uptight—too, you know, defensive.●

BALONEY

● Mr. PACKWOOD. Mr. President, the Wall Street Journal ran an article last week about working women.

At first glance, the article would seem to present a picture of some of the unique problems faced by women in the work force.

However, I find the underlying message in this article very disturbing indeed.

The day after this article was published, Ms. Judy Mann, columnist for the Washington Post, presented a commentary which, I believe, gets right to the heart of the issue. She said, in a word, "Baloney."

I ask that these articles be printed in the RECORD and I urge my colleagues to give serious consideration to this excellent commentary.

The articles are as follows:

[From the Wall Street Journal, July 20, 1981]

MATERNITY LEAVE: FIRMS ARE DISRUPTED BY WAVE OF PREGNANCY AT THE MANAGER LEVEL

(By Earl C. Gottschalk, Jr.)

LOS ANGELES.—When Lynn Redgrave became pregnant some months ago, it presented delicate problems for the "House Calls" CBS comedy series, in which she portrays a single-woman administrator.

To preserve the plot and the ratings, it was felt, her condition had to be concealed from viewers. So the TV cameras focused on her face a lot, and at other times she carried an oversized medical chart or sat behind an especially high table. Filming of the series was rushed to completion before she gave birth.

Pregancies among key performers are causing an increasing problem these days—and not just on the stage and screen. What happened to the 38-year-old Miss Redgrave at MCA's Universal Studios is also happening in the real world of banks, retailers, computer companies and law firms—outfits that can't cover up the resulting problems with cinematic tricks.

The problems are more widespread these days because more women hold high-level jobs and because pregnancies are increasing among those over 30. In the past eight years, the number of women over 30 having a child has almost doubled, to 104,000 from 57,000. The rate of over-30 pregnancy is even greater among highly educated women who live in metropolitan areas, says Peter Morrison, a demographer at Rand Corp., the think tank.

EPIDEMIC PROPORTIONS

In cities like Los Angeles, Washington and New York, it seems that "almost every married woman executive in her 30s is either pregnant or planning to be," says Beth Olesky, a vice president of Russell Reynolds Associates, a New York executive-recruiting firm.

Bernardo Handszer, a New York obstetrician, says that expectant mothers in their mid-30s were unusual eight years ago but that they make up much of his practice today. And in Beverely Hills, Calif., Jane Fonda's Workout, an exercise studio, says that its classes for expectant mothers are filled with businesswomen in their 30s.

All this is causing some turmoil at companies where at large number of women in their 30s have made their way into important positions, says Mark Lipis, an employe-relations consultant for William M. Mercer Inc. in Los Angeles. All across the U.S. corporations have had to shift managers and other employes to take the place of women on maternity leave, he says. Colleagues of pregnant women in small companies or offices have often seen their workloads swell. And many executives and supervisors have had to burn the midnight oil to take up the slack while women executives are on leave to have their babies.

Companies will be facing more and more

of this kind of problem in the future, says Barbara Boyle Sullivan, the president of Boyle/Kirkman Associates, a New York management-consulting firm specializing in women managers. "This is a part of the changing work force of the 1980's," says Mrs. Sullivan. "Women now want to have the satisfaction of having a family along with having a good, challenging job. In the past, they chose one or the other. Women who have postponed having children now are finding that their biological clock is running out of time."

EFFECT ON CAREERS

Motherhood also has a serious effect on the careers of many women executives. Some resume their former jobs at a full tilt, but a growing number choose a "slower track," shorter hours and more time at home raising their children, management consultants say. Still other drop out of corporate life until their children grow up.

Whatever the effect on their careers may be, maternity leaves of women employes can certainly upset the smooth operation of many businesses. One morning this spring, Linda Foss, 32, the vice president and corporate secretary of Security Pacific National Bank in Los Angeles, was called into a meeting of the banks executives. Mrs. Foss, eight months pregnant, was told that the bank had decided to go ahead immediately with a $100 million convertible-debenture offer. It was the job of Mrs. Foss, an attorney, to coordinate all legal details of the offer.

She began scheduling a long list of briefings with corporate officers and others for the next several days, and she recalls that she went home that night with a million things on her mind.

But Mrs. Foss never made it back to the bank the next day. She went into labor that night and gave birth to a daughter a month before her due date. "It couldn't have happened at a worse time for the bank," says John H. Harriman, senior vice president. "Things got frantic for several days," he says, as attorneys from other departments and other executives helped out in Mrs. Foss' absence. She hadn't had time to brief her planned replacement. But thanks to a lot of long hours and hard work, the offer went off as planned. Mrs. Foss now is back on the job.

Executives at KABC–TV in Los Angeles spent many a nervous night over the motherhood of Christine Lund, an anchor woman on the Channel 7 local news shows, one of the station's biggest sources of advertising revenue. When she became pregnant, KABC executives were worried about whether she would make it through the crucial May ratings "sweeps" before her maternity leave. The ratings sweeps are periods in which television rating services poll viewers to see how stations rank in popularity. Miss Lund, a six-year veteran, is a big reason for Channel 7's leadership of the local news ratings, station officals believe.

In the sweeps, anything that disrupts viewer patterns—such as Miss Lund's being absent from the show—could mean a loss of ratings points and therefore advertising revenues. "It was down to the wire," says Miss Lund, a married television newswoman in her mid-30s. But she made it through the May sweeps and gave birth to a daughter five days later. "I wanted to stick it out to prove pregnant women aren't irrational, irresponsible, ill or anything else," she says. She now is taking a couple of months off.

Losing an important woman can have an especially severe effect on a small company. When Lisa Snyder, 33, an attorney in a 12-member Los Angeles entertainment law firm, announced she was pregnant, she says, there was a "major blowup" at the law firm. Miss Snyder, married to an attorney, was involved in litigation of entertainment law cases, she says. She was handling some 25 cases when she took her pragnancy leave last Dec. 1, and her colleagues who covered for her "just went crazy" because of their heavy workloads, she says.

Unlike some women executives who work up until the last day, Miss Snyder took her maternity leave a month before her due date because "being pregnant was taking precedence over being a lawyer," she says. It was difficult for her to appear in court. Judges, concerned about her condition, kept asking her to sit down. They wouldn't allow opposing counsel to interrupt her because "they didn't want me to be upset," she says. Miss Snyder also says the hormonal changes connected with pregnancy "mellowed me out and made me less combative." She is back on the job now.

Some companies that achieved impressive records of hiring and promoting young women into important positions in the 1970s now find themselves with an office full of pregnant women executives. Tuttle & Taylor, a Los Angeles law firm, not long ago was ranked first among Los Angeles law firms by a legal publication in hiring of women attorneys. Now,the 55-member firm has two women attorneys on maternity leave; two other women lawyers are pregnant, and a law clerk also is pregnant.

Mark Schaffer, the managing officer of Tuttle & Taylor, admits that the maternity problem is "a difficult one" for his firm, because the women attorneys have built up good working relationships with clients. These relationships are hard to interrupt when a woman takes maternity leave, he says.

Tuttle & Taylor has plenty of company, however. At some companies, there almost seem to "tides of pregnancies," says executive recruiter Beth Olesky. A couple of years ago, five members of the 40-person international personnel division of Citibank in New York were pregnant at the same time. Included were the division's director and assistant director.

SOMETHING IN THE COFFEE?

"It was a year of revolution at the bank," says Ann L. McLeod, 37, the former director of the division and now a vice president. "The senior officers' dining room—where executives and customers have lunch—was filled almost every noon with pregnant women. They thought at first it was something in the coffee." By working hard and switching various duties around, the international personnel division managed to accomplish its goals, Mrs. McLeod says.

Some companies have found that women on maternity leave are coming back to work sooner than in the past. Irving Margol, a senior vice president at Security Pacific National Bank, believes that the inflationary economy, which often compels both husband and wife to work, is forcing women to return to work sooner.

Even after they are back on the job, many women executives say, the effect of motherhood on their careers remains substantial. Women with jobs that involve large travel demands and long hours, such as management consulting and law, are especially affected, says Mrs. Sullivan, an expert on women in management in Los Angeles.

"A number of first-class women attorneys with potential to be partners of law firms in New York, Washington and Los Angeles find that once they have a child, they can't stand the long hours," says executive recruiter Mrs. Olesky. "So they leave the high-powered law firms to take legal positions in insurance companies and banks that work nine-to-five hours," she says.

In Washington, D.C., Bonny M. Henderson, 37, associate consultant at the management consulting firm of McKinsey & Co., became pregnant after a hectic 12-year career of travel and long hours. Once she had delivered a son, she decided to take a six-month leave of absence. "I'm moving to a slower track," she says. "I'm making my career second for a while. Six months out of a 50-year working life is nothing."

ACCEPTING THE SLOWER TRACK

Mary F. Cooper, 34, the personnel manager for a division of Addison-Wesley Publishing Co., Menlo Park, Calif., admits she has slowed down since her child was born two years ago. "I won't get to the top as fast. My family is taking a great priority," she says. "Emotionally, accepting this is difficult for an ambitious person."

Other women such as Laurette Spang McCook, 30, an actress on such television series as Universal's "Battlestar Galactica," drop out of their careers once they become pregnant. After she saw the stunts she had to perform for a guest spot on the series "Dukes of Hazzard," she threw in the towel when she was four months pregnant. She spends her time by helping her actor husband with publicity and by modeling maternity clothes for Motherhood Maternity Boutique, a maternity-clothing chain.

Carol Brown, 40, a Manhattan computer consultant, was able to alter her job so she could do most of her work at home. A partner with her husband in a New York investment-counseling and minicomputer-consuling concern, Mrs. Brown switched her job emphasis from consulting with businesses on how to adapt minicomputers to their operations, to writing software programs for clients.

She had a computer terminal installed in her home, and she uses it to communicate and give instructions to one of her clients, a Manhattan architectural firm. She can pick up her telephone, attach it to her computer and make changes in the programs for the firm. She admits she could have made more money by staying in the office, but she enjoys working at home and taking care of her daughter at the same time.

But some women, consumed with their jobs can't bear to be away for very long. Judy Woodruff, 34, a White House correspondent for NBC News, is expecting a child in September. That won't stop her from flying to California to cover President Reagan's August trip. "I want to work as late as I can—up to the last day," she says. She plans to take six weeks off to deliver and care for the baby.

"I'll miss some big stories in October and November," she says wistfully. "Already I'm getting pangs of regret about missing something exciting."

"HAVING IT ALL"

Some women executives maintain that childbirth and childbearing haven't affected their careers and that they have become more efficient and better-organized as a result. The key to success, says Betty Baldwin, 39, the vice president for human resources at Gino's Inc., a fast-food chain, is "a monstrous amount of planning and organization." Thus, Mrs. Baldwin arrives home from her job at 6:30 p.m. in suburban Wynnewood, Pa., to spend from 6:30 to 8:30 p.m. with her young children, and from 8:30 to 10:30 p.m. with her husband, who commutes from New York. She has written a book about how to do this entitled "Having It All."

Lisa Carl, 30, a Los Angeles attorney specializing in medical malpractice suits, was on the phone with her office as soon as she was able to lift her head off the pillow after having her baby. She saw clients nine days after the baby was born, and her secretary brought documents to her hospital room.

Federal law stipulates that women can't lose their jobs as a result of being pregnant and that maternity must be considered just like any other disability. However, what com-

panies pay women while they are out varies widely. Depending on how long the woman has been with the company, most companies give her full pay for several weeks.

Jenene Wilson, 38, the manager of employe-benefit programs at Carter Hawley Hale Stores Inc., a Los Angeles-based retailer, will receive full salary on her maternity leave. But Lisa Snyder, an attorney in a small Los Angeles law firm, had to get by on minimal state disability payments. "I took a tremendous financial beating, but it was worth it," she says.

[From the Washington Post, July 21, 1981]

BALONEY

(By Judy Mann)

Stop the presses. Pregnancy is threatening to bring American business to a halt. This is apparently so serious a matter that the Wall Street Journal found it the most important thing going on in American business this past Monday and made it the lead story of the entire newspaper. The headlines, sounding like something out of an old Saturday Night Live script, were apocalyptic enough to jolt every red-blooded American businessman awake over his coffee. "Firms Are Disrupted by Wave of Pregnancy at the Manager Level, After-30 Motherhood Snags Debenture Offer, Clouds Ratings of TV News Show."

That just goes to show what happens when you hire women. After all, clouding the ratings of a TV news show is one thing, but snagging a debenture offer—whatever that it—is quite another.

Well, it turns out that a debenture offer is sort of like a bond offer except that in the case of a debenture offer it is convertible into stock. It seems that in Los Angeles, whence this story originated, there was a female bank vice president who had a premature baby the day after the bank decided to go ahead with a $100 million-debenture over. It was her job to coordinate the details of the offer, said The Journal, which quotes another bank vice president as saying her childbirth "couldn't have happened at a worse time for the bank. Things got frantic for several days." Says The Journal: "Attorneys from other departments and other executives helped out in [her] absence. She hadn't had time to brief her planned replacement. But thanks to a lot of long hours and hard work, the offer went off as planned." The offer went off, in other words, just as it would have if a male executive in charge had had a heart attack.

Between that example and a handful of anecdotes about other pregnant middle managers and some quotes from management consultants who don't have any numbers to back up their impressions, The Journal drew a portrait of women in business that will warm the heart of every unreconstructed corporate m.c.p. "In cities like Los Angeles, Washington and New York, it seems that 'almost every married woman executive in her 30s is either pregnant or planning to be.' " The Journal quotes an executive recruiter as saying. And a Los Angeles consultant says this is "causing some turmoil at companies where a larger number of women in their 30s have made their way into important positions . . . All across the U.S., corporations have had to shift managers and other employees to take the place of women on maternity leave . . . Colleagues of pregnant women in small companies or offices have often seen their workloads swell. And many executives and supervisors have had to burn the midnight oil to take up the slack while women executives are on leave to have their babies," says The Journal.

You get the picture. Even professional women will succumb to the mothering urge and other employees [read men] will be excessively burdened because of her. But The Journal, ever quick to spot a trend, has been a little trendier than usual in this particular piece.

In an article uncharacteristically unburdened by statistics, there was one figure that if anything illustrates how infinitesimal the impact of pregnant women in the work force actually is. According to The Journal, the number of women over 30 who are having children has not quite doubled in the past eight years from 57,000 to 104,000. What The Journal doesn't mention, and what puts this in some kind of perspective, is that out of a female work force of more than 44 million, there were 10,861,000 women between the ages of 30 and 39 working as of May 1981. Even if all of the 104,000 women who had babies were working, which is certainly not the case, we are dealing with a phenomenon affecting .0095 percent of those working women in their 30s and .0023 percent of the entire female work force. And if we were to look at the numbers of those pregnant women who are in middle management or top management jobs, that figure would vanish right off the screen. If this is disrupting American business, then American business is in a lot of trouble.

"Less than 3 percent of the women in corporations make over $25,000 a year," says Alexis Herman, head of the Labor Department Women's Bureau under President Jimmy Carter. "It couldn't do that much damage if every woman got pregnant . . . I just wish the problem were of the proportion and magnitude the article suggests. Unfortunately, it is not."

"The fact that some women have gotten pregnant makes headlines," says author and management consultant Natasha Josefowitz. "If 30 men quit work and decided to go around the world on a sailboat, it would never make The Wall Street Journal saying most men are quitting their jobs and going around the world."

To say that pregnancy cannot be having much impact on corporate life now is not to say it might not in the future. There is merit in looking ahead at the problem and in devising shared parental leaves and ways for executives to work at home and other approaches.

But if articles such as the one in The Journal keep appearing, there won't be much need to plan ahead. The logical conclusion of that piece was not that there was an intriguing social phenomenon to be dealt with in the future, but that hiring women executives is tantamount to hiring a major pain in the neck.●

YAMAL NATURAL GAS PROJECT: NO LIGHT AT THE END OF THIS PIPELINE

● Mr. GARN. Mr. President, I would like to bring to the attention of my colleagues an article from a German publication, Munchner Merkur, which highlights the views of some German public officials toward the proposed Soviet Yamal natural gas pipeline project. I believe it is important for us to understand that the wisdom of the pipeline project does not go unquestioned in the Federal Republic of Germany. Indeed, deep concerns exist concerning the strategic implications of the energy and financial dependence of our Western European allies on the Soviets which will come about as a result of this project.

Therefore, Mr. President, I ask that the article, "Securing West European Energy Supplies through Natural Gas from the Soviet Union: For Ten Billion Marks—A Look Through the Pipes?," be printed in the RECORD. I extend my appreciation to the Language Service Department of the Congressional Research Service, particularly to Mr. Casimir Petraitis, for his assistance in translating this article on short notice.

The article is as follows:

SECURING WEST EUROPEAN ENERGY SUPPLIES THROUGH NATURAL GAS FROM THE SOVIET UNION: FOR 10 BILLION MARKS—A LOOK THROUGH THE PIPES?

The German-Soviet natural gas—pipeline deal, if it materialized, would be the biggest foreign trade deal in German economic history. Hans Count Huyn—representative of the Christian Social Union (CSU), chairman of the Study Group on German, Foreign, Defense and Development Policy of the CSU national panel in the Bundestag, member of the Committee on Foreign and Domestic Affairs, deputy chairman of the Subcommittee on Disarmament and Armaments Control as well as member of the Subcommittee on International Broadcasting Affairs—deals in the following lines with the multibillion mark project.

"I have no doubt that the Soviet Union will comply with the commitments entered into." With these words, Federal Minister of Economy Otto Count Lambsdorff optimistically swears to the future Soviet treaty fidelity with regard to the planned multibillion mark project, by which large parts of Western Europe, but above all the Federal Republic, shall be made dependent on Soviet natural gas supplies in their energy needs.

"It is a matter of delivery of questionable gas with the aid of questionable credits at a politically difficult time. This is how Karl-Heinz Narjes, foreign trade and energy expert, one of the two members of the German Commission in the European Community in Brussels, assesses the deal.

Which is right: Lambsdorff's opinion or Narjes's statement? What is it all about in the natural gas—pipeline deal and how should it be assessed?

From the Siberian Yamal Peninsula, which gained a sad notoriety through the Soviet death camps of the Gulag Archipelago, about a 5,800-kilometer natural gas pipeline shall be built up to Waidhaus in the Upper Palatinate in order to be connected with the West European natural gas network. From the mid 80's about 40 billion cubic meters of natural gas should be pumped annually to Western Europe through this pipeline. Within the scope of the deal, German steel pipes as well as other industrial goods and machines amounting to about ten billion marks shall be delivered to the Soviet Union in order to build the piepline. From the expected 40 billion cubic meters of natural gas the Federal Republic should receive about one quarter—about twelve billion cubic meters; the remaining will be distributed between France, Italy, Austria, Belgium, the Netherlands and Sweden.

The German banks shall make the multibillion mark project possible with the Soviet Union through credits, which on their side will be safeguarded through Federal guarantees. The Soviet Union will not repay these credits in cash but through supplies in kind: through natural gas deliveries.

It is undisputable that, despite all savings measures, West European energy needs will increase in the coming years. In addition, the decrease in our energy dependence on petroleum imports is to be welcomed.

Are the credits at all justifiable commercially? Here first of all is the question of interest. The Soviet Union is asking for an interest rate of 7.75 percent. The Kremlin is playing poker with high stakes, in order to make German banks and companies submissive; only a short while ago the Soviet Union let it be known that it would not be

interested in low ordinary trade interest rates in the total deal.

Narjes expresses his misgivings: "I don't know of any first class bankers who are getting such an interest rate of 7.75 percent. I see in it preferential treatment, which I consider as markedly questionable. I have doubts whether the participating banks can refinance it with the announced interest rate." This reminds us of a joke about a man who was buying bread rolls for 20 cents a piece and selling them for 15 cents. He had a frantic sale and said: "This is not a good business, but with the high turnover I make it."

AT LOW INTEREST RATES: THE CREDIT IS NOT COMMERCIALLY JUSTIFIABLE

In fact, every German applying for credit at the same banks must pay at least eleven percent—if not even more—in interest. Who then pays the difference? Is it the Federal Government that is being asked to intervene? Or is the German natural gas consumer who in the end will foot the bill? There is no question: at such a low interest rate the credit is not justifiable for purely commercial reasons. Then comes the questions of the constantly increasing federal guarantees. At present the guarantees assumed by the Federation amount to 132 million marks. Faced with the payment difficulties in Poland, Yugoslavia, Romania and other developing countries, the federal guarantees for credit acceptance of ten billion marks means in purely economic—besides political—terms, high risks at a time when at times the Federation is itself not solvent.

An objection is raised here because an order of this amount means for the participating companies a guarantee of jobs in the Federal Republic of Germany which should not be underestimated. We can easily reply to it. If we built nuclear plants in the Federal Republic of Germany for guaranteeing energy supplies instead of giving credits to Moscow for ten billion marks—then 40,000 workers would find employment for five years and we would stand on our own feet in the energy field and would not depend on imports from the Soviet Union.

How does the principle "no economic support for the rearmament of the Soviet bloc directed against the West" fare? The credit would be provided and the deal made with Moscow at a time—

When the Soviet Union is arming against the West as never before in history;

When the Kremlin wants to induce the Federal Republic with stick and carrot to abandon the NATO double decision;

When from Southeast Asia across the Middle East and Africa up to the Caribbean the Soviet Union pursues an aggressive and expansionist policy and threatens Western security;

When the Soviet troops are still in Afghanistan exterminating the defenseless population; and

When in the midst of Europe the threats against Poland are again on the rise.

At this time the Federal government, whose Chancellor Helmut Schmidt is reviled as the "lackey of the American high armaments policy," shall positively decide about the granting of Federal guarantees for a ten billion mark credit.

The Federal government knows exactly that the Soviet Union in its foreign trade policy essentially gives priority to political goals at the expense of economic interests. Can the Federal government prevent Moscow from achieving strategic-political advantages through the natural gas-pipeline deal? And will the granting of credits not make the continuation of the high armament policy possible and facilitate it?

In addition, there is the question of technology transfer important for the defense economics of the Soviet Union—such as the delivery of special drilling equipment for use in permafrost areas.

It is a fact that all Western supplies make it possible for the Soviet Union to allocate resources for the armaments industry. The substitution capacity of the Soviet Union is big enough for placing the resources that had been previously serving peaceful purposes at the shortest notice to the armaments industry. The centralized economic planning makes it possible to undertake such a transformation within a few months.

IN ADDITION TO PIPES WE WOULD SUPPLY THE FAUCET TO TURN THE GAS OFF

From these points of view the conclusion of the pipeline deal would mean that the West would pursue to an increasing degree a policy that it has been following for more than ten years through its irresponsible technology transfer and unjustifiable credit granting: we are financing two separate defense budgets—our own and to an increasing extent that of the Soviet Union directed against us!

How does it look with the last principle 'no creation of economic dependence in key areas such as energy?'

In case of concluding a natural gas—pipeline deal all in all 30 percent of the German natural gas would come from the Soviet Union. In this context Narjes says: "It is a problem for us to concede more than 20 percent in the German market supply to the Russians." The fact is that we would supply the Russians with not only the pipes but also with the faucet with which they would be able to turn off the gas supplies to the Federal Republic and Western Europe. Who does not have in mind the famous Lenin saying that the Western capitalists will be so stupid that they will provide the rope to the Soviets with which they will hang them?

The arguments run that the Soviet Union is faithfully complying with the agreements signed. But how do things look with the treaty compliance of the Soviet Union in this area? Already Konrad Adenauer has stated in his "Memoirs" that "from 1925 to 1960 the Soviet Union concluded 58 treaties with foreign states and broke, violated or cancelled 45 of them on its own."

