# SENATE—*Monday, August 3, 1981*

*(Legislative day of Wednesday, July 8, 1981)*

The Senate met at 11:15 a.m. 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 in heaven, we pray that Thou will overrule in the air controllers' strike and help those inconvenienced by it, especially those whose travel is critical.

We commend to Thee the Boschwitz family, son Ken, as he enters the hospital for surgery today.

Gracious God, our Father, as Thou didst rest from Thy work, so hast Thou ordained rest for Thy people. As we near the close of these stressful weeks, we thank Thee for the prospect of the August recess. Grant special grace to this body that it may resolve the issues before it; and help these public servants to take seriously the divine mandate for rest.

May this recess be preeminently a time for family, for healing, renewing and deepening relationships. Grant discernment as to the apportionment of time and work so that Thy servants may give attention to their loved ones and to their health.

Be with those who are required to stay on the job here. Help them to make time for relaxation, recreation, and rest.

May this recess be a time of physical and emotional rehabilitation. We pray this, not selfishly, but that we may be maximized in our continued effectiveness in public life.

We pray this in the name of Him whose life as a servant was unhurried, the epitome of peace and poise and power. 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 TODAY

Mr. BAKER. Mr. President, I might say at this point that there was an order entered on Saturday that after the time for the two leaders and the time for the recognition of the Senator from Wyoming (Mr. SIMPSON) for 15 minutes, there be a brief period for the transaction of routine morning business in which Senators may speak.

CONSIDERATION OF CONFERENCE REPORT ON H.R. 4242 INCLUDING KENNEDY MOTION TO RECOMMIT

At 12 noon, the Senate will proceed to the conference report on H.R. 4242, the tax bill, on which there will be 2 hours of debate equally divided and controlled by the distinguished Senator from Massachusetts (Mr. KENNEDY) on behalf of the proponents, and the distinguished Senator from Kansas (Mr. DOLE), the chairman of the Committee on Finance.

If the motion to recommit fails, under the previous order the Senate will immediately turn to the consideration of the conference report itself, and without intervening action of any sort the Senate will vote on the conference report.

DEPARTMENT OF JUSTICE AUTHORIZATION BILL

It is my understanding, Mr. President, that after the disposition of the conference report, assuming that it is disposed of as I have just described, the Department of Justice authorization bill (S. 951) will automatically recur as the pending business before the Senate.

May I inquire of the Chair if that is correct?

The PRESIDENT pro tempore. That is correct.

Mr. BAKER. It would not be the intention of the leadership to proceed to debate the Department of Justice authorization bill today.

However, it is anticipated that the distinguished Senator from Louisiana or another Senator may file on his behalf a cloture motion to end further debate on the Johnston amendment to the Helms amendment to the Department of Justice authorization bill. If that does occur, it is my understanding that, under rule XXII, a vote on that cloture motion would occur then on the 2d day after our return, which would be the 10th day of September, a Thursday.

I do not anticipate any other business to be transacted today, other than that which I have just described. If there are matters that can be dealt with by unanimous consent, of course, I will confer with the minority leader in that respect.

But, assuming that the conference report is disposed of and the other business I have described is transacted, it would be my intention to offer for the Senate's consideration an adjournment resolution conditioned on action by the House of Representatives on tomorrow.

It would be necessary, Mr. President, perhaps to provide for a contingency of a Wednesday session, which I do not anticipate—I reiterate, I do not anticipate—simply because I think it would be unwise for the Senate to pass the adjournment resolution without any restriction or without any provision until the House of Representatives has acted and has had an opportunity tomorrow to consider the adjournment resolution and if, indeed, they turn to the consideration of that resolution at that time.

The practical effect of what I have said is to say that I believe the conference report on the tax bill will be disposed of on today, a cloture motion will be laid down by Senator JOHNSTON against other debate on his amendment, a resolution of adjournment will be adopted with certain contingency plans to permit the House of Representatives to act on tomorrow, and then, Mr. President, to deal with any other items of business that may be agreed upon by unanimous consent but, otherwise, to transact no further business before the beginning of the August recess.

Mr. President, that is the business before the Senate as I can anticipate it at this time.

In furtherance of that program, Mr. President, I have a series of requests that I would like to make at this point.

## AUTHORIZATION FOR CERTAIN ACTION TO BE TAKEN DURING THE ADJOURNMENT

Mr. BAKER. Mr. President, I ask unanimous consent that, during the adjournment of the Senate over until Wednesday, September 9, 1981, the Vice President, the President pro tempore, or the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions.

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

## AUTHORIZATION FOR NOMINATIONS TO BE HELD IN THE STATUS QUO DURING ADJOURNMENT

Mr. BAKER. Mr. President, I ask unanimous consent that any nominations which have been submitted to the Senate and not acted upon by the time the Senate adjourns be held in the status quo until the Senate next reconvenes.

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

## AUTHORIZATION FOR THE SECRETARY OF THE SENATE TO RECEIVE CERTAIN MESSAGES

Mr. BAKER. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until Wednesday, September 9, 1981, the Secretary of the Senate be authorized to receive messages from the President of the United States and the House of Representatives and that such be appropriately referred.

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

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

## AUTHORIZATION FOR COMMITTEES TO FILE REPORTS

Mr. BAKER. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until Wednesday, September 9, 1981, committees be authorized to file reports between the hours of 9 a.m. and 3 p.m. on Thursday, August 13, 1981, and Thursday, August 27, 1981, and that, in addition to those dates, the Committee on Ethics be authorized to file between the hours of 9 a.m. and 3 p.m. on Thursday, September 3, 1981.

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

Mr. BAKER. Mr. President, I will have other requests to make as they are cleared by the distinguished minority leader.

## ORDER FOR RECESS UNTIL 12 NOON ON WEDNESDAY, AUGUST 5, 1981

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12 noon on Wednesday, August 5, 1981, unless the House of Representatives has previously agreed to Senate Concurrent Resolution 27.

Before the Chair acts on the request I have just made, may I say once again, for those who are listening, that there is no intention to convene the Senate on Wednesday. This is a simple precaution in view of the fact that the House will not act on the adjournment resolution, which I will offer later today, until Tuesday. To provide against the extreme improbable possibility that the House would not act on Tuesday, then the Senate must preserve the option of coming back on Wednesday.

But, I repeat, I do not anticipate it. I think it is virtually certain that there will be no session of the Senate on Wednesday. This request is necessary in order to preserve the opportunity for the Senate to act in the event the House does not complete its action tomorrow.

Mr. PROXMIRE. Will the majority leader yield for a question?

Mr. BAKER. Yes.

Mr. PROXMIRE. If there were a session on Wednesday, would there be a rollcall vote?

Mr. BAKER. Mr. President, I do not expect a session on Wednesday. I do not expect any business to be transacted. I think there is less than a 1-percent possibility that we will be in on Wednesday. But if we are in on Wednesday, it will be so unexpected that I simply could not rule out any possibility of any procedural votes.

Mr. PROXMIRE. I thank the Senator.

Mr. BAKER. Mr. President, was the request granted?

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

Mr. BAKER. Mr. President, later in the day, assuming the Senate has transacted the business that I alluded to in my previous remarks, I will offer an adjournment resolution which will be designated Senate Concurrent Resolution 27. I do not expect a rollcall vote on that. It will provide that the Senate will go over until Wednesday, September 9, at 12 noon.

I say to my friend, the minority leader, it will be an adjournment.

Mr. President, I have no need for my time under the standing order. If no other Senator requires additional time, I am prepared to yield it back or yield it to the control of the minority leader, if he wishes.

Mr. ROBERT C. BYRD. I thank the distinguished majority leader.

## RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

## ORDER TO PERMIT MINORITY LEADER TO OFFER CLOTURE MOTION ON BEHALF OF SENATOR JOHNSTON

Mr. ROBERT C. BYRD. Mr. President, Mr. JOHNSTON is not here today and he would like for me to introduce a cloture motion on his behalf. Inasmuch as the Justice Department authorization bill automatically will be before the Senate upon the disposition of the conference report of the tax bill today, at which time I would offer the cloture motion on behalf of Mr. JOHNSTON, would the distinguished majority leader consider getting a consent at this time to allow me to offer the cloture motion at this time, even though the DOJ bill is not before the Senate, because I may have to leave Washington immediately after the second rollcall vote and would not be here at the time the DOJ bill becomes the pending business.

Mr. BAKER. Mr. President, I have no objection to that.

I wonder if we might even go further than that. Would it be convenient to the minority leader or Members on his side and perhaps Members on our side to set some time other than rule XXII time for the vote on the cloture motion?

Mr. ROBERT C. BYRD. Mr. President, I would have to counsel with Mr. JOHNSTON.

Mr. BAKER. Mr. President, why do we not explore that possibility on both sides of the aisle and perhaps I could make another request later in that respect.

Mr. President, I ask unanimous consent that it be in order at this time for the distinguished minority leader to offer a cloture motion under rule XXII to limit further debate on the Johnston amendment to the Helms amendment to the Department of Justice authorization bill, notwithstanding that the bill is not yet pending before the Senate.

The PRESIDENT pro tempore. Is there objection? The Chair hears none. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished majority leader for his characteristic courtesy and consideration of the request of the minority leader.

## CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, at this time I send to the desk a cloture motion on behalf of Mr. JOHNSTON.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on amendment No. 96 (as modified) to S. 951, the Department of Justice authorization bill.

Jennings Randolph, Lloyd Bentsen, J. Bennett Johnston, Don Nickles, Dennis DeConcini, John C. Stennis, Russell B. Long, David L. Boren, Lawton Chiles, Edward Zorinsky, Steven Symms, J. James Exon, Bob Kasten, Walter D. Huddleston, Sam Nunn, and Chuck Grassley.

Mr. ROBERT C. BYRD. Mr. President, I again thank the distinguished majority leader.

Mr. President, does the Senator from Wisconsin have need for time this morning?

Mr. President, I yield to Senator PROXMIRE at this time.

## GENOCIDE IS COMMITTED BY INDIVIDUALS

Mr. PROXMIRE. Mr. President, I would like to point out one of the important provisions of the Genocide Convention.

Article IV states that:

Persons committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.

Article IV is of great and subtle importance. Genocide is defined as a crime committed by persons, not by governments or organizations.

In any case of genocide, charges would be brought against a person or persons responsible for acting with the intention of destroying a substantial part of a group of people.

The wisdom of this provision lies in the fact that we have no method of punishing governments or organizations. We can bring all the pressure which the international community can muster to bear on institutions that support genocidal acts. But we have no worldwide government or penal system which could actually punish an institution.

Instead, each country of the world has its own criminal justice system which can accuse, try, convict, and punish persons who deliberately engage in genocide and other crimes. The Genocide Convention takes into consideration the reality of national penal systems.

Another important aspect of article IV is that it applies one of the fundamental principles of America's judicial system—that all people are equal in the eyes of the law. No one is exempt from responsibility for their actions. Thus, a genocidal act committed by a king or a Senator is just as much a crime as one committed by any person.

Clearly, article IV of the Genocide Convention is an integral part of the

treaty. Its wording leaves no doubt that persons, not governments, could be accused of genocide under the treaty. No person, from the highest public official to the lowliest man in the street, would be treated differently under this law.

This provision exemplifies the wisdom and deliberation which went into the Genocide Convention. The document was approved by the United Nations in 1948 and today, 33 years later, the U.S. Senate still has not shown its approval of the treaty. I urge my colleagues to speedily ratify this treaty.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, does the distinguished Senator have need for additional time?

Mr. SIMPSON. I think the time of the special order will be adequate.

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

## RECOGNITION OF SENATOR SIMPSON

The PRESIDENT pro tempore. The Senator from Wyoming is recognized.

Mr. SIMPSON. I thank the Chair.

## JAMES WATT, SECRETARY OF THE INTERIOR

Mr. SIMPSON. Mr. President, I have noted with considerable interest a variety of recent commentary which has been offered into the CONGRESSIONAL RECORD with regard to Interior Secretary Jim Watt. I must admit that I was somewhat startled at the intensity of the recent remarks by my fine friend and colleague, Senator ALAN CRANSTON of California. I thought his assessment of Jim Watt to be uncharacteristically harsh. I think it is appropriate for those of us who support Jim Watt to respond to those comments.

I would respectfully state that all of the evidence certainly has not been presented in this case. Jim Watt is a solid guy, a fair one, and I want to say just a very few words about him.

I think Jim Watt realizes that he may have erred in his early months in this administration, since he made the determination to set the Department of the Interior "on course," to mold it in the new image of the Reagan administration, and in doing so he cloistered himself, limiting his media availability. He paid dearly for that.

We are all personally aware of that.

When he arrived on the scene, he very quickly found that some of those red hot issues which had been discussed in past weeks have been lurking around in the inner recesses of the Department of the Interior for many years. One of the issues that was not dealt with in past administrations was the critical need to assess the location and extent of strategic materials in our country. These are minerals which our country simply could not replace if sensitive sources were shut off. Many of those strategic materials are located in Third World countries that have an unstable governmental structure and many of these countries feel no special obligation to the United States of American. If these sensitive sources of supply are shut off we will be in critical need in this country.

Mr. President, there has been a lot of high old hysteria about Jim Watt. Many have a real sense of glee as they hurl their harpoons into him. It is ironic that various organizations in America which characterize themselves as "sensitive and gentle folk" who banded together years ago to "preserve, protect, and nurture" really do like to get the gloves off and get into some pretty vile characterizations. Those organizations are having a heyday at the present time. It is interesting to see them rubbing their hands with glee as they contemplate tacking Jim Watt's pelt on a wall of their redwood paneled dens. They really are quite the hunters, even though they would like to give one the impression of hunting "only with binoculars or camera" as they tramp through the woods searching for the furbish lousewort and various species of the crested titmouse. But I conclude they know more about the jugular vein of adversarial combat than many a hunter I have known out in the high country of Wyoming.

I have known Jim Watt for over 20 years. He is no zealot, no nut, no lightweight. He is doing things that fit into this administration's agenda and he will be doing those things in a manner which will be protective of the environment. Yes, that just could be so. But there is a dedicated band out to nail him to the cross. So dedicated and so bizarrely zealous and off tilt that he now has Secret Service coverage with him around the clock. No other Cabinet Secretary is confronted with the type of abuse and threats he receives. And so it goes. He is a tough guy and he knew what he was headed into.

As someone well stated several days ago, "It is possible to do controversial things in a noncontroversial manner." Jim is learning that. Jim Watt is also making himself available in the editorial boardrooms throughout the United States. He is holding himself open for media questioning and participation and he is becoming accessible. I think that is great. And yet, it must be a little disappointing and disheartening to him as one of the human clan to be painted as some sort of a "death's head" engaged in the mindless destruction of the fragile world of flora and fauna and also some kind of a religious fanatic. He is not that.

I do say that one of the toughest prejudices that Jim Watt has had to encounter is one that has been planted with great glee. All sources of opposition to him prefer to languish in the distortion that Jim Watt, if he but had his way, would allow oil and gas leasing and mining development in the national parks. Now, there is a phony one. But it still gets good coverage. Jim Watt could not do that even if he wanted to, and he has indicated on repeated occasions with utmost incredulousness that he never made such a statement. He did not. But it gets good mileage. He could not do it even if he wanted to, since the statutes of the United States would prevent it, and there are not two or three Senators in the United States who would give him that authority. I assure you that this one would not.

It might just be well to review for a moment the circumstances which have brought us to this point. Perhaps we can wade through all of the stuff and see why we are now hearing all this hue and cry from this rabid opposition?

Well, Jim Watt will never shake the bar sinister which was conferred upon him by the so-called environmental extremists when he chose years ago to enter the fray on behalf of a public interest law firm in a manner which caused him to realize the ironic worth of that remarkable adage, "Hoist on your own petard." This is what has vexed those organization so and it continues to do so. Those are the groups who failed to get their way in the legislative arenas throughout America years ago and, therefore, began to zealously utilize the court systems for their triumphs. It worked, and indeed it worked well, and it worked unfettered for many years until these public interest law firms, such as Mountain States Legal Foundation, rose up to bring some semblance of balance to the serious environmental issues that confronted Americans. And now they also shriek that he has surrounded himself with people of "his own ilk."