The Soviet Union did not fulfill repayment commitments towards its former war allies. The countries where foreign trade is under state control are not strangers to harming trade partners through unjustifiable price undercutting and blackmailing price manipulation. When Moscow directed its policy against China, with which it had been closely allied in earlier days, it withdrew all its scientists and technicians. At that time there were still 178 projects which had to be carried out with Soviet aid or were already in the process of construction or in the planning stage. The Kremlin withdrew not only its technicians but also all the planning documents, so that many of the projects could not be completed, causing a heavy loss for Peking. This is one of many examples. The latest non-compliance concerned Austria, when the Soviet Union, despite agreements concluded for natural gas supplies in the winter of 1980/81, reduced them by one third and caused the Republic in the Alps considerable economic difficulties and a controversy at the domestic level.

Economic expert of the Soviet Foreign Trade Ministry, Juri Krasnow, said in April 1980 at the Hannover Industrial Fair: "We can turn the natural gas faucet off if we are forced to in an extreme emergency."

Should the Federal government give the green light to the pipeline deal it makes one thing possible: "We might be left with empty pipes."●

IRREGULARITY IN THE MOVEMENT OF OIL FROM THE BLACKFEET INDIAN RESERVATION

(By request of Mr. ROBERT C. BYRD, the following statement was ordered to be printed in the RECORD:)

● Mr. MELCHER. Mr. President, yesterday, I presented to the Senate an overview of the Select Committee on Indian Affairs' investigation of oil thefts from Indian and Federal lands. At that time I noted that I had just received a report of yet another irregularity in the transportation of oil from a Blackfeet Indian oil lease.

For the information of the Senate I would like to expand on the details and background of that incident as well as the Federal regulation which was violated.

On the afternoon of July 28, a fully loaded oil-hauling truck was intercepted leaving the Blackfeet Indian Reservation in Montana without a sales receipt—commonly referred to as a "run ticket."

The U.S. Geological Survey regulations require a run ticket as essential documentation to verify that oil transported from an Indian or Federal lease by truck is properly accounted for. The run ticket constitutes legal ownership. The incident on the Blackfeet Reservation seems to be another in a series of continuous and flagrant violations of this as well as other USGS regulations.

The actions of Permean, Inc., the trucker, and Western Oil Transportation, Inc., the purchaser of the oil—while probably only meant to be short cuts—will be investigated by the U.S. Interior Department Inspector General. Everybody in the oil field knows about regulations requiring run tickets. If the regulation is ignored, the Inspector General must determine if the irregular movement of oil is subject to penalty.

I have already discussed this incident with the U.S. Geological Survey officials and the FBI, and am determined to do what I can to clean up this mess in the oil fields. However, I must say that while I am distressed by yesterday's events, I was by no means surprised. During the past 7 months the Select Committee on Indian Affairs has received numerous reports of alleged oil thefts from Indian and Federal leases and violations of U.S. Geological Survey regulations regarding the production and movement of oil from these leases to refineries.

In fact, on May 29, 1981, I and two staff members of the committee made an unannounced on-site visit to several oil leases on the Blackfeet Reservation in Montana, where about 8,000 barrels of oil is produced daily.

At one lease site, there were over 1,000 barrels of oil on a sump pit that had been there more than 2 years, perhaps longer. USGS had apparently never used its authority to shut down the lease until the operator moved the oil. Several days before the visit, a severe rainstorm washed 150 barrels of this viscous crude over the pit into a coulee where it traveled

through 1 mile of wheat and pasture land, leaving an ugly black stain. At this same lease, a large pipe led directly from the back of the five storage tanks, bypassing the LACT meter.

According to a USGS employee present on the site, such piping is not illegal as long as it is locked and sealed. This is contrary to USGS regulations governing excess piping. If it bypasses a meter it is illegal although it may be approved for good cause—that is, water disposal and so forth. There was no evidence that USGS formally approved this piping.

At another lease, we found a seal draped over the valve of a 500-barrel storage tank that was more than half full. All one had to do was lift the seals and turn on the spigot. This tank was at a well site, not a storage battery. Charles Thomas, an employee of the Blackfeet Tribe, who was formerly employed by both the USGS and the Wind River Tribes and has years of experience in oilfields, had never seen an arrangement of this kind at a well site. The oil is pumped right into the tank and then later pumped back into an underground pipe that leads to the battery. It is not clear whether this setup has ever been approved or even questioned by USGS inspectors.

At this same tank, there was a simple pipe coming out of the ground with a faucet that gushed black crude oil when turned off. It had no lock or seal. At the storage battery on this same lease, a storage tank was found to be improperly sealed.

Mr. President, the recent incident on the Blackfeet Reservation reinforces two firm beliefs I have. First, the U.S. Geological Survey has accomplished very little, if anything, in its efforts to improve the Federal monitoring of Indian and Federal oil. Its 8-month-long crash inspection program and its strike force assigned to pinpoint lax enforcement, are programs lacking both direction and results.

Second, the Select Committee on Indian Affairs must with all due diligence carry out its responsibility and move forward with its investigation. To do anything less would be tragic.●

HEARINGS ON REFUGEES AND ASYLUM PROBLEMS

● Mr. KENNEDY. Mr. President, under the able chairmanship of my colleague from Wyoming (Mr. SIMPSON), chairman of our Judiciary Subcommittee on Immigration and Refugee Policy, we held today an extraordinarily important hearing on the problems the United States faces in resettling refugees as a country of first asylum.

Senator SIMPSON's hearings continue the Judiciary Committee's effort from last year to review the problems attendant with the influx last year of Cubans, and from the continuing flow of Haitians seeking asylum in the United States today.

First asylum issues are enormously complex, and both Senator SIMPSON and I wrestled with them as members of the recent Select Commission on Immigration and Refugee Policy.

The administration presented today its proposals for dealing with this issue and we had a good discussion on them in our hearing today.

Because refugee and asylum issues are national problems, they must be of concern to all Senators. And because they are of concern to many Americans, especially the voluntary agencies and church groups as well as State and local agencies, I want to share with them and my colleagues some of the prepared testimony we heard today.

I will not ask that all the testimony we received be printed at this point, but I think it is important for the developing dialog that we must have on this issue if we could have the benefit now of the administration's position as outlined by Assistant Secretary of State for Inter-American Affairs Thomas O. Enders and some of the comments from the voluntary agencies and State and local government representatives.

Again, Mr. President, I commend the leadership of my colleague from Wyoming, especially for his effort to reach out to all interested and knowledgeable persons, in an effort to develop a consensus on the crucial asylum and refugee problems our country faces today.

I ask that selected testimony from today's hearing be printed at this point in the RECORD, along with the opening statement of Senator SIMPSON.

The testimony follows:

UNITED STATES AS A COUNTRY OF MASS FIRST ASYLUM

OPENING STATEMENT—CHAIRMAN ALAN K. SIMPSON

Seldom has the United States been galvanized into more active thinking on an immigration issue as it was last year by reason of the influx of Cubans and Haitians into South Florida.

This was the initial occasion for this country to find itself as a country of mass first asylum, and it was soon evident that there was very little within our laws, or administrative procedures, or national preparedness to provide any clear direction on the handling of this extraordinary situation.

The citizens and social services of Florida were overwhelmed by the sheer numbers of Cubans and Haitians arriving on their shores, and that state continues to feel that great impact to this day. Of the 133,000 persons who arrived last year, many have remained in Florida. Moreover, the problem of new arrivals has not lessened:

Since October 10, 1980, over 8,500 Haitians have come to our shores. We still have 900 Cubans at Fort Chaffee who have been labeled as "difficult to resettle" and 1,800 Cubans with criminal records at the Federal Penitentiary in Atlanta.

The full cost to the Federal Government has risen to $175 million and this does not include the funds expended by states, localities, voluntary organizations and private individuals: this cost figure would be the equivalent of almost 50 percent of the total annual budget of the Immigration and Naturalization Service.

During the course of this hearing, we shall seek to resolve to basic issues: First, the legal status of the Cubans and Haitians who have entered the United States and secondly, the policies and procedures which should be adopted in order to handle future mass asylum crises.

One valid reason why the status of the Cubans and Haitians has not yet been determined—one year after their entry—is the complex and ponderous nature of our asylum adjudications and appeals process.

Current law provides that asylee status be determined on an individual, "case-by-case" basis and decisions can then be appealed up to three levels. (Trial De Novo—at 3 levels) There are 44 immigration judges in the Nation—two of them in Florida.

In addition to the Cuban and Haitian cases, over 58,000 other individuals, some of whom initially entered the U.S. illegally, have also applied for asylum.

Under current law, any person, regardless of legal status, once in the U.S., may apply for asylum. The proven unworkable nature of current adjudications procedures guarantees that these people will remain in the U.S. for 1½–2 years before their cases are even reviewed, and for an indefinite period beyond that if the cases are appealed. During this time, they are granted the right to work, and in the case of Cubans and Haitians, the right to receive cash and medical assistance at the expense of the Federal Government.

Clearly, then, we need to reform present adjudications, exclusion and deportation proceedings in order to provide for speedy determination of status so that legitimate asylum claims can be expedited—while frivolous claims are denied and ineligible applicants deported.

During today's hearing, the Subcommittee will also examine the options of detaining asylum applicants pending the resolution of their status; enforcing the law preventing U.S. citizens and permanent residents from transporting persons in illegal status to this country; interdiction on the high seas; the degree to which due process that is granted to asylum applicants here in this country should parallel that due process granted to refugees being processed overseas; the role of foreign policy and international cooperation in mass asylum crisis; and contingency planning which must be implemented to address such situations in the future.

The United States is a signing party to the 1968 United Nations Protocol Relating to the Status of Refugees, and it is bound by that agreement to refrain from returning persons to a country where they will be persecuted. This does not mean, however, that the United States must accept for permanent resettlement each legitimate asylee who arrives on our shores.

The citizens of the United States are proud of our freedoms and of our generous tradition of offering haven to the persecuted of the world. It is indeed unfortunate that so many peoples on our planet reside in nations whose standards of individual freedom do not match ours. Nevertheless, I firmly believe that the United States cannot and should not attempt to accept the sole responsibility for this tragedy by resettling all of those who leave their homelands bound for our shores. We must develop clear and strong policies and procedures to assist us in distinguishing between the legitimate and the frivolous asylum claims, and to ensure that the true refuge for legitimate asylees is provided equitably by all the nations of the free world.

STATEMENT BY THOMAS O. ENDERS

Mr. Chairman: I am pleased to appear this morning to discuss the international and foreign policy aspects of Cuban and Haitian migration, in the light of the new immigration policy announced by the President, and to support the legislative changes he is requesting. I would like at the outset to make clear that, although the domestic impact of migration from either country is much the

same, the foreign policy significance is quite different.

Your committee asked us to discuss the possibility of future mass migrations to the United States. Emigration of a few dozen or a few hundred people may occur from a number of foreign countries. A sudden, massive outflow of tens of thousands in a short period of time is likely only from a totalitarian state.

In other words, in one case we are dealing with a friendly government, the Government of Haiti, interested in enforcing its laws and respectful of the laws of its neighbors, and desirous of cooperating with the United States in bringing illegal migration under control. Migration occurs as the result of separate decisions by private individuals without the support or sanction of their government.

In the other case, in the Mariel boatlift of last year, we were faced by a deliberate decision of the Cuban Government to permit, and indeed in many instances to force, the departure of large numbers of its citizens for the United States. The offers of several countries to receive these Cubans and the efforts of international agencies to arrange a safe and orderly system of departure were rejected or ignored.

The steps we take to halt illegal migration to the United States, and to arrange the return of citizens of these countries who are not eligible for admission, will obviously be different in these two very different circumstances.

In the case of Haiti, we face a continuing problem. Illegal migrants from Haiti constitute a significant social and economic problem for the United States particularly in the state of Florida. Over 20,000 Haitians entered the U.S. illegally in the last year, many of them in dangerous sea voyages in unseaworthy craft. However, the Government of Haiti has assured us of its determination to enforce its own laws against illegal migration and of its intention to cooperate with the United States, to the maximum extent of its ability, in joint efforts to halt the flow. We are actively engaged in both diplomatic and technical discussions with the Government of Haiti to determine how we may improve the cooperation of our two governments.

One thing that has become clear is that Haiti will not be able to do the job alone, without U.S. assistance. The economic and security assistance requests for FY 1982 that are now before the Congress will be essential to enable the Haitian Government to deal with a severely strained economy and to improve the capability of its Coast Guard to prevent the departure of small boats with illegal migrants.

In addition the U.S. Coast Guard will be assisting foreign governments that request such assistance of attempting to violate U.S. immigration laws. Arrangements will be made for expeditious screening and processing of any asylum requests at sea so that aliens who are not legitimate candidates for asylum can be returned promptly to their country aboard interdicted vessels. We envision that such interdiction would be done selectively and given maximum publicity in Haiti, with the cooperation of the Haitian Government, in order to have maximum impact on intending migrants, without entailing excessive expenditure or enforcement effort.

Legislation to facilitate seizure and forfeiture of vessels bringing aliens to the U.S. in violation of U.S. laws would also assist greatly in dealing with Haitian migration. Indeed, the U.S. Government technical team which visited Haiti last week observed that the traffic in migrants is now highly organized, using sizeable ships. Confiscation of these ships once they have been seized would be a powerful deterrent against those who are cynically profiting from the traffic in Haitian migrants.

Let me now turn to the very different case of Cuba.

Some 125,000 Cubans entered the United States between April 21 and September 26, 1980. This was an unprecedented event—the deliberate use of innocent human beings to impose political and economic costs on a neighboring country. By the end of this fiscal year, it is estimated that the Mariel boatlift will have cost the United States over $700 million. Such politically-inspired exoduses have little in common with legitimate immigration and refugee issues; rather, they are the ultimate in manipulation, exploiting the suffering of an oppressed people to commit an unfriendly act against another country.

Federal, state and local governments were unprepared to deal with the Mariel boatlift of 1980. Although we estimate that between one and two million Cubans would like to leave the island, approximately 200,000 Cubans have been approved by Cuban authorities for emigration. We must and we will be prepared to respond to any attempt by Castro to repeat last year's sudden exodus.

Let me make clear that we propose no change in this country's traditional policy of welcoming individual refugees from persecution and tyranny, whether from Cuba or other repressive regimes. But our experience of last year amply proved that we simply cannot respond in the same way when we are faced with a sudden influx of tens of thousands, including the inmates of jails and asylums.

There are four key elements in our planning for any contingency of this kind.

First, Castro, and the Cuban people, must be in no doubt or uncertainty about the nature of our response to a new Mariel. If they believe we are unprepared to handle an illegal immigration emergency; if they believe we will vaccilate between attempting to stop the migration and welcoming it; if they believe we will in the end welcome the arrivals and resettle them in American communities, then the temptation to deal us another blow will be very great. The President, by asking Congress for the authority to declare an immigration emergency and to take the actions necessary to respond to it, has clearly signaled his determination that there be no mistaking of our intentions. It is important that the Congress send the same signal in its action on the President's legislative proposals.

Second, it is vitally important to deny Castro the one means of transportation by which a massive flood of illegal migrants can be brought to this country: boats. The 1980 experience was made possible by the U.S. citizens and residents who took thousands of U.S.-registered boats to Cuba. Cuba has few boats it could spare for a new boat lift. If U.S. residents do not take boats to Cuba, there can be no migration from Cuba on the scale of Mariel. I am confident they will not do so if the U.S. Government is clear that it disapproves, if it is clear that such action is illegal, and if it is clear that boatowners will lose their boats and be subject to prosecution and heavy fines if they attempt to help a foreign government create an immigration emergency. Again, adoption of the President's legislative proposals would have a major impact.

Third, there are some boats in Cuba, and some may reach there from the U.S. despite our best efforts. The Coast Guard with support from the Navy if necessary, would be available to interdict on the high seas those vessels that we have reasonable cause to believe may be engaged in transporting illegal aliens to the United States in violation of our laws. Cuba has also in the past made use of third-country flag vessels to carry migrants. In the case of third country vessels, interdiction would of course take place only with the prior consent of the flag state. The proposed legislation would facilitate our turning these vessels away from the United States, before they have been able to unload their passengers on our territory, and turning them back toward their port of departure or another point outside of the U.S.

Fourth, for those Cubans and Haitians who do, by one means or another, arrive in the U.S., our policy must be one of immediate detention and prompt exclusion of those found to be inadmissable to this country. To do otherwise is to encourage others to follow.

These four are the elements of a successful policy to prevent new massive influxes of illegal aliens: a clear Administration and Congressional rejection of illegal immigration; seizure and forfeiture of vessels used for illegal boatlifts; interdiction of illegal boatlifts on the high seas; and detention and exclusion of those who arrive by that means.

These are not, of course, cost-free policies. Effective interdiction, whether of the continuing Haitian boatlift or a potential Cuban one, means additional operating costs for the Coast Guard. Expedited exclusion proceedings require additional manpower. Detention of the continuing flow of illegal migrants, plus prudent preparation for any sudden increase, requires, as the Attorney General said yesterday, "additional resources for the construction of permanent facilities." The Administration will ask your approval of the resources needed, and I hope that your Committee will support our request.

I do not wish to convey the impression that discouraging Cuba from the temptation of unleashing a new human wave against this country, or stopping it once it is started, will be easy tasks for which we have found a simple formula. On the contrary, they will require difficult and delicate balances of diplomatic pressures, effective law enforcement actions, and well-coordinated federal, state and local policies. A clear consensus of Congressional and public opinion in support of this approach will be indispensable if it is to succeed.

President Reagan, in his statement, quoted the report of the bipartisan Select Commission that Mariel "brought home to most Americans the fact that United States immigration policy was out of control." The Administration's proposals are designed to bring coherence and control back into our policy and to ensure respect for our laws both at home and abroad. We will well serve our foreign policy objectives by doing so.

TESTIMONY OF BENJAMIN CIVILETTI

Mr. Chairman and Members of the Subcommittee:

I am pleased to be able to testify before this Subcommittee today on behalf of the Citizens' Committee for Immigration Reform. The Citizens' Committee is a broadly-based, non-partisan organization committed to the rational and humane reform of this country's immigration laws and policies. We believe that a new immigration policy must be achieved through careful and thoughtful analysis, and it is our hope that we can hope to cast the debate in a manner that will benefit our nation as a whole.

On a more personal note, the Chairman and I were privileged to serve together for many months on the Select Commission on Immigration and Refugee Policy. During our deliberations, we learned a great deal about the historical impact of immigration on this country and much about the current dilemmas this country faces, including the particular issues we are discussing today.

I have been asked today to address issues

dealing specifically with mass asylum and, more particularly, with the problems caused by the recent influx of Cubans and Haitians over the last 18 months. During my tenure as Attorney General in the Carter Administration, the questions of what to do with the 125,000 Cubans who arrived here in the so-called "Mariel boat lift" or "Cuban Flotilla" and the thousands of undocumented Haitians who continue to come ashore in South Florida, were among the most intractable problems we faced. Frankly, no one was prepared to handle the mass of people who came in those few months in 1980 but we did the best we could to both handle the flow and to stem it. I am well aware that the responses were not quick or complete enough.

During 1980, the boat lifts from Mariel Harbor, Cuba brought approximately 125,000 Cubans to South Florida. Approximately 2.5 percent of these Cubans (3,000) were sent by the Cuban authorities from their prisons, and mental institutions; others were simply social misfits. Most of these people have already been resettled in American communities. But 1,800 criminals remain housed in the Atlanta federal prison and 1,700 mentally ill and social misfits remain at Fort Chaffee, Arkansas pending imminent reassignment.

In addition to this mass inflow of Cubans, there has been a steady flow of Haitians into South Florida during the past two years. This flow averages about 15,000 a year on top of the 35,000 who are currently here. Many of these Haitians face the threat of political persecution at home; however, the vast majority seem to be simply seeking escape from lives of continues poverty and economic despertation. The per capita income in Haiti is less than $300 per year.

Our hearts go out to any people who are seeking better and more productive lives. But we have to be realistic about the absorptive capacity of this country both socially and economically. We cannot let our refugee and mass asylum policy be determined by hostile foreign leaders or by enterpreneurs who make a living from bringing undocumented aliens to our shores. And we must develop a policy that is fair to both the people who want to come here and people who are already here.

I. SHARING THE BURDEN WITH OTHER NATIONS

We should attempt to sort through regional and international organizations to spread the responsibility for accepting people seeking asylum. Our humanitarian instincts suggest that we should be willing to be a country of mass first asylum. As a nation, we are comparatively wealthy. We have always considered our diversity one of our principal virtues. And because we already have various communities where persons of a variety of nationalities have settled, we already have in place some bases for survival networks.

But these humanitarian impulses must be tempered with realism. We do not have the resources to expand infinitely our capacity to welcome unexpected masses of people seeking asylum. This country is in the process of revising an immigration and refugee policy that already accepts large numbers of regular immigrants and other refugees each year. By the terms of the Refugee Act of 1980, the base allocation for refugees is 50,000 per year. We cannot stand ready, however, as a matter of course, to absorb huge numbers of foreign nationals seeking asylum over and above the immigration flows we have adopted as matters of deliberate policy. We should always remain a country of asylum for those fleeing oppression, but we must work through international organizations to share this burden equitably.

We should follow a dual strategy. First, we must work through international organizations, including the U.N. High Commission on Refugees, to obtain commitments from other nations to share the burdens of accepting participants in mass out-migrations. Second, we must be better equipped to act as the country of first asylum only in extraordinary mass asylum situations for those people who do reach our shores.

II. ADVANCE PLANNING FOR ASYLUM EMERGENCIES

There is no way to eliminate completely the substsantial burdens imposed by large groups of foreign nationals seeking asylum in the U.S. Our objective must be to minimize those strains by developing methods to screen the people seeking asylum, if possible, before they leave their native lands and to accommodate them properly once they have arrived.

Whenever possible, we should seek to develop working arrangements with "sending" nations to set up preliminary asylum centers in those countries. The benefits of this type of proposal are obvious. It would allow early evaluation of asylum applications at a point prior to the time applicants are on U.S. soil. It would permit us to work on a multilateral basis to find non-U.S. asylum sites for people determined to leave their native land. Finally, it would permit a more measured entry with greater chance of sound support and limited local disruption.

The problems with this sort of preliminary screening strategy are substantial. There will be cases, as with the Indochinese boat people and the Cubans from Mariel Harbor, where our poor relations with the sending government seem to preclude our working together to make the process more rational and equitable. Moreover, establishing asylum screening centers in the sending country may inhibit precisely those genuinely oppressed people who may have much to fear from coming forward to seek asylum. The process of coming forward, being rejected, then returned to the jurisdiction of oppressive local authorities may most discourage those people whom we should want to seek asylum.

Even in the Mariel Harbor situation, however, we might have done more than we did. First, we should have tried to negotiate with the Cuban government to allow us to send asylum ships to Mariel Harbor. We could have then conducted on-the-spot reviews of asylum claims and rejected those (including the criminals, the insane, and the misfits) who were unsuited to come to the United States. Second, in conjunction with this screening, we could have used the Navy to assist the Coast Guard to prevent other illegal transport vessels from moving to and from Cuba.

These are difficult problems. But it is clear that more can and should be done to make the process of screening asylum applicants more cooperative and less haphazard.

At home, we must be better equipped than we are at present to cope with mass asylum situations. The Select Commission recommended that an interagency body be established that would be responsible for opening and managing federal processing centers. What is needed, in other words, is a federal strategy to provide care for those people seeking asylum while their individual cases are being determined.

We must be able to acknowledge the problems that have surfaced over the last two years. There have been substantial delays in processing those who seek asylum; there has been the widespread perception that the Haitians have been discriminated against on the basis of race; there has been an inconsistent Federal policy with respect to work authorizations for Haitians; the placement of Cubans in processing centers has been, at best, haphazard; communities chosen as the sites for processing centers have reacted quite negatively; and the delivery of necessary services to the processing centers has been inadequate.

We believe that the way to minimize these problems is through careful advance planning. Such planning should involve the appropriate Federal agencies, including the White House, the U.S. Coordinator for Refugee Affairs, INS, the Departments of State, Health and Human Services, Education, the Army, and the FBI. In addition, voluntary agencies and local government representatives who must play essential roles in actually implementing such a system should be brought in at early stages of the planning process. The Select Commission recommended that this planning body develop contingency plans for actually opening and managing federal processing centers where applicants would stay while their applications were being processed.

The advantages of having in place a planning process and a set of procedures to handle these mass asylum situations would be substantial. Moreover, the existence of processing centers would itself have numerous benefits. It would permit large numbers of asylum applications to be processed quickly in a central location. specially trained staff could be supplied to the centers; applicants could be centrally housed, fed, and provided with medica care; law enforcement problems could more easily be controlled; the resettlement of applicants whose asylum applications are denied would be eased by the involvement of the U.N. High Commission for Refugees; ineligible applicants would not be released into communities where they might disappear and thereby avoid deportation; and the existence of such centers would deter those who might otherwise view asylum claims as a reliable means of backdoor immigration.

Serious advance planning would eliminate some of the worst features of our recent experiences with the Cubans and Haitians. It would ensure that individual applicants would be treated more decently and with more respect for their human dignity than we have accorded them in the recent past.

III. ADJUDICATING INDIVIDUAL CLAIMS AND ENFORCEMENT

It is difficult to foresee mass asylum situations. Even with quite sophisticated advanced planning, many of the most important decisions will have to be made as a mass asylum situation develops. With respect to the continuing flow of refugees from Haiti, an appropriate strategy must be developed right now.

It is reported that the Administration has chosen a questionable interdiction strategy to deal with future boatloads of Haitians. It would involve authorizing the Coast Guard to intercept boats carrying Haitian refugees and might include a preliminary hearing process on board ship to determine the presence of passengers ineligible for asylum. The New York Times has already coined the appropriate term for these proceedings, "walrus courts." It is reportedly favored by many in the Administration because it is reasonably inexpensive, and might act as a strong deterrent against future episodes.

The problem with this solution is that it sacrifices procedural regularity for the sake of expediency and threatens to humiliate us throughout the world. It is unlikely that the type of proceeding that could be held on board ship would lead to proper and consistent decisions on whether to admit individual applicants. It is equally inconceivable that ugly spectacles such as Haitians jumping ship or the Coast Guard relying on force to quell disturbances could be avoided. The result would be embarrassment at home and charges of hyprocrisy from abroad.

One part of an appropriate solution is to seek sanctions against those people who make

their living off the backs of undocumented aliens trying to migrate to this country. Harsher enforcement measures against people who bring undocumented aliens into the country makes good sense. These measures could include both criminal policies and forfeiture of vessels.

But the applications of individuals seeking asylum should be handled in some other way than in harried circumstances aboard ship. The Select Commission has endorsed the streamlining of current procedures for evaluating asylum applications to bring them in line with what is currently done with respect to refugees. Currently, a person who belongs to a group qualified for refugee status is accorded a strong presumption of eligibility and the procedure for evaluating an individual claim is quite straightforward. This is in stark contrast to the tedious and onerous individualized burdens of proof required of individuals seeking asylum. Since the grounds on which people should be granted asylum and refugee status are identical, similar procedures should be adopted to process asylum applications.

Group profiles could be developed for asylees based on evidence of how members of particular religious, ethnic, racial, and political groups are treated in different countries. On the basis of these group profiles, presumptions could be made concerning the validity of individual claims. No longer would each asylum claim be treated as unprecedented. The result would be greater consistency and speed in making such decisions.

To further expedite the handling of asylum applications, the Select Committee recommended creating the position of asylum admissions officers within the INS. It was our feeling that a small group of specialists trained in making eligibility determinations would be better equipped to make the individual decisions than the non-specialist officials who do so at present. One level of asylum appeal should be provided as a matter of right, and the appeal should be handled in the same fashion as other immigration appeals.

If we implement the kinds of procedures I have just sketched, we will be better able to ensure that mass asylum situations do not turn into unmitigated disasters. We all wish that these problems did not arise in the way that they do. But the answer is not to go for the glamorous or cruel quick fix. Neither a strategy of interdicting boats carrying undocumented aliens seeking asylum nor rounding them up in detention camps when they arrive in the States is the appropriate solution. Instead, we must seek to ensure that people who seek an escape from oppression and persecution continue to be welcomed here and that we deal with all applicants in a way that allows us to hold our heads high.

TESTIMONY OF JOHN TENHULA

With passage in March 1980 of the Refugee Act of 1980, the United States acquired its first refugee policy in statute, a welcome piece of legislation in that refugees throughout U.S. history had been admitted through a variety of ad hoc admission procedures. The bill accomplished two objectives: it established a uniform policy for refugee admissions; and a domestic policy of resettlement assistance. What the bill failed to do was provide any coherent or comprehensive policy or law for dealing with asylum seekers—those who are physically present in the United States wanting to be called refugees under U.S. definition.

Even today, the United States has no policy or program of dealing with groups seeking asylum here. The possibility of selecting refugees overseas (which also means security, health screening and a sponsor ready to guarantee their movement) ended in a dramatic way last summer when some 125,000 Cubans and 11,000 Haitians (who continue to arrive) landed on our shores. Most recently Salvadorans are arriving in increasing numbers.

Has United States immigration turned sides from a country of hospitality to that of hostility? As we open detention camps throughout the U.S. and in Puerto Rico, have we simply directed our actions to state—out of sight out of mind? Are we ignoring the plight of refugees?

Concerning the granting of asylum, the U.S. experience has been that of acknowledging single and isolated cases that often reflected U.S. political attitude toward asylees and refugees. It was in November 1970 that U.S. national attention was focused on asylum provisions when a Lithuanian seaman, Simas Kudirka was forced to return to a Soviet vessel moored to a Coast Guard cutter in U.S. territorial waters. The result of all this was a set of new "Guidelines" from the Secretary of State approved by the White House in January 1972.

The Guideline insisted that "the request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel", and stated that the basic objective of the policy on right of asylum was "to promote institutional and individual freedom and humanitarian concern for the treatment of the individual." Certainly no other asylum flow better demonstrates the failure of those Guidelines or for the fears and shouts of "enough" more than the recent Cuban and continuing Haitian and Salvadoran influx. What went wrong?

The United States found itself a host nation to uninvited Cubans who, for whatever reason, left or were pushed out of Cuba. The numbers of those mentally impaired, handicapped, social misfits and homosexuals were exaggerated and highlighted by the press—especially in the areas surrounding the four stateside camps: Eglin Air Force Base, Florida; Fort McCoy, Wisconsin; Fort Indiantown Gap, Pennsylvania; and Fort Chaffee, Arkansas. However, most of those who came, came to join their relatives and have since well adjusted.

The Haitian influx offers a more difficult situation to understand; underlining all of this is the question: Are these economic or political refugees? U.S. State and Justice Department officials continue to argue that Haitians are economic migrants seeking employment and a better life in Florida. Their plight is not an easy one to explain. Over one million Haitians of a nation of six million are out of the country. The poverty of Haiti is real and the Haitian people hurt.

But the repression in Haiti is documented. When Papa Doc Duvalier gave his title of President-For-Life in 1972 to Baby Doc, a great deal of discussion was sounded concerning a lessening of repression. Not so. Duvalier rules Haiti with an iron fist and is supported by a secret security force that controls local government and rival activities with a feudal allegiance of Duvalier. The Amnesty International Report of December 18, 1978 stated: "The apparatus of repression established under Francois Duvalier remains in place under Jean-Claude Duvalier." Human rights advocates stress that Haitians who have left Haiti jeopardize their welfare and safety if returned.

Since 1972 Haitians have sought asylum in the U.S., with an estimated 11,000 Haitians arriving on the southern Florida shores during 1981. The issue has found its way into the court system. In July 1980, Federal Court Judge King ruled in the Fifth Circuit Court in Miami that both Justice and State Departments have discriminated against Haitians with "systematic and pervasive discrimination by the Immigration and Naturalization Service (INS)." The government's appeal to that decision was heard in Atlanta in June 1981; no decision has yet been reached.

GOVERNMENT RESPONSE AND POLICY

Monitoring treatment of our government's response to Cuban and Haitian arrivals seems to demonstrate a discriminatory system of treatment. Our concerns range from INS inappropriate I–94 stamping to unequal care and maintenance and processing of Haitians. This wide range of issues begins with involvement and use of government funds and agencies (Federal Emergency Management Agency, FEMA) that assisted Cubans and not Haitians, to the present day unequal processing of immigration documents. Certainly no other asylum group of unaccompanied minor children would have been treated by separation and uncertainty as the Haitians were, housed in Krome South and now Greer-Woodycrest, New York. Anthropologist Virginia Dominquez stated before the June 1980 House Subcommittee on Immigration, Refugees and Naturalization:

"Although President Carter has publicly stated that the two groups will be treated equally, there is as yet little sign that this is happening. The Cubans are screened more 'for resettlement' rather than to determine their eligibility for refugee status. The Haitians are detained for three days for health examinations. Then the INS buses them to Miami's little Haiti without, in many cases, finding housing."

The Carter administration's policy of responding to the Cubans and Haitians was to not call them refugees. "Refugee status would not be presented as an award for the voyage here," stated United States Refugee Cordinator Victor Palmieri in the early days of the movement, and the official Policy Statement of June 20th stated:

"In order to redress this extraordinary situation, yet maintain the integrity of our refugee laws for those applying for admission in the prescribed manner, the President has decided to seek special legislation regularizing the status of Cuban-Haitian entrants. This legislation will allow them to remain in the United States and will make them eligible for certain benefits, but it will not provide the status or benefits accorded to those admitted as refugees or granted political asylum."

The results of handling both groups has been detrimental to their welfare and caused not only bad feelings in refugee-impacted areas of especially Florida, but a severe drain on social service and education systems waiting to be adequately compensated by special Federal legislation. And if cost was a consideration in this program, surely the government gets poor marks.

Clearly the voluntary agencies responsible for decades for refugee sponsorship, have been taxed from the very beginning. We have need of asylum seekers, often called refugees resettlement contracts.

We were asked to respond to the desperate need of aslyum seekers, often called refugees but treated as undocumented and illegal and unwanted aliens. And we did respond.

Through the secular and religious networks of the voluntary agencies around the country we placed the majority of Mariel Cubans and a large number of Haitians in a resettlement opportunity with a stated goal of self sufficiency. Our success in assisting homeless people toward a new life has often been overlooked by the dramatics of the special needs of a minority number of these people.

The formation, then phase-out, of the State Department's Cuban-Haitian Task Force into the Office of Refugee Resettlement, Health and Human Services has

created severe work problems for us. We continue to be asked to assist resettlement of Haitian refugees from the intolerable conditions of Krome North Camp in Miami and now possibly Federal Prisons and Puerto Rico. Our resettlement experience has shown that Haitians are often denied necessary social services and fall into exclusion proceedings in the community they choose to live in. This is probably the most dangerous aspect of our lack of an asylum policy: the handling of the asylees' legal status and INS documentation, a critical issue for a domestic resettlement program. Willing sponsors are still confused over "entrant status." Our future refugee resettlement work has been complicated by the inactions and lack of policy of this program.

We receive reports continually from around the country of confusion and misunderstanding of the procedures and methods used to conduct asylum interviews. Certainly this is reflected in the recent June 1981 closed group courtroom hearings of Haitians in Miami who did not have access to counsel and did not fully understand their rights or the proceedings.

We are also aware of the continued difficulties Salvadorans are having in applying for political asylum. Over 4,500 applications nationally are pending. All this as the State Department continues to decide if conditions in El Salvador merit these claims of a fear of persecution if returned.

The creation of refugees and refugee-producing situations has become a daily global phenomenon, and recent events seem to reinforce the words of former INS Director Leonel Castillo: "The next 20 years will see an untold number of homeless and poor people knocking at our door for admission—how will we respond, in what way will we decide who shall enter who should we welcome."

What should be the policy considerations of the U.S. for asylees? The following are three suggestions: international awareness of this problem, equity and enforcement; and getting to the root causes.

INTERNATIONAL AWARENESS OF THIS PROBLEM

Today, mass asylum is not a U.S. phenomenon but part of a global migration of people seeking a new life and opportunity. In 1980 Germany recorded over 100,000 asylum applications, and over 10,000 East Europeans, mostly Poles, are crowded in camps in Austria today.

The same pressing concerns are heard in France, Greece and Italy. Recognition and action is required by the international community. What is needed now is a system of criteria and standards that can be adopted by member governments, ensuring some degree of equity to the increased asylum requests being received by states today.

Asylum has increasingly been stretched, confused and misunderstood. Certainly this is of deep concern to our national voluntary networks and religious communities. People in uncertain status are vulnerable to abuse. For the U.S., this means coming to terms with a policy and program to deal with the reality of mass asylum. There are several guidelines that deserve serious consideration.

The final report to the President in March 1981 of the U.S. Select Commission on Immigration and Refugee Policy offers sensible goals and objectives such as: (1) the maintenance of the U.S. as a "country for asylum for those fleeing persecution" (2) the adoption of policies and procedures that will deter abuse of asylum, and (3) expeditious handling of individual asylum claims.

We strongly support the Commission's recommendation for the establishment of an interagency body like a Refugee and Asylum Review Board to oversee all aspects of the process. This Board could help to develop and clarify asylum standards and procedures; periodically review selected applications for political asylum as a means of providing uniformity of treatment for all countries and in all INS districts and to consult with Congress and the Executive branch when emergency situations arise.

We support the Select Commission's recommendation about creation of federal asylum processing centers, provided they offer fair treatment and free access; this especially in light of the present use of Federal Correctional Institutions and Fort Allen, Puerto Rico, for Haitians and the possible due process violations these people may incur.

We feel that the protection of a review of asylum applicants on a case by case basis must be respected by INS Regional Directors. We also urge the use of extended voluntary departure as a means of meeting emergency asylum needs.

The Select Commission's recommendation of a group profile raises questions, as yet unanswered, as to how objective assessment of refugees producing conditions can be accomplished.

But most important is the need for improving the efficiency of the asylum process. The present system of individual review with the State Department's Bureau of Humanitarian Affairs is hopelessly bogged with the present national caseload which now exceeds 185,000.

We are also aware that lengthy and costly litigation in our courts is not the answer to this problem.

The present INS interim regulations for asylum requests under the Refugee Act of 1980 lack clarity and direction. There is a little logic in refugee matters bureaucratically falling under the mandate of the State Department's U.S. Refugee Coordinator's office and asylum matters under the mandate of the Bureau of Human Rights and Humanitarian Affairs (BHRHA). Refugees and asylees are directly interconnected and should be managed from one office.

In conclusion, we must protect the welfare and safety of the asylum seeker who has a well-founded fear of persecution. This means creating an asylum policy that is applied with equity. The recent experience of treatment of asylees demonstrates what in policy and program should not happen.

American Council for Nationalities Service.
American Fund for Czechoslovak Refugees.
Buddhist Council for Refugee Rescue and Resettlement.
Church World Service.
HIAS.
International Rescue Committee.
Lutheran Immigration and Refugee Service.
Migration and Refugee Services, United States Catholic Conference.
Polish American Immigration and Relief Committee.
The Presiding Bishop's Fund for World Relief.
Tolstoy Foundation.
World Relief.
Young Men's Christian Association.

STATEMENT OF MR. WELLS KLEIN

Mr. Chairman, members of the Subcommittee, my name is Wells Klein. I'm executive director of the United States Committee for Refugees. We appreciate the opportunity you have afforded USCR to testify before you today.

Our appearance before the Subcommittee stems from a very specific concern of USCR, namely—the manner in which the United States responds to the difficult public policy issue of mass asylum will directly and immediately affect our nation's leadership role with respect to fundamental issues of refugee asylum at an international level. The policy we adopt will confirm or compromise our historical leadership and moral authority in the field of human rights and, most specifically, refugee acceptance and assistance. The world is, in fact, closely watching how we handle this issue.

We must be forthright. We know the policy decisions that result from these deliberations will not please everybody. The issue is complex and not amenable to easy resolutions simply on the basis of good will.

Public attitudes on immigration currently run deep, largely because of the Mariel boatlift of 1980. The nation felt violated and, indeed, was. Mariel introduced a new migration phenomenon to America, one that other nations have experienced before, but not the United States, that which we call "mass asylum."

Our current immigration policy has not anticipated mass arrival on our shores. As you know, current refugee admission policy is based on the assumption that, by and large, screening will occur in a country of first asylum and that those we choose to admit will arrive through an orderly process.

The experiences of the recent past demand that our government articulate a clear policy with respect to mass asylum situations, both so we will be prepared to respond in an adequate fashion to any future episode and so that those who would consider coming will know the results of their actions. The result of our policy must be predictable so that those who don't fit won't come. And should there again occur a mass expulsion to our shores, we must be prepared to react with humanity, but with full recognition of our need to be in control of our own immigration policy. This translates into an immediate request for international cooperation and assistance, and international sanctions against the expelling country.

Failure to clearly articulate a mass asylum policy will inevitably undermine what has always been our country's commitment to a liberal, flexible and humane policy with particular respect to those legitimately seeking asylum and for those refugees fleeing persecution.

To repeat ourselves, this is a complex public policy issue. We believe the only way to come to grips with this issue is by reference to three fundamental principles that should guide U.S. policy.

1. The U.S. must have control, and must appear to have control, of the flow of people permanently entering into this society. We have neither at present. This failure prejudices the constructive expression of the inherent reservoir of good will within the American public to respond positively to genuine refugee emergencies. While we might ideally wish to see the free movement of people across all national boundaries, we do not yet live in the best of all possible worlds.

2. Our mass asylum policy—the result of these deliberations—must be consistent with what we ask of other nations in similar circumstances. Such consistency is fundamental to our continuing role of leadership in the free world.

3. We must fully observe the fundamental tenets of due process in the way in which we deal with the varying circumstances of asylum seekers.

The right to due process is one of the few qualities that distinguishes us from much of the rest of the world. Granted, due process does not always yield the most efficient system. But it is that which separates us from Hitler's Germany, Stalin's Russia and Idi Amin's Uganda. Due process is not only our way, it is also the only practical way. A policy that does not provide for due process for individual as well as group asylum seekers will be consistently and repeatedly chal-

lenged in our courts, thus tying up our whole system as has occurred in the past with respect to Haitians. Due process is, therefore, a prerequisite for a workable policy.

The term "mass asylum" is to loosely used and incorporates, in the vernacular, some other related issues we would like to touch on separately. In our view a mass asylum situation exists when a large number of asylum seekers arrive on or shores is a constrained period of time resulting in a situation with which regular asylum processes are unable to cope. There are, however, two other aslyum situations with which we must be concerned.

The first is that in which significant numbers of individuals already in the United States in nonimmigrant status are caught here by significant events, usually military, in their own countries. While application for political asylum may eventually be a viable alternative for some of these individuals, by and large, the majority are in need of temporary safe haven. This, we believe, can be easily accomplished, and without threat to our control of immigration, by extending such individuals indefinite voluntary departure until such time as they are able to return home.

The second situation is that in which significant numbers of individuals seek to enter the United States as asylum seekers after transiting a third country, most obviously Mexico. In this situation we feel that the country to which they initially fled, be it Mexico or another, should be considered by the United States as the country of first asylum. Practically, and in terms of political realities, we may need to assist that country in the care and maintenance of these persons in first asylum status as we have done elsewhere, for example Thailand. But we should not confuse this situation with one of mass asylum as defined above.

The heart of the matter, however, is another Mariel or the Haitian asylum phenomenon that faces us today. We propose a mass asylum policy based on the following guidelines:

1. However uncomfortable the immediate implications we must accept the obligation of being a country of first asylum. In practice this means we do not interdict at sea and we do not push boats off our shores.

2. In accepting our responsibility as a country of first asylum, we must reserve the right to detain asylum applicants or permit them temporary access to our society either on a group by group or case by case basis, depending on what we deem to be in our best interests.

3. We must recognize there are far more people in the world, including applicants in a mass asylum situation, who meet our definition of refugee than this country can, or can be expected to, integrate into our society. It follows, therefore, that we must involve the UN High Commissioner for Refugees in any mass asylum situation and internationalize our response to those legitimately seeking asylum on the basis of a well founded fear of persecution.

4. It also follows that those who do not meet the test of a well founded fear of persecution must be repatriated or otherwise relocated short of permanent admission to our society.

Mr. Chairman, I personally and we as an agency are not entirely comfortable with the position we have just taken. It results from a good deal of soul-searching. We return, however, to our original set of principles and the conviction that America's long range world leadership and our ability as a nation to provide haven for truly needy refugees hinges on a responsible policy in which the American public can have confidence.

In conclusion, Mr. Chairman we would like to briefly touch on some implications of "due process" in a mass asylum situation. These are in addition to the normal safeguards currently embodied in the law and the intent of the law. First, if due process in a mass asylum situation is to be a reality both for the asylum applicant and ourselves as a nation, adjudications must be handled with reasonable speed. We endorse the concept of group profiles for purposes of establishing a well founded fear of persecution.

We do not endorse the concept of group profiles as the basis for rejecting asylum applications. Rejections must be handled on a case by case basis no matter how inefficient this may be.

Secondly, we feel that the implications for individuals in the rejection of asylum applications are far too great to permit the decision to be made by one individual or one body. There must be an appeal or review mechanism separate from the original adjudication. Every effort should be made to make this a fair and impartial process that strives to give the applicant every reasonable benefit of doubt. We do not, however, believe the appeal or review process should go on ad infinitum, keeping the applicant in a limbo and tying up our adjudication system.

Finally, Mr. Chairman, we must realize that many asylum applicants may have no familiarity with our language, customs or with our laws, and therefore, must have the right to representation in the adjucication and particularly in the appeal process.

Mr. Chairman, we feel our nation cannot allow the ineffective confused type of government response that occurred during the Mariel exodus to occur again. We believe a clearly enunciated policy with rapid implementation in a mass asylum emergency will deter those who fall outside our policy from coming. We believe that clarity of authority and responsibility within the context of the policies we have enumerated will foster a continued willingness on the part of the American public to be positively responsive to the legitimate needs of those seeking asylum. And that is what we are after.

Mr. Chairman, separately we are submitting to your staff a series of detailed suggestions for executive branch implementation of mass asylum policy for your further consideration. We hope you will find these useful.

STATEMENT BY RONALD F. GIBBS

(Associate Director for Human Resources)

Mr. Chairman, honored members of the subcommittee, I am Ronald Gibbs, Associate Director for Human Resources, of the National Association of Counties (NACo).

NACo welcomes the opportunity to testify before you on the issue of the United States as a country of first asylum. It is an issue of great concern to counties—particularly those in Florida—which last year experienced an influx of more than 150,000 Cubans and Haitians seeking asylum in this country.

Although the Federal Government is responsible for determining national immigration and refugee policies, it is county government which must deal on a daily basis with the effects of these policies.

Given the political and economic climate in many Caribbean and Latin American nations, the issue of the United States as a country of first asylum is likely to continue—as evidenced by the arrival of an additional 462 Haitians in South Florida last weekend.

NACo's positions on the issues being addressed at this hearing reflect the work of the NACo Task Force on Refugees, Aliens and Migrants, chaired by Harvey Ruvin, Commissioner, Dade County, Florida. The task force is composed of 40 elected and appointed county officals from across the country. At NACo's annual conference, held in Louisville earlier this month, the NACo membership adopted the resolutions on immigration and refugee policies developed by the task force.