What a kicker. Go take a look at the roster of the cast of characters that staffed the Interior Department and the Forest Service in the previous administration—the Under Secretary, the Assistant Secretary, the Deputy Secretary. Talk about a revolving door. They bounced between being counsel for the environmental organizations to being a part of the department with whom they would bargain in the courts. I commend you to a review of my previous remarks on that subject many weeks ago on page 806 of the CONGRESSIONAL RECORD of January 22, 1981.

You might just want to take a look at a few of those names and offices and see why those groups seem to so enjoy that method of administering the public lands when their side was riding high.

I still believe that Jim Watt is the right person at the right place at the right time for just the right position in this new administration.

I believed that at the time of his confirmation and I believe that now.

What I hope that Americans would keep in mind was that Jim Watt pledged—prior to even accepting the nomination of Secretary of the Interior—that he would support the language and the intent of the statutes of the United States. Those are the statutes that describe the stewardship of national public lands and the concept of multiple use. That concept of multiple

use was not Jim Watt's new idea as Secretary of the Interior. That was the concept of Congress when they first spread the law on the books. Jim Watt will carry out that pledge he gave to the President and to the country at the time of his confirmation.

He loves the land which nurtured him. During many times in his youth, there were periods of hard scrabble in seeing that the Earth could provide enough sustenance for him and for his family. He knows more about the fragile nature of the ecosystem than many who simply read about it in the magnificent and graphic publications that you are privy to when you pay your dues to those vigorous organizations. He paid his dues many years ago and in many ways. He believes deeply in stewardship and conservation and protection of the environment. He happens to be in a job where he is required by law to do that and also by law to allow for grazing and mining and timbering and development on the public lands.

That is what the law says. Those things are demanded by the statutes of America. If we do not want to give him that power, change the statutes. They were not hatched by Jim Watt or those in the present administration.

Jim Watt knew the stakes of this game when he came. What he did not count on was that peculiar parlor game played in Washington where what is said in private and thoughtful conversation with your adversaries is totally different from the babbling and posturing by those adversaries when those camera lights go on or when somebody stuffs a microphone under their nose. We all learn that one around this place—sooner or later.

Well, enough of that, Mr. President. It is my great pleasure to enter into the RECORD an editorial from the Detroit News of July 6, 1981, which is supportive of these observations of mine.

I also wish to state again that it has been my rich personal privilege and pleasure to have shared much with this fine man. He brings rare skills to what is most assuredly a very tough job. He has a great personal faith—a great personal stability—and a firm anchorage and heritage of persistence and perseverance. What pleases me most at this time in his tenure is to see my friend listening to others and hearing them out. That augurs well for the future. It is the kind of thing that will turn rugged opposition into ragged opposition. I commend Jim for his willingness to do it. I think Americans will be pleased with that new attitude of his.

I think that it is important to reflect that none of us in our daily lives as humans have ever witnessed anything but a hollowness that comes when a person or an organization attempts to add greater stature and dimension to his or its own self by lessening or diminishing another.

I ask unanimous consent to have the aforementioned editorial printed in the RECORD.

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

A DELICATE BALANCE

The Department of Interior has generally been an obscure Washington preserve presided over by forgettable directors. Then came James Watt.

During his five-month tenure, Secretary Watt has generated more controversy than any of his predecessors. From the confirmation hearings when he faced down Senate critics, to the initial decision to reconsider offshore oil drilling along northern California's scenic coastline, Mr. Watt has not been one to shrink from confrontation.

A Newsweek cover depicts him lifting a carpet of wooded beauty to assist in the "exploitation" of the land. Former Sen. Gaylord Nelson calls Mr. Watt "unfit to hold office." The Sierra Club is circulating a petition to force him from office.

Who is this man the environmentalists characterize as a Dr. Strangelove bent on defiling nature's grandeur?

He is a man who simply wants to restore the balance between preserving the environment and promoting economic development—a balance that has been lost during the past two decades.

This may sound easy, but it isn't. Not only is the Interior secretary the nation's chief environmentalist, he oversees dam construction, mining, the leasing of oil fields on the outer continental shelf, and mineral-rights grants.

Mr. Watt must resist those who would exploit the land for profit, as well as the environmental purists who would make the world safe, at any cost, for the snail darter.

There is a clear need both to preserve the land's natural beauty and to extract those resources that will promote economic self-sufficiency. And, from the evidence to date, Secretary Watt seems to recognize the need for equilibrium far better than his detractors do.

The energy crisis has clarified American attitudes about achieving that balance.

A Newsweek poll reflects an American eagerness to increase the nation's energy production. Seventy percent favor expanded offshore oil drilling and 76 percent want increased oil exploration on federal lands. A plurality supports easing strip-mining regulations to extract more coal from the land, and a majority favors relaxing air-pollution standards to permit more coal burning.

Many environmentalists view this trend with alarm.

They believe that the public's shortsighted self-interest will defile the land. But it is the extreme environmentalist who has been shortsighted, and selfish, by refusing to acknowledge the possibility of development that is sensitive to the ecology.

But charges that Secretary Watt will sacrifice the national landscape to wanton timbering, drilling, and mining inflame the issue without providing hard facts or, more important, redeeming and practical alternatives.

Certainly the Interior Department's program must be tempered by a reasonable concern for preserving the landscape. But to prevent the nation from tapping its abundant natural resources would be precisely the kind of foolishness the American people emphatically rejected last November.

The extreme environmentalists, who dislike compromise, have a choice: They can either recognize the economic need to accommodate dual values, or they can go out to the garden and eat worms.

## ORDER OF BUSINESS

Mr. BAKER. Mr. President, there is no other special order today, is there?

The PRESIDING OFFICER (Mr. KASTEN). The Senator is correct.

Mr. BAKER. Mr. President, I believe there is one item on the Executive Calendar that can be cleared for action at this time. May I inquire of the minority leader if he is prepared to proceed to consideration of the first item under nominations, to the Department of Defense, Richard N. Perle, of Maryland, to be an Assistant Secretary of Defense?

Mr. ROBERT C. BYRD. Mr. President, I have discussed this nomination with Mr. JACKSON and assured Mr. JACKSON that I would act to clear the nomination quickly. That has been done on my side of the aisle at this time. I am in a position to advise the distinguished majority leader that the minority is ready, willing, and eager to proceed.

Mr. BAKER. I am grateful, Mr. President, in all three categories.

## 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 Richard N. Perle.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nomination will be stated.

## DEPARTMENT OF DEFENSE

The legislative clerk read the nomination of Richard N. Perle, of Maryland, to be an Assistant Secretary of Defense.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. BAKER. I move to reconsider the vote by which the nomination was considered and confirmed, Mr. President.

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 this nomination.

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.

## ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 12 noon, with statements limited therein to 3 minutes each.

The PRESIDING OFFICER. The Senator from Utah is recognized.

## THE AIR TRAFFIC CONTROLLERS STRIKE

Mr. GARN. Mr. President, I wish to express in the strongest possible terms

my anger with the Nation's air traffic controllers strike.

I have had considerable experience with airports, Mr. President, and I am well aware of the function of the air traffic controller. I have also had considerable experience with Government employee unions, and what the Professional Air Traffic Controllers Association has wrought is a classic case of employee greediness. Under agreements negotiated by PATCO, the controllers at small and little-used airports earn the same salaries as those at the major airports such as La Guardia or O'Hare. Those salaries are substantial, Mr. President. Right now, they average $33,000 per year. The union is shooting for an average of $52,000, and a cutback to a 4-day week.

Why air traffic controllers, Mr. President? I do not deny that there are heavy pressures on some controllers, but there are heavy pressures on lots of other Government employees. Soldiers, sailors, marines, airmen, all serve their Nation at the peril of their lives, as the tragic accident on the U.S.S. *Nimitz* recently reminds us. They are not allowed to strike, and they should not be.

To choose an even closer parallel, what about air traffic controllers on aircraft carriers? Even the pressures on controllers at the busiest airport in the United States do not compare with trying to set a supersonic jet down on the postage stamp deck of a carrier, rolling and pitching in heavy seas. Those controllers do not threaten strikes. Neither do the pilots whose lives hang in the balance in those operations.

I note, Mr. President, that there are no geographical differentials built into the pay scales of controllers. What that means is that a controller at the busiest airport in the country gets the same pay as the controller at the dirt strip in the country where an airplane is an oddity. In other words, the union for these workers has behaved in normal fashion, and written into law the same pay for all its members, using the requirements on the most burdened worker as justification.

Mr. President, I cannot emphasize strongly enough that this strike is illegal. As Federal employees, the air traffic controllers are forbidden to strike. We have had illegal strikes in the past, Mr. President, and the Government's response has been sickening. I sincerely hope that the Reagan administration will have the guts to stand up to this union, a union whose officers sat before committees of this Congress and denied that they were thinking about a strike. Robert Poli, the president of the union, testified before the Commerce Committee that "in no way is PATCO planning to go on strike in 1981." He also said "I make no excuses for people involved in illegal actions."

Well, Mr. President, Mr. Poli is singing a different tune today. In the Wall Street Journal he is quoted as saying "the only illegal strike is one that fails." That is a very different tune, and one that this Senator does not care to march to. I think our response should be a little bit different, too. I think the administration should be as hard on this illegal strike as it can be.

Mr. President, this is a dangerous strike. The union has picked the most disruptive time of year to threaten a strike. Millions of Americans will be traveling this summer, and the work stoppage or slowdown will endanger their lives, and seriously damage the economy at a time when it needs all the help it can get. The administration is attempting to get the budget into balance, and the kind of budget-busting demands made by this small group of critical workers is outrageous. I urge my colleagues to stand fast against this extortion, and to join me in urging the President to prosecute violations of the law to the utmost.

Mr. President, in order that my colleagues can judge for themselves the extent of official PATCO involvement in preparations for this threatened strike, I ask unanimous consent that a document outlining preparations for the strike be printed at this point in the RECORD. This strike plan appears on official PATCO stationery, and amply justifies the remarks I have just made.

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

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION

Brothers and Sisters of Cluster G–9 (ZAU, ARR, DPA): This is the first in a series of informational packages designed to let the members of the cluster know what is being done, what is planned, what you are expected to do and any other information pertinent to our success and well-being in pursuit of an equitable contract.

This packet contains five items that should be of interest to everyone.

First is a draft of the letter given to our legislators informing them of the reasons and rationale behind H.R. 1576. For those who may doubt your worth, this will provide interesting and, hopefully, enlightening reading. You rightfully deserve a shorter work week, improved retirement, and better pay.

The second item is a list of the various committees involved in the '81 program along with all their functions.

The third item is the rules of conduct for the headquarters' area in the event of a confrontation. The key word is rules. We must protect our professional standing at all times.

The fourth item is the National Controllers Subsistence Fund Guidelines. Anyone concerned over the consequences of a job action will find this document of the utmost importance.

Last, but certainly not least, is the probable sequence of events leading up to the head count and a description of your individual areas of responsibility.

If this package has generated any questions or you have any recommendations on information that should be included in future packages, please contact me or your Area Representative. Remember, PATCO is not me, PATCO is not you, PATCO is US!

TERRY ANDERSON,
*Choirboy, Cluster G–9.*

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COMMITTEES

HEADQUARTERS COMMITTEE

Operates the main desk at headquarters and coordinates the activities between other committees. The Headquarters Committee will also:

(a) maintain an incident log and status board,

(b) determine emergency situation actions to be taken,

(c) disseminate latest info on conflict status at all times.

(d) act as a spokesperson for the local in the absence of any local officer or choirboy.

GOOD AND WELFARE COMMITTEE

The people of this committee will serve as the official channel through which local community services provide assistance. These people help make agency services available to the strikers. The conflict counselors may be called upon to give info on any needs, such as eviction, hospitalization, financial problems, installment payments, etc. Each area in the building will be represented by a trained strike counselor. The membership must realize that the public aid is not a charity. It represents tax money that you and I have paid. A letter will be sent to each member prior to a confrontation explaining the committee and it's job.

INTERNAL COMMUNICATION COMMITTEE

This committee is responsible for maintaining a membership phone list in conjunction with the "Call-Pak" and, in a time of conflict, to collect, validate, and disseminate on a daily basis any and all information the committee has acquired. The sources of information would be National, Regional, or Facility Bulletins, TV coverage, artioles from prominent newspapers across the country as well as local articles from magazines, suggestions from members, and information about all of the committees. Any information acquired by an individual who feels it is pertinent to PATCO would be welcomed and duly posted by this committee.

SOLIDARITY COMMITTEE

This committee will be responsible for a variety of activities aimed at boosting membership morale. Each evening, at rally time, one or two activities will be scheduled for the members entertainment. Listed below are the types of activities and those people who will coordinate them.

Sports, Dwight King; Refreshments, Gary Hedman; Speakers, A. J. Andrews; Music, Pete Nyquist; Movies, Gary Michael; and Free Time, Jim Marszalek.

In addition to the above, each night this committee will hold a strength evaluation and an open forum type discussion that will allow everyone to vocalize his or her feelings about the conflict and our progress.

TRANSPORTATION COMMITTEE

The Transportation Committee was formed to help meet any transportation needs that the membership might have in the case of conflict. The committee will survey the membership to ascertain what our transportation capabilities are; then formulate a plan to meet the membership's needs to the best of our capabilities and resources.

PICKETING COMMITTEE

The Picketing Committee is responsible for implementing the picketing portion of the plan as it pertains to our cluster. This includes researching the applicable laws and regulations, procuring supplies and designating key individuals.

SECURITY COMMITTEE

This committee is responsible for the headquarters area, parking security, picket line security, and air traffic movement volumes. The committee has a representative from each area plus other personnel to carry out each assignment. The overriding responsibility of maintaining order and protecting PATCO personnel and property are given top priority. Security personnel will be present at all picketing sites to assist the picket line Captain in the event of an incident.

POLITICAL ACTION COMMITTEE

This committee's function is to encourage and to coordinate letter writing campaigns in support of both HR 1576 and S 808 now before congress

The National Controller Subsistence Fund guidelines were amended via a resolution passed at the 1980 Convention. The new guidelines are:

ARTICLE I—GENERAL

Section 1.—The controller subsistence fund shall consist of those monies collected from dues for that purpose and any interest, dividends, profits or repayments made to the PATCO controller subsistence fund resulting from backpay awards.

Section 2.—Duration: The fund shall be perpetual unless dissolved by majority vote of the members of the fund. In case of dissolution, all financial obligations of the fund must be paid prior to disbursement of the monies.

Section 3.—Objective: To provide financial support of members whose participation in a nationally sanctioned job action has resulted in suspension and/or dismissal.

ARTICLE II—RESPONSIBILITY

Section 1.—The Executive Vice President of PATCO shall be responsible and assountable for the proper receipts and disbursement of all monies of the Fund, in accordance with Article II, Section 4.b of the PATCO Constitution. All investments of monies in the fund shall be made only in guaranteed government securities.

Section 2.—The National Finance Committee shall exercise overview responsibilities of the fund in accordance with Article X, Section 1.c of the PATCO Constitution.

ARTICLE III—ELIGIBILITY

Section 1.—In order to receive subsistence, a member must:

a. Be a member as described in the PATCO Constitution.

b. Be suspended and/or dismissed as a direct result of his (her) participation in a nationally sanctioned job action.

c. Have been an active member of PATCO for 60 days immediately prior to engaging in a nationally sanctioned job action. The 60 day limitation does not apply to new members who have been employed as air traffic controllers for less than one year.

d. File a grievance or administration appeal against the suspension/dismissal.

e. Be certified as eligible by his (her) local Executive Board. If no local Executive Board exists, the member must be certified by the Regional Vice President.

f. Deliver a promissary note to the Executive Vice President promising to repay the fund for subsistence received in an amount equal to all backpay awards resulting from grievance, appeal or court action, if any.

ARTICLE IV—SUBSISTENCE

Section 1.—Each eligible member shall receive, on a bi-weekly basis, subsistence payments equal to his (her) base pay, including regularly scheduled increases, had the member's employment continued. No eligible member or his (her) designated survivor, who is receiving subsistence from this Fund, can have his (her) subsistence revoked without a ⅔ majority vote of all the Voting Representatives of PATCO convened at a National Convention.