Our position on the issue of the U.S. as a country of first asylum are as follows:

CONTINGENCY PLANS

The widespread confusion and lack of coordination in the handling of the recent Cuban/Haitian influx points to the need for the Federal Government to develop contingency plans for handling future mass asylum situations. Such plans should identify the lead Federal agency responsible for directing the Federal Government's efforts in this area, as well as identifying the programmatic responsibilities of other relevant agencies. To the extent that the contingency plans involve either the selection of sites in which to detain applicants for asylum or the resettlement of asylees into communities, state and local elected officials should be consulted in the planning process.

ENFORCEMENT MEASURES TO PREVENT ILLEGAL ENTRY INTO THE UNITED STATES

Stronger measures are needed to prevent a reoccurrence of the Mariel Boatlift in 1980, in which American vessels brought thousands of Cubans illegally into south Florida. The Mariel boatlift represented not only a gross violation of U.S. immigration laws, but also a hazard to the safety of persons involved, resulting in a number of deaths. In the case of the Mariel Boatlift, existing statutes proved to be inadequate; therefore, NACo would support the enactment of legislation to more effectively deter persons from bringing aliens into the country illegally.

We believe that the U.S. should proceed cautiously before implementing a policy of interdiction of illegal migration on the high seas. Although strong enforcement on our borders is desirable, we recognize that interdiction would be operationally difficult, and hazardous to the safety of persons involved. In addition, if the U.S. turned away "boat people" seeking asylum here, it would weaken our efforts to discourage other nations, such as in Southeast Asia, from doing the same.

EXCLUSION AND DEPORTATION PROCEEDINGS

Without negating the rights of persons to due process, we feel that the current asylum application process should be changed in order to reduce the length of time it takes. Currently, it can take years to complete.

DETENTION

NACo favors a policy of temporarily detaining mass asylum applicants in Federal facilities, pending a determination of their immigration status. With the exception of initial processing centers, the detention facilities should be located outside of areas, such as Florida, which are directly affected by mass asylum. State and local elected officials should be consulted in the selection of sites for the detention facilities. The asylum applicants should also be treated as humanely as possible. Health and safety conditions at the Krome North facility in Dade County, Florida, where Haitians are being detained, are deplorable.

To the extent that it appears that exclusion proceedings for individual applicants are likely to take a long period of time, those applicants who do not represent a danger to the public should be resettled into communities. We believe it is inhumane to keep persons for months and even years in detention facilities without just cause. Moreover, long-term detention is far more costly than resettlement.

RESETTLEMENT OF MASS ASYLEES

The Federal Government should develop placement strategies for resettling mass asylees which take into account the capacity of communities to successfully absorb them. That is, consideration should be given to the availability of housing, employment and other resources which they will need. In addition, resettlement should not take place in

counties in California, Florida, and other States which are already heavily impacted by mass asylees or refugees.

NACo also strongly believes that the Federal Government should fully reimburse States and counties for the costs of assisting asylum applicants, as well as persons granted asylum.

ELIGIBILITY OF ASYLUM APPLICANTS FOR ASSISTANCE

NACo favors extending to asylum applicants the same Federal assistance that is provided to refugees and asylees under the Refugee Act of 1980, and to Cuban/Haitian entrants under the Fascell-Stone amendment. Under present law, applicants for asylum are currently not eligible for Federal assistance programs such as AFDC, medicaid, SSI, or food stamps. As a result, counties must bear the burden of assisting needy asylum applicants. Without passage of the Fascell-Stone amendment last October, Dade County would have had to absorb several million dollars in costs of health care provided to asylum applicants from Cuba and Haiti.

LEGAL STATUS OF CUBANS AND HAITIANS CURRENTLY RESIDING IN THE U.S.

NACo favors permitting Cubans and Haitians currently residing in this country as of July 1, 1981 to remain in the U.S. and to apply for permanent resident alien status after they have been in the country for at least 3 years. We believe that the mass deportation of the more than 150,000 Cubans and Haitians whose legal status is currently unclear is neither feasible nor in the best interest of this country.

However, efforts should be made to repatriate criminals, the mentally ill, and other Cubans and Haitians who are subject to exclusion on other grounds. Consistent with our position on Federal financial responsibility for refugee assistance costs, NACo believes that the Federal Government should fully reimburse States and counties for the costs of providing cash and medical assistance to these Cubans and Haitians until they become economically self-sufficient.

In closing, I would like to thank you for the opportunity to speak before you today. I believe that this hearing is an important first step towards developing national policies and plans which more effectively respond to mass asylum situations.

I am prepared to answer any questions you may have.●

RECESS UNTIL 10 P.M.

Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 10 p.m. this evening.

There being no objection, the Senate, at 9:27 p.m., recessed until 10 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. WARNER).

EXECUTIVE CALENDAR

Mr. BAKER. Mr. President, there is one item on the Executive Calendar, a treaty, Executive A, 93–1, a treaty with Colombia concerning the status of Quita Sueno, Roncador, and Serrana.

Might I inquire of the distinguished acting minority leader if he is in a position to clear that measure for consideration at this time?

Mr. CRANSTON. I am not, at this point. I think we can.

Mr. BAKER. Mr. President, while we inquire into the possible clearance of this matter, 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. 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.

Mr. BAKER. Mr. President, could I inquire now of the distinguished minority leader if it would be possible to proceed in executive session to the consideration of the treaty with Colombia?

Mr. ROBERT C. BYRD. Mr. President, it is agreeable to this side of the aisle.

EXECUTIVE SESSION

TREATY WITH COLOMBIA CONCERNING THE STATUS OF QUITA SUENO, RONCADOR, AND SERRANA

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering Calendar No. 5 on the Executive Calendar, Executive A, 93–1.

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

The treaty will be stated.

The assistant legislative clerk read as follows:

Treaty, Executive A, 93–1, Treaty with Colombia Concerning the Status of Quita Sueno, Roncador, and Serrana.

Mr. BAKER. Mr. President, has the treaty been taken through the several stages leading to the resolution of ratification?

The PRESIDING OFFICER. The Chair informs the majority leader and the minority leader that it has not been.

Mr. BAKER. Mr. President, I ask that the treaty be advanced through the various stages in preparation for the consideration of the resolution of ratification.

The PRESIDING OFFICER. Without objection, the treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The assistant legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana, signed at Bogota on September 8, 1972, subject to the understanding that—

(1) the provisions of the Treaty do not confer rights or impose obligations upon, or prejudice the claims of, third states;

(2) the United States of America and the Republic of Colombia, as well as other nations in the Western Hemisphere, are obligated under the Charter of the United Nations and the Charter of the Organization of American States to resolve their differences peacefully; and

(3) as recognized by Senate Resolution 74, Ninety-third Congress, States may contribute to the development of international peace through law by submitting territorial disputes to the International Court of Justice or other impartial procedures for the binding settlement of disputes.

Mr. BAKER. Mr. President, I ask for consideration of the resolution before the Senate by a division vote.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BAKER. 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. 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.

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.

RECESS UNTIL 10:45 P.M.

Mr. BAKER. Mr. President, I wish to report that negotiations are still underway with respect to the matters in conference between Members of the House of Representatives and the Senate on the tax bill. There are other considerations as well between individual Members of the House and Senate that may expedite the final disposition of the conference report on the tax bill. Once again, I think it may be worth while for the Senate to remain in session a while longer until a further report can be had.

Therefore, Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 10:45 p.m.

There being no objection, the Senate, at 10:14 p.m., recessed until 10:45 p.m.; whereupon, the Senate reconvened when called to order by the Presiding Officer (Mr. DENTON).

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I must report that the conferees are still working diligently, and I am hoping we will have some further information before very long.

This time I will not ask the Senate to recess. There is some indication we may have some more information in the next 15 minutes or so, and I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant 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.

STATUS REPORT—ECONOMIC RECOVERY TAX ACT OF 1981 CONFERENCE

Mr. BAKER. Mr. President, I just returned from the House side of the Capitol where I visited our diligent and dedicated conferees. They asked me to report that they are making good progress; if my memory is correct, they have only about 10 items remaining of 115 or so that were in conference between the Houses.

I point out that among those 10 are the major items of oil, the tax straddle, stock options, and perhaps one or two others. But when I spoke with the chairman of the conference, the chairman of the Ways and Means Committee on the House side, and our chairman, Senator DOLE, they indicated to me that they thought they might be able to finish the conference yet tonight, maybe in the next hour or so.

Mr. President, I am reluctant to say so, but it seems to me that once again it would be well to stay in for a little while to see if we can make an announcement about the schedule of the Senate for tomorrow.

I do not mean to tantalize Members, nor to threaten staff, but I point out that, if the conferees conclude and if an examination of that conference report suggests that we might be able to take it up as soon as it is available from the Public Printer and pass it by voice vote tomorrow, that would be a great savings. I do not predict that but I confess to wishing for that.

So, Mr. President, it is with regret that I say I wish to ask my colleagues to remain in session for a brief time, and so that we can get another reading on this situation a little later, I shall ask unanimous consent that the Senate stand in recess until the hour of 12 midnight.

RECESS UNTIL 12 MIDNIGHT

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate stand in recess until 12 midnight.

There being no objection, the Senate, at 11:30 p.m., recessed until 12 midnight; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. MURKOWSKI).

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Alaska, suggests the absence of a quorum.

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.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I think it is still worth our while to remain in session. I hope the Senate will agree to do that for the time being.

In the meantime, I have two other items on the Executive Calendar that are cleared on this side: Calendar Order No. 395 and 369, Harold V. Hunter of Oklahoma and Charles Wilson Shuman of Illinois.

May I inquire of the distinguished acting minority leader if those items are cleared for unanimous consent on their side?

Mr. CRANSTON. Yes, Mr. President, they have been cleared. We are delighted to agree to the unanimous consent request.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate proceed into executive session for the consideration of the two nominations just identified.

There being no objection, the Senate proceeded to the consideration of executive business.

DEPARTMENT OF AGRICULTURE

The PRESIDING OFFICER. The nominations will be stated.

The legislative clerk read the nominations of Harold V. Hunter, of Oklahoma, to be Administrator of the Rural Electrification Administration and Charles Wilson Shuman, of Illinois, to be Administrator of the Farmers Home Administration.

REA NOMINEE HAROLD V. HUNTER

● Mr. HUDDLESTON. Mr. President, on July 29, the Senate Committee on Agriculture, Nutrition, and Forestry held a confirmation hearing on Mr. Harold V. Hunter, who is to be Administrator of the Rural Electrification Administration.

As part of the confirmation process, Mr. Hunter responded to questions I submitted. One of these questions was in regard to the administration's plans for possibly raising the interest rate on Rural Electrification Administration insured loans.

It is my understanding that in May of this year the administration was considering proposing legislation to:

First, increase the standard interest rate for these loans from 5 percent to 7 percent; or

Second, change the standard interest rate for these loans to an interest rate that is a certain number of basis points below the cost of money to the Treasury; or

Third, authorize the administration to change interest rates on these loans from time to time to make the revolving fund able to continue without future appropriations for interest subsidies and losses.

I am pleased to note that Mr. Hunter has responded that these proposals are no longer under consideration. I support the nomination of Mr. Hunter, and I ask that my questions and Mr. Hunter's answers be printed in the RECORD.

The material follows:

Question: The administration has sought to eliminate the REA 2 percent insured loan program. Are you considering more changes in the insured loan program, such as raising the interest rate about 5 percent?

Answer: No change to an insured loan interest rate of more than 5 percent is being considered at this time.

Question: Congress has in the past rejected specific limitations on REA loan guarantees. Has a ceiling on REA loan guarantees been imposed by the administration?

Answer: REA expects to issue its guarantee commitment for all loan guarantee applications for which processing is completed by the end of this fiscal year. There is no legal restriction on the amount of loans which may be guaranteed in the current year.

Question: Last week, during the reconciliation conference, the conferees agreed to make the 2 percent REA insured loan program discretionary. Could you describe for the committee the circumstances under which 2 percent loans will be made if Congress accepts the conferees' recommendation?

Answer: We understand that the proposed amendments to the Rural Electrification Act to which the conferees have agreed provide that loans may be made at a rate of not less than 2 percent if the borrower has experienced extreme financial hardship or will otherwise be required to charge rates which are unreasonable for the area. Factors such as density will be given consideration to the extent they cause the type of situation for which the discretionary lower rate is to be made available.●

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

Mr. BAKER. I move to reconsider the vote by which the nominations were considered and confirmed.

Mr. CRANSTON. 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.

RECESS UNTIL 12:45 A.M.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate stand in recess until 12:45 a.m.

There being no objection, the Senate, at 12:13 a.m. recessed until 12:45 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. MURKOWSKI).

Mr. BAKER. 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. 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.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I have to report once more that we still do not have a definitive statement to make on the progress of the conference. I am still encouraged that the conference may be able to conclude this evening. A number of Senators are anxious for the Senate to remain in session so that we can announce a further schedule of the Senate and our intention about the session tomorrow and perhaps next week.

I think the only reasonable course at this hour is to put the Senate in recess subject to the call of the Chair. It is my anticipation that before 1:30 we will have another announcement to make.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 12:52 a.m. took a recess, subject to the call of the Chair.

The Senate reassembled at 2:24 a.m., when called to order by the Presiding Officer (Mr. MURKOWSKI).

STATUS REPORT—ECONOMIC RECOVERY TAX ACT OF 1981 CONFERENCE

Mr. BAKER. Mr. President, it is still likely, I think, that the conferees on the tax bill will finish their work this morning. But it is now 2:30 a.m. in the morning, and I judge there is still more work to be done, a significant amount of work, and it will take a while.

I do not feel inclined now to ask the Senate to remain longer. In a moment I will propound a unanimous-consent request to put us out until this evening, meaning the 1st of August, at 6 p.m.

Mr. President, before I do that, may I say that if the conferees can complete their work on the tax bill yet this morning, I would hope that it would be possible to produce the documents that are necessary to present to the Senate later today and then the Senate, if it chose, could take up the conference report on the tax bill and dispose of it this evening.

I reiterate if we do that it will only be by voice vote. There will not be a rollcall vote on Saturday.

I have advised the distinguished Senator from Ohio and the minority leader that it is my intention, if we cannot dispose of the matter this evening, then I would hope to call up the conference report, if it is available, make it the pending business, perhaps file a cloture motion at that time, and then to recess over until a day in the following week.

I will have a further statement to make on those details when we reconvene.

Mr. President, if no Senator wishes me to yield to him for any purpose I am prepared now to ask the Senate to go into recess.

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

Mr. BAKER. I yield.

Mr. CRANSTON. Will that date probably be Tuesday or Wednesday?

Mr. BAKER. Yes; it will probably be Tuesday or Wednesday, and I will confer with the minority leader and the distinguished acting minority leader before we make a decision on that.

Mr. CRANSTON. I thank the Senator.

ORDER FOR RECESS UNTIL 6 P.M. TODAY

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business this morning, it stand in recess until 6 p.m. today.

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

RECESS UNTIL 6 P.M. SATURDAY, AUGUST 1, 1981

Mr. BAKER. Mr. President I move, in accordance with the order just entered, that the Senate stand in recess until 6 p.m. today.

The motion was agreed to, and, at 2:32 a.m., the Senate recessed until Saturday, August 1, 1981, at 6 p.m.

NOMINATIONS

Executive nominations received by the Senate July 31, 1981:

DEPARTMENT OF STATE

Ronald I. Spiers, of Vermont, a Foreign Service Officer of the class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Pakistan.

BOARD FOR INTERNATIONAL BROADCASTING

Ben J. Wattenberg, of the District of Columbia, to be a Member of the Board for International Broadcasting for a term expiring April 28, 1983, vice John A. Gronouski, term expired.

UNITED NATIONS

William Courtney Sherman, of Virginia, a Foreign Service Officer of class 1, to be the Deputy Representative of the United States of America in the Security Council of the United Nations, with the rank of Ambassador.

IN THE AIR FORCE

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 531, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

To be major

Calzada, Jose E., xxx-xx-xxxx
Carroll, Gerard M., Jr., xxx-xx-xxxx
Fleming, John D., xxx-xx-xxxx
Riordon, John A., xxx-xx-xxxx

To be captain

Aavang, Glennis L., xxx-xx-xxxx
Abbit, James H., xxx-xx-xxxx
Abbott, Dwayne E., xxx-xx-xxxx
Acevedo, Patricia K., xxx-xx-xxxx
Adamcik, James P., xxx-xx-xxxx
Adams, Gerald M., Jr., xxx-xx-xxxx
Adams, James R., Jr., xxx-xx-xxxx
Addington, Doyle R., Jr., xxx-xx-xxxx
Aebli, Jacques, III, xxx-xx-xxxx
Aguiar, Lee W., xxx-xx-xxxx
Alfier, John, xxx-xx-xxxx
Allen, Jimmy R., xxx-xx-xxxx
Alley, Frederick L., xxx-xx-xxxx
Allie, Joseph S., xxx-xx-xxxx
Allison, Steven R., xxx-xx-xxxx
Amend, Frank R., Jr., xxx-xx-xxxx
Ames, Milton E., Jr., xxx-xx-xxxx
Anderson, Charles M., xxx-xx-xxxx
Anderson, David G., xxx-xx-xxxx
Anderson, James J., xxx-xx-xxxx
Anderson, John C., xxx-xx-xxxx
Anderson, Thomas L., xxx-xx-xxxx
Andren, George W., xxx-xx-xxxx
Andrews, Charles L., xxx-xx-xxxx
Andrews, Edward, Jr., xxx-xx-xxxx
Antinora, Richard, xxx-xx-xxxx
Antkowicz, Mark, xxx-xx-xxxx
Armentrout, Drew A., xxx-xx-xxxx
Arnold, Joseph W., xxx-xx-xxxx
Arsenault, John A., xxx-xx-xxxx
Athey, Michael W., xxx-xx-xxxx
Atwater, Richard M., xxx-xx-xxxx
Auletta, Joseph F., xxx-xx-xxxx
Bagesse, Robin H., xxx-xx-xxxx
Bailey, Michael A., xxx-xx-xxxx
Baird, Douglas P., xxx-xx-xxxx
Baked, Alfred C., III, xxx-xx-xxxx
Baker, John F., xxx-xx-xxxx
Ballance, Lyle L., Jr., xxx-xx-xxxx
Balyeat, John R., xxx-xx-xxxx
Barca, Robert S., xxx-xx-xxxx
Bare, Harold F., Jr., xxx-xx-xxxx
Barnes, Jeffrey D., xxx-xx-xxxx
Barrett, Ernest J., xxx-xx-xxxx
Barrow, William E., xxx-xx-xxxx
Bartlett, William H., xxx-xx-xxxx
Barton, John D., xxx-xx-xxxx
Bass, Thomas L., xxx-xx-xxxx
Bate, Stephen A., xxx-xx-xxxx
Baughman, Terry L., xxx-xx-xxxx
Beard, Dwight D., xxx-xx-xxxx
Beaty, Gene L., xxx-xx-xxxx
Beck, John F., xxx-xx-xxxx
Becker, Henry D., xxx-xx-xxxx
Becker, Michael E., xxx-xx-xxxx
Beebe, Gary E., xxx-xx-xxxx
Beightol, Willis E., Jr., xxx-xx-xxxx
Bell, Gus, Jr., xxx-xx-xxxx
Beltz, Fredrick M., xxx-xx-xxxx
Bennett, Fredrick E., Jr., xxx-xx-xxxx
Berg, George C., xxx-xx-xxxx
Berger, Dale K., xxx-xx-xxxx
Berger, William R., xxx-xx-xxxx
Bertoglio, James V., xxx-xx-xxxx
Best, William E., xxx-xx-xxxx
Bills, Conrad G., xxx-xx-xxxx
Bina, Robert E., xxx-xx-xxxx
Bitler, Steven A., xxx-xx-xxxx
Bjornstad, Ronald E., xxx-xx-xxxx
Black, Robert H., xxx-xx-xxxx
Blankenship, Robert R., xxx-xx-xxxx
Bledsoe, William L., xxx-xx-xxxx
Bogle, Lewis D., xxx-xx-xxxx
Bohn, Gary P., xxx-xx-xxxx
Bohunko, Joseph F., xxx-xx-xxxx
Bond, Lamar, Jr., xxx-xx-xxxx
Bonifant, Stephen S., xxx-xx-xxxx
Borchardt, William E., xxx-xx-xxxx
Bordman, Roger J., xxx-xx-xxxx
Bouchard, Ronald L., xxx-xx-xxxx
Bowman, Bradley A., xxx-xx-xxxx
Boyd, Franklin K., xxx-xx-xxxx
Boyd, James A., xxx-xx-xxxx
Boyd, Jimmie V., xxx-xx-xxxx
Bracken, George C., xxx-xx-xxxx
Bracken, Harold R., xxx-xx-xxxx
Bradie, Ross L., xxx-xx-xxxx
Bradley, Kenneth A., xxx-xx-xxxx
Bradshaw, Joel C., III, xxx-xx-xxxx
Branan, William C., Jr., xxx-xx-xxxx
Brandt, Lee E., xxx-xx-xxxx
Brewton, Jerry M., xxx-xx-xxxx
Briggs, Kent D., xxx-xx-xxxx
Broestel, Lee L., xxx-xx-xxxx
Brogan, James R., xxx-xx-xxxx
Brooksby, Robert C., xxx-xx-xxxx
Brown, Charles A., xxx-xx-xxxx
Brown, Charles I., xxx-xx-xxxx
Brown, Gregory K., xxx-xx-xxxx
Brown, Henry C., xxx-xx-xxxx

Brown, James H., Jr. xxx-xx-xxxx
Brown, Larry, xxx-xx-xxxx
Brown, Richard E. xxx-xx-xxxx
Brown, Ronald C. xxx-xx-xxxx
Brown, Thomas G. xxx-xx-xxxx
Brumm, Steven H. xxx-xx-xxxx
Bryant, Lillie A. xxx-xx-xxxx
Buckingham, John R. xxx-xx-xxxx
Buckingham, Larry A. xxx-xx-xxxx
Buckman, Robert J. xxx-xx-xxxx
Bukacek, Jody A. xxx-xx-xxxx
Bullock David E. xxx-xx-xxxx
Bunn, Jimmy D. xxx-xx-xxxx
Bunyard, James A. xxx-xx-xxxx
Bupp, Christopher L. xxx-xx-xxxx
Buras, Kathleen A. xxx-xx-xxxx
Burger, George H. xxx-xx-xxxx
Burgeson, James R. xxx-xx-xxxx
Burke, Lloyd S. xxx-xx-xxxx
Burke, Ted S. xxx-xx-xxxx
Burkholder, Ronald xxx-xx-xxxx
Burley, Boyce B., III xxx-xx-xxxx
Burrell, Raymond D. xxx-xx-xxxx
Busko, James P. xxx-xx-xxxx
Butts, Ronald L. xxx-xx-xxxx
Bycura, Michael W. xxx-xx-xxxx
Byers, Terrence L. xxx-xx-xxxx
Byrne, Robert E. xxx-xx-xxxx
Calloni, Ben A. xxx-xx-xxxx
Camp, Michael E. xxx-xx-xxxx
Campbell, James D. xxx-xx-xxxx
Cannon, Garry L. xxx-xx-xxxx
Cantrell, Randall R. xxx-xx-xxxx
Caraker, Michael L. xxx-xx-xxxx
Carlson, John J. xxx-xx-xxxx
Carlson, Robert D. xxx-xx-xxxx
Carpenter, George R. xxx-xx-xxxx
Carpenter, Jerold J. xxx-xx-xxxx
Carr, Robert E., Jr. xxx-xx-xxxx
Carson, Shirley R. xxx-xx-xxxx
Carter, Paul M. xxx-xx-xxxx
Carter, Robert A. xxx-xx-xxxx
Carver, James A. xxx-xx-xxxx
Cassil, John T. xxx-xx-xxxx
Castro, Fred M. xxx-xx-xxxx
Catherwood, John E. xxx-xx-xxxx
Catts, Clarence W. L. xxx-xx-xxxx
Cazessus, Ricardo M. xxx-xx-xxxx
Chamberlain, Craig F. xxx-xx-xxxx
Chapman, Douglas M. xxx-xx-xxxx
Chiles, Henry F. xxx-xx-xxxx
Chiofolo, Joseph M. xxx-xx-xxxx
Chisholm, Barry J. xxx-xx-xxxx
Christian, Terry E. xxx-xx-xxxx
Chubbs, Alonza T. xxx-xx-xxxx
Churchel, Gene E. xxx-xx-xxxx
Clark, Lynda A. xxx-xx-xxxx
Clayton, Richard C. xxx-xx-xxxx
Coats, Roger D. xxx-xx-xxxx
Coche, Dianne E. xxx-xx-xxxx
Cole, John R. xxx-xx-xxxx
Collins, Donal J. xxx-xx-xxxx
Cologne, Richard S. xxx-xx-xxxx
Coloney, Eric M. xxx-xx-xxxx
Confer, Edward C. xxx-xx-xxxx
Connell, James E. xxx-xx-xxxx
Copeland, John M. xxx-xx-xxxx
Copelin, Gary C. xxx-xx-xxxx
Cox, James R., Jr. xxx-xx-xxxx
Cox, Kell, Jr. xxx-xx-xxxx
Cox, Murray D. xxx-xx-xxxx
Coyne, Thomas P., Jr. xxx-xx-xxxx
Crane, Lowell W., Jr. xxx-xx-xxxx
Creel, Charles L. xxx-xx-xxxx
Cridlebaugh, Allan B. xxx-xx-xxxx
Crouse, William E. xxx-xx-xxxx
Crowe, Michael J. xxx-xx-xxxx
Crystal, Gregory C. xxx-xx-xxxx
Cummings, William H., III xxx-xx-xxxx
Cuneo, Jeffrey A. xxx-xx-xxxx
Curtis, Paul W. xxx-xx-xxxx
Daley, Judson D. xxx-xx-xxxx
Damanti, Vincent A. xxx-xx-xxxx
Darrell, Christopher E. xxx-xx-xxxx
Dashiell, Thomas M. xxx-xx-xxxx
Davidson, Walter G. xxx-xx-xxxx
Davies, Robert W. xxx-xx-xxxx
Davis, James C. xxx-xx-xxxx
Davis, John R. xxx-xx-xxxx
Davis, Mark L. xxx-xx-xxxx
Davis, Norvin L. xxx-xx-xxxx
Davis, Olin J. xxx-xx-xxxx
Davis, Shelby, Jr. xxx-xx-xxxx
Day, Richard L. xxx-xx-xxxx
Dean, Jerry N. xxx-xx-xxxx
Degarmo, James H. xxx-xx-xxxx
Demaster, Peter L. xxx-xx-xxxx
Dennison, John C. xxx-xx-xxxx
Denton, Tommy L. xxx-xx-xxxx
Denton, William A. xxx-xx-xxxx
Dewey, Charles S. xxx-xx-xxxx
Dibiase, Matthew xxx-xx-xxxx
Dice, Edward R., Jr. xxx-xx-xxxx
Digrado, Joseph P. xxx-xx-xxxx
Dike, Richard J. xxx-xx-xxxx
Dillard, Susan J. xxx-xx-xxxx
Dion, David P. xxx-xx-xxxx
Dockham, David M. A., II xxx-xx-xxxx
Doffoney, Angela D. xxx-xx-xxxx
Donagher, Francis P. xxx-xx-xxxx
Donahue, Roy G., Jr. xxx-xx-xxxx
Donald, Edwin C. xxx-xx-xxxx
Donovan, Victor R. xxx-xx-xxxx
Doquette, Charles E. xxx-xx-xxxx
Dougherty, Michael V. xxx-xx-xxxx
Douglas, Frank J. xxx-xx-xxxx
Douglas, Kirk R. xxx-xx-xxxx
Downs, Daniel R. xxx-xx-xxxx
Downs, Robert C., Jr. xxx-xx-xxxx
Downs, Victoria W. xxx-xx-xxxx
Dredla, Michael J. xxx-xx-xxxx
Dreher, Alan W. xxx-xx-xxxx
Drew, Michael W. xxx-xx-xxxx
Driscoll, John A. xxx-xx-xxxx
Dunable, Lyle C. xxx-xx-xxxx
Duncan, James R., Jr. xxx-xx-xxxx
Duncan, Jeffrey L. xxx-xx-xxxx
Duplissis, Diane M. xxx-xx-xxxx
Dykes, Joe G. xxx-xx-xxxx
Eadie, Robert D. xxx-xx-xxxx
Eagle, Douglas P. xxx-xx-xxxx
Early, Frances M. xxx-xx-xxxx
Eason, William A. xxx-xx-xxxx
Easterlin, Fred R. xxx-xx-xxxx
Eckburg, James R. xxx-xx-xxxx
Eddleman, Stanley H. xxx-xx-xxxx
Edgerton, Dean D. xxx-xx-xxxx
Edgren, Kevin L. xxx-xx-xxxx
Edie, George S., III xxx-xx-xxxx
Edmonds, Thomas J., Jr. xxx-xx-xxxx
Edwards, Robert R. xxx-xx-xxxx
Effinger, Joseph T. xxx-xx-xxxx
Eldon, Eric G. xxx-xx-xxxx
Eller, Michael M. xxx-xx-xxxx
Ellerbee, Emory E., Jr. xxx-xx-xxxx
Elliott, Andrew S. xxx-xx-xxxx
Elliott, Kurt A. xxx-xx-xxxx
Ellyson, George M. xxx-xx-xxxx
Ely, Neal M. xxx-xx-xxxx
Engle, Weldon D., Jr. xxx-xx-xxxx
Ertler, Dennis R. xxx-xx-xxxx
Estes, George M. xxx-xx-xxxx
Estill, David J. xxx-xx-xxxx
Eudy, Jerry D. xxx-xx-xxxx
Evans, William F., Jr. xxx-xx-xxxx
Everhart, Wilbert L., Jr. xxx-xx-xxxx
Fales, Gary R. xxx-xx-xxxx
Faram, David E. xxx-xx-xxxx
Farnow, Lawrence J. xxx-xx-xxxx
Ferguson, Lawrence xxx-xx-xxxx
Fernandez, Arturo G. xxx-xx-xxxx
Fine, Leslie R. xxx-xx-xxxx
Finney, William M. xxx-xx-xxxx
Fisher, Max L. xxx-xx-xxxx
Fisher, Michael E. xxx-xx-xxxx
Flannery, Paul xxx-xx-xxxx
Flinn, Frank C. II xxx-xx-xxxx
Floyd, Roger D. xxx-xx-xxxx
Fogler, Stephen H. xxx-xx-xxxx
Ford, James C. xxx-xx-xxxx
Fordyce, Victor H. xxx-xx-xxxx
Foreman, Larry W. xxx-xx-xxxx
Forest, Ronald L. xxx-xx-xxxx
Framme, John R. xxx-xx-xxxx
Franzen, Garry L. xxx-xx-xxxx
Fravel, John H. xxx-xx-xxxx
Fredenburgh, Mark xxx-xx-xxxx
Fredericks, John R. xxx-xx-xxxx
Freeman, Dale E. xxx-xx-xxxx
Freeman, William H. xxx-xx-xxxx
Freitas, Jean T. xxx-xx-xxxx
Frisch, John K., Jr. xxx-xx-xxxx
Froslie, Keith E. xxx-xx-xxxx
Fulkerson, Paul C. xxx-xx-xxxx
Fuller, Myrna L. xxx-xx-xxxx
Funck, Paul K. xxx-xx-xxxx
Gabaldon, Ronald P. A. xxx-xx-xxxx
Gabbard, Vernon, Jr. xxx-xx-xxxx
Gaddy, Billy C. xxx-xx-xxxx
Galanos, Demosthenes G. xxx-xx-xxxx
Galloway, Randolph M. S. xxx-xx-xxxx
Gallup, Edgar A. xxx-xx-xxxx
Gamble, Bruce D. xxx-xx-xxxx
Garcia, Alfredo, Jr. xxx-xx-xxxx
Garcia, Edward L. xxx-xx-xxxx
Garcia, Stephen R. xxx-xx-xxxx
Gardner, Curtis L. xxx-xx-xxxx
Garner, Bruce M. xxx-xx-xxxx
Garrett, William A., Jr. xxx-xx-xxxx
Garrison, David K. xxx-xx-xxxx
Garrison, Eugene A. xxx-xx-xxxx
Garza, Javier, Jr. xxx-xx-xxxx
Gasik, James W. xxx-xx-xxxx
Gassman, Richard A. xxx-xx-xxxx
Gebhart, Thomas J. xxx-xx-xxxx
Getzin, Brian R. xxx-xx-xxxx
Gibbs, Frankie W. xxx-xx-xxxx
Givens, Willie L. xxx-xx-xxxx
Glover, Eugene, xxx-xx-xxxx
Godbold, Stephen W. xxx-xx-xxxx
Gonzalez, Gustavo, Jr. xxx-xx-xxxx
Goodell, Joseph D. xxx-xx-xxxx
Goodlin, David P. xxx-xx-xxxx
Goodson, Lonnie C. xxx-xx-xxxx
Gootee, Kevin J. xxx-xx-xxxx
Gormley, William E. xxx-xx-xxxx
Gossell, Lowell C. xxx-xx-xxxx
Goudie, James E. xxx-xx-xxxx
Gouldthorpe, David W. xxx-xx-xxxx
Gourley, Robert P., Jr. xxx-xx-xxxx
Gover, Howard N. II xxx-xx-xxxx
Gowen, Richard A. xxx-xx-xxxx
Grace, Harold W. xxx-xx-xxxx
Gray, William A. xxx-xx-xxxx
Greathouse, James R. xxx-xx-xxxx
Greaves, Robert J. xxx-xx-xxxx
Green, Antionette L. xxx-xx-xxxx
Green, Daniel P. xxx-xx-xxxx
Greff, Ricky J. xxx-xx-xxxx
Grieco, Patrick A. xxx-xx-xxxx
Griffith, Willard D., Jr. xxx-xx-xxxx
Grigus, Jon E. xxx-xx-xxxx
Grunzke, Paul M. xxx-xx-xxxx
Guffey, Maurice H., Jr. xxx-xx-xxxx
Guidry, Murrell J. Jr. xxx-xx-xxxx
Gummel, Joseph E. xxx-xx-xxxx
Gump, Timothy J. xxx-xx-xxxx
Gustafson, Carl D. xxx-xx-xxxx
Gutschenritter, James L. xxx-xx-xxxx
Hadaway, Fred E. xxx-xx-xxxx
Hadley, Emerson E. xxx-xx-xxxx
Haerter, Merville G. xxx-xx-xxxx
Hagee, Kinser H. xxx-xx-xxxx
Halbert, Kenneth C. xxx-xx-xxxx
Hall, Richard H. xxx-xx-xxxx
Hall, Ronald L. xxx-xx-xxxx
Hall, Tony L. xxx-xx-xxxx
Halpin, Senan xxx-xx-xxxx
Hanna, Bruce F. xxx-xx-xxxx
Hanrahan, Thomas P. xxx-xx-xxxx
Hardaway, Steven A. xxx-xx-xxxx
Hare, Thomas R. xxx-xx-xxxx
Harley, Walter L. xxx-xx-xxxx
Harrelson, Kim xxx-xx-xxxx
Harris, Brian K. xxx-xx-xxxx
Harris, Clyde J. xxx-xx-xxxx
Harris, Leslie N. xxx-xx-xxxx
Harris, Michael C. xxx-xx-xxxx
Harris, Randell C. xxx-xx-xxxx
Harris, Stephen xxx-xx-xxxx
Harris, William L., II xxx-xx-xxxx
Harrison, Joe R. xxx-xx-xxxx
Harrison, Kelly D. xxx-xx-xxxx
Harrison, Michael A. xxx-xx-xxxx
Hart, Harold D. xxx-xx-xxxx
Hart, Thomas H. xxx-xx-xxxx
Harter, Merrick D. xxx-xx-xxxx
Hartle, Byron C. xxx-xx-xxxx
Hartranft, Thomas J. xxx-xx-xxxx
Hataway, Clayton M. xxx-xx-xxxx

Hathaway, Kenneth R., xxx-xx-xxxx
Haugo, Keith E., xxx-xx-xxxx
Havko, Arthur F., xxx-xx-xxxx
Hazelton, Norris J., xxx-xx-xxxx
Hazlett, Flynnis B., xxx-xx-xxxx
Head, Willie T., Jr., xxx-xx-xxxx
Healy, Joseph L., III, xxx-xx-xxxx
Heiken, Edward D., Jr., xxx-xx-xxxx
Heisch, Harold V., xxx-xx-xxxx
Heisel, William G., xxx-xx-xxxx
Henderson, George R., xxx-xx-xxxx
Henry, Daniel R., xxx-xx-xxxx
Herman, Abigail I., xxx-xx-xxxx
Hicks, Robert C., Jr., xxx-xx-xxxx
Higdon, Dorsey E., Jr., xxx-xx-xxxx
Higgins, Douglas S., xxx-xx-xxxx
Higgons, Gerald T., xxx-xx-xxxx
Hill, James E., Jr., xxx-xx-xxxx
Hiller, Douglas W., xxx-xx-xxxx
Hiller, John S., xxx-xx-xxxx
Hilliard, Michael G., xxx-xx-xxxx
Hillson, Franklin J., xxx-xx-xxxx
Himmelstein, David A., xxx-xx-xxxx
Hinderleider, Susan K., xxx-xx-xxxx
Hines, Edward E., xxx-xx-xxxx
Hines, John W., Jr., xxx-xx-xxxx
Hodges, Carl D., Jr., xxx-xx-xxxx
Hodges, Harry R., Jr., xxx-xx-xxxx
Hoegel, Peter, xxx-xx-xxxx
Hoesly, William J., xxx-xx-xxxx
Hoffhines, Stephen P., xxx-xx-xxxx
Hofstetter, Craig W., xxx-xx-xxxx
Hogrefe, Thomas S., xxx-xx-xxxx
Holden, Richard W., xxx-xx-xxxx
Holder, Kenneth D., xxx-xx-xxxx
Holderman, Frederick W., xxx-xx-xxxx
Holdiness, Hubert C., Jr., xxx-xx-xxxx
Hollis, James B., xxx-xx-xxxx
Holman, Scott R., xxx-xx-xxxx
Holstun, John B., xxx-xx-xxxx
Holubik, Thomas E., xxx-xx-xxxx
Homrig, Mark A., xxx-xx-xxxx
Honea, Gary S., xxx-xx-xxxx
Honnet, Randy E., xxx-xx-xxxx
Hood, Gregory W., xxx-xx-xxxx
Hood, William C., xxx-xx-xxxx
Horace, Robert F., Jr., xxx-xx-xxxx
Horton, Benjamin C., xxx-xx-xxxx
House, John W., xxx-xx-xxxx
Howard, Byron L., xxx-xx-xxxx
Howell, Ronnie C., xxx-xx-xxxx
Howell, Thomas O., xxx-xx-xxxx
Howlett, Terry L., xxx-xx-xxxx
Hubbard, Elbert B., III, xxx-xx-xxxx
Huber, Richard J., xxx-xx-xxxx
Hudson, Robert E., II, xxx-xx-xxxx
Hull, Stephen G., xxx-xx-xxxx
Hultgren, Allen L., xxx-xx-xxxx
Hundley, David R., xxx-xx-xxxx
Hunsinger, Dennis A., xxx-xx-xxxx
Hunt, Alfred N., xxx-xx-xxxx
Hunt, Ronda J., xxx-xx-xxxx
Huntington, Richard E., xxx-xx-xxxx
Hurley, Daniel D., xxx-xx-xxxx
Hurt, Dewey L., xxx-xx-xxxx
Hutchison, James R., xxx-xx-xxxx
Huwe, Thomas A., xxx-xx-xxxx
Hyde, James C., xxx-xx-xxxx
Iseli, Carolyn J., xxx-xx-xxxx
Isgro, Benjamin A., II, xxx-xx-xxxx
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The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 531, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

CHAPLAIN

To be major

Hanrahan, William P., xxx-xx-xxxx

To be captain

Bernstein, John I., xxx-xx-xxxx
Brault, Gilles J. R., xxx-xx-xxxx
Dudash, Harold, xxx-xx-xxxx
Homer, Arthur R., xxx-xx-xxxx
Johnson, Junius W., xxx-xx-xxxx
Revello, James P., xxx-xx-xxxx
Richardson, Cecil R., xxx-xx-xxxx

JUDGE ADVOCATE CORPS

To be captain

Armstrong, Mark W., xxx-xx-xxxx
Barnard, Bruce, xxx-xx-xxxx
Becker, Bruce W., xxx-xx-xxxx
Bersak, Robert A., xxx-xx-xxxx
Blackwell, Paul H., Jr., xxx-xx-xxxx
Bowen, William P., xxx-xx-xxxx
Brupbacher, Emil D., Jr., xxx-xx-xxxx
Cohen, Jay L., xxx-xx-xxxx
Dalessio, Gerard V., Jr., xxx-xx-xxxx
Dippold, Lynn, W., xxx-xx-xxxx
Diver, David M., xxx-xx-xxxx
Faber, William J., xxx-xx-xxxx
Fitch, Donald R., xxx-xx-xxxx
Giebelhaus, Stephen J., xxx-xx-xxxx
Gordon, Croxton, xxx-xx-xxxx
Grady, Jack W., xxx-xx-xxxx
Haggar, Jan G., xxx-xx-xxxx
Hebert, Hamilton D., Jr., xxx-xx-xxxx
Held, Peter R., xxx-xx-xxxx
Heriot, Gail R., xxx-xx-xxxx
Hollis, Brenda J., xxx-xx-xxxx
Jarlenski, Daniel G., Jr., xxx-xx-xxxx
Kuckelman, David J., xxx-xx-xxxx
Kuhn, Kevin J., xxx-xx-xxxx
Levardsen, Martha J., xxx-xx-xxxx
Little, William J. III, xxx-xx-xxxx
Mannix, Charles R., Jr., xxx-xx-xxxx
Martin, Mariann I., xxx-xx-xxxx
Miller, Gary D., xxx-xx-xxxx
Orton, John M., xxx-xx-xxxx
Rellett, John M., xxx-xx-xxxx
Rhoades, Stephen J., xxx-xx-xxxx
Rives, Jack L., xxx-xx-xxxx
Schlegel, Thomas E., xxx-xx-xxxx
Schreier, Margaret L., xxx-xx-xxxx
Smith, Ellis P., xxx-xx-xxxx
Spilker, Alan J., xxx-xx-xxxx
Unpingco, Johnny S., xxx-xx-xxxx
Wichelns, Miles D., xxx-xx-xxxx
Wilber, Gary M., xxx-xx-xxxx
Windham, Terrance, xxx-xx-xxxx

NURSE CORPS

To be major

Hansen, Phillis J., xxx-xx-xxxx
Sanger, Jean K., xxx-xx-xxxx

To be captain

Alverson, Helen M., xxx-xx-xxxx
Ammann, Barbara S., xxx-xx-xxxx
Anderson, Gary E., xxx-xx-xxxx
Armini, Alexis J., xxx-xx-xxxx
Baker, Gerald A., xxx-xx-xxxx
Barr, Kathleen M., xxx-xx-xxxx
Beam, Jay J., xxx-xx-xxxx
Bishop, Linda J., xxx-xx-xxxx
Bolton, Norma K., xxx-xx-xxxx
Brady, Michele M., xxx-xx-xxxx
Brannon, Barbara C., xxx-xx-xxxx
Brasko, Michael J., xxx-xx-xxxx
Brown, Martha A., xxx-xx-xxxx
Brownstein, Annette, xxx-xx-xxxx
Buck, Patricia A., xxx-xx-xxxx
Cannon, Patricia A., xxx-xx-xxxx
Chiles, Marsha R., xxx-xx-xxxx
Colbert, Robert W., xxx-xx-xxxx
Cole, Barbara D., xxx-xx-xxxx
Comparon, Margret I., xxx-xx-xxxx
Corrow, Laura K., xxx-xx-xxxx
Cox, Deanna L., xxx-xx-xxxx
Cross, Charles A., xxx-xx-xxxx
Daniels, Maureen F., xxx-xx-xxxx
Deason, Carol R., xxx-xx-xxxx
Decker, Kristine Case, xxx-xx-xxxx
Dunningham, Mary C., xxx-xx-xxxx
Edwards, Quannetta T., xxx-xx-xxxx
Emmick, Roger D., xxx-xx-xxxx
Fairley, Rhonda V., xxx-xx-xxxx
Ferguson, David L., xxx-xx-xxxx
Ferguson, Scott F., xxx-xx-xxxx
Fesel, Frederick, xxx-xx-xxxx
Figun, Monica A., xxx-xx-xxxx
France, Deborah S., xxx-xx-xxxx
Garcia, Norma I., xxx-xx-xxxx
Gensel, Joanne M., xxx-xx-xxxx
Gentile, Janice W., xxx-xx-xxxx
Gerdes, Jolene J., xxx-xx-xxxx
Gibson, Gailyn J., xxx-xx-xxxx
Gilbert, Shannon N., xxx-xx-xxxx
Grant, Susan E., xxx-xx-xxxx
Grella, Nancy L., xxx-xx-xxxx
Haight, Vicki L., xxx-xx-xxxx
Harris, Patricia E., xxx-xx-xxxx
Herrman, Enrica J., xxx-xx-xxxx
Hertz, Kerby L., xxx-xx-xxxx
Hewson, Carol A., xxx-xx-xxxx
Higgason, Martha F., xxx-xx-xxxx
Hirshouer, Patricia A., xxx-xx-xxxx
Hitt, Robert L., xxx-xx-xxxx
Hohm, Jean M., xxx-xx-xxxx
Holm, Angela M., xxx-xx-xxxx
Holtz, Sharon A., xxx-xx-xxxx
Howard, Illona W., xxx-xx-xxxx
Jensen, Garye D., xxx-xx-xxxx
Johnson, Jewett G., xxx-xx-xxxx
Johnson, Nancy L., xxx-xx-xxxx
Jones, Brenda L., xxx-xx-xxxx
Jones, Judy D., xxx-xx-xxxx
Joyce, Charlotte J., xxx-xx-xxxx
Kamback, Sharon G., xxx-xx-xxxx
Kelley, Sarah L., xxx-xx-xxxx
Kennedy, Vickey A., xxx-xx-xxxx
Lake, Linda R., xxx-xx-xxxx
Lane, Mary J., xxx-xx-xxxx
Larson, Shari A., xxx-xx-xxxx
Leary, Steven E., xxx-xx-xxxx
Lewis, Ellen N., xxx-xx-xxxx
MacDonald, Anna K., xxx-xx-xxxx
MacPherson, Patricia M., xxx-xx-xxxx
Maxin, Mary L., xxx-xx-xxxx