Section 2.—When an eligible dismissed member reaches age 61, the amount of subsistence which he (she) receives from the fund will be reduced to a level he (she) should have received if normal Civil Service Retirement had occurred.

Section 3.—In the event of the death of a controller receiving subsistence from the fund, the member's designated survivor shall receive survivor subsistence annuity equal to the amount that the survivor would have received, if the member had not been dismissed.

Section 4.—An eligible member, whether developmental or full performance level at the time of his (her) dismissal, shall be guaranteed, in accordance with the regular schedule of promotion for which the member would have become eligible, in progressing to at least the journeyman level of a level three terminal or a level one center.

Section 5.—In the event of a suspension, subsistence will be paid to the eligible member for a period of time equal to the length of the suspension which the member actually served. In the case of dismissal, the eligible member will be paid until that member has been offered reinstatement at his (her) last assigned facility or at a facility acceptable to the member.

Section 6.—Each subsistence fund recipient or designated survivor may appeal a decision related to the establishment or the payment of subsistence to the PATCO National Executive Board. The National Executive Board's related decision shall be final.

Section 7.—In the event of fund depletion, the National Executive Board may, by a ⅔ vote, reduce payments by an equal percentile in order to preserve continuity of income to all recipients.

ARTICLE V—SANCTIONING

Section 1.—A national job action must be sanctioned by at least five members of the National Executive Board.

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HEADQUARTERS—RULES OF CONDUCT

Absolutely no alcoholic beverages.
Sobriety required.
Keep it clean . . . America is watching.
Do not let any question go unanswered.
Cooperate.

SCENARIO

1. Meaningful negotiations with the F.A.A. no longer exists.

2. Our legislative pursuits have stalled.

3. Only because the above efforts have reached their end, a nation-wide strike of air traffic controllers will be called. The date for this action (2–3 weeks prior to the actual headcount) will be given to the F.A.A., the media, and the flying public.

4. The headcount will be taken nationwide, prior to the day shift of the strike date. This count will be checked and cross-checked via the validation process which has been outlined at our meetings.

5. If we do not get the required 80 percent, everyone will return to work as scheduled. There will be no exceptions!

6. If we have 80 percent of the bargaining unit, which must also include 80 percent of the high impact facilities, willing to go out and stay out, we will go on strike at the start of that day shift.

7. Every member will be required to attend the rallies scheduled for the first day of the strike.

8. After the first day, every member is expected to work the same schedule that was shown in the schedule book prior to the strike. The only difference is that you will be working for PATCO as a striker, not the F.A.A. who has failed to address the needs of the work force. Our members should not look at this time away from the boards as a vacation, but as a dog fight where we will take what we deserve.

9. Members and their spouses can expect phone calls/letters from F.A.A. managers offering immunity if controllers return to work. These calls must be ignored but should be reported to strike headquarters.

10. The courts will more than likely issue subpeonas which will require controllers to appear before a Federal Judge. The Judge will order all controllers back to work with the threat of a jail sentence/fine if the order is not complied with. This situation will be dealt with when the time comes.

11. When the National states they have negotiated a settlement worthy of our efforts, the PATCO members who are on strike will be given an opportunity to ratify the contract. That vote will require 50 percent plus one of the striking PATCO members.

Mr. GARN. Mr. President, let me give my colleagues an example of what PATCO wants, as outlined in S. 808. This bill would make it possible for controllers to become the highest paid employees in the Government. The top controller under S. 808 would make $73,420 in base pay. Add-ons would make it possible for him to make as much as $135,000 per year. Controllers would receive a 1½-percent increase for every 1-percent increase in the CPI, thus allowing them to benefit from inflation. This bill would allow them to retire after 20 years at 75 percent of their highest annual gross salary, and would give controllers the right to strike. No responsible agency or Congressman could support these proposals.

More than a month ago, Mr. President, 38 of our colleagues in the Senate signed a letter that Senator KASSEBAUM and Senator PACKWOOD initiated telling the controllers that we were willing to listen, we were willing to talk, but if they struck, it was an illegal action and there are severe penalties that could come from that kind of action. They did not go on strike and, therefore, no further action was taken on this floor.

But, last week, after they rejected a very generous contract that would have given them pay increases of over 11 percent, a reduced workweek, and increased fringe benefits plus the almost 5 percent that would occur this fall—more than 16 percent in that package—and they turned that down, 54 of my colleagues joined me in sending in a very strong letter saying that we would not agree to this kind of extortion or blackmail.

That is exactly what it is, Mr. President. They have ignored that letter. They have gone on strike. They are going to cost the airlines and industry of this country hundreds of millions of dollars and they are not too concerned about public safety, apparently, either.

So I am pleased with the President's actions this morning, Mr. President, that he has given them 48 hours to come back to work or they will be terminated. The only thing I would disagree with the President on is I would have given them 24 hours. If they were not back to work in the morning, they would be fired; if we have to retrain controllers and start from scratch and have to take some old retread pilots like me to man those towers, we will do it; but we are not going to have this kind of illegality and this kind of threat and this kind of intimidation. Whatever they may now negotiate with the administration, which is taking a tough stand at this point, they need to know that they will not get any huge increases negotiated as a result of an illegal strike through this body.

They had better remember that 55 Senators signed that letter and even if all 54 others back off, this Senator will filibuster any agreement obtained through this type of greedy action. I hope Mr. Poli hears this, either before or after the Federal marshals find him. If they persist, this union should be broken up, they should be fined heavily, they should be terminated. And if that does not stop it, they should be placed in jail. We put poor people in jail in this country for larceny who take $100 from a grocery store.

Here we have this greedy union demanding ridiculous salaries—I repeat: more than other Federal employees except the President of the United States.

I hope the message goes loud and clear from this Chamber today that they had better be back to work as quickly as they can, or they will not be working at all as air traffic controllers and I defy them to try to find a job at the salary levels they are now making.

I am pleased that some of my colleagues are on the floor with me today to add their concerns about this illegal job action.

Mrs. KASSEBAUM. Mr. President, I support the comments that the Senator from Utah has made in addressing the air traffic controllers' strike.

It is not only troubling to us in Congress but also to others throughout the Nation; not just for those travelers who might be bothered for a day or two but also, more important, the disruption of a major transportation system that significantly impinges on many aspects of lives.

I have consistently expressed the desire that the dispute between the Professional Air Traffic Controllers and the Federal Aviation Administration could be resolved through genuine efforts to reach a negotiated agreement. It is my feeling that the agreement reached through the negotiation process, which was submitted to the membership of PATCO, provided a care package of wage and other benefits.

I firmly believe that illegal action will do nothing to further the goals of increased pay and changes in working conditions of the controllers. That proposal which was presented to them was fair and equitable.

I believe that the administration should be praised for its reaction to this illegality in the strike that was called this morning.

It is to the credit of the air traffic controllers who reported to work this morning, those who have helped fill in, that the system, in the early hours of the strike, has operated at almost full capacity.

I believe that the strong position taken by the President, the Secretary of Transportation, and the Director of the Federal Aviation Administration is to be commended. I hope that those who are breaking the law will be met with the full force of the sanctions available to the Secretary and to the President, and I commend them for the firmness they have shown and which I am sure they will continue to show until the situation is resolved.

Mr. MATTINGLY. Mr. President, I commend Senator GARN and Senator KASSEBAUM for their stand this morning. We joined in sending the letter last week to the air traffic controllers, warning them with respect to the strike threat.

I represent the State with the world's largest airport, which is located in Atlanta, Ga. Therein lies not only my interest but also the interests of many people today, even those in this Chamber. We do have the world's largest and busiest airport, but more important than that is what has happened today with respect to the Professional Air Traffic Controllers.

I believe that the position taken by the President of the United States and by Secretary Lewis is correct—by giving the air traffic controllers a 48-hour get-back-to-work order or new people will be put in their positions.

However, I believe that, even more than that, what needs to be done is to send a clear warning to all Federal unions that they are not to threaten strikes, because that is against the basic oath they take when they take those Federal jobs, as union people. The oath says that they shall not threaten a strike, nor shall they go out on strike.

I believe we need to look at legislation that is even more stringent, so that this does not happen again.

I agree with the President of the United States and the Secretary of Transportation that those air traffic controllers who do not come back to work have committed an illegal action and that they should find other jobs.

With respect to Mr. Poli, who is the head of their union, PATCO at one time made the comment that their past union leader was not strong enough, that they needed somebody more militant. They certainly got one in Mr. Poli. He has put that union and its members in a very precarious position, but he also has put the Nation in a very precarious position.

He may have been successful in voicing his threats, he may have been successful in putting people on strike, and he may be successful in slowing down the air transportation of this country; but what he is not successful in is in threat ening this body or in threatening the people of the United States, because the people will not stand still for illegal action.

I suggest to him and those people who do not show up for work in 48 hours to please find other employment, because the American people will not be held hostage by this act or any other act.

Mr. GARN. I thank my distinguished colleagues.

Mr. President, I close by reminding the air traffic controllers of this country that no agreement reached can be agreed to only by the administration. It must come before the Congress of the United States.

I suggest that they listen very carefully to the attitudes expressed on this floor today. It is not just three Senators. There are others who would like to have been heard this morning, to participate in this colloquy, such as the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Florida (Mr. CHILES). However, they were unable to get here because of the strike, and they have not arrived yet. I imagine that they will not feel too happy when they finally do arrive.

Again, I thank the Senator from Kansas and the Senator from Georgia for their participation this morning.

Mr. PACKWOOD. Mr. President, I join my colleagues in deploring the strike today by the Professional Air Traffic Controllers Union. These individuals, employed by the Federal Government, are prohibited from striking. Their walkout, in contempt of a Federal court restraining order, constitutes an illegal activity. The Departments of Transportation and Justice have my full support in taking whatever punitive action against the strikers called for in the law.

Striking air traffic controllers are to be reminded that the Congress will have to approve whatever salary, workweek and benefits package that is eventually recommended for ratification. Our consideration of that package will be affected by the cooperation and attitude of controllers in negotiating a new agreement. Our consideration will also take into account the salary needs of other Federal workers, as well as the impact of the agreement on the Federal budget.

This is a time when tremendous efforts are being exercised by the executive branch and the Congress to slow down inflation so that eventually all of us can enjoy better buying power and lower interest rates. That means that we all have to work together to keep Federal spending down. This is not a time when management looks with favor on shorter workweeks, higher salaries and increased overtime pay. This is a time for increased productivity.

Air traffic controllers are important to the smooth operation of the entire air traffic control system. They provide a specialized expertise and oftentimes under considerable pressure. We appreciate those services, but we do not intend to be blackmailed by the lack of them.

The airlines expect to lose at least $80 million per day as a result of the strike. Commuters will be most seriously affected since short distance flights are given a lower priority. Air travelers will be tremendously inconvenienced. This is a high price to pay because some Federal employees are frustrated and want higher salaries. The benefits package which has been presented to the Department of Transportation estimated to cost $681 million surely does not represent a serious attempt to negotiate with the Government. I think the union had better quickly return to the bargaining table with a reasonable package.

The PRESIDING OFFICER. Who yields time?

Mr. GARN. 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 (Mr. STEVENS). Without objection, it is so ordered.

Mr. BAKER. Mr. President, this morning the President issued a statement to the press in respect to the air controllers' strike. I think the statement is succinct and I think it is correct, and I support it.

I ask unanimous consent to have printed in the RECORD the President's statement.

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

STATEMENT BEFORE THE PRESS, AUGUST 3, 1981

This morning at 7 a.m. the union representing those who man our air traffic control facilities called a strike. This was the culmination of 7 months of negotiations between the Federal Aviation Administration and the union.

At one point in these negotiations, agreement was reached and signed by both sides granting a $40,000,000 increase in salaries and benefits. This is twice what other government employees can expect. It was granted in recognition of the difficulties inherent in the work these people perform.

Now, however, the union demands are 17 times what had been agreed to—$681 million. This would impose a tax burden on their fellow citizens which is unacceptable.

I would like to thank the supervisors and controllers who are on the job today helping to keep the nation's air system operating safely. In the New York area, for example, four supervisors were scheduled to report for work and 17 additionally volunteered. At National Airport a traffic controller told a news person he had resigned from the union and reported to work because, "How can I ask my kids to obey the law if I don't." This is a great tribute to America.

Let me make one thing plain; I respect the right of workers in the private sector to strike. Indeed as president of my own union I led the first strike ever called by that union. I guess I'm the first one to ever hold this office who is a life-time member of an AFL–CIO union. But we cannot compare labor-management relations in the private sector with government. Government cannot close down the assembly line, it has to provide without interruption the protective services which are government's reason for being.

It was in recognition of this that the Congress passed a law forbidding strikes by government employees against the public safety. Let me read the solemn oath taken by each of these employes:

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

It is for this reason I must tell those who failed to report for duty this morning they are in violation of the law and if they do not report for work within 48 hours they have forfeited their jobs and will be terminated.

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.

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## CONFERENCE REPORT ON H.R. 4242, ECONOMIC RECOVERY TAX ACT OF 1981

The PRESIDING OFFICER. Under the previous order the hour of 12 noon having arrived, the Senate will now proceed to the consideration of the conference report on H.R. 4242, which the clerk will state.

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. 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, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all 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 RECORD following today's Senate proceedings.)

The Senate proceeded to the consideration of the conference report.

The PRESIDING OFFICER. The time for debate on this conference report is limited to 2 hours, equally divided and controlled by the Senator from Kansas (Mr. DOLE) and the Senator from Massachusetts (Mr. KENNEDY).

Who yields time?

### MOTION TO RECOMMIT

Mr. KENNEDY. Mr. President, I send to the desk a motion and ask for its immediate consideration.

The PRESIDING OFFICER. The motion will be stated.

The assistant legislative clerk read as follows:

Motion by Mr. KENNEDY: I move to recommit the conference report on H.R. 4242, with instructions that the Senate conferees shall seek to reduce the revenue loss from the windfall profit tax provisions.

Mr. KENNEDY. Mr. President, I yield myself such time as I might use.

This motion would recommit the conference report to the conference committee with instructions to reduce the revenues for oil. I believe that the $33 billion in oil tax breaks in this legislation is a breach of faith with the American people, a surrender to expediency, and a gross act of injustice to many American taxpayers.

I hope the Senate will oppose the gigantic multibillion-dollar giveaway to the oil industry that is included in this tax bill.

Last Friday night in the Capitol turned out to be a big night for big oil and a bad night for every American taxpayer. The oil industry's midnight raid on the Treasury netted them a cool $13 billion over the next 5 years and an incredible $33 billion over the next 10 years.

I am particularly disturbed by reports that the Secretary of Treasury himself held out until the very last moments of the all-night conference for an additional $13 billion for oil. It appears that at least this part of the oil deal could not stand the light from the rays of the early morning Sun.

At a time when millions of average families are being asked to sacrifice as part of the administration's economic program, and at a time when millions of elderly citizens are being asked to accept drastic cutbacks in their social security benefits and their retirement plans, it makes no sense to give the Federal store away to the oil companies.

The issue here is not the President's tax bill. I would have preferred a fairer tax cut for low- and middle-income taxpayers and small business, and a shorter tax cut to help keep inflation down. But the President won that battle.

What I do oppose is the $33 billion pot of gold for the oil industry that has now been tied to the tail of the tax bill. It is an unfair and unnecessary giveaway that should be stripped from this measure before it is sent to the President for his signature.

I know that my colleagues wish to begin the current recess and to leave the long hot summer of a Washington August.

But before voting another Bonanza for the oil industry, the most profitable industry in the Nation, we should remember the families who will have increasing trouble making it through another long cold winter in their homes.

Just 17 months ago the Senate was considering a conference report on another major piece of tax legislation—the crude oil windfall profit tax of 1980. We passed that legislation after 7 years of national debate on oil prices. In the course of that debate, two Presidents—both Republicans—and two Congresses (in 1972 and again in 1976) had approved oil price controls.

But between 1976 and 1979, an unprecedented lobbying campaign took place, orchestrated by the oil industry, to end price controls on oil. These controls were not put in place to punish the oil companies. They were established because skyrocketing oil prices had turned the American dream of prosperity and economic growth into a nightmare of domestic inflation. It was unfair to permit the oil companies to charge the OPEC cartel price to American consumers, and keep the profits. It was wrong to permit the oil industry to charge the international monopoly price for oil produced in the United States and keep the windfall profits from those higher prices.