Maxse, Mary E., xxx-xx-xxxx
McClure, Mary J., xxx-xx-xxxx
McDaniel, Donna L., xxx-xx-xxxx
McIntyre, Carol L., xxx-xx-xxxx
McNamara, Nancy L., xxx-xx-xxxx
Moore, Gary J., xxx-xx-xxxx
Moran, Mary E., xxx-xx-xxxx
Moretz, Nancy L., xxx-xx-xxxx
Mosmiller, Anthony J., Jr. xxx-xx-xxxx
Nester, Robert M., xxx-xx-xxxx
Neuberger, Jeffrey L., xxx-xx-xxxx
Nichols, John C., xxx-xx-xxxx
Oset, Diane R., xxx-xx-xxxx
Peters, Patrica A., xxx-xx-xxxx
Pickowitz, Marjorie, xxx-xx-xxxx
Preziosi, Nancy C., xxx-xx-xxxx
Price, Ralph B., xxx-xx-xxxx
Quinn, Susan L., xxx-xx-xxxx
Reynolds, Blancanieve A. G., xxx-xx-xxxx
Rich, Cletus D., xxx-xx-xxxx
Robinson, Julienell N., xxx-xx-xxxx
Rustvang, Daniel R., xxx-xx-xxxx
Saulpaugh, Janine M., xxx-xx-xxxx
Sheldon, Carolyn E., xxx-xx-xxxx
Shultz, Alan F., xxx-xx-xxxx
Sinha, Patricia V., xxx-xx-xxxx
Snide, Joseph E., xxx-xx-xxxx
Stash, Diane M., xxx-xx-xxxx
Stauffer, Michael W., xxx-xx-xxxx
Sult, Stephen K., xxx-xx-xxxx
Tetreault, Jacqueline E., xxx-xx-xxxx
Thompson, Donna D., xxx-xx-xxxx
Thum, Paula E., xxx-xx-xxxx
Toman, Carol A., xxx-xx-xxxx
Urbanik, Alice M., xxx-xx-xxxx
Vann, Thomas A., xxx-xx-xxxx
Villanueva, Anthony M., xxx-xx-xxxx
Walsh, Carl E., xxx-xx-xxxx
Waters, Kenneth D., xxx-xx-xxxx
Weber, Bruce J., xxx-xx-xxxx
Wilkins, Richard L., xxx-xx-xxxx
Williams, Jacquelyn K., xxx-xx-xxxx
Wilson, Catherine L., xxx-xx-xxxx
Wolf, Suzanne, xxx-xx-xxxx
Wotring, Stephanie M., xxx-xx-xxxx
Wright, Geraldine K., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be captain

Anderson, Michael C., xxx-xx-xxxx
Davis, Douglas C., xxx-xx-xxxx
Diehl, Edward B., xxx-xx-xxxx
Friend, Roger W., xxx-xx-xxxx
Garriott, Lee N., xxx-xx-xxxx
Geiger, James F., xxx-xx-xxxx
Goudelock, Walter E., xxx-xx-xxxx
Hay, Martin A., xxx-xx-xxxx
Legg, Brian E., xxx-xx-xxxx
Love, Andrew F., xxx-xx-xxxx
Morris, Dale R., xxx-xx-xxxx
Ontiveros, Alfredo, Jr., xxx-xx-xxxx
Palen, Donald W., Jr., xxx-xx-xxxx
Pisut, Matthias B., III, xxx-xx-xxxx
Renwick, William R., xxx-xx-xxxx
Tatum, Daniel L., xxx-xx-xxxx
Walter, Lucas J., Jr., xxx-xx-xxxx
Williams, Raymond, III, xxx-xx-xxxx

To be first lieutenant

Albano, Rocco L., Jr., xxx-xx-xxxx
Aycoth, David L., xxx-xx-xxxx
Bigelow, Richard E., xxx-xx-xxxx
Ciccocioppo, Michael V., Jr., xxx-xx-xxxx
Drye, Alvin B., Jr., xxx-xx-xxxx
Gilbreath, David D., xxx-xx-xxxx
Halvorsen, Brad J., xxx-xx-xxxx
Hymer, Richard R., xxx-xx-xxxx
Kearney, Jeanie M., xxx-xx-xxxx
Tatko, Thomas P., xxx-xx-xxxx
Tatroe, Randy L., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

To be captain

Anthony, Taylor C., xxx-xx-xxxx
Armbruster, David A., xxx-xx-xxxx
Bailey, Ronald C., xxx-xx-xxxx
Bohannon, Claudette, xxx-xx-xxxx
Bowen, Sue E., xxx-xx-xxxx
Brooker, Alan E., xxx-xx-xxxx
Cargill, William G., xxx-xx-xxxx
Colosimo, Charles P., xxx-xx-xxxx
Costa, Kenneth A., xxx-xx-xxxx
Dehler, John H., xxx-xx-xxxx
Drawbaugh, Richard B., xxx-xx-xxxx
Efird, Carl R., Jr., xxx-xx-xxxx
Elmore, John H., xxx-xx-xxxx
George, Robert A., xxx-xx-xxxx
Greenamyer, Judith J., xxx-xx-xxxx
Gustafson, Lee A., xxx-xx-xxxx
Hall, William C., xxx-xx-xxxx
Harpel, Leslie D., xxx-xx-xxxx
Hess, Alan J., xxx-xx-xxxx
Holt, Danny L., xxx-xx-xxxx
Hunter, David, xxx-xx-xxxx
Jennings, Ronald M., xxx-xx-xxxx
Juhas, Andrew M., xxx-xx-xxxx
Kasa, Thomas J., xxx-xx-xxxx
Keller, William C., xxx-xx-xxxx
Kemp, Candace, xxx-xx-xxxx
Kerch, Paul E., xxx-xx-xxxx
Koreman, Ira J., xxx-xx-xxxx
Krogwold, Roger A., xxx-xx-xxxx
Larsen, Daniel L., xxx-xx-xxxx
Lehman, Jay W., xxx-xx-xxxx
Love, William C., xxx-xx-xxxx
Meier, Terry J., xxx-xx-xxxx
Murry, Michael D., xxx-xx-xxxx
Nelson, Gregory H., xxx-xx-xxxx
Nelson, John P., xxx-xx-xxxx
Nickell, Roy C., Jr., xxx-xx-xxxx
North, Victoria S., xxx-xx-xxxx
Nothnagel, Victor T., xxx-xx-xxxx
O'Neal, Melvin R., xxx-xx-xxxx
Padgett, Richard E., xxx-xx-xxxx
Parisher, Darrel W., xxx-xx-xxxx
Potts, David L., xxx-xx-xxxx
Prado, Karl L., xxx-xx-xxxx
Price, Richard L., xxx-xx-xxxx
Ray, Paul T., xxx-xx-xxxx
Robillard, Thomas A., xxx-xx-xxxx
Rohrig, William L., xxx-xx-xxxx
Rosenfield, James B., xxx-xx-xxxx
Russell, James M., xxx-xx-xxxx
Schlossnagle, George W., Jr., xxx-xx-xxxx
Sierrairizarry, Benigno, xxx-xx-xxxx
Simonini, Rinaldo C., III, xxx-xx-xxxx
Smith, Nelson K., xxx-xx-xxxx
Sybrant, Terry D., xxx-xx-xxxx
Tarpley, Alice A., xxx-xx-xxxx
Tartasky, Donald J., xxx-xx-xxxx
Tweedie, William C., xxx-xx-xxxx
Ward, Leo J., Jr., xxx-xx-xxxx
Weber, Charles S., xxx-xx-xxxx
Woods, Gordon E., xxx-xx-xxxx
Young, Robert W., xxx-xx-xxxx

To be first lieutenant

Alexander, Terrance G., xxx-xx-xxxx
Delagarza, Judith A., xxx-xx-xxxx
Dunne, Elizabeth V., xxx-xx-xxxx
Fairman, Terry M., xxx-xx-xxxx
Kidd, George H., IV, xxx-xx-xxxx
Mason, Robert W., xxx-xx-xxxx
Sargent, James D., xxx-xx-xxxx
Springer, Bobby C., xxx-xx-xxxx

IN THE ARMY

The following-named officers for promotion in the Army of the United States, under provisions of title 10, United States Code, sections 3442 and 3447:

CHAPLAIN CORPS

To be colonel

Strawser, Ray A., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be colonel

Bastian, John A., III, xxx-xx-xxxx
Loryea, Robert S., xxx-xx-xxxx

ARMY PROMOTION LIST

To be lieutenant colonel

Abrams, John N., xxx-xx-xxxx
Adams, Barry H., xxx-xx-xxxx
Adams, John E., Jr., xxx-xx-xxxx
Adams, Melville W., xxx-xx-xxxx
Ahnell, Charles P., Jr., xxx-xx-xxxx
Albright, Robert H., xxx-xx-xxxx
Alexander, George M., xxx-xx-xxxx
Alexander, James P., xxx-xx-xxxx
Allanach, William C., xxx-xx-xxxx
Allen, Jon J., xxx-xx-xxxx
Allen, Richard D., xxx-xx-xxxx
Almes, Edward W., xxx-xx-xxxx
Almojuela, Thomas N., xxx-xx-xxxx
Amoroso, Frank P., xxx-xx-xxxx
Andersen, Timothy W., xxx-xx-xxxx
Anderson, Ben L., Jr., xxx-xx-xxxx
Anderson, Dale R., xxx-xx-xxxx
Anderson, David M., III, xxx-xx-xxxx
Anderson, John D., xxx-xx-xxxx
Anderson, Leonard G., Jr., xxx-xx-xxxx
Anderson, Louie H., xxx-xx-xxxx
Anderson, Melvyn L., II, xxx-xx-xxxx
Anderson, Michael R., xxx-xx-xxxx
Andreen, Ronald D., xxx-xx-xxxx
Andrews, Michael A., xxx-xx-xxxx
Andrle, John C., xxx-xx-xxxx
Angeli, Raymond S., xxx-xx-xxxx
Angsten, Joseph J., Jr. xxx-xx-xxxx
Ansel, Raymond B., xxx-xx-xxxx
Antoine, Lawrence V., Sr., xxx-xx-xxxx
Aquino, Paschal A., xxx-xx-xxxx
Arango, Roger J., Jr., xxx-xx-xxxx
Archebelle, Edwin B., xxx-xx-xxxx
Arens, Noel J., xxx-xx-xxxx
Asiello, Robert M., xxx-xx-xxxx
Asimakopoulos, Peter L., xxx-xx-xxxx
Atkins, Edsel R., xxx-xx-xxxx
Audrain, Erin F., Jr., xxx-xx-xxxx
Auger, John D., xxx-xx-xxxx
Babb, Joe P., xxx-xx-xxxx
Back, John F., Jr., xxx-xx-xxxx
Badger, James L., Jr., xxx-xx-xxxx
Baggett, David L., xxx-xx-xxxx
Baggott, Francis M., xxx-xx-xxxx
Baily, Charles M., xxx-xx-xxxx
Baker, Richard L., xxx-xx-xxxx
Baker, Robert M., xxx-xx-xxxx
Balogh, Zoltan J., xxx-xx-xxxx
Banisch, Werner W., xxx-xx-xxxx
Barbara, James C., xxx-xx-xxxx
Barefoot, Allen, Jr., xxx-xx-xxxx
Barrett, Richard E., xxx-xx-xxxx
Barrett, Robert W., xxx-xx-xxxx
Barrington, John E., xxx-xx-xxxx
Barron, Robert C., xxx-xx-xxxx
Barry, Russell W., xxx-xx-xxxx
Barry, William A., III, xxx-xx-xxxx
Barth, David F., xxx-xx-xxxx
Bartley, Randall B., xxx-xx-xxxx
Bassett, Richard S., xxx-xx-xxxx
Basso, George, xxx-xx-xxxx
Bates, William M., xxx-xx-xxxx
Battcher, John A., xxx-xx-xxxx
Batten, Peter R., xxx-xx-xxxx
Bauer, William B., xxx-xx-xxxx
Baumgartner, Glenn W., xxx-xx-xxxx
Beach, Martin H., xxx-xx-xxxx
Beard, Otis R., xxx-xx-xxxx
Beaver, John W., xxx-xx-xxxx
Beck, Dwight A., xxx-xx-xxxx
Beck, James W., xxx-xx-xxxx
Beck, Lois M., xxx-xx-xxxx
Beck, Silas E., xxx-xx-xxxx
Belch, Peter P., xxx-xx-xxxx
Bell, Lester R., xxx-xx-xxxx
Bellamy, Lonnie J., xxx-xx-xxxx
Belz, George D., Jr., xxx-xx-xxxx
Bender, Michael J., xxx-xx-xxxx
Benjamin, Richard D., xxx-xx-xxxx
Bennett, Kelley E., xxx-xx-xxxx
Benson, Charles A., xxx-xx-xxxx
Berg, Allan, xxx-xx-xxxx
Berg, David B., xxx-xx-xxxx
Berger, Joseph B., Jr., xxx-xx-xxxx
Bergeron, Alfred J., xxx-xx-xxxx
Bergman, William K., xxx-xx-xxxx
Berkey, Richard O., xxx-xx-xxxx
Bernard, Joseph P., xxx-xx-xxxx
Bernhardt, Eugene D., xxx-xx-xxxx
Bertagnolli, Joseph J., xxx-xx-xxxx
Beverley, William W., Jr., xxx-xx-xxxx
Biamon, Niels P., xxx-xx-xxxx
Biekkola, James W., xxx-xx-xxxx
Bijold, Gerald P., xxx-xx-xxxx
Bikus, John J., Jr., xxx-xx-xxxx
Birmingham, Irvin, xxx-xx-xxxx
Bise, Lanny C., xxx-xx-xxxx
Bishop, Glade M., xxx-xx-xxxx
Bishop, Lewis M., Jr., xxx-xx-xxxx
Black, John H., xxx-xx-xxxx
Blackburn, David A., xxx-xx-xxxx
Blackwell, Leon B., Jr., xxx-xx-xxxx

Blanchard, Sherman J. xxx-xx-xxxx
Blaylock, Norman R. xxx-xx-xxxx
Bloyd, John R. xxx-xx-xxxx
Blue, Leon D. xxx-xx-xxxx
Blue, Thomas J. xxx-xx-xxxx
Blumenfeld, Charles H., Jr. xxx-xx-xxxx
Bock, William P. xxx-xx-xxxx
Bohuslar, John W. xxx-xx-xxxx
Boles, Edward A. xxx-xx-xxxx
Bonnell, Kenneth L. xxx-xx-xxxx
Booker, Marshall L. xxx-xx-xxxx
Boozer, James D. xxx-xx-xxxx
Boudreau, Michael W. xxx-xx-xxxx
Bougas, Constantine T. xxx-xx-xxxx
Bounds, Gary L. xxx-xx-xxxx
Bowden, David D. xxx-xx-xxxx
Bowen, Wallace J. xxx-xx-xxxx
Bowles, Edward S. xxx-xx-xxxx
Boyd, Michael F. xxx-xx-xxxx
Boyd, Morris J. xxx-xx-xxxx
Braddock, Richard R. xxx-xx-xxxx
Bramblett, John R., Jr xxx-xx-xxxx
Brantley, James E. xxx-xx-xxxx
Braswell, Billie E. xxx-xx-xxxx
Braudaway, Jessie A. xxx-xx-xxxx
Braze, David J. xxx-xx-xxxx
Breeden, Kenneth R. xxx-xx-xxxx
Breman, Stephen L. xxx-xx-xxxx
Brewer, Dennis W. xxx-xx-xxxx
Bridges, Franklin G. xxx-xx-xxxx
Bridges, Terrell D. xxx-xx-xxxx
Brinker, Walter E., Jr. xxx-xx-xxxx
Brisson, Robert F., Jr. xxx-xx-xxxx
Britt, Thomas W. xxx-xx-xxxx
Broadhurst, Carl R. xxx-xx-xxxx
Brockway, Charles R. xxx-xx-xxxx
Brohm, Gerard P. xxx-xx-xxxx
Bronson, James R. xxx-xx-xxxx
Brown, Bradford M. xxx-xx-xxxx
Brown, Charles D. xxx-xx-xxxx
Brown, Clark C. xxx-xx-xxxx
Brown, Jerry A. xxx-xx-xxxx
Brown, Robert J. xxx-xx-xxxx
Brown, Robert M., Jr. xxx-xx-xxxx
Brown, Wayne K., Jr. xxx-xx-xxxx
Brown, William R. xxx-xx-xxxx
Brunnhoeffer, Gilbert C. xxx-xx-xxxx
Bruns, Thomas E. xxx-xx-xxxx
Bryan, Hardy W., III xxx-xx-xxxx
Bryant, Boyd C. xxx-xx-xxxx
Bryant, Charles L. xxx-xx-xxxx
Bryant, Hurley D., Jr. xxx-xx-xxxx
Bryson, Gene K. xxx-xx-xxxx
Buchholz, Douglas D. xxx-xx-xxxx
Buchwald, Clarence R., Jr. xxx-xx-xxxx
Buckley, Daniel J., Jr. xxx-xx-xxxx
Buckley, David L. xxx-xx-xxxx
Buczacki, John B. xxx-xx-xxxx
Buetti, Anthony J., III xxx-xx-xxxx
Bullock, Donald L. xxx-xx-xxxx
Bullock, Howard R. xxx-xx-xxxx
Bumanglag, Carlos J. xxx-xx-xxxx
Bundons, Albert R. xxx-xx-xxxx
Burbidge, John M. xxx-xx-xxxx
Burch, Linda G. xxx-xx-xxxx
Burckhardt, Marland J. xxx-xx-xxxx
Burdette, Robert J. xxx-xx-xxxx
Burnette, Thomas N., Jr. xxx-xx-xxxx
Burns, Kennith R. xxx-xx-xxxx
Burrow, Troy E. xxx-xx-xxxx
Busch, Brian J., Sr. xxx-xx-xxxx
Bush, Charles D. xxx-xx-xxxx
Bush, Robert F., Jr. xxx-xx-xxxx
Butler, Daniel E. xxx-xx-xxxx
Butler, James M. xxx-xx-xxxx
Buys, Albert P. xxx-xx-xxxx
Buzby, Brian xxx-xx-xxxx
Byard, Frederick B. xxx-xx-xxxx
Byrne, William G., Jr. xxx-xx-xxxx
Cabot, O H., Perry, xxx-xx-xxxx
Cadorette, Raymond P. xxx-xx-xxxx
Caine, Bruce T. xxx-xx-xxxx
Calhoun, Norman S., Jr. xxx-xx-xxxx
Callahan, Francis R. xxx-xx-xxxx
Callaway, Larry W. xxx-xx-xxxx
Camerano, Anthony G., Jr. xxx-xx-xxxx
Campbell, Carole M. xxx-xx-xxxx
Campbell, David H. xxx-xx-xxxx
Campbell, John D. xxx-xx-xxxx
Campbell, Julian M., Jr. xxx-xx-xxxx
Canar, Robert G. xxx-xx-xxxx
Cannon, Charles C., Jr. xxx-xx-xxxx
Cannon, James C. xxx-xx-xxxx
Cannon, Joe M. xxx-xx-xxxx
Cannon, Samuel L. xxx-xx-xxxx
Cannon, Walter W. xxx-xx-xxxx
Canon, Charles M., III xxx-xx-xxxx
Capozzi, Roy M. xxx-xx-xxxx
Capps, James H. xxx-xx-xxxx
Cardell, Larry E. xxx-xx-xxxx
Carden, Joe B. xxx-xx-xxxx
Cargile, James P., Jr. xxx-xx-xxxx
Carlsen, Dale A. xxx-xx-xxxx
Carlton, John W. xxx-xx-xxxx
Carpenter, Ronald B. xxx-xx-xxxx
Carr, Jerry T. xxx-xx-xxxx
Carter, Ronald W. xxx-xx-xxxx
Cartier, Eugene N. xxx-xx-xxxx
Carwile, Frederick H. xxx-xx-xxxx
Carzoli, Richard L. xxx-xx-xxxx
Casalengo, Roger W. xxx-xx-xxxx
Case, James W. xxx-xx-xxxx
Cecere, Peter M. xxx-xx-xxxx
Cecil, Gerald T. xxx-xx-xxxx
Cejka, David C. xxx-xx-xxxx
Celani, Albert F. xxx-xx-xxxx
Cepak, Charlie J. xxx-xx-xxxx
Cermenaro, James A. xxx-xx-xxxx
Chambers, Jerry W. xxx-xx-xxxx
Cheatham, Calvin W., Jr. xxx-xx-xxxx
Cheatham, James H., Jr. xxx-xx-xxxx
Cheatham, Ronald C. xxx-xx-xxxx
Cheeks, Robert F. xxx-xx-xxxx
Cherry, Norman R. xxx-xx-xxxx
Childress, Phillip W. xxx-xx-xxxx
Chilton, Forrest S., IV xxx-xx-xxxx
Chobrda, Martin P. xxx-xx-xxxx
Christiansen, Edward T. xxx-xx-xxxx
Ciarlo, Fred H. xxx-xx-xxxx
Cibula, George A. xxx-xx-xxxx
Cindric, Thomas A. xxx-xx-xxxx
Clare, Joseph F., Jr. xxx-xx-xxxx
Clark, David W. xxx-xx-xxxx
Clark, Douglas M. xxx-xx-xxxx
Clark, Michael R. xxx-xx-xxxx
Clark, Patrick W. xxx-xx-xxxx
Clarke, Harold R., Jr. xxx-xx-xxxx
Clegg, Douglas W. xxx-xx-xxxx
Clinger, Charles G. xxx-xx-xxxx
Cochrane, Charles B. xxx-xx-xxxx
Coen, Kendall B. xxx-xx-xxxx
Coffey, Andrew W. xxx-xx-xxxx
Coffman, Raymond J. xxx-xx-xxxx
Coggins, Gary M. xxx-xx-xxxx
Cole, Bruce H. xxx-xx-xxxx
Cole, Gene W. xxx-xx-xxxx
Collar, Roy A. xxx-xx-xxxx
Collard, Nelson B., Jr. xxx-xx-xxxx
Collins, Carl L., Jr. xxx-xx-xxxx
Collins, James L. xxx-xx-xxxx
Collins, Jan C. xxx-xx-xxxx
Collins, Kenneth R. xxx-xx-xxxx
Collmeyer, Michael K. xxx-xx-xxxx
Conaty, Peter M. xxx-xx-xxxx
Condon, John L., Jr. xxx-xx-xxxx
Connally, Sharon C. xxx-xx-xxxx
Cooney, Norman R. xxx-xx-xxxx
Copeland, Donald P. xxx-xx-xxxx
Coradini, William J. xxx-xx-xxxx
Cordes, Arben P. xxx-xx-xxxx
Cork, Stephen D. xxx-xx-xxxx
Corley, Milton D. xxx-xx-xxxx
Corn, Vollney B., Jr. xxx-xx-xxxx
Cosgrove, Colin B. xxx-xx-xxxx
Cottrell, Peter J. xxx-xx-xxxx
Cowan, Charles E., Jr. xxx-xx-xxxx
Cowan, William L. xxx-xx-xxxx
Cowsert, Garrett T. xxx-xx-xxxx
Cox, Ronald H. xxx-xx-xxxx
Coyle, Raymond A. xxx-xx-xxxx
Cozier, Anthony R. xxx-xx-xxxx
Crabtree, Jack D., Jr. xxx-xx-xxxx
Craig, William R. xxx-xx-xxxx
Craven, Grover O., Jr. xxx-xx-xxxx
Crawford, Danny L. xxx-xx-xxxx
Crawford, James L. xxx-xx-xxxx
Creque, Terry R. xxx-xx-xxxx
Cretella, Joseph G., Jr. xxx-xx-xxxx
Crews, Gerald L. xxx-xx-xxxx
Crocetti, Ferruccio M. xxx-xx-xxxx
Crocker, George K. xxx-xx-xxxx
Crockett, John R. xxx-xx-xxxx
Crosby, John W. xxx-xx-xxxx
Crowe, Bobby N. xxx-xx-xxxx
Crowell, David V. xxx-xx-xxxx
Cruikshank, Ralph H., Jr. xxx-xx-xxxx
Culbreth, Larry M. xxx-xx-xxxx
Culbreth, Roy, Jr. xxx-xx-xxxx
Cullem, James M. xxx-xx-xxxx
Curl, Terry W. xxx-xx-xxxx
Curry, Ronald E. xxx-xx-xxxx
Curtis, Craig H. xxx-xx-xxxx
Cushing, John R. xxx-xx-xxxx
Dacey, Richard P. xxx-xx-xxxx
Dalfonzo, Joseph A. xxx-xx-xxxx
Daly, Timothy E. xxx-xx-xxxx
Dangerfield, Harvey D. xxx-xx-xxxx
Darnell, Ronald H. xxx-xx-xxxx
Darone, Ronald D. xxx-xx-xxxx
Davidson, Donald O. xxx-xx-xxxx
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Wray, George L., III, xxx-xx-xxxx
Wright, Cooper L., xxx-xx-xxxx
Wright, Donald A., xxx-xx-xxxx
Wright, James M., xxx-xx-xxxx
Wright, Nelson B., Jr., xxx-xx-xxxx
Wright, Robert D., xxx-xx-xxxx
Wright, Walter G., xxx-xx-xxxx
Wrightson, Samuel H., xxx-xx-xxxx
Wylie, Alexander C., xxx-xx-xxxx
Yap, Rudolph H., xxx-xx-xxxx
Yates, Clyde P., xxx-xx-xxxx
Yeargan, Robert G., xxx-xx-xxxx
Yenrick, Philip C., xxx-xx-xxxx
Youmans, Tommy B., xxx-xx-xxxx
Young, Keith L., xxx-xx-xxxx
Young, Stephen H., xxx-xx-xxxx
Zanini, Daniel R., xxx-xx-xxxx
Zeiler, Richard H., xxx-xx-xxxx
Zierdt, John G., Jr., xxx-xx-xxxx
Zimmerman, Leroy, xxx-xx-xxxx
Zoglman, Robert R., xxx-xx-xxxx

CHAPLAINS CORPS

To be lieutenant colonel

Abel, Donald W., xxx-xx-xxxx
Allen, John M., xxx-xx-xxxx
Anderson, James R., xxx-xx-xxxx
Ashurst, Turpin C., xxx-xx-xxxx
Banner, Ernest A., xxx-xx-xxxx
Barnett, Dillmus W., Jr., xxx-xx-xxxx
Bickley, Hugh J., xxx-xx-xxxx
Brown, Clyde G., xxx-xx-xxxx
Campbell, Robert L., xxx-xx-xxxx
Christensen, Donald G., xxx-xx-xxxx
Davis, Daniel O., Jr., xxx-xx-xxxx
Davis, Elvernice, xxx-xx-xxxx
Dresin, Sanford L., xxx-xx-xxxx
Erbach, William W., xxx-xx-xxxx
Fly, Francis L., Jr., xxx-xx-xxxx
Gantt, Stephen Y., xxx-xx-xxxx
Gogl, George L., xxx-xx-xxxx
Gover, Donald W., xxx-xx-xxxx
Gunhus, Gaylord T., xxx-xx-xxxx
Hartlage, Albert J., xxx-xx-xxxx
Hatler, Gaylord E., xxx-xx-xxxx
Hepner, Theodore W., xxx-xx-xxxx
Hines, Thomas E., Jr., xxx-xx-xxxx
Holland, Jerry H., xxx-xx-xxxx
Iverson, Virgil G., xxx-xx-xxxx
Johnson, Richard C., xxx-xx-xxxx
Jopp, Frank G., Jr., xxx-xx-xxxx
Kennedy, Daniel F., xxx-xx-xxxx
Koss, Saul H., xxx-xx-xxxx
Lamback, Samuel P., Jr., xxx-xx-xxxx
Lieving, Bernard H., Jr., xxx-xx-xxxx
Lokkesmoe, Robert G., xxx-xx-xxxx
McLean, Richard, xxx-xx-xxxx
McSwain, Donald W., xxx-xx-xxxx
Millard, Stanley N., xxx-xx-xxxx
Miller, Paul L., xxx-xx-xxxx
Nichols, George H., Jr., xxx-xx-xxxx
Norris, Paul S., xxx-xx-xxxx
Northrop, Clyde M., III, xxx-xx-xxxx
Oloughlin, Stanley J., xxx-xx-xxxx
Payne, Delbert G., xxx-xx-xxxx
Pitchford, Bertrand C., xxx-xx-xxxx
Polito, Victor V., xxx-xx-xxxx
Pridgen, Lamar B., xxx-xx-xxxx
Pugh, Loren D., xxx-xx-xxxx
Renfrow, Kenneth E., xxx-xx-xxxx
Rogers, James E., xxx-xx-xxxx
Schalm, Roger B., xxx-xx-xxxx
Shaddix, John T., xxx-xx-xxxx
Sharp, Billy R., xxx-xx-xxxx
Shimek, Andrew A., xxx-xx-xxxx
Silverstein, Philip, xxx-xx-xxxx
Slater, Dennis W., xxx-xx-xxxx
Smith, Charles M., Jr., xxx-xx-xxxx
Smith, Douglas T., xxx-xx-xxxx
Spiller, Jimmie C., xxx-xx-xxxx
Suellentrop, Daniel M., xxx-xx-xxxx
Thomas, Jack L., xxx-xx-xxxx
Timm, Harry W., xxx-xx-xxxx
Towley, Carl K., xxx-xx-xxxx
Tyson, Charles A., xxx-xx-xxxx
Vickers, Marvin K., Jr., xxx-xx-xxxx
Vogt, Robert H., xxx-xx-xxxx
Weaver, Jerry A., xxx-xx-xxxx
Webb, Jerry, xxx-xx-xxxx
Webb, William P., xxx-xx-xxxx
White, David A., xxx-xx-xxxx
Wideman, Fletcher D., xxx-xx-xxxx
Young, Jimmy L., xxx-xx-xxxx

JUDGE ADVOCATE GENERALS' CORPS

To be lieutenant colonel

Artzer, Paul E., xxx-xx-xxxx
Baker, James R., xxx-xx-xxxx
Basham, Owen D., xxx-xx-xxxx
Bates, Bernie L., xxx-xx-xxxx
Bonney, Charles E., xxx-xx-xxxx
Bufkin, Henry P., xxx-xx-xxxx
Chwalibog, Andrew J., xxx-xx-xxxx
Cruden, John C., xxx-xx-xxxx
Deberry, Thomas P., xxx-xx-xxxx
Deline, Donald A., xxx-xx-xxxx
Dickerson, Harry A., xxx-xx-xxxx
Edwards, John T., xxx-xx-xxxx
Feighny, Michael L., xxx-xx-xxxx
Frankel, Ronald S., xxx-xx-xxxx
Garretson, Peter W., xxx-xx-xxxx
Gibb, Steven P., xxx-xx-xxxx
Gordon, Jonathan C., xxx-xx-xxxx
Graves, Joseph L., Jr., xxx-xx-xxxx
Hamilton, John R., xxx-xx-xxxx
Havens, Edward A., xxx-xx-xxxx
Howell, John R., xxx-xx-xxxx
Kirby, Robert B., xxx-xx-xxxx
Lancaster, Steven F., xxx-xx-xxxx
Leonardi, Kenneth J., xxx-xx-xxxx
Mackey, Richard J., xxx-xx-xxxx
Rice, Frances P., xxx-xx-xxxx
Richardson, John W., xxx-xx-xxxx
Russell, Richard D., xxx-xx-xxxx
Seibold, Paul M., xxx-xx-xxxx
Sklar, David A., xxx-xx-xxxx
Smyser, James O., xxx-xx-xxxx
Spiller, John E., xxx-xx-xxxx
Taylor, Daniel E., xxx-xx-xxxx
Wagner, Frank J., Jr., xxx-xx-xxxx
Wallace, John K., III, xxx-xx-xxxx
Woodward, William B., Jr., xxx-xx-xxxx
Zimmerman, Charles A., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be lieutenant colonel

Aspinall, Kenneth B., xxx-xx-xxxx
Bailey, Charles L., xxx-xx-xxxx
Barton, Douglas A., xxx-xx-xxxx
Bearce, Gerald R., xxx-xx-xxxx
Becco, Lawrence A., Jr., xxx-xx-xxxx
Bell, William H., Jr., xxx-xx-xxxx
Bentley, Gerald A., xxx-xx-xxxx
Beringer, George R., xxx-xx-xxxx
Blackwell, Russell R., xxx-xx-xxxx
Bodenbender, David G., xxx-xx-xxxx
Bosetti, Larry G., xxx-xx-xxxx
Boyd, Willie H., xxx-xx-xxxx
Braendel, Douglas A., xxx-xx-xxxx
Brown, Samuel A., Jr., xxx-xx-xxxx
Bunch, James S., xxx-xx-xxxx
Burke, Raymond J., III, xxx-xx-xxxx
Carbonell, Arthur J., xxx-xx-xxxx
Champion, Charles H., Jr., xxx-xx-xxxx
Childs, Ronald P., xxx-xx-xxxx
Church, Zaidos N., xxx-xx-xxxx
Coleman, Richard L., xxx-xx-xxxx
Costanzo, Joseph J., Jr., xxx-xx-xxxx
Covington Bobbie, J., xxx-xx-xxxx
Damato, James J., xxx-xx-xxxx
Danby, James C., xxx-xx-xxxx
Debree William P., xxx-xx-xxxx
Dempster, Clifford R., xxx-xx-xxxx
Dingey, Martha J., xxx-xx-xxxx
Dotson, Prilip E., xxx-xx-xxxx
Draude, John F., Jr., xxx-xx-xxxx
Driskill, Thomas M., Jr., xxx-xx-xxxx
Edge, Rodney A., xxx-xx-xxxx
Farlow, Joseph E., xxx-xx-xxxx
Foust Jerome V., xxx-xx-xxxx
Fulfer, Jesse K., xxx-xx-xxxx
Galenes, Alexander A., xxx-xx-xxxx
Ginn, Richard V., xxx-xx-xxxx
Gmelich, James R., xxx-xx-xxxx
Goldman, Gilbert L., xxx-xx-xxxx
Greene Stonell, B., xxx-xx-xxxx
Gulley, Myra I., xxx-xx-xxxx
Hamilton, John, xxx-xx-xxxx
Hammond, Sterling D., xxx-xx-xxxx
Hash, Franklin R., Jr., xxx-xx-xxxx
Hawkins Robert T., xxx-xx-xxxx
Heln, Richard D., xxx-xx-xxxx
Helmbold, Richard F., xxx-xx-xxxx
Herndon Michael E., xxx-xx-xxxx
Hiu, Patrick S., xxx-xx-xxxx
Hockmeyer, Wayne T., xxx-xx-xxxx
Horn Dennie E., xxx-xx-xxxx
Holland, Frank B., xxx-xx-xxxx
Hooker, Scottie T., xxx-xx-xxxx
Hoopes, Thomas R., xxx-xx-xxxx
Howard David, xxx-xx-xxxx
Howell, James L., xxx-xx-xxxx
Hoxie, Ferman C., xxx-xx-xxxx
Hunt William C., xxx-xx-xxxx
Ihlenfeld, Richard W., xxx-xx-xxxx
Jeffrey, Timothy B., xxx-xx-xxxx
Johnson Barry J., xxx-xx-xxxx
Johnson, Larry G., xxx-xx-xxxx
Kaisershot, Gordon, E., xxx-xx-xxxx
Kimbell David L., xxx-xx-xxxx
Kittinger, Paul F., Jr., xxx-xx-xxxx
Knisely, Benjamin M., xxx-xx-xxxx
Krupka, Thaddeus A., xxx-xx-xxxx
Labaugn William J., xxx-xx-xxxx
Langhorne, Webster L., xxx-xx-xxxx
Lester, Michael B., xxx-xx-xxxx
Lozada Jacob, xxx-xx-xxxx
Luckey, Thomas S., xxx-xx-xxxx
Lyons, Joseph F., xxx-xx-xxxx
Lyons, Matthew, J., Jr., xxx-xx-xxxx
McAdams Charles O., xxx-xx-xxxx
McCarroll, James E., xxx-xx-xxxx
McKinstry, Earl R., xxx-xx-xxxx
Moore, Clayton H., III, xxx-xx-xxxx
Moore, George R., Jr., xxx-xx-xxxx
Morton, Ward D., III, xxx-xx-xxxx
Mumma, Patrick J., xxx-xx-xxxx
Nardozza, Anthony J., xxx-xx-xxxx
Newbill, John L., xxx-xx-xxxx
Nilsen, David I., xxx-xx-xxxx
Odell, Thomas E., Jr., xxx-xx-xxxx
Olson, Roger, xxx-xx-xxxx
Ostrander, James H., xxx-xx-xxxx
Overend, Robert K., xxx-xx-xxxx
Owen, John T., xxx-xx-xxxx
Palmer, Darwin B., Jr., xxx-xx-xxxx
Parker, William R., xxx-xx-xxxx
Perry, Ray H., xxx-xx-xxxx

Peters, Curtis A., xxx-xx-xxxx
Pick, Robert O., xxx-xx-xxxx
Plank, Gordon H., xxx-xx-xxxx
Powanda, Michael C., xxx-xx-xxxx
Quinn, Frank X., xxx-xx-xxxx
Rath, Frank H., Jr., xxx-xx-xxxx
Robinson, Ronald B., xxx-xx-xxxx
Rodman, Terral L., xxx-xx-xxxx
Sanderlin, Larry R., xxx-xx-xxxx
Schlie, James A., xxx-xx-xxxx
Schulz, Jeffrey B., xxx-xx-xxxx
Short, Thomas E., xxx-xx-xxxx
Slaton, Irvin C., xxx-xx-xxxx
Smith, Ray V., xxx-xx-xxxx
Smoluk, John J. III, xxx-xx-xxxx
Sullivan, John E., Jr., xxx-xx-xxxx
Swallow, Gary L., xxx-xx-xxxx
Taylor, James A., xxx-xx-xxxx
Taylor, Roy G., xxx-xx-xxxx
Tessier, Paul L., xxx-xx-xxxx
Thomas, Buddy G., xxx-xx-xxxx
Thompson, Gerald E., xxx-xx-xxxx
Thompson, Jerry F., xxx-xx-xxxx
Treece, Thomas R., xxx-xx-xxxx
Vanvranken, Edwin W., xxx-xx-xxxx
Voss, Daniel R., xxx-xx-xxxx
Wannarka, Gerald L., xxx-xx-xxxx
Webb, Arthur B., xxx-xx-xxxx
Weed, Roger I., xxx-xx-xxxx
Wilkinson, Rowland N., xxx-xx-xxxx
Williams, James N., xxx-xx-xxxx
Williams, Michael D., xxx-xx-xxxx
Woodward, Ronald L., xxx-xx-xxxx
Wortham, James T., Jr., xxx-xx-xxxx

ARMY MEDICAL SPECIALIST CORPS

To be lieutenant colonel

Bell, Clyde H., Jr., xxx-xx-xxxx
Brown, Clarence D., xxx-xx-xxxx
Liu, George K., xxx-xx-xxxx
Maize, Roy S., II, xxx-xx-xxxx
Pennell, Clifford R., xxx-xx-xxxx
Sater, Derrol H., xxx-xx-xxxx

VETERINARY CORPS

To be lieutenant colonel

Catanzaro, Thomas E., xxx-xx-xxxx
Debok, Phillip C., xxx-xx-xxxx
Deen, Wallace A., xxx-xx-xxxx
Kyzar, Carl T., xxx-xx-xxxx
Lewis, George E., Jr., xxx-xx-xxxx
Morrissey, Robert L., xxx-xx-xxxx
Scharding, John H., xxx-xx-xxxx
Vescovi, Ronald E., xxx-xx-xxxx
Volkmann, Heiko W., xxx-xx-xxxx

ARMY NURSE CORPS

To be lieutenant colonel

Accardo, Wilbert J., xxx-xx-xxxx
Adams, Gearl V., xxx-xx-xxxx
Allanach, Bruce C., xxx-xx-xxxx
Arnold, Joseph V., xxx-xx-xxxx
Arrowsmith, David R., xxx-xx-xxxx
Bayliss, Susan E., xxx-xx-xxxx
Baysinger, Douglas M., xxx-xx-xxxx
Beach, Donald M., xxx-xx-xxxx
Bennett, John R., xxx-xx-xxxx
Brockschmidt, Fredric R., xxx-xx-xxxx
Bryan, Gareth D., xxx-xx-xxxx
Bystran, Sharon F., xxx-xx-xxxx
Courcy, Ernest H., Jr., xxx-xx-xxxx
Dingbaum, Herbert H., xxx-xx-xxxx
Elliott, Barbara J., xxx-xx-xxxx
Elliott, Carol J., xxx-xx-xxxx
Evans, Jane E., xxx-xx-xxxx
Gleeson, Roberta L., xxx-xx-xxxx
Glenn, Lucille, xxx-xx-xxxx
Goad, Nan J., xxx-xx-xxxx
Golightly, Clarice B., xxx-xx-xxxx
Gordon, Kenneth A., xxx-xx-xxxx
Hamper, Sandra L., xxx-xx-xxxx
Heston, James V., xxx-xx-xxxx
Hickman, Kathleen R., xxx-xx-xxxx
Hooper, William R., Jr., xxx-xx-xxxx
Hopkins, Roger N., xxx-xx-xxxx
Howard, Duane L., xxx-xx-xxxx
Hutcheson, Marguerite R., xxx-xx-xxxx
Kalpakgian, Olga, xxx-xx-xxxx
Knepper, Glenn B., xxx-xx-xxxx
Kraemer, William J., xxx-xx-xxxx
Kulm, Margaret M., xxx-xx-xxxx
Kutchoodon, Eleanor M., xxx-xx-xxxx
Lavery, Barbara S., xxx-xx-xxxx
Leavell, Ronald E., xxx-xx-xxxx
Leonard, Lawrence C., Jr., xxx-xx-xxxx
Leonhard, John F., xxx-xx-xxxx
Long, Jerry D., xxx-xx-xxxx
Mallory, Jerilyn J., xxx-xx-xxxx
McCarthy, Mary M., xxx-xx-xxxx
Metcalf, Franklin L., xxx-xx-xxxx
Misener, Terry R., xxx-xx-xxxx
Morales, Sandra S., xxx-xx-xxxx
Moriarty, Francis M., xxx-xx-xxxx
Nelson, Iva K., xxx-xx-xxxx
Oatway, David M., xxx-xx-xxxx
O'Connor, Stephen J., xxx-xx-xxxx
Oliver, Randall L., xxx-xx-xxxx
Olson, Thomas J., xxx-xx-xxxx
Oswald, George E., xxx-xx-xxxx
Parker, Cyril C., xxx-xx-xxxx
Pescatore, Edward A., xxx-xx-xxxx
Philiben, Anne N., xxx-xx-xxxx
Rakiewicz, Caroline J., xxx-xx-xxxx
Reimers, Darlene M., xxx-xx-xxxx
Resko, Carolyn B., xxx-xx-xxxx
Sapolis, Richard J., xxx-xx-xxxx
Schanding, Donald W., xxx-xx-xxxx
Schotz, Helen C., xxx-xx-xxxx
Seureau, Kathleen N., xxx-xx-xxxx
Shapiro, Allan E., xxx-xx-xxxx
Smith, Charles L., xxx-xx-xxxx
Squires, Grace E., xxx-xx-xxxx
Thompson, Charles R., xxx-xx-xxxx
Truscott, Alma J., xxx-xx-xxxx
Urick, George M., xxx-xx-xxxx
Welch, Christopher W., xxx-xx-xxxx
Wimett, Joan J., xxx-xx-xxxx
Woldt, Gerald D., xxx-xx-xxxx
Wolf, Richard C., xxx-xx-xxxx
Wondra, George E., xxx-xx-xxxx

DENTAL CORPS

To be lieutenant colonel

Appleby, Ronald P., xxx-xx-xxxx
Bernstein, David A., xxx-xx-xxxx
Bettes, Stephen F., xxx-xx-xxxx
Blaney, Thomas D., xxx-xx-xxxx
Burnham, Arlie E., Jr., xxx-xx-xxxx
Crino, Samuel J., Jr., xxx-xx-xxxx
Crumpler, Lyle E., xxx-xx-xxxx
Dargon, Paul K., xxx-xx-xxxx
Elliott, James M., xxx-xx-xxxx
Fairchild, William A., xxx-xx-xxxx
Ferguson, Lucian M., xxx-xx-xxxx
Freccia, William F., xxx-xx-xxxx
Quinn, John W., III, xxx-xx-xxxx
Harvey, Gerald W., xxx-xx-xxxx
Henderson, Lester R., xxx-xx-xxxx
Hollinger, Jeffrey O., xxx-xx-xxxx
Hoots, James C., xxx-xx-xxxx
Horsley, John P., xxx-xx-xxxx
Jones, Leonard A., Jr., xxx-xx-xxxx
Koppelman, Eric S., xxx-xx-xxxx
Krantz, William A., xxx-xx-xxxx
Lascher, Michael F., xxx-xx-xxxx
Liley, Charles H., xxx-xx-xxxx
Rajniak, John D., xxx-xx-xxxx
Riddell, Todd R., xxx-xx-xxxx
Rollow, John A., xxx-xx-xxxx
Short, Sinclair G., xxx-xx-xxxx
Skirvin, Dennis R., xxx-xx-xxxx
Wells, Donald W., xxx-xx-xxxx

MEDICAL CORPS

To be lieutenant colonel

Alexander, Milton D., Jr., xxx-xx-xxxx
Antonelli, Mary A., xxx-xx-xxxx
Bacon, David R., xxx-xx-xxxx
Bank, Robert L., xxx-xx-xxxx
Begley, Vincent J., xxx-xx-xxxx
Booth, Bruce W., xxx-xx-xxxx
Bourke, Larry T., xxx-xx-xxxx
Castle, Donald D., xxx-xx-xxxx
Chacko, Anna K., xxx-xx-xxxx
Chamusco, Roger F., xxx-xx-xxxx
Chapman, Ramona M., xxx-xx-xxxx
Cho, Lucy O., xxx-xx-xxxx
Choi, Soonja P., xxx-xx-xxxx
Chow, Jimmy A., xxx-xx-xxxx
Chung, Sooil, xxx-xx-xxxx
Coleman, Fred H., III, xxx-xx-xxxx
Deveney, Clifford W., xxx-xx-xxxx
Diggs, Roderick P., Jr., xxx-xx-xxxx
Dsilva, Francis R., xxx-xx-xxxx
Dunn, Michael A., xxx-xx-xxxx
Eaton, Michael W., xxx-xx-xxxx
Eskestrand, Thomas A., xxx-xx-xxxx
Friendlander, Arthur M., xxx-xx-xxxx
Gamez, Jesus A., xxx-xx-xxxx
Gottlieb, Viktor, xxx-xx-xxxx
Graeber, Geoffrey M., xxx-xx-xxxx
Greenberg, Harvey, xxx-xx-xxxx
Greenspan, Renata B., xxx-xx-xxxx
Gulbrandsen, Patricia H., xxx-xx-xxxx
Harris, John M., Jr., xxx-xx-xxxx
Hur, Kwang D., xxx-xx-xxxx
Kim, Seung H., xxx-xx-xxxx
Kim, Seung I., xxx-xx-xxxx
Kraus, Eric W., xxx-xx-xxxx
Kumar, Surinder, xxx-xx-xxxx
Lawsin, Rosen J., xxx-xx-xxxx
Lee, Da H., xxx-xx-xxxx
Lemon, Stanley M., xxx-xx-xxxx
Lennon, Robert L., xxx-xx-xxxx
Limbo, Zenen C., xxx-xx-xxxx
Lin, Tse H., xxx-xx-xxxx
Lough, Frederick C., Jr., xxx-xx-xxxx
Macasaet, Francisco F., xxx-xx-xxxx
Marsden, Richard J., xxx-xx-xxxx
McAllister, Charles K., xxx-xx-xxxx
McCarthy, Josep, xxx-xx-xxxx
McConnell, Douglas H., xxx-xx-xxxx
McKoy, James, xxx-xx-xxxx
McNeill, Daniel H., Jr., xxx-xx-xxxx
Moessner, Harold F., xxx-xx-xxxx
Monsivais, Jose J., xxx-xx-xxxx
Morgan, James W., Jr., xxx-xx-xxxx
Morrison, Mary J., xxx-xx-xxxx
Mueller, Lawrence P., xxx-xx-xxxx
Norton, Michael L., xxx-xx-xxxx
Ochia, Rowland E., xxx-xx-xxxx
Park, Pyong S., xxx-xx-xxxx
Petrie, Jonathan L., xxx-xx-xxxx
Ramey, Palmer R., Jr., xxx-xx-xxxx
Richmond, Isabell L., xxx-xx-xxxx
Rodriguez Franco, Jose A., xxx-xx-xxxx
Rosenfeld, Robert, xxx-xx-xxxx
Ryan, James M., xxx-xx-xxxx
Saldana, Guido F., xxx-xx-xxxx
Schaffner, Donald P., xxx-xx-xxxx
Sen, Jayanti K., xxx-xx-xxxx
Shehi, Lyle E., Jr., xxx-xx-xxxx
Shervette, Robert E., III, xxx-xx-xxxx
Short, Donald E., xxx-xx-xxxx
Shulman, Robert S., xxx-xx-xxxx
Slade, Clement L., xxx-xx-xxxx
Smythe, Alexander R., II, xxx-xx-xxxx
Solters, John S., xxx-xx-xxxx
Song, Jon E., xxx-xx-xxxx
Spratling, Larry, xxx-xx-xxxx
Srabstein, Jorge C., xxx-xx-xxxx
Swann, James H., xxx-xx-xxxx
Taubner, Rudolf W., xxx-xx-xxxx
Vagshenian, Gregory S., xxx-xx-xxxx
Walcott, William O., xxx-xx-xxxx
Waters, Keith H., xxx-xx-xxxx
Weeks, Kenneth D., Jr., xxx-xx-xxxx
Wuori, Donald F., xxx-xx-xxxx
Xenakis, Stephen N., xxx-xx-xxxx
Zeligs, Joseph, xxx-xx-xxxx