It has always been the responsibility of Government to protect the American poeple and the American economy from monopoly power—at least until now.

But between 1976 and 1979 a new direction developed, engineered largely through the lobbying efforts of the oil companies. Under this new plan, oil prices would be permitted to rise to OPEC levels, but the windfall profit of the oil companies would be subjected to a tax. From the beginning, many of us considered this approach intellectually attractive but unrealistic in practice. We feared that once decontrol was accomplished—even if a windfall tax was enacted—the tax would soon be nibbled to death.

Unfortunately, those fears are now becoming a reality. The ink was barely dry on the windfall profit tax before the oil industry began lobbying for its repeal. Their 17 months of lobbying have been very, very effective. In fact, their lobbying has been worth $2 billion a month—for the tax loopholes in this legislation are worth about $33 billion to the oil companies for the next decade.

What has become of the solemn promise we made to the American people when we passed the windfall tax? We promised that the oil companies would not keep their windfall profit from decontrol. But if we approve this legislation today, we are saying—in the first tax bill passed after the windfall tax was signed into law that we did not really mean it, that the oil companies can keep their windfall after all.

The windfall profit tax was enacted for a very simple reason. As the President told Congress in April 1979, a windfall profit tax was essential to recover

the "unearned, excessive profits that the oil companies would receive, as a result of decontrol and possible future OPEC price increases."

But now, if the Senate accepts this conference report, it will be stating its belief that the oil companies are actually entitled to these "unearned excessive profits;" $33 billion more will be turned over to the industry that Wall Street has called "more profitable" than any other industry in America—an industry whose profits are 12 times greater than nonoil companies.

This legislation is a breach of faith with the American people. When we decontrolled the price of oil, we pledged that windfall profit would be taxed. Now, we are revoking that pledge.

If we accept this conference report, we are also ratifying the bidding war that led to its inclusion in the House bill.

When President Reagan proposed his original tax package, he did not ask for $33 billion in special tax cuts for the oil companies. There was no provision for oil at all. There was no mandate in the November election to cut the windfall profit tax.

The reality is that, in the intense lobbying of the past 5 months, the oil interests have been able to manipulate the President's program for national economic recovery into a giveaway to the oil industry. This legislation might better be called the oil industry tax relief act of 1981.

Even without this $33 billion in special tax relief, the oil companies did very, very well in this legislation. The accelerated depreciation provisions alone will give the oil companies billions of additional dollars each year—which they can use to buy department stores, or copper companies, or circuses—or even each other, as they are trying to do today.

But billions of dollars in new tax relief from accelerated depreciation was not enough for the oil companies. So they added $20 billion more in special relief from the windfall profit tax in the Senate bill. But even that was not enough to satisfy their greed. They wanted even more. They prowled the Halls of Congress and the executive branch. They demanded and manipulated. They smelled an even greater victory. And they got it—they got $13 billion more in this conference report—for a total tax cut of $33 billion for oil. They won that extra $13 billion in the wee hours of Saturday morning. With the corridors outside the conference room filled with oil lobbyists, the conferees agreed to give the oil companies $13 billion more.

And make no mistake about it—$33 billion will not even be enough. For if this body today announces its surrender by accepting this conference report, the oil companies will be back again later this year, and the next year, and the year after that, until there is no windfall profit tax left at all.

They know they have Congress on the run. If we throw in the towel today, in a very short time the oil companies will turn the windfall profit tax into an empty gesture. And in doing so, they will be taking unfair advantage of every American, and every small businessman who supported decontrol of oil in good faith, because it was accompanied by the windfall profit tax.

Finally, approval of this legislation will be a great act of injustice to the American people.

When President Reagan announced his economic recovery plan, he stated the principles upon which it was based. One of these principles was that every segment of American society must sacrifice for the greater good. But what sacrifice is the oil industry being asked to make?

What we are now witnessing in the United States is a full-court press by the oil interests against the best interests of the American people. The Secretary of the Interior, Mr. Watt, wants to give away a billion acres of Federal lands to the oil companies in 5 years. The Secretary of Agriculture wants to let the oil companies drill at will in the national forests of America.

The Environmental Protection Agency proposes to weaken the controls over the toxic wastes the oil companies produce, and the poisonous gases they vent into the atmosphere.

And now the Congress proposes to give them $33 billion in new tax breaks. I say, it is time to take a stand. It is time to say enough is enough.

When we are asking schoolchildren to pay more for lunches, should we be giving more to the oil companies?

When we are asking the elderly to give up their minimum social security benefit of $122 a month, should we be giving away $33 billion to the oil industry?

The funds distributed to the oil companies alone in this bill could make up the entire deficit in the social security trust funds.

In effect, the choice before us now is between protecting social security, or giving the oil companies $33 billion more in tax relief. That choice should be an easy one for any Congress to make. I urge the adoption of the motion and the instruction to the conferees.

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

The PRESIDING OFFICER (Mr. STEVENS). Who yields time? Who yields time?

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum, with time to be equally divided.

The PRESIDING OFFICER. Is there objection to time to be equally divided?

Mr. BOSCHWITZ. I object.

The PRESIDING OFFICER. Objection is heard.

Who yields time? If neither side yields time, time will be charged equally to both sides.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. I think that is an indication of how big an issue that is. It is really not an issue because there is not anybody waiting to speak on this momentous occasion. Many of us were ready to speak Saturday evening.

I would just suggest that we did have a long conference. I am not certain where the Senator from Massachusetts obtained all his figures about big oil. I did not know big oil was even in the conference. Maybe there were some people there we were not aware of in the conference, and I am not certain about all these lobbyists.

I am certain the Capitol was full of lobbyists, as there are every other time a major bill is considered. If there was an inference in his statement that they were in the room and dictating what happened in the conference, I can indicate to the Senator from Massachusetts that that was not the case.

I would also indicate that the conference report was signed by every member of the conference, every House Member, every Senator, and I think it is fair to say that some of those House Members are just as much antioil as the Senator from Massachusetts. But they signed the conference report because they believed it was fair.

There was a give and take, and as far as this Senator knows the only discussion was what we were doing for independent producers, not major oil companies. It does not do much good to say that on the floor because the press never seems to write anything other than what the Senator from Massachusetts has to say on this subject. He gets up and attacks big oil, so it is big oil in the papers and big oil on television and big oil on radio. We will just keep trying. At least it is in the RECORD in case somebody ever wanted the facts, and they will be in the RECORD, perhaps not in many of the papers, but in the RECORD.

Having said that I would suggest that anybody who would read the conference report and anybody who may have covered the conference will know that the discussion was not about big oil. We were talking about stripper production, wells that produce 10 barrels or less. If that is big oil, then the Senator from Massachusetts has information not available to any of the conferees.

Mr. President, the House-passed tax bill had about $16.2 billion in windfall profit income tax relief for oil producers and royalty owners for the next 5 years. The Senate-passed bill had about $6.6 billion in such relief, and the compromise was about $11.7 billion. That is slightly over half.

I am not certain how other conferences do, but I think it is—maybe not the custom, but more often than not around here—if you have one figure on one side of the Congress and another figure on the other side, it is generally conceded that if you split the difference that is fair. I think that is the feeling of most Senators.

In fact, I read with interest the press release issued by the distinguished Senator from Ohio (Mr. METZENBAUM) taking credit for the big savings because the conference had dropped so many of the oil provisions and many of the demands by the so-called oil industry.

So I was frankly somewhat surprised to learn later that the Senator from Massachusetts had a release saying just the opposite. So somewhere there was a lack of communication by the antioil Senators on what would be the line.

(Mr. GORTON assumed the chair.)

Mr. DOLE. Having said that, let me again indicate that we are talking about stripper production, oil wells that produce less than 10 barrels a day, effective in 1983. Nobody tampered with the date.

That was in the House bill. It was not in the Senate bill.

We ended up with the House provision that, effective in 1983, there would be no tax on stripper production. Stripper production has been exempted in the past and should not have been taxed when the windfall profit tax bill passed last year.

I might say that the phasedown of new oil taxes was the same in both bills. Certainly the Senator from Massachusetts does not expect us to go in and go out beyond the scope of the conference. The phasedown of new oil tax was down to 27.5 percent in 1982, 25 percent in 1983, 22.5 percent in 1984, 20 percent in 1985, and 15 percent in 1986, and the whole tax is going to end somewhere in 1989–90, so that is no great concession to the industry.

That was worth about $3.3 billion. But that was agreed to by a voice vote in the Senate. It was also in the House bill, so it was not in conference. What is left? The only other issue open for discussion were the depletion allowance and royalty owner relief.

We tried several variations on reaching agreement on the percentage depletion issue. The Democrats on the House conference made it clear to me that they did not care if we stayed there for 6 months. There would be no change in the so-called depletion provision which is in present law.

So after a number of efforts to freeze it at 20 percent or a combination thereof of 18 percent, 19 percent, 17 percent, 22 percent, it was agreed among the Senate conferees to forget about it. I do not know where the Senator from Massachusetts can find any fault with that.

I want to make it very clear because it is hard to understand by some who write these stories that the new oil provision was the same in both bills. That could not be changed. The Senate receded to the House on the so-called depletion allowance, so there was not any loss there.

The stripper provision, which I have indicated, talks about wells of 10 barrels or less, and if that is big oil, as the Senator had in his release. then again it defies my imagination, if not his.

So the only other provision left was with reference to royalty owners, not oil companies as stated in the Senator's release, not oil companies, but individuals, retired people, landowners, and others who never thought they were taxed in the first place, but they found out that the last administration did not spare anybody when it came to increasing taxes, and they imposed the windfall profit tax on the small landowners and others who had royalty income.

We, in effect, cut back on the House provision by $300 million or $400 million. So I was surprised, to be very candid about it, to learn late Saturday afternoon that the Senator was going to hold us up for 2 days so he could come down and attack big oil because big oil is not in the picture. Big oil has never been in the picture. There is not a thing in the stripper amendment or in the loyalty owner amendment that does a thing for big oil. That does not mean you cannot put out a press release and say that it does, and most of the press in this country will print that, but that is not a fact.

And it is about time we started looking at the facts instead of the rhetoric or the politics of the moment.

We worked long and hard, I would remind the Senator from Massachusetts, all of us, Democrats and Republicans alike, starting at 4 p.m. on Friday and concluding at 8 a.m. on Saturday morning, to come together on the outstanding issues, I believe, and I say this on behalf of all of the conferees, that, for the most part, we did the best that could be done.

I regret that the Senator from Massachusetts could not have been there, because had he been there or had his staff been there, he would have known that we discussed this oil provision probably more than any other provision. And it was not held up, as you are advised, by the Treasury Secretary. This Senator contacted the Treasury Secretary to indicate that we had gone about as far as we could go. The House Democrats were frozen in their position as far as any change in depletion. We were going to concede to that, not because we wanted to, but because there were no other choices.

Aside from that, the only other provisions discussed were the new oil provision, which is the same in both bills, the stripper provision that benefits only small oil wells—in my State, they average 3.3 barrels a day—and relief for royalty owners, individuals, and not companies.

Now, if I missed something in the conference, then perhaps we should be reprimanded by the Senator from Massachusetts. But we left the Senate floor with about $6.6 billion, as I have indicated. We met with the House and they had about $16.2 billion over the next 5 years. We came out with $11.6 billion or $11.7 billion, depending on whose numbers you use.

Now, I think everybody in this body would agree that this is a fair compromise. We did not get everything and we did not lose everything. We came down in the middle. So this Senator would suggest that we did the best we could.

Perhaps the Senator is concerned because we exempted children's homes. We decided that oil interests held by charitable children's homes on January 2, 1980, would be exempt from the windfall profit taxes.

If that is what the Senator is complaining about—another big oil provision—we ought to hear more on that from the Senator from Massachusetts.

As one Senator to another, I do not quarrel with the Senator's right to argue as he does. But, in fact, when there is no substance to the argument, it would seem to me that we would do better to stick to the facts. The facts to the Senator from Massachusetts, where there is no oil production, probably are that whatever we do for anybody who makes a living in the oil business, whether he is small or large or working in the business or relping on that business for his livelihood, would be wrong.

But, in my State, in the State of Kansas and other States, the industry is important. It is important to our State, important to the people who work in the industry. We do not have any major oil companies to speak of in our State. We do not have big oil, as the Senator refers to it in every other sentence.

So I would suggest that if there were any other things the Senator from Kansas missed in the conference, other than a lot of sleep, then perhaps it could be pointed out to us. In fact, I might say to the Senator from Massachusetts that we could have gone higher dollarwise, but we did not. We were told by some of the influential House conferees that we could go as high as $12 billion. It was all right with them. We did not do that. We backed off, knowing that on the Senate side there might be some little problem. And I think it is only a small problem.

We are talking about a tax bill over the next several years of about $750 billion. We believe that the accommodation we made fairly well satisfies most of our colleagues in the House and the Senate.

Finally, I will point out one other thing. The Senator's position did not prevail in the Senate. It did not prevail in the House. Now, if a majority in the House and a majority of the Senate have one position and the Senator from Massachusetts has another, I would hope that most people would understand that you probably go with the majority. Had the Senator from Massachusetts prevailed, that would have been another matter. But that was not the case.

I would also indicate that I know of one provision or two provisions the Senafor was concerned about. One was charitable contributions by corporations, which we agreed to. Another one was the amendment offered by the distinguished Senator from New Hampshire, Senator RUDMAN, and the Senator from Massachusetts on the heating credit.

I would say, and I think the official record will point this out, I tried to get the House to accept that a half a dozen times and the House would not take it. Only one House conferee even indicated any interest in it, and that was Congressman RANGEL from New York. If they will not take it, it is hard to force it on them. We tried to do that. This Senator tried to do that as chairman of the conference on our side.

Again, I would hope that the official record will be read, because I had given my word to the Senator from Massachusetts and the Senator from New Hampshire that they were not going to have any problem with this Senator.

Mr. LONG. Will the Senator yield?

Mr. DOLE. I yield to the Senator.

Mr. LONG. Is it not true that throughout that whole conference that lasted for 16 hours or better, that every step of the way, at any moment, all one of those House conferees needed to do was to move to agree with the Senate provision with regard to the heating oil credit, and that would have been all there was to it. But at no point did more than one member of the House conference of eight Members indicate any interest in that item. And even that member did not make the motion that they agree to the Senate provision.

Mr. DOLE. The Senator is correct. And I wanted the record to reflect that, because I do not give my word lightly. But

when you cannot force something on them, it is hard to keep it.

Mr. LONG. If the Senator would yield further, it is not a matter of giving something away, it is a matter that this was in the Senate bill. As far as the majority of the conferees was concerned, our position has always been if there is something in the Senate bill that the House is willing to agree to, the House has a right to agree to it. I would ask the Senator, is it not true that the Senator from Kansas, the distinguished manager for the Senate, the chairman of the conferees for the Senate, repeatedly suggested to the House conferees that this provision ought to be part of the package?

Mr. DOLE. I think the record will indicate that. We had our private discussions. Senators met, the Democrats and Republicans together, and House Members met. We narrowed the list down, I think, to about seven items. That item was still on the list. We narrowed it down to four items. In fact, the last item mentioned in the entire conference was the heating credit. This Senator brought it up himself. I thought I would try one more time to accommodate a number of Senators in this body, because there was widespread interest in that amendment.

I think Congressman RANGEL indicated that he had heard from the Speaker about it, but that is about all he said.

And so, if that is a problem, I regret, if that is the cause of this extra session today. If that is a fact, then I regret that, because it was not the intention of anybody on the Senate side to lose that provision.

Finally, let me say this: I agree with the Senator from Massachusetts; The oil industry does not like the windfall profit tax. No other industry would like a special tax applicable only to them. Again, when the story is written, it is always a tax break for oil. But remember that nobody else gets this special detriment—to be singled out for a windfall profit tax—as the oil industry receives.

I would say again to my friends on both sides that the oil companies are probably like most other people in this country, most other businesses. They like to make a profit. They do not like taxes. The American taxpayer does not like taxes. The American businessman does not like taxes. We have to have some. That does not mean we have to penalize with a special tax, stripper production of 10 barrels or less or small royalty owners or something that was agreed to in both the House and the Senate.