The following-named officers for promotion in the Regular Army of the United States, under provisions of title 10, United States Code, section 3305:

MEDICAL SERVICE CORPS

To be major

Carano, James C., xxx-xx-xxxx
Hehn, Richard D., xxx-xx-xxxx
Nakayama, Harvey K., xxx-xx-xxxx
Schaefer, Ken M., xxx-xx-xxxx
Zumek, David T., xxx-xx-xxxx

ARMY NURSE CORPS

To be major

Clark, Royce Elaine S., xxx-xx-xxxx

DENTAL CORPS

To be major

Haro, David P., xxx-xx-xxxx
Maerki, Henry S., Jr., xxx-xx-xxxx

IN THE MARINE CORPS

The following-named male officers of the Marine Corps for temporary appointment to

the grade of lieutenant colonel under the provisions of title 10, United States Code, section 5769:

George L. Alvarez
Robert E. Boerner
Robert J. Carroll
Alex H. Caylao, Jr.
Edward Dimaio
Donald E. Frost
William H. Harris
Arney M. Johnson, Jr.
Kenneth W. Jones
Ben W. King
Everett W. Krantz
Elbridge W. Lang
Richard A. Lenhart
James W. Lewallen
William N. Lowe
Don E. Mosley
Michael W. Murphy
Edward P. Rolita, Jr.
Arthur J. Seaman
Jerry M. Shelton
Stanley C. Skrobialowski
Donald J. Snooks
Charles E. Swisher
Charles R. Tackett
Roger D. Zorens

The following-named male officers of the Marine Corps for temporary appointment to the grade of major under the provisions of title 10, United States Code, section 5769:

Ronald Achten
Willie A. Armstead
Charles H. Barton, Jr.
Richard J. Beatty
James A. Belfiore
Roy H. Bixler
Robert L. Blake
Thomas J. Borowitz
Frank E. Box
William G. Byrne, Jr
Donald L. Caroway
Francis J. Carr
Thomas E. Cartier
James D. Churchman
Michael J. Clarke
Garnet E. Cope
Hilton Craig, Jr.
Frederick M. Cunningham
Rex L. Curtis
Howard G. Dodd
Arthur J. Douglas
Jack H. Evans
Frederick J. Flihan
Ellwood D. Gordon
Pedro Gutierrez
Robert I. Hall
Henry D. Halloway
Albert L. Hayes
Harold S. Heinbaugh
John D. Hess
William J. Hisle III
Paul R. Hoffman
William Hornhorst, Jr.
Julius B. Hopkins
John W. Johnson
William R. Johnson
John S. Keene
Donald A. Lane
Paul E. Long, Jr.
John W. Loynes
William S. Maire
John R. Marcucci
John P. Marlowe
James H. McGee
Larry G. Merrifield
James Muschette, Jr.
Dewitt R. Reid, Jr.
Lloyd A. Robinson
Marvin C. Rodney
John D. Scroggins
Albert W. Sheldon
Roger A. Sherman
Stephen L. Shivers
Dan W. Showalter, Jr.
David E. Shumpert
Gary G. Simmons
Minter S. Skipper, Jr.
Isaac A. Snipes
Robert R. Stutler
John M. Sweeney, Jr.
Thomas E. Swindell
James M. Thomas
Joseph Thorpe
Marcelo J. Tyler
Daniel Vallee
Leonard R. Webb
William A. Whiting
George E. Williams
Leroy Williams
Billy W. Woodard
James J. Yantorn
Arthur Yow, Jr.

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W–4 under the provisions of title 10, United States Code, section 563:

Clarence T. Anthony, Jr.
Paul T. Ashe
James V. Branum
James D. Churchman
George F. Deckert III
Donald F. Deline
Thomas W. Dolman
Michael B. Graddy
Robert I. Hall
William Hohnhorst, Jr.
Mark C. Hunt
Lorenzo G. Jordan
Ernestine A. Koch
Larry R. Krouse
Jerome F. Lawson
Jack D. Mathis
Roland N. Pannell, Jr.
John B. Samples
Roger A. Sherman
Robert Skyles, Jr.
Lloyd D. Songne
William L. Steigner
David W. Streagle
John W. Sweeney, Jr.
Gary O. Thompson
Donald R. Troutt
Marcelo J. Tyler
Daniel Vallee
Paul R. Weigley, Jr.
John D. Yarbrough

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W–3 under the provisions of title 10, United States Code, section 563:

Thomas E. Adams
John H. Alderson, Jr.
Geza J. Anasagasti
William A. Andrews
Donald P. Angely
Terry L. Armstrong
Charles W. Bailey
Kurt T. Barnes
Craig L. Bauer
Karl P. Beehler
Robert C. Benbow, Jr.
Franklin O. Benjamin
Douglas L. Bishoff
Henry Black, Jr.
Eldon E. Blair, Jr.
Jimmie L. Blick
Hendrik A. Blume
Steven D. Borgeson
Kenneth E. Boyer
Patrick J. Brake
William O. Brenek
Joseph A. Briscoe
Robert D. Brookins
Randy P. Brown
James D. Buck, Jr.
Steven R. Burgess
Fred L. Burpo
Edward L. Burwell, Jr.
Richard E. Byrd
Walter D. Calvert
Stephen E. Cecil
Jesus S. Chacon C.
Jerry W. Chatelain
Vernon J. Chute III
William L. Clyde
Melvin L. Cochran
Merritt L. Cogswell
Matthew W. Conley
John R. Connelley
Barton D. Consford, Sr.
Neely H. Cook
Charles L. Cornwell, Jr.
James F. Cox
Larry D. Cox
Alan T. Cripps
George M. Crouch
Paul D. Cyr
Otto A. Daly III
David Davis
Jere K. Detwiler
Walter S. Dickerson
Robert D. Dorsey
Paul F. Dossin
Roger W. Douthit
Thomas J. Dunphy
Dale A. Dye II
Samuel L. Flores, Jr.
Donald K. Foltz
Stephen H. Foreman
Thomas A. Fox
Rodney Frazee
Peter G. Frederiksen
Ronald H. Freeman
Jack D. Frost
Roland J. Fryer, Jr.
Gary M. Fuhrman
Clarence R. Fussell, Jr.
John J. Gallagher
Thomas H. Gardner
Ronald R. Gaskell
Johnny E. Gebaide
Raymond S. Girardin
Bruno J. Giri, Jr.
Eric A. Glass
Frankie D. Gonzales
Arvis O. Graham, Jr.
Edward Green
Ronald E. Grindle
Harold J. Guillory
Clinton W. Gunter
Louise M. Haebig
Douglas W. Hagee
Loren E. Hajduk
Walter S. Hakala
John C. Hannaford
Donald R. Hansen
Patrick J. Hardy
Stephen L. Harrington
Charles A. Harris
James B. Harris
Gary L. Harvey
Selvin E. Harvey, Jr.
David A. Healy
Daniel A. Henry
William H. Herndon
Edward W. Holder
Roger L. Hoot
Seybourn E. Hopper, Jr
Steven R. Hulland
Dory B. Hux
James A. Inman
George L. Jackson, Jr.
David F. Jacobus
Larry E. Jellison
Percie V. Johnson, Jr.
Robert R. Jones
Douglas R. Keene
John J. Kierepka
Kathleen J. Kincaid
Michael S. Kinsella
Garry N. Klaus
Henry L. Klepac
Arthur C. Koon
Dennis E. Kush
Michael D. Labonne
Leamond F. Lacy, Jr.
Stephen C. Lambeth
Gerald L. Languell
Stanley R. Lemley
Arthur E. Leone
Edward B. Lewis
Alan J. Lirette
John M. Longshore
Ronald J. Lucinski, Jr.
Stephen E. Lusk
Michael R. Lynch
William R. Mahoney
George R. Martin
William H. Martin
Jacabo L. Martinez
Tyrone L. Mason
Richard W. Masterson
Edward G. McDaniel
Robert R. McDonald, Jr.
Donald D. McGuire
Barry L. McLemore
Layton A. McLeod
Donald R. G. McMann
Jack C. McNutt
John W. McRae
Gary P. Meisenhelder
Robert E. Melton
James O. Mick
Charles S. Miller
Montelle E. Miller, Jr.
Robert B. Miller
Michael B. Mitchell
William M. Monroe
Willus L. Morgan
Thomas M. Mulloy
William J. Murphy
Kenneth J. Murray
Levance Myers
James H. Neal, Jr.
Cecil L. Nelson
Richard C. Ortiz
Bobby E. Ott
William L. Payne
Douglas J. Pelko
Thomas L. Penn
Bradford M. Perkins
Wayne M. Poore
Sammy Popwell
Glenn E. Porter
Donald H. Post
Kenneth B. Poteet
Michael Pozzolungo
Guadalupe E. Reyes
Jerry D. Ritchie
William J. Roberge
James C. Roberts
Richard L. Robinson
Joseph M. Rodriguez
Thomas C. Rose
Martin L. Rosenfield
Terry D. Ruhter
Thomas M. Rutherford, Sr.
Leroy E. Sanderson
Michael C. Schaefer
Robert A. Schatz
William W. Schrader
Frank L. Scott, Jr.
Joseph D. Scott
Paul L. Smith
Paul W. Smith
Victor J. Smith
Joseph J. Snow, Jr.
Lawrence R. Soloy
Gerald R. Sorensen
Robert L. Spencer
Roy W. Starks
Keith D. Stevens
Terry G. Stevens
James A. Stone, Jr.
Gary W. Stuck
Jonathon H. Sylvester
Mario H. C. Tamayo
Melvin Thomas
Wayne H. Thomas, Jr.
Ronald Throckmorton
Paul J. Tomecek
Jerrel R. Townsend
John T. Trosper
Donald T. Troublefield
John L. Trudo
John M. Vandeursen
John J. Varelli
Charles A. Vaughan
Daniel G. Walczak
Jake Walker, Jr.
William M. Whittington
Charles B. Wilson, Sr.
Jerry L. Wilson, Sr.
Alva R. Windham
Durwood M. Wingfield
Ronnie J. Wood
James E. Yale
William E. Zimmerly

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W–2 under the provisions of title 10, United States Code, section 563:

Eduardo Acosta
George H. Amerine, Jr.
Gerald D. Anders
Donald J. Anderson
Michael D. Anderson
Terry R. Armstrong
Walter F. Arndt
Edwin G. Avecilla
Dennis L. Baker
Steven M. Banks
Steven M. Baracosa
Charles M. Barrett
Donald J. Bartek
Douglas D. Barton
Billy E. Basham
Randy L. Baum
Robert W. Beard
Eugene G. Beck
Kevin L. Bell
Roger B. Bell
Robert L. Bivens
James Black
William J. Black, Jr.
John D. Blake
Charles E. Bleile, Jr.
William R. Bloomfield
Donald E. Bolen
Carol S. Bonson
Edgar M. Boose
John E. Borraggine
George B. Brown
James W. Brown
Raymond C. Brown
Joseph H. Burt
Lionel J. Bushey II
Jerald D. Byrum
Robert N. Callison
Roy R. Cappadona
Loston E. Carter, Jr.
James R. Casey
Joseph M. Cason
Michael F. Castagna, Jr.
Stephen Centowski
Danny W. Champlin
Morgan F. Chavis
Alvin O. Chesney, Jr.
Alvin P. Christensen
Barkley A. Cornwell
Don C. Cottle
Richard G. Cox
Wayne Craig
Raymond J. Cristman
Roger L. Crone
Edward A. Cruz, Jr.
Moses Culbreath
Edward J. Delehant III
Antonio G. Diaz
Steven C. Dietz
Michael E. Dmytriw
Richard A. Dorn
James M. Dorriety
David L. Duff
Edward R. Dunlap
Stephen A. Eklund
Matthew Eller, Jr.
Ronald W. Ellinger
Dennis R. Emperley
Eligio Espiritu, Jr.
John A. Fails
Michael E. Ferguson
Jonathan R. Field
John L. Fletcher
Gary W. Funk
Marvin G. Gandy
Robert R. Gibbs
David I. Gilbert
Stewart O. Gold
Eugenio Gonzales, Jr.
David R. Gorton
William L. Groothoff, Jr.
Larry A. Grove
Joe R. Hall
Ernest E. Hamilton
Ralph J. Hanegan
Michael T. Harper
Leonard M. Harris, Jr.
David D. Harshbarger
Barbara A. Harvell
Daniel O. Hawthorne
Frederick F. Heimgartner
Wesley C. Henderson
Paul Hicks
Leon Hill
Penelope Hilliard
Richard J. Hoag
Michael P. Holloway
Raymond L. Hopkins, Jr.
Larry P. Hopp, Sr.
Paul T. Howard
Calvin H. Iona
Robert J. Jablonski
Clyde R. Jackson
William L. Jackson
Richard L. Johnson
William G. Julian
Marie G. Juliano
Ronald P. Kale
James A. Kehn
Kenyon T. Kelley
William J. Kerr
Johnny H. King, Jr.
Ronald C. Kinslow
George W. Kirby
Gary D. Kjeldahl
Samuel G. Konrad, Jr.
Carl E. Lagassa II
Ronald D. Lambert
James R. Langley
Thomas J. Langlois
John W. Lawson
Robert R. Leinenbach
David D. Leutwyler
David S. Lewis
Robert W. Lively
Robert E. Long
Gilbert A. Lopez
Michael A. Luther
Daniel P. Lybert
James P. MacFarlane
Raymond H. Lummus
Rodger Macias
John F. Maier III
Erlynn A. Manthey
James K. Marchant
William H. Marron

Perry A. Marzean
Charles D. Matthews
Gary M. Matthews
James P. Mayfield III
Stephen J. Mazza
David A. McCall, Sr.
James G. McClelland
David L. McKay
Donald W. McRaven
Ernie G. Milam
Leslie N. Minihan
Timothy M. Molina
Johnny M. Montoya
Peter D. Morneau
Kenneth A. Morris
Lawrence J. Murello
Samuel G. Murray
Thomas G. Nelson
John H. Neumann, Jr.
Michael E. Nicknadarvich
Kenneth E. Niemi
Wayne D. Nunnery
Michael A. O'Donnell
Lee P. O'Donovan
Timothy J. O'Malley
Alfredo E. Palmejar
Peter J. Pappas
William C. Parrill, Jr.
James L. Paxton
Genero H. Perez
Timothy E. Perry
Carl E. Phillips
Earnest W. Phillips
Gary R. Place
James T. Pollard
Charles A. Pope II
Gregory A. Posey
Richard W. Price
John F. Pritchard
Timothy E. Purcell
Larry J. Quandahl
Edward R. Quintero
Earl T. Radabaugh
Ralph Ramos
James M. Rasmussen
Harold B. Redmond, Jr.
Clinton Reed
Donald C. Reed
James R. Reinbold
Candelario L. Resendez
Charles S. Reynolds, Jr.
Pablo F. Ribadeneira
William J. Richey
Shirley M. Ritzdorf
James A. Roberts
John W. Roberts
Daniel B. Robinson
Mitchell F. Roden
Keith E. Rosemond
Kelvin L. Ruffin
Larry L. Runner
Wayne R. Ryther
John E. Salmon, Jr.
Terry G. Sanders
John T. Saraga
Lorraine A. Scheetz
Alan L. Scheib
Amos D. Scherff
William R. Schweisthal
Marcus L. Scott
Willie F. Scott
Richard A. Seaquist
Timothy L. R. Secrist
Bruce E. Shanks
Christopher H. Shaw
Leonard P. Shipley
William L. Siebold
Billy T. Skaggs
James C. Smith
James L. Smith
Richard W. Smith
Walter B. Smith
Duane H. Snyder
William A. Startt
David T. Stewart
Charles R. Stiers
William R. Stimax, Jr.
Patrick J. Stokes
Dale K. Stone
Larry E. Sullivan
Everett R. Swift
Donnie G. Taylor
Freddie L. Taylor
Louis G. Taylor
Trafford J. Taylor, Jr.
Robert S. Thien
Raymond O. Thomas
Jeffrey D. Touchet
Dennis E. Trach D.
Charles M. Tucker
George P. Turner
Warner L. Twillie
Richard S. Vinton
Fred J. Vinzant
Peter R. Violette
Manuel E. Vizinho
Guntere E. L. Vonderheyde
Thomas D. Wagley
Henry A. Walczky
John J. Walsh III
Mark A. Walters
Mansur J. Ward
William P. Ward
Thomas L. Warren
James W. Washington
Ralph Way
Gordon J. Wehri
Raymond T. West, Jr.
George T. Weston, Jr.
Danny L. White
William C. Whittlesey
Eldon D. Williams
Theodore Wilson
Alan W. Wincek
Robert V. Winton
Marvin G. Wyatt
Martin J. Yannaccone
Robert A. Zink

SELECTIVE SERVICE SYSTEM

Thomas K. Turnage, of California, to be Director of Selective Service, vice Bernard Daniel Rostker, resigned.

REGIONAL COMMISSIONS

Joseph Robert Wright, Jr., of New York to be Federal Cochairman of the following.

Coastal Plains Regional Commission.
Four Corners Regional Commission.
New England Regional Commission.
Old West Regional Commission.
Ozarks Regional Commission.
Pacific Northwest Regional Commission.
Southwest Border Regional Commission.
Upper Great Lakes Regional Commission.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 31, 1981:

DEPARTMENT OF EDUCATION

Daniel Oliver, of Connecticut, to be General Council, Department of Education, vice Betsy Levin, resigned.

DEPARTMENT OF COMMERCE

Robert G. Dederick, of Illinois, to be an Assistant Secretary of Commerce, vice Robert Thallon Hall, resigned.

DEPARTMENT OF JUSTICE

Rex E. Lee, of Utah, to be Solicitor General of the United States, vice Wade Hampton McCree, Jr., resigning.

GOVERNMENT PRINTING OFFICE

Danford L. Sawyer, of Florida, to be Public Printer, vice John J. Boyle, resigned.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Robert A. Rowland, of Texas, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 1987, vice Frank R. Barnako, term expired.

DEPARTMENT OF COMMERCE

Rear Admiral Herbert R. Lippold, Jr., NOAA, to be Director of the National Ocean Survey, National Oceanic and Atmospheric Administration, vice Rear Admiral Allen L. Powell, retired.

FEDERAL COMMUNICATIONS COMMISSION

James H. Quello, of Virginia, to be a Member of the Federal Communications Commission for the unexpired term of 7 years from July 1, 1977, vice Charles D. Ferris, resigned.

Henry M. Rivera, of New Mexico, to be a Member of the Federal Communications Commission for a term of 7 years from July 1, 1980, vice James H. Quello, term expired.

SMALL BUSINESS ADMINISTRATION

Frank S. Swain, of the District of Columbia, to be Chief Counsel for Advocacy, Small Business Administration, vice Milton David Stewart, 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 HOUSING AND URBAN DEVELOPMENT

Charles L. Dempsey, of Virginia, to be Inspector General, Department of Housing and Urban Development (reappointment).

GENERAL SERVICES ADMINISTRATION

Joseph A. Sickon, of Virginia, to be Inspector General, General Services Administration, vice Kurt W. Muellenberg.

DEPARTMENT OF JUSTICE

Frank H. Conway, of Massachusetts, to be a Member of the Foreign Claims Settlement Commission for the remainder of the term expiring September 30, 1981, vice Ralph W. Emerson.

Frank H. Conway, of Massachusetts, to be a Member of the Foreign Claims Settlement Commission for the term expiring September 30, 1984 (reappointment).

ENVIRONMENTAL PROTECTION AGENCY

Kathleen M. Bennett, of Virginia, to be an Assistant Administrator of the Environmental Protection Agency, vice David G. Hawkins, resigned.

John P. Horton, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency, vice William Drayton, Jr.

DEPARTMENT OF JUSTICE

Richard S. Cohen, of Maine, to be U.S. attorney for the district of Maine for the term of 4 years, vice Thomas E. Delahanty, II, resigning.

NUCLEAR REGULATORY COMMISSION

Thomas Morgan Roberts, of the District of Columbia, to be a Member of the Nuclear Regulatory Commission for the term expiring June 30, 1985, vice Richard T. Kennedy, term expired.

DEPARTMENT OF JUSTICE

A. Melvin McDonald, of Arizona, to be U.S. attorney for the district of Arizona for the term of 4 years, vice Michael D. Hawkins, resigned.

R. Lawrence Steele, Jr., of Indiana, to be U.S. attorney for the northern district of Indiana for the term of 4 years, vice David T. Ready, resigning.

Thomas E. Dittmeier, of Missouri, to be U.S. attorney for the eastern district of Missouri for the term of 4 years, vice Robert D. Kingsland.

Richard A. Stacy, of Wyoming, to be U.S. attorney for the district of Wyoming for the term of 4 years, vice Charles E. Graves, resigned.

John C. Bell, of Alabama, to be U.S. attorney for the middle district of Alabama, for the term of 4 years, vice Barry E. Teague.

J. B. Sessions, III, of Alabama, to be U.S. attorney for the southern district of Alabama for the term of 4 years, vice William A. Kimbrough, Jr., resigned.

Joseph J. Farnan, Jr., of Delaware, to be U.S. attorney for the district of Delaware for the term of 4 years, vice James W. Garvin, Jr.

James A. Rolfe, of Texas, to be U.S. attorney for the northern district of Texas for the term of 4 years, vice Kenneth J. Mighell.

Michael R. Spaan, of Alaska, to be U.S. attorney for the district of Alaska for the term of 4 years, vice Alexander O. Bryner, resigned.

Executive nominations confirmed by the Senate August 1, 1981:

DEPARTMENT OF AGRICULTURE

Harold V. Hunter, of Oklahoma, to be Administrator of the Rural Electrification Administration for a term of 10 years, vice Robert W. Feragen, resigned.

Charles Wilson Shuman, of Illinois, to be Administrator of the Farmers Home Administration, vice Gordon Cavanaugh, 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.