I do not know what we are here for today. There really is not any argument about big oil at all. Big oil is not in this conference report.

Even if we had frozen the depletion allowance at 20 percent or 22 percent or 18 percent, we were talking about independents and not major oil companies.

So to keep beating the major oil companies over the head may be good politics, but it is not an issue. The only issue is that we are back here on Monday instead of finishing on Saturday, at the inconvenience of many Senators who had to come back. It does not bother this Senator. I was going to be here, in any event.

So I just suggest, for whatever it is worth, that this is sort of an empty discussion. It is a media event. That is all it is. It is a media event. [Gestures to press gallery.] Maybe it is all right to have a media event on Monday. There is not much else going on in town.

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

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield myself such time as I might use.

Before we start crying crocodile tears for the oil industry, we ought to recognize, Mr. President, that this is the wealthiest industry in America. That is not just a statement of the Senator from Massachusetts. It is Merrrill, Lynch which has made the judgment. I read from May 1981, Merrill, Lynch investors report, evaluating the profits of the oil industry, not only the majors but the independents. It stated that it is "probably the more profitable than any other segment of American industry." Profits have gone up 117 percent in the last 2 years, 12 times other industries.

Mr. Reagan himself did not request that we provide this kind of windfall to the major oil industries and to the independents. But we find that the conference committee comes back with $33 billion. All I am saying is we should have a rollcall so the Members of the Senate will be able to vote up or down on that issue.

Now we hear about how we are so concerned about independent oil and stripper production.

That is an interesting argument from the Senator from Kansas, because we did not see that kind of attention for the stripper and independent producers when the legislation came out of the Senate Finance Committee.

He argues one thing today, but he argued something quite differently when the Senator from Texas (Mr. BENTSEN) was trying to provide help and assistance to the independents. He was the one who made the case against the independent at that time, and the Senate rejected it.

Now he comes back and he says, "Look, we are just trying to help the mom and pop stripper well."

He mentions 10 barrels a day. At $30 a barrel that is $300 a day. That is $100,000 a year if you have one well. Many of these owners have scores of wells.

That is hardly the average taxpayer. The average taxpayer in this bill is $20,000 a year, and the average taxpayer in this bill will not be held harmless from the increases in inflation and social security over 3 years.

Nonetheless, we are trying to help that industry which has been described by financial analysts as the most profitable in this country. That is where the Senator from Kansas comes out on this issue.

It is interesting that the $20 billion amendment of the Senator from Kansas was primarily a phaseout of the windfall profits on new oil, much of which went, not to the mom and pop operators of the industry, but to big oil. If, as the Senator from Kansas contends, these tax breaks are going to the independents, those independents will be receiving $2.75 million in tax breaks—hardly "ma and pa" operations.

It is interesting to hear now when we are about to vote on this issue that finally we have the mom and pop part of the oil industry before the Senate.

That is hogwash, and every taxpayer in this country will understand it.

This is $33 billion to the most profitable industry in this country at a time when we are cutting back on social security, cutting back on student loans and programs to educate the young people in this country, cutting back on decent quality health care, cutting back on assistance to the elderly to heat their homes in the winter. And we are providing $33 billion for the major oil industry.

That is the issue, Mr. President, and that is the issue that we ought to vote on.

The Senator from Kansas points out that on many of these issues we lost during the debate and discussion of the tax bill earlier last week. The fact of the matter is when the Senator from Kansas himself was trying to add billions of dollars more to the Senate Finance Committee and tabled his own motion, the Senate voted on that 49 to 47. Basically we were almost evenly divided about whether we were going to add anything more for the oil industry. The Senate was basically evenly divided on that issue. But, nonetheless, we have seen this conference report sent to the Senate.

Finally, Mr. President, during the course of the conference, CHARLIE WILSON, a Congressman, talked to a number of those who were concerned about the giveaways to the oil industry and proposed that we use the Senate figures and target those figures into the independents and into stripper wells.

That seemed to me to make some sense. That seemed to me, if we were going to provide any kind of additional incentive for the oil industry, that was the approach which commended itself, most realistically, on the merits. If we were going to provide the $20 billion which the Senate Finance Committee bill had, why not target that into the independents? I would have said amen to that.

But that was rejected. The conferees said, 'That is out of conference."

I have been around here long enough to know that when the Senate Finance Committee goes to conference with the House of Representatives, anything that they basically want is in conference.

I remember in 1978 when here on the floor of the Senate the Senate accepted the Bumpers-Kennedy amendment to target the various tax reductions more equitably among the taxpayers. We overturned the Senate Finance Committee recommendation. They went to conference and what did they come back with from the conference? Exactly what the Senate Finance Committee has reported out.

So, Mr. President, I think it is impor-

tant to understand what the issue is. Call the roll on whether we want $33 billion for the most lucrative, most successful industry in this country at a time when we are refusing to provide equity and fairness for the other taxpayers in this country and at a time when we are giving special privilege to the most successful industry.

I yield 5 minutes to the Senator from Missouri.

Mr. DOLE. Mr. President, could I answer some of those errors right now?

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I regret the Senator from Massachusetts was not at the conference. If he had been he would not make many of the statements he makes. CHARLIE WILSON was not a conferee. Maybe he was a messenger for the Senator from Massachusetts but he was not a conferee. As far as this Senator knows, I never saw CHARLIE WILSON. I know CHARLIE WILSON. If he was there as an aide or something to carry out the wishes of the Senator or whatever, it was never called to my attention. I regret we did not have his input.

Second, the Senator from Massachusetts claims that we could have gone outside the conference. Well, the Senator may be right; in normal times that could have been possible. But you have to understand, Mr. President, the House conferees were not too happy to be there at all. Chairman ROSTENKOWSKI, SAM GIBBONS, JAKE PICKLE, CHARLIE RANGEL, and PETE STARK just lost 2 days before on the House floor. They were more or less there under duress in any event. Some had voted for the bill on final passage so they could be conferees, but they lost the big fight. They did not really enjoy the conference at all except when it ended.

They were very careful to point out that we could not go outside the conference. They told us that a dozen times; they could not go outside the conference or they would have to go back to the Rules Committee, to Mr. BOLLING's committee.

It was a very tight conference. There was not one thing that happened that was outside the scope of the conference. That is another fact that ought to be in the RECORD, in case anyone reads the RECORD.

On the Bentsen amendment, the Senator from Massachusetts is right, the Senator from Kansas did everything he could to defeat that amendment. That would have exempted 1,000 barrels a day as opposed to the stripper which is 10 barrels a day. Maybe that is not much difference to the Senator from Massachusetts, but it is a great deal in the dollar difference. The Senator from Kansas understood that was about $4.5 billion a year in lost revenue that we could not afford. So the Senator from Kansas did his best to defeat that amendment, to table that amendment. He was joined by the Senator from Massachusetts and I thank him for that.

So, Mr. President, it is not a question of standing up today talking about the little oil wells and, last week, discussing something else. I opposed that amendment. It was a thousand barrels a day, about $13 million or $14 million a year, if you add it up. That would have pleased many in my State and many in the State of Texas and many in every other oil-producing State. But the Senator from Kansas was trying to act responsibly, because I understood that we would have some difficulties in the event such an amendment were adopted.

I also say that the Senator from Kansas never offered any oil amendments to this bill. They were offered in the committee. The Senator from Kansas voted against the Boren amendment, which prevailed, and overnight we were able to turn a couple of people around to defeat the Boren amendment. Then we worked out the compromise.

Mr. President, I believe the compromise in the Senate Finance Committee bill was a good one. There was a close vote in the Senate. That did not disturb the Senator from Kansas. It indicated what I already believe, that we should not do too much as far as oil is concerned in this legislation.

But this Senator does not vote in the House and this Senator does not control the House any more than the Senator from Massachusetts does. They acted and, by a wide margin, they adopted the President's proposal. That proposal contained some small items for small producers, royalty owners, individuals. Some of these royalty owners may even live in Massachusetts or Missouri. You do not have to live in the State where the oil is from to be a royalty owner.

There was also a provision for stripper production in the House bill and there was the new oil provision that we had in the Senate and the House bill. That is in essence what it is. That does not mean we cannot argue about it in the Senate. We argue about less, I guess, and have in the past. But to have the Senators stand up and indicate that we more or less sold out to big oil is not a fact. There is no big oil in this discussion, and there should not be any if we are going to stick to the facts.

I would like to read a little bit from a typical letter that a royalty owner sent in to us. I shall ask unanimous consent that this be made a part of the RECORD.

Mr. President, I ask unanimous consent that that letter be printed in the RECORD.

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

GREAT BEND, KANS.,
*April 24, 1980.*

Hon. BOB DOLE,
*Dirksen Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR DOLE: I am enclosing a copy of the check received by my Mother, Ada Kingston, from Clear Creek for her one oil well for the month of March 1980. I think it is ridiculous for this person to be taxed with the Windfall Tax.

My Mother is 83 years of age and in a nursing home and the charge is now over $800.00 per month. She gets social security of $260.00 per month and the income from the one oil well was really a "lifesaver" for her financially before this tax. She owns one quarter of land but with "cheap wheat" and only ⅓ of the crop that is not much income by the time you pay the tax and buy fertilizer. Her total farm income last year was only 700 bushels of wheat and with $3.25 wheat this does not go very far for her $800.00 expense each month. She has been using savings left by my Dad but it does not take long to use this up. Probably she will soon have to sell her land for her keep in the nursing home.

Can't something be done to exempt the small land owner with only one stripper well from paying this tax?

Sincerely,

Mrs. ROY DIRKS.

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WINDFALL PROFIT TAX ACT OF 1980

Lease Interest Owners: Effective March 1, the Crude Oil Windfall Profit Tax Act of 1980 became law. As the first purchaser, Clear Creek, Inc. must collect the tax from your account. This has been done by a deducted item as shown on your check apron. The tax deduction item has been labeled as Windfall Tax Major Rate or Windfall Tax Independent Rate.

By law, all royalty and overriding royalty are taxed at the high rate used for "Major" or Integrated Oil Companies. If eligible, Independent working interest owners can, through certification to the purchaser, receive a reduced tax rate.

The tax is administered through the Internal Revenue Service. At the calendar year end, Clear Creek, Inc. will furnish each owner, who has incurred a tax deduction, with the the total amount of the tax withheld.

CLEAR CREEK, INC.

Mr. DOLE. Mr. President, I shall also include in the RECORD a story from the U.S. News & World Report, dated June 9, 1980. It talks about the windfall profit tax's unlikely victims. Then it talks about how many people are losing money and how many should not have been taxed in the first instance. It is an article that cites cases in Kansas, Oklahoma, Texas, and talks about hearings held in these States on the windfall profit tax.

I shall also include a letter to the editor in the Baton Rouge Morning Advocate dated June 20, 1980. I ask unanimous consent that they be printed in the RECORD.

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

[From U.S. News & World Report,
June 9, 1980]

"WINDFALL" TAX CLAIMS SOME UNLIKELY VICTIMS

Beatrice Wright, a Pauls Valley, Okla., widow who supplements her income by giving piano lessons, was outraged to discover that the U.S. government is now taxing away half the $2,180 she earns each year from an investment left by her late husband.

John B. Davis, a retired Milwaukee chemical engineer, reacted with shock when notified that Washington is suddenly taking an extra $75.43 bite out of his monthly income.

Mrs. Freida M. Brewer of Winfield, Kans., discovered the other day that one source of her retirement income has been reduced by 30 percent.

These three are among an estimated 2 million Americans—most of them farmers, ranchers, retirees and others of modest incomes—who own royalty shares of oil wells. And they are angry.

Royalty owners have belatedly discovered that Congress included them in the controversial "windfall profits" tax recently enacted to siphon off some of the record earning of "big oil."

"I was all for the tax because I thought it was going to take away some of the profits of the big oil companies," reports an elderly Oklahoma woman who earns around $20 a month from a share of an oil well inherited from her husband. "Now I find out that I have to pay the same rate as Exxon."

A MISLEADING NAME

Part of the confusion stems from the label attached to the "windfall profits" tax. The

tax is not really levied against oil-company profits at all, but is an excise tax on oil production. It is designed to recoup, in addition to regular taxes, 227 billion dollars of the estimated 1 trillion that oil companies will earn over the next 10 years as price controls on U.S. oil are gradually lifted. Royalty owners are expected to pay about 30 billion dollars in new taxes.

Not only will individuals be taxed at the same 30 to 70 percent rate as major oil companies, royalty owners complain, but they will not be able to pass the tax on to consumers in the form of higher prices as oil companies are expected to do.

Says Representative Wes Watkins (D-Okla.): "Those people cannot in any way be considered engaged in profiteering or plundering. How the administration and Congress can justify taxing them at the same rate as major oil companies is beyond my comprehension." Watkins is one of several lawmakers from oil-producing states who are trying to persuade Congress to reopen the windfall-profits issue to grant an exemption to royalty owners.

Leading the drive are Senators Robert Dole (R-Kans.) and David Boren (D-Okla.), who are sponsoring legislation exempting royalty owners from the tax on up to 10 barrels of oil a day.

Senator Lloyd Bentsen (D-Tex.) is backing a bill that would exempt royalty owners and independent oilmen from the tax on the first 1,000 barrels of oil per day.

Similar measures were rejected during the grueling debate on the "windfall profits" tax approved by Congress in March. Oil-state congressmen admit that they are facing an uphill struggle to persuade their colleagues to amend the measure in the near future.

Pressures for such changes, however, are mounting fast. At hearings held by Dole and Boren in late May in Oklahoma City and Great Bend, Kans., more than 4,000 outraged royalty owners showed up. Many of those attending were farmers who claimed that they need all their royalty income to help them survive the high interest rates and the downturn in farm prices. Also attending were a number of widows and retirees, who said they depend on monthly royalty checks to supplement their Social Security income.

James L. Stafford of Ada, Okla., representing a group called the Royalty Owners Action Committee, described the tax as "the biggest step towards nationalization of assets since Hitler seized control of Germany's industrial organization."

Representative Watkins says the new tax forced one of his constituents, a retiree, to go on welfare in order to keep his wife in a nursing home.

"The vast majority of royalty owners have small incomes from that source, many under $100 a month," declares Senator Boren. "Many did not even realize that their interests were included in the tax."

Experts disagree on just how hard royalty owners will be hit by the tax. Along with farmers and widows in nursing homes, the ranks of royalty owners include wealthy oilmen and major landowners.

One petroleum-industry executive argues that, in the long run, royalty owners will benefit from high oil prices along with oil companies. And the "windfall" tax can be deducted from regular income as a business expense.

However, Julian G. Martin, executive vice president of the Texas Independent Producers and Royalty Owners Association, contends that about 60 percent of royalty owners receive income from "stripper wells" that produce less than 10 barrels of oil a day. He points out that the administration lifted price controls on stripper wells four years ago in an effort to encourage more production, sending the price to around $35 a barrel. As a result of the tax, Martin says, owners of stripper-well production will receive no benefit from decontrol while paying $12 to $14 a barrel in new taxes.

Analysts also warn that the tax is likely to turn into a bookkeeping nightmare for small royalty owners who cannot afford to hire accountants.

Declares Gene Howard, an Oklahoma state senator from Tulsa: "If the tax is designed to punish large corporations whose profits are deemed excessive, then it misses its mark. Instead, it uses a hammer to kill an ant—and it comes down much more heavily on a lot of little people than it does on any faceless corporation."

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[From the Baton Rouge (La.) Morning Advocate, June 20, 1980]

"WINDFALL" TAX SHOWS PARTY IN TRUE LIGHT

(By William R. Tucker)

Nobel prize winning economist Milton Friedman has called the "windfall profits" tax a "disastrous measure." Texas Gov. Clements has announced his intention to challenge the tax in the courts. There is, indeed, a serious question about its compatability with the federal constitution and about its impact on both the royalty owners and the oil companies which must pay the tax.

Concerning the imposition of the tax on royalty owners (land owners), Sen. Russell Long of Louisiana is reported to have commented, "Not one of them will be on welfare." The implications of this cynical remark should not go unchallenged. The fact is that there are royalty owners, most of whom are elderly, who have very modest incomes and who must rely on small royalty checks to pay their medical bills and make ends meet. Other royalty owners are people with middle-class incomes who use the payments to finance their children's college education in these inflationary times. Not all royalty owners are wealthy Texans or Oklahomans who drive Cadillacs and spend their vacations on the French Riviera. And yet Sen. Long would have us believe that the application of the "windfall profits" tax to royalty owners would affect only the affluent.

This tax measure is based on the premise that any increase in royalty revenues, due to the gradual federal decontrol of the price of domestically produced petroleum, is undeserved. Yet the prospective increase would have been due to market forces, particularly the law of supply and demand. Thus, this tax has far-reaching implications. Cannot an increase in any person's income, due to market adjustments, be labeled by Sen. Long's "undeserved" or "unwarranted" and then be taxed away at the rate of 70 percent? In the future could not any businesses' profits be called "obscene" by other members of the Congress and taxed at a similar rate? It seems to me that the entire business and professional community should consider that possibility. Nor should working people think they will be immune to a confiscation of their incomes similar to that imposed on royalty owners.

The Democratic Party has gained a fair degree of credibility over many years by its contention that it is the party that defends the interests of the "little man." This tax puts the Democratic Party in its true light. At the national level its primary motivation is greed for additional federal revenues. And, apparently, anyone is fair game to its roving eye.

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

Mr. KENNEDY. Mr. President, I yield to the Senator from Missouri.

Mr. EAGLETON. Mr. President, I realize that the Senate now finds itself in a state of euphoria over the imminent passage of the Reagan tax bill. What I have to say on this bill in no way detracts from the magnitude of the President's victory. The hour is clearly his and now the state of the American economy between now and the end of 1984 is clearly his.

Mr. President, this is an atrocious tax bill. It is atrocious in terms of economic policy and it is atrocious in terms of fundamental equity.

On basic economic policy, you do not have to take my word for it. Listen to some of the most conservative economists in the Nation.

Listen to Henry Kaufman of Salomon Brothers:

I think we have not yet seen the high in interest rates. And we have not seen the full impact on the financial markets of the tax cuts the administration is proposing, or of the increase in defense spending, or the actual results of what the Federal Reserve is doing to stabilize monetary policy when fiscal policy is so extraordinarily expansionary . . . There is hope by everyone, including the Treasury, that interest rates will come down. But you cannot talk interest rates down, no matter what President Reagan thinks.

The central bank is being overburdened by the administration. It is encouraging tighter monetary policy while fiscal policy is in the process of becoming even more expansive.

Listen to Edward Yardeni, the chief economist at E. F. Hutton:

Whereas the consensus has been that the economy is remarkably resilient in the face of these high interest rates, we are finding that the economy has turned much weaker as a result of the Fed's aggressively tight monetary policy . . . A decision has been made in Washington to deliberately engineer a period of protracted economic slack. But the Fed, we've learned, if it errs, is going to err on the side of being too tight rather than too easy . . . This is going to be more painful than many people expected. And if inflation is so dug in that it takes a long and protracted recession to get rid of it, the risk is that the public's patience with this kind of policy will get short.

Listen to Alan Lerner, economist at Bankers Trust Co.:

The Fed can decide to monetize this huge debt, but if it does, it can kiss the long-run economic outlook good-bye. And if it doesn't, it can kiss the short-run economy good-bye . . . . We will see historical highs in interest rates before the year is over.

What these and other economists are saying is that in order for the Reagan plan to work we will have to go through a protracted period of high interest rates, endure a sharp recession, and rising unemployment.

Although our economy is significantly stronger than that of Great Britain, remember that this is the same medicine—high interest rates, recession, rising unemployment—that Mrs. Thatcher prescribed for Great Britain.

On the question of equity, I do not believe that the American people as yet perceive the inherent inequity of the Reagan program. I do not believe, for example, that the public realizes that a wage earner making $20,000 next year will end up paying more taxes next year than he did the last because his minuscule income tax cut will be more than offset by social security tax increases and bracket inflation.

I do not believe for example, that the public as yet realizes how we have so brazenly overloaded this tax bill with special benefits for the rich or for the oil companies.

But the day of reckoning, Mr. President, the day of public awareness will come.

Some day, next year perhaps, when a factory worker looks at his paycheck and finds that he has received no net tax cut at all, he will ask his friendly H. & R. Block friend some questions.

The H. & R. Block man-worker conversation may go something like this:

WORKER. Say, what the hell ever happened to that "across the board" tax cut I was going to get?

H. & R. BLOCK MAN. Well, "across the board" was a clever euphemism. "Across the board" means that the wealthy get a whopper of a tax cut and the average guy like you gets little or nothing.

WORKER. Well, wasn't there any tax break for me in that Reagan bill that everyone was bragging about?

H. & R. BLOCK MAN. Well, let's see. I'll ask you some questions to see if you qualify.

Do you have a large amount of dividend income? Do you own a piece of a Subchapter S company? Income from this stuff is called "unearned" and the Reagan tax bill gives one hell of a tax break on "unearned" income.

WORKER. I earn all of my income. I don't own any stocks or any of that Subchapter S stuff.

H. & R. BLOCK MAN. Too bad. Well, do you own any oil royalties? If you do, the Reagan bill gives you a heck of a deal on that.

WORKER. No. I've told you. I work for a living. The only thing I own is my car, my dog, and my house, and my Savings and Loan owns most of the house.

H. & R. BLOCK MAN. Too bad. There is nothing in the Reagan bill about dogs, although there is a great deal in the Reagan bill for thoroughbred race horses. Do you happen to own a thoroughbred race horse?

WORKER. No. But my father-in-law bets on the horses.

H. & R. BLOCK MAN. Say, speaking of your father-in-law, he can now give you a $10,000 tax free gift under the Reagan bill.

WORKER. I told you, my father-in-law bets on horses. He borrows money from me.

H. & R. BLOCK MAN. Gee, that's too bad. Let me try one more angle. Does anyone in your family own a grove of pecan trees? There's a real good tax steal on those in the Reagan bill.

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

Mr. EAGLETON. I do not yield.

WORKER. The only trees I own are the two in the backyard, and Dutch Elm is about to get them.

H. & R. BLOCK MAN. Sorry, no gimmick in the bill for Dutch Elm. Do you have a rich relative who might die and leave you a bundle? The Reagan bill is great on rich people when they die.

WORKER. None of my relatives have a pot to cook in.

H. & R. BLOCK MAN. Well let me take one final stab. Does any member of your family own any oil stock? The Reagan bill gives away the store to the oil industry. The oil boys get a $33 billion give-away in the Reagan tax bill and anyone who earns any capital gains from selling their oil stock will find that he's paying less in taxes to boot. If you or your wife happen to own some Conoco stock, the combination of all the big-shot corporations bidding for Conoco and the special deals the Reagan bill gives to oil companies will give you a huge capital gain on Conoco stock. The Reagan bill gives a great tax deal on capital gains.

WORKER. The only thing I know about Conoco is that I buy their gasoline and pay too much for it at that.

H. & R. BLOCK MAN. Well, I'm sorry, fella, the Reagan tax bill doesn't do a thing for you. You aren't rich enough to benefit from its provisions. Perhaps someday you will win a pot of gold on a TV game show. By the way, there is a special tax deal in the Reagan bill for investors in game shows. But I guess you don't own a piece of a theatrical production or a game show. I'm terribly sorry, fella, but the Reagan bill wasn't designed with you in mind.

This conversation may never take place. But the gist of this conversation will take place. Mr. Average Citizen will come to realize that he has been had by the Reagan tax bill. He will realize that about all he gets of the Reagan bill is the privilege to pay high interest rates and the increased risk of losing his job in a credit-crunch recession.

Mr. Average Citizen will realize that the across-the-board Reagan tax cut and its assorted sweeteners constituted nothing more and nothing less than the rape of the U.S. Treasury.

Finally, Mr. President, let me say this: Many articles have been written since the President's decisive, convincing, and overwhelming victory on the tax bill in the House of Representatives. Articles have been written to the effect that the Democratic Party is dead and gone, perhaps forever. Only time will tell the accuracy of those political predictions, those dire predictions, that are being made by some of the journalistic pundits.

But I submit this: I suggest that the Democratic Party is not dead and that the one main thing that is keeping the Democratic Party alive is the egregious, greedy inequity of this Reagan tax program.

I will make the prediction that, come 1982 and come 1984, those journalistic pundits who are predicting the demise of our party will point to this date—will point to the date of August 3, 1981—when the Reagan folks foisted on the American people a greedy, bloated, avaricious tax bill that benefits only the rich and gives a pittance to the poor and to the moderate income taxpayer.

The journalists will point to this day as the day of the revival of the Democratic Party.

This bill keeps the Democratic Party alive. It is so inherently inequitable, so inherently imbalanced, and so inherently unfair that it will stand as the bedrock for the rebirth of the Democratic Party.

The euphoria of the moment is clear. I do not want to be the skunk at the garden party, but I caution those who are caught up in this euphoria that the day of reckoning is coming. Do not sell the intelligence of the American people short. The American people, at this particular point in time, may not know all the "sweeteners," "goodies," "ripoffs," and the "special benefits" that are in this bill, but they will know. They will come to know them when they see that they get nothing out of this bill and that the rich get richer, the special interests get more special benefits, and that the oil companies get $33 billion in tax relief that they neither need nor deserve.

When the American people come to that awareness, there is going to be a day of political retribution, and that day of political retribution will be visited upon those who foisted this "across-the-board" tax cut euphemism on the American people.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield 5 minutes to the Senator from Minnesota.

Mr. BOSCHWITZ. Does the Senator from Kansas wish to make a response to the Senator from Missouri?

Mr. DOLE. I will take a moment to indicate that I appreciate the statement by the Senator from Missouri, my friend, who did not vote for the bill in the first place. The vote was 89 to 11. We have heard from two speakers who voted against the original bill, so I would not expect any great praise.

I will want to clarify the record as to some misinformation that got into the H. & R. Block questions and answers, as to whose bill it was in.

The provision as to the pecan trees, for example, was added on the floor. It did not make it through the conference. The investment credit for television game shows, the "Gong Show" amendment, fell by the wayside in conference. We fought hard for those amendments and could not retain them in conference. [Laughter.]

Mr. President, I yield 5 minutes to the Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, will the Senator yield me 10 minutes?

Mr. DOLE. All right.

Mr. BOSCHWITZ. Mr. President, I was very upset on Saturady night, when I arrived here and found that the Senator from Massachusetts had left, forcing us all to be back on Monday, even though we were prepared to debate and vote by voice vote on the conference report of the tax bill. Yet, he left and saw to it that we all had to come back here today, at considerable cost to the American taxpayer. I do not know how much of a cost—$40,000 or $50,000 for shipping Senators around and opening the Senate, with all the expense that requires.

That, in my judgment, perhaps deserved the term that the Senator from Missouri used—egregious. The Senator from Massachusetts could not be here. Nevertheless, he saw to it that, despite many family and other obligations, we had to rearrange our travel, in the face of the air controllers' strike, presenting even more problems.

However, what surprises me, and what I ask the Senator from Massachusetts to address himself to again, is where in this bill he finds such advantage being given to the large oil companies. That, of course, is his reason for asking that the bill be recommitted to yet another conference.

There are four provisions that affect oil in this conference report.

Incidentally, it is important to point out that the $33 billion that the Senator from Massachusetts speaks of is a 10-year figure. It is not a figure for each year but it is a figure spread out over 10 years. The royalty owners' credit and exemption is approximately one-third of that $33 billion. It does not apply to the big oil companies the Senator speaks about.

The producers' exemption applies to the exemption of stripper oil wells which produce 10 barrels a day or less. Most oil wells in this country do produce 10 barrels a day or less. There are well over

500,000 oil wells, and most of them are producing very few barrels a day. It exempts stripper oil produced by independent producers.

The Senator points out that 10 barrels, when annualized, amounts to $100,000. Yet, he criticizes the Senator from Kansas, who opposed a 1,000-barrel-a-day exemption.

That is real money, I say to the Senator from Massachusetts, who is not listening. That is real money. That is about $10 million a year, not just $100,000 a year. Yet he criticizes the Senator from Kansas for not supporting the Bentsen amendment which really would have been a very major reduction in that tax. One thousand barrels a day is indeed very large production, which most independent producers certainly do not have.

So, the first part of this bill, the royalty owners' credit and exemption, does not apply to big oil. That is $11 billion over 10 years.

The next part of the bill, the producers' exemption, applies to stripper wells of independent producers. It is approximately $6 billion over 10 years. It, too, does not apply to big oil.

The depletion allowance, which is $8.4 billion over 10 years, does not apply to big oil either.

Then we come to the reduced tax rate on newly discovered oil. Indeed, that could apply, at least in part, to big oil companies. It should be kept in mind that approximately 80 percent of the wells that are drilled in this country are drilled by independents, are drilled by wildcatters. They are not drilled by the large oil companies, even though independents do not find 80 percent of the oil that is found. Large oil companies do indeed find a good share of the new oil.

But, I say to the Senator from Massachusetts, there is no difference between the House bill and the Senate bill. It was not an item in conference. Certainly no one could reasonably presume or reasonably maintain that the conference would go beyond a conferenceable item or that it would get into the never, never land of anything goes in this tax bill.

This bill with all of its exposure and all the attention it is getting, simply would not go beyond the items that were conferenceable, and this was not such an item.

The only item in the bill that applies to big oil is the reduced rate on newly discovered oil, which will save the oil industry $6.6 billion. Let us assume that half of that savings goes to the big oil companies. Then $3.3 billion of this bill would apply to big oil companies. Not the $33 billion, but $3.3 billion, yet this particular provision was the same in the House bill as in the Senate bill and simply was not an item of the conference.

So, as the Senator speaks out about crocodile tears, the wealthiest industry in America, and the $33 billion that we are handing the big oil companies, I submit that he is just plain wrong; that perhaps one-tenth of that $33 billion applies to the big oil companies. It is not even clear that it is as much as one-tenth, and, even so, that particular one-tenth was not subject to the conference. Therefore, I submit that the Senator from Massachusetts has brought the Senate back here today under false pretenses. The Senator from Massachusetts is doing what the Senator from Kansas stated, creating a media event, and I, for one, dislike it.

I admire the Senator from Massachusetts, but not today, because he is wasting the time of the Senate. He is wasting the money of the American taxpayers in bringing us back here on an item that is simply not subject to conference.

I was not at the conference, but I understand from people who were there, that numerous objections were heard when items were brought up that were not properly conferenceable. Certainly, the Senator from Massachusetts understands that if this item, one of the principal items in the entire windfall profit tax provisions, had been brought up, it would have been considered beyond the scope of the conference, and most certainly opposed for that reason.

So, Mr. President, I am sorry that I have to be here today. I am sorry that the Senate has to waste its time and its money, the money of the American taxpayers, perhaps not in the billions, and that is all we talk about around here, but $40,000 or $50,000, the kind of money I used to understand pretty well before getting to the Senate. Now I am in the big time. Now I only talk about billions and hundreds of millions.

But, Mr. President, I submit to you that we are here under false pretenses and that indeed the single item of this bill that applies to big oil was not even an item of conference.

I yield.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY and Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will make a brief comment, and then I will be glad to yield to the Senator from New Hampshire.

The issue is, is $33 billion for the oil industry too much?

The Senators from Minnesota and Kansas can talk about how you cut up the pie, but it is $33 billion for a major industry which has been described as the most profitable in this country.

There is just one point I will make in response to the Senator from Minnesota. He talks about 10 barrels and he talks about $30 a barrel. He is talking about $300 a day or $100,000 a year. For those who own 10 stripper wells, he is talking about $1 million a year in income. That is what they talk about when they talk about mom and pop stores in the oil industry, $1 million a year income.

I come back to my statement, are we going to shed crocodile tears for individuals in this country who are making $1 million a year in income and have already been described as the most profitable industry in this country?

I yield to the Senator.

Mr. BOSCHWITZ. Mr. President, now all of a sudden we are going from nothing to $1 million a year.

Mr. KENNEDY. Mr. President, this is on his time.

Mr. BOSCHWITZ. Fine. This is on the time of the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor. Does he yield?

Does the Senator from Massachusetts yield?

Mr. KENNEDY. I yield for a question as long as the question is on the time of the Senator from Minnesota.

Mr. DOLE. Mr. President, I yield 1 minute for that purpose to be very helpful.

Mr. BOSCHWITZ. Let me comment. The Senator goes from nothing to $1 million a year. One of the people on my staff has an oil well that is producing in Kansas. He and his bother-in-law are up to 2 barrels a day. They do not have 10 wells, only that single well and, as a matter of fact, the brother-in-law is entirely engaged in trying to make it two wells.

People do not have $1 million a year, and mind you that is not tax-free income. That is income that is subject either to a corporate tax or an individual tax.

Mr. DOLE. It is gross.

Mr. BOSCHWITZ. Sure. It is an item of gross income. And it is subject to income tax.

The Senator is quite right, that it may not be subject to a windfall profit tax. But again, the Senator is talking about the oil industry. He is talking about wanting the oil industry to be energy independent over a period of time. Certainly if people who go out to produce oil and people who go out to look for oil are going to create the energy independence of this country, they have to be allowed to make a reasonable dollar.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. Mr. President, I yield such time as the Senator from New Hampshire may require.

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

Mr. RUDMAN. Mr. President, I thank the Chair and I thank the Senator from Massachusetts for yielding time.

Mr. President, I supported the President's tax bill and I will support it today on final passage.

I wish to say to the Senator from Kansas and the ranking minority member, the Senator from Louisiana, that I thank them very sincerely for what I know were their Herculean efforts to incorporate in the conference report the amendment that passed the Senate 71 to 25 to give home heating credit for all fuels to those people of moderate income.

I know from people who attended the conference that they tried and they tried diligently. I understand that the House of Representatives just would not have it.

I thank them for faithfully trying to fulfill the wishes of the Senate.

I wish to say as much to the Members of the House of Representatives and to the administration more than to the members of the Finance Committee that I do not intend to engage in a diatribe against big oil today. That has been going on for years. But I wish to address something to the record today and hope that in later debates some dim echo of what I say may be heard.

We have spent 1 hour and 15 minutes in the Chamber today talking our interpretations, be it the Senator from Massachusetts, the Senator from Kansas, or the Senator from Minnesota, as to what was or was not done for people who either drill for oil, own oil wells, or invest in oil.

As far as this Senator is concerned, that is symptomatic of the problem that has been going on in Congress for more years than I wish to remember.

Because, Mr. President, there were only two amendments that came to that conference that dealt with the consumers of this Nation. One dealt with a tax credit for wood stoves. The other dealt with, the Senate amendment sponsored by the Senator from Massachusetts and myself which dealt with, inflation-fighting tax credits for those who have a hard time heating their homes across the Frost Belt of this country.

Neither of those amendments is before us for final passage, and what that tells this country, Mr. President, is that the majority of Members of the House of Representatives and a number of Members of this body do not care about the deep concerns that many of us have for the people of the Frost Belt of this country, who are making horrible choices every winter, people in my State spending 32 to 40 percent of their income to heat their homes.

Now, Mr. President, I want to make a prediction, and it is simply this: This Senate and the House represent this entire country. This entire battle has been a regional conflict for more years than I would like to remember. The fact of the matter is if there were a disaster in any part of this country costing millions or billions of dollars affecting the lives and the safety of human beings who are American citizens, be they from Louisiana or from Mississippi or from Kansas or Maine, the majority of the Members of this Senate and that House would vote funds to help them in their time of need.

Well, I want to serve notice on the Members of this body that the people of the Northeast are in a time of dire need, as well as the people of the upper part of this country from East to West, and we are facing a crisis and a polarization of those who freeze against those who do not. I hope when the President's second tax bill comes before this Senate that we will pay heed to those people who need help.

It is not simply a question of giving credits for home heating. It is a question of the entire administration's policy towards alternate energy sources. If we are to say, and the majority is to prevail, that free market policies are the policies of this administration and we will let the price of oil and gas and whatever energy sources rise as the market demands, and that prevails, so be it. But at the same time we ought to be making some substantial commitments to helping the people of this country find alternate energy sources to help ameliorate the horrible impact these costs have been having.

Mr. President, I support the President's tax program. I think it is a good program. I think there are some things in it which I would have voted against had I had the chance. But in the main I disagree, of course, with my good friend from Missouri. I think it is a very good bill, and I will vote for it on final passage. But I will support the Senator from Massachusetts today in his motion to recommit not because I do not believe the Senator from Kansas or the Senator from Louisiana have not done an extraordinary job and worked hard, and I thank them for that and I am sure my constituents do, but because I would like to give the Members of the House who so quickly rejected our amendment, who so quickly rejected their own amendment on wood stoves, the only two items directed to the consumers of energy in America in this entire tax bill, I would like to have them have a chance again to address those issues and do something for the people who need help.

I thank the Senator from Massachusetts for the time.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I appreciate the comments of the distinguished Senator from New Hampshire, and I think even though the motion to recommit is based on what some consider to be too much relief to certain segments of our economy, I think the point has been made that we are talking about a $750 billion tax package in the next 5 years, and we are concerned about the difference between $11.6 billion and some lower figure, it could not be any lower than 6, so we are discussing something between $6.2 billion and $11.7 billion. I do not know what percent that is of $750 billion, but certainly it is not very much.

I hope we would focus on what this tax package means to the American working man and woman, as well as American business. Anybody can pick up the table of contents in the conference report and learn very quickly that there are a number of provisions that will reduce taxes for people in this country, whether it is some relief from the marriage penalty, a child care credit, deductions for charitable contributions, tax relief on the sale of a residence, individual retirement accounts, the so-called targeted jobs tax credit, 25 percent across-the-board rate cuts, the estate tax reductions, and the accelerated cost recovery system, which is certainly going to be helpful to business and create new jobs.

It would seem to this Senator this is a massive program that is going to impact on every single American, taxpayer or nontaxpayer alike.

During this media event this afternoon we may have lost sight of just what this bill will do for the American people. Let us face it. All we have here is a media event, an attack on the big oil companies or so-called big oil companies, even though that is not a part of the discussion.

So I would just suggest during this media event maybe we ought to talk a little bit more about what this bill means to the American people.

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

Mr. DOLE. I will be happy to yield to the Senator from Louisiana.

Mr. LONG. We did not talk about the employee stockownership plan provisions which concern employees owning stock in corporations. The Senate did not get all we wanted from the conferees, but we did as well as we could. This provision will help employees to get some stockownership in the corporations in which they work, more so than any measure would do.

I would have liked to have seen accepted everything the Senate passed on employee stockownership. But what was agreed to will help advance the cause of the employee stockownership.

Mr. DOLE. As the Senator knows, that was one of the hard-fought provisions. There were a number of hard-fought provisions that we believed in and fought for. As the Senator pointed out, he did not get all he wanted, and I assume the House may have thought the Senator got more than he should have, but we worked it out. That is why I do not really want to dwell on this so-called big oil provision because that never was a matter of discussion among the conferees. It is only a matter of discussion by those who did not attend the conference and who did not vote for the bill in the first place.

Had they voted for the bill and said we had violated their faith or somehow breached our responsibilities, that would have been something else. But those who are standing up now crying out now are—the same old tired liberal voices, making the same old speeches, knocking the private sector. When it gets cold in Massachusetts remember we produce a little oil in the State of Kansas, and we produce a little oil in other States. It is necessary and of benefit to all America.

I understand a media event although I may never have had the success the Senator from Massachusetts has had. This is certainly a good place for one. Who else could call a press conference for 2 hours on the Senate floor? This could all have been done on Saturday night with a voice vote. I want to put in the RECORD for those Senators who cannot make it back today, to let them know they did not miss these votes because of the Senator from Kansas. There are 10 on this side who wanted to be here for the vote and thought it was all going to be worked out on Saturday.

The Senator from Ohio, who was our special commissioner for taxation on the floor, Senator METZENBAUM, put out a release saying, in effect, we had done a good job and taking credit back home for saving these billions of dollars.

The Senator from Massachusetts said we have wasted them. But what a place for a press conference. I never tried it before in my life, but now that we have everybody here it is not such a bad idea, and we can talk about anything. If you have the right philosophical belief, it will be written about. You might even make the nightly news. But I want the 10 Senators from this side and the 10 from the other side who are absent today to know that the Senator from Kansas did not call this meeting. I only came to participate in the meeting as a manager of the bill.

We are not really discussing something that is really in doubt of anything. I hold

up as exhibit A the conference report signed by all the House Members, everyone. Some of those have a 100-percent ADA rating, and that is not the American Dental Association. [Laughter.] That is the Americans for Democratic Action. Everyone signed the conference report. They were not concerned about big oil. Only one, only one lone ranger from Massachusetts, stood up and said "We have got to cut off big oil."

Well, if he is going to say that, he has to prove what big oil is, after having hustled back from Massachusetts to meet the rest of us who have been here all weekend. This Senator just suggests that if, in fact, there is a debating point, we ought to debate it. But, as the Senator from Minnesota pointed out, there is not any debating point. Big oil has never been a factor. And when the provision is the same in the House side as it is in the Senate side, I assume the Senator would agree there is not anything in conference.

I want to put in the RECORD that I do not own any interest in oil properties. If I do not, somebody will be writing that I must have some oil. I do not have any. I have some in my car and that is about all. I do not have any production. I tried it once and did not do very well. I decided to run for Congress, instead. So this Senator does not have any big oil income. I am not worried about the tax breaks in this bill. It will help, not as much as it will help some, but it will help.

So I would hope that those of us who could make it here are here, some 78 or 79 Senators are present. I hope the others who are listening or tuned in will know that we had an outstanding meeting and that nearly everybody came and it was really written up in the proper places. Maybe not accurately, but it was noted. The Senator from Massachusetts gave up Monday to come back and tell the rest of us what we did wrong on Saturday and all night Friday night.

But this Senator is not going to yield to anyone to suggest that we went into that conference and did not keep our word to the Members of this body. About all I have is my word on the Senate floor. Once you lose that credibility in this body, I suggest that it is very difficult to continue. This Senator followed the instructions from the Senate.

I might say that even the pecan trees, we even put up a battle for those pecan trees; not very long, but we put up a good fight. We did not talk too long, but we made the point for those pecan trees. The Senator from Louisiana, I thought, made a very good argument. The trouble is, no one listened. So we dropped the pecan trees.

The "Gong Show" amendment had a lot of support in the Senate, and it passed on a voice vote. The distinguished Senator from Alaska offered that amendment, along with another amendment to help theatrical productions. We could not find any support for that among the House conferees. In fact, some thought we were in the Gong Show about 3 o'clock in the morning. So we had to drop the amendment.

I would say that there were other amendments that did not survive. Some were good and some were bad and some we passed anyway. That is sort of how it works out in a conference.

The Senate did not get all they went in with and the House got less than they went in with, in some cases. We had to drop some provisions that I know some Senators wanted very much—the Senator from Connecticut, Senator DODD, and the Senator from Pennsylvania, Senator HEINZ, for example, had what I thought was a good amendment to modify section 189. We had to modify their amendment, but we went back to ACRS and put the real property recovery method back up to 175 percent rather than 150 percent. The Senator from Connecticut came down to our conference about 2 a.m. that morning. He arrived, I think, when we were discussing oil, because the last three items discussed were the oil amendments, the straddles, and the heating credit.

On straddles, the Senate prevailed. There were discussions about lowering the rate from 32 percent to 20 percent. But there was not sufficient support for doing that, on the House side and in the Senate we felt we had a pretty good provision.

As I have indicated before on the oil proposition, there was never any argument about dollars. In fact, I believe the distinguished Congressman from Florida, Congressman GIBBONS, will tell the Senator from Massachusetts that, as far as he was concerned, we could have gone to $12 billion over a 5-year period. But we did not do that. We settled on $11.7 billion or $11.6 billion, depending on whose figures you use. So this Senator would suggest that the dollar amount was never in question until it was raised by the Senator from Massachusetts.

Certainly that is his right. I have no quarrel with that.

Mr. President, early Saturday morning the conferees on the tax bill reached agreement on the provisions that should be included in the bill that we send to the President's desk. This agreement represents the final stage of the tax legislative process that, for practical purposes, began last summer when the Senate Finance Committee approved a tax bill that would have reduced individual tax rates and provided accelerated depreciation beginning in 1981.

The major provisions of this legislation were similar in both bills—5–10–10 sequence of individual tax rate reductions, and the accelerated cost recovery system for business investment in new plant and equipment. Both bills also included identical provisions for stabilizing individual tax rates by a system of indexing beginning in 1985, and included similar provisions that would make major revisions of the estate and gift tax laws, the tax treatment of Americans working abroad, and incentives for individual retirement savings. To the extent these provisions differed, the differences have been resolved in what I believe is a satisfactory manner.

Mr. President, each bill contained a number of provisions on relatively narrow or technical matters that were not also in the other bill. Some of these have been dropped by agreement of the conferees, and some were modified to satisfy concerns that were raised. We have done our best to consider the interests of those who proposed amendments, and I think we have come out with a good package. Obviously anyone who proposed an amendment that is not in the final package will have every opportunity to have that proposal reconsidered in the next tax bill.

There were some areas of substantial disagreement between the bills, including oil, commodity straddles, and ESOP's. While some hard bargaining was necessary, a suitable balance has been struck in each of these areas. The particulars of the agreement are set forth in the conference report. I believe we now have a bill that everyone can agree to.

Mr. President, as far as this Senator is concerned, this is the conclusion of the legislative process on this matter with regard to the Senate. The issues have been debated again and again, and the sentiments of the people have been overwhelmingly expressed in both the Senate, by a vote of 89 to 11, and the House, by a vote of 238 to 195. We know how the people want us to go, and we know the preferences of the President. We must have this legislation on the books as soon as possible, and I hope we will agree to the conference report without delay.

This legislation is the most important revision of the tax laws in recent years. It redirects tax policy to restore incentives for work, savings, investment, and productivity. This change in direction will benefit all Americans, and can be a key part of an economic renaissance in this country. That is why this legislation has received priority attention from the Congress and why we should take satisfaction in completing action before the August recess.

Mr. President, this effort would not have succeeded without the cooperation of many in Congress and in the executive branch. I have mentioned before the contribution of the distinguished minority leader, Senator BYRD, and of course the distinguished majority leader, Senator BAKER. I would now also like to express my appreciation to the Speaker of the House, TIP O'NEILL, for agreeing to the ambitious legislative schedule that enabled us to move as fast as we have. In particular, I salute the conferees on this legislation. Chairman ROSTENKOWSKI showed good spirit and determination in his efforts to complete action on the bill. As always, the senior Senator from Louisiana, RUSSELL LONG, made an invaluable contribution. I also thank Senators ROTH, PACKWOOD, DANFORTH, BYRD, and BENTSEN, and Congressmen PICKLE, GIBBONS, STARK, RANGEL, CONABLE, ARCHER, and DUNCAN for putting in the long hours and helping in the negotiations that led to this agreement.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a brief summary of the legislation as agreed to by the conferees.

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

SUMMARY

As agreed to by the House and Senate conferees, the Economic Recovery Tax Act of 1981 provides for substantial reductions in the individual income tax, the corporate income tax, the windfall profit tax and the

estate and gift taxes. It also contains provisions for reforming the treatment of tax straddles and improving tax administration. The revenue impact of the Act is estimated to be a reduction of $1.6 billion in fiscal year 1981, $37.7 billion in 1982, $92.7 billion in 1983, $149.9 billion in 1984, $199.3 billion in 1985 and $267.6 billion in 1986.

Let me summarize the major provisions of the Act.

INDIVIDUAL INCOME TAX PROVISIONS

The Act reduces individual income tax rates across-the-board, beginning on October 1, 1981. The cumulative rate cuts are scheduled to be 1¼ percent for 1981, 10 percent for 1982, 19 percent for 1983 and 23 percent for 1984. However, the top tax rate is reduced to 50 percent and the maximum tax is repealed in 1982. Starting in 1985, the income tax brackets, zero bracket amount and personal exemption are adjusted for inflation as measured by the Consumer Price Index.

The Act allows a married couple that files a joint return to deduct 5 percent of the first $30,000 of the lower earning spouse's earned income in 1982 and 10 percent of that amount after 1982. It allows all taxpayers, whether or not they itemize deductions, to deduct 25 percent of the first $100 of charitable contributions in 1982 and 1983, 25 percent of the first $300 contributed in 1984, 50 percent of all contributions in 1985 and 100 percent of all contributions in 1986, after which the provision expires. The Act permits deduction of up to $75,000 of foreign earned income in 1982, deduction of certain excess foreign housing expenses, and reduces the out-of-country requirement to 11 of 12 months. The child and dependent care credit is put on a sliding scale based on the taxpayer's income, and the maximum amount of expenses taken into account is increased to $2,400 for one dependent and $4,800 for more than one dependent.

The maximum effective tax rate on capital gains for individuals is reduced by the Act to 20 percent on sales or exchanges made after June 9, 1981, and the present 12-month minimum holding period for long-term capital gain or loss treatment is retained.

BUSINESS TAX CUT PROVISIONS

The Act replaces the present system of depreciation and investment tax credits with the Accelerated Cost Recovery System. Under this system, most tangible personal property is depreciated over 3, 5, 10 or 15 years. Personal property with an ADR midpoint life of 4 years or less and research and development equipment are depreciated over 3 years. Public utility property with an ADR midpoint life greater than 18 years but not greater than 25 years, railroad tank cars, residential mobile homes, real property with an ADR midpoint life of less than 13 years and certain coal utilization burners and boilers used by public utilities are included in the 10-year class. Public utility property with an ADR midpoint life exceeding 25 years is depreciated over 15 years.

In general, all other personal property and single purpose agricultural structures and petroleum storage facilities are depreciated over 5 years. The method of depreciation is approximately equivalent to the 150-percent declining balance method switching to straight-line for property placed in service in 1981–1984; the 175-percent declining balance method switching to sum-of-the-year's digits for property placed in service in 1985; and the 200-percent declining balance method switching to sum-of-the-year's digits for property placed in service after 1985. At the taxpayer's election, up to $5,000 of equipment may be expensed in 1982 and 1983, $7,500 in 1984 and 1985, and $10,000 after 1985.

The Act provides a 6-percent investment credit for eligible property in the 3-year class and a 10-percent credit for eligible property (including petroleum storage facilities) in the 5-year, 10-year, or 15-year classes. On early disposition, the credit is recomputed by allowing a 2-percent credit for each year the property is held. An at-risk limitation is applied to certain taxpayers, and the 7-year requirement for availability of credit for qualified progress expenditures is repealed. The limitation on used property eligible for the credit is increased to $125,000 in 1981 and $150,000 in 1985, and the investment credit carryover period is extended to 15 years.

Under ACRS, real property is depreciated over 15 years, on a composite basis and without regard to salvage value. The method of depreciation is approximately equivalent to the 175-percent declining balance method (200 percent for low-income housing) switching to straight-line. Section 1245 recapture will apply on dispositions of nonresidential property if the accelerated method of depreciation has been used. Section 1250 recapture will apply on dispositions of residential property.

The Act liberalizes the terms for characterizing a transaction as a lease and contains rules to prevent the churning of assets solely to obtain the benefits of ACRS.

The Act provides an investment credit for rehabilitation expenditures of 15 percent for nonresidential buildings 30 to 39 years old, 20 percent for nonresidential buildings 40 or more years old, and 25 percent for certified historic structures. The credit is available only if straight-line depreciation is elected. Basis reduction is required for rehabilitation credits other than the tax credit for certified historic structures.

The Act provides a nonrefundable 25-percent tax credit for incremental research and experimental expenditures made after June 30, 1981, and before 1986. The Act reduces the corporate income tax rate on income under $25,000 to 16 percent in 1982 and 15 percent thereafter; on income between $25,000 and $50,000 the tax rate is reduced to 19 percent in 1982 and 18 percent thereafter.

ENERGY TAX PROVISIONS

The Act allows a royalty owner's credit up to $2,500 against windfall profit tax for 1981. There is a 2-barrel a day exemption for royalty owners in 1982 through 1984 and a 3-barrel a day exemption thereafter. The Act also exempts stripper oil produced by independent producers, beginning in 1983, and reduces in steps the tax rate on newly discovered oil to 15 percent by 1986.

SAVINGS INCENTIVE PROVISIONS

The Act increases the limit on the deduction for contributions to a self-employed retirement savings plan to the lesser of 15 percent of earnings or $15,000. The Act also increases the limit on the deduction for contributions to an independent retirement account to the lesser of 100 percent of earnings or $2,000, and extends eligibility to active participants in employer-sponsored plans.

The Act repeals the present $200 interest and dividend exclusion and reinstates the $100 dividend exclusion of prior law, beginning in 1982. Starting in 1985, there is a 15-percent net interest exclusion up to $450 on a single return and $900 on a joint return. Up to $1,000 ($2,000 on a joint return) of interest earned on one-year certificates issued by depository institutions between October 1, 1981, and December 31, 1982, are exempted from income tax. These certificates must be issued at 70 percent of the Treasury bill rate and at least 75 percent of the proceeds must, in general, be linked to residential financing and agricultural loans.

This Act terminates the ESOP additional investment tax credit after 1982 and allows a new income tax credit for contributions to an ESOP. The new credit is limited to 0.50 percent of compensation paid to employees under the plan in 1983 and 1984, to 0.75 percent in 1985 through 1986, and terminates thereafter.

The Act permits utility corporations to establish dividend reinvestment plans, under which an individual may exclude up to $750 of stock dividends ($1.500 on a joint return) per year. Shareholders will have a zero basis in such stock and realize gain upon sale of the stock. The provision applies to distributions made after 1981 and before 1986.

ESTATE AND GIFT TAX PROVISIONS

Beginning in 1982, the Act increases the unified credit in stages so that transfers up to $600,000 will be exempt from the estate and gift taxes by 1987, phases down the maximum tax rates to 50 percent by 1985 and allows an unlimited marital deduction. The estate tax limitation on reduction in fair market value for current use valuation is increased to $600,000 for 1981, $700,000 for 1982 and $750,000 for 1983 and thereafter. The amount of the annual gift tax exclusion is increased to $10,000 per donee, plus an unlimited exclusion of amounts paid for benefit of an individual for medical expenses and school tuition.

TAX STRADDLES

The Act provides that regulated futures contracts be marked to market at year end and taxed as if 60 percent of the net gain is long-term and 40 percent is short-term. Straddle losses on contracts that are not marked-to-market are allowed only to the extent losses exceed unrealized gains on offsetting positions, and disallowed losses are deferred. The Act requires that taxpayers capitalize interest and carrying charges, that Treasury bills be treated as capital assets and that broker-dealers identify securities held for investment on the day they are acquired. The Act exempts hedging transactions from the mark-in-market, loss deferral and capitalization rules.

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

The Act provides for the annual adjustment of the interest rate on deficiencies and overpayments to 100 percent of the prime rate, provides additional penalties for filing false W–4 forms, requires that estimated tax payments of large corporations be increased over 3 years to 80 percent of the current year tax liability, and increases the exemption from the estimated tax penalty for individuals to $500 over a 4-year period. In addition, the Act provides for increases in railroad retirement taxes and, among other miscellaneous provisions, an extension of the telephone excise tax through 1984.

In addition, the Act extends and modifies the targeted jobs credit. The credit will be available for targeted employees, including displaced CETA workers, who begin work before January 1, 1983. The modifications include administrative tightening and limits on retroactive certification.

Mr. DOLE. Mr. President, I do want the RECORD to reflect that this is a very comprehensive piece of legislation. It is good tax legislation. We can quarrel all day long about whether it is too much for business or too much for individuals or too much for my part of the business sector. But it is a $750 billion tax proposal and probably makes the biggest single piece of tax legislation in history.

Eighty-nine Members of this Senate voted for it. Eleven voted against it. That is their right. Two have already spoken and the other nine may show up. But these are the facts: 89 to 11.

Now, it cannot be 89 today because some Senators cannot get back. But many of the Senators are here and it will be a good vote.

I would hope when we vote on the motion, whether it is going to be the motion to table or the motion itself, that we keep in mind that the Senate conferees kept their pledge to the Senate. We, in

fact, split the difference on this provision. We tried to keep as many of the Senate amendments as we could.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a list of all the amendments offered in the Senate and their final disposition.

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

FLOOR AMENDMENTS—DISPOSITION IN CONFERENCE

| TITLE | FLOOR AMENDMENT | CONFERENCE ACTION |
|---|---|---|
| Indexing | Committee | Same as House Bill. |
| Child Care Credit | Metzenbaum & Durenberger | House recedes except to refundability and employer 50 percent credit. |
| Charitable Deduction for nonitemizers | Packwood | Senate recedes with amendment providing $300 Cap in 1984 and requirement of substantiation. |
| Sale of Residence by Handicapped Persons | Leahy | Senate recedes. |
| Capital Cost Recovery (Eligible Property) | Huddleston | House recedes with amendments—RACE horses over 2 years old and other horses over 12 years old go into 3 year class. All others 5 years. |
| Capital Cost Recovery—Useful Lives for Personal Property. | R. Byrd & Lugar | Same as House Bill with amendment to place burners & boilers using coal in 10 yr. class if used by utility & if conversion or replacement; and to place residential manufactured homes in 10 yr. category. |
| Real Property Cost Recovery Methods | Dole, Roth | Compromise: Sec. 189 repealed only for low income housing. 200 percent declining balance for low income, 175 percent declining balance for all other real estate. |
| Depreciable Assets Held Out of United States | Roth | House recedes: (1) except "within/without" clause; (2) no long-term leases to foreign railroads. |
| Investment Tax Credit | Roth | House recedes: (1) except "within/without" clause; (2) no long-term leases to foreign railroads. |
| Used Property Limit for Investment Credit | Durenberger & Weicker | Same as House Bill. |
| Recapture of Investment Credit | Durenberger & Weicker | Same as House Bill. |
| Capital Cost Recovery-Miscellaneous normalization for utilities. | Cranston | House recedes. |
| Capital Cost Recovery (Inventory Credit) | Matsunaga | Same as House Bill. |
| Penalty for Demolition of Historic Structures. | Chafee | Same as House Bill. |
| Credit for Research and Experimentation | Glenn | Senate recedes. |
| Allocation of Research & Development Expenditures to U.S.-source income. | Glenn | House recedes. Effective for two years. |
| Subchapter S Corporations | Byrd (Va ) | House recedes. |
| Qualified Charities | Cochran | Same as House Bill. |
| Production Credit for Certain Gases | Tower | House recedes. |
| Corporate Rate Reduction | Weicker | Same as House Bill. |
| Extension and modification of Targeted Jobs Tax Credit. | Heinz | Extension until January 1, 1983, with modifications. |
| Individual Retirement Accounts (Contributions by nonworking former spouse). | Grassley | Compromise: Alimony treated as earned incomee |
| Study of Retirement Savings Tax Incentives | Heinz | Senate recedes. |
| Partial Dividend and Interest Exclusion | Schmitt | Senate recedes. |
| Tax Exempt Savings Certificates (No restrictions on Credit Unions). | Bentsen | Senate recedes. |
| ESOP's | DeConcini | Senate recedes. |
| Qualified Group Legal Service Plans | Dole for Packwood | House recedes. |
| Estate and Gift Tax Provisions | Symms | Unified Credit—Senate recedes. Rate reduction—Senate recedes. Marital deduction—same as House Bill. |
| Current Use Valuation Cap | Baucus | Senate recedes with modification: 1981—$600,000; 1982—$700,000; 1983—$750,000. |
| Payment of Estate Tax Attributable to Closely Held Business. | Symms | Deferred payment to Estates taxes—Senate recedes.<br>Judicial review provided—House recedes.<br>No Acceleration of tax upon transfer to family number—Senate recedes. |
| Special Gift to Smithsonian | Goldwater | House recedes. |
| Generation-skipping Transfer Tax | Symms | House recedes. |
| Annual Payment Gift Tax | | Senate recedes.<br>(S. 955—Byrd of Va. adopted as part of conference report.) |
| Tax Straddles | Moynihan | House recedes. |
| Dealer Identification of Securities Held for Investment. | Moynihan | House recedes. |
| Penalty for Valuation Overstatements | Wallop | Same as House bill. |
| Disclosures of Return and Information for Purposes Unrelated to Tax Administrations. | Nunn | Senate recedes. |
| State Legislators' Travel Expenses | D'Amato | Per diem deduction—Senate recedes, with amendment to apply provision for taxable years beginning on or after January 1, 1976. |
| Fringe Benefit Regulations | Mattingly | House recedes. |
| Campaign Funds | Ford | House recedes. |
| Tax Exempt Bonds—Volunteer Fire Departments. | Lugar | House recedes with amendment to limit to fire trucks and buildings. |
| Modification of Foreign Investment Company Provisions. | Boren | House recedes. |
| Charitable Contributions by Corporations | Kennedy | House recedes. |
| Unemployment Tax Status for Fishing Boat Services. | Cohen | House recedes with amendment 1 year exemption for FUTA, not retroactive for FICA. |
| Tax Credit for Pecan Trees | Heflin | Senate recedes. |

| TITLE | FLOOR AMENDMENT | CONFERENCE ACTION |
|---|---|---|
| Mortgage Subsidy Bonds—State of Oregon | Hatfield | Senate recedes. |
| Two-year Extension of Telephone Excise Tax—One percent. | Heinz | House recedes. |
| Exemption from Firearms Excise Tax—Small Producers. | Sasser | Senate recedes. |
| Amortization Construction Period Taxes and Interest. | Dodd, Heinz | House recedes with amendment: Sec. 189 does not apply to low-income housing, but will apply to other real property construction. |
| Amortization of Low Income Housing Rehabilitation Expenditures. | Quayle | House recedes. |
| Investment Credit for Theatrical Productions and T.V. Game Shows. | Stevens | Senate recedes. |
| Payout requirements Private of Foundations | Durenberger | Compromise: postponed effective date until after 12/3/81. |
| Imputed Interest Rates or Installment Sales | Melcher | Compromise: $500,000 limit, restricted to intra-family transactions. Applies only to land sales. |
| Bad Debt Deduction for Commercial Banks | Bentsen | House recedes. |
| Home Heating Oil Credit | Rudman | Senate recedes. |
| Deductions for Gifts and Awards | Garn | House recedes. |
| Reorganizations Involving Financially Troubled Thrift Institutions (Tax-free reorganization status). | Boschwitz | Senate recedes with technical modification. |
| Tax Treatment of Mutual Savings Banks Which Convert to Stock Associations. | Gorton | House recedes. |
| Deduction for Certain Adoption Expenses | Jepsen | House recedes, itemized returns only and technical modifications. |
| C.B.O. Reports on State of the Economy | Heflin | Senate recedes. |
| Level of Interest Rates (Sense of the Senate) | Chiles | Senate recedes. |
| Interfund Borrowing Among Social Security Trust Funds. | Sasser | Senate recedes. |

(Mr. WARNER assumed the chair.)

Mr. DOLE. Mr. President, I would hope that most Senators would read that list. If it does not explain it enough, I would be very happy to discuss it, because in a majority of the cases the Senate prevailed. In some other cases where an amendment was dropped, take the amendment of the Senator from Oregon on the Oregon veterans home, it was not because the amendment lacked merit, it was because the House had four or five similar amendments they did not have in their bill and they just said that they were not going to accept the Senate provision. The House conferees did not want to do it because they were going to wait until they were able to take care of some of the problems in their States. And we understood that.

So the Senator from Kansas would hope that we can address these problems raised by the Senator from Massachusetts and the Senator from New Hampshire in the second tax bill. There is going to be a second tax bill. The President had not changed his mind. There was never any attempt to address everything in the first tax proposal.

I would hope that those who have an interest in some measure, whether it is the heating credit or whether it is something else, that we will have an opportunity now to really hone in on some of these areas and try to work them out to serve the best interest not only of the Senators but the people they represent.

We have not given up on trying to improve things in this legislation or improve the tax system. I would hope the Senators who feel that we may have let them down in some way have not given up, either.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

I appreciate the comment of the Senator from Kansas when he said that the money value of this tax deal for the major oil companies was not raised until the Senator from Massachusetts raised it. It seems that the Senate conferees went out shopping on Friday night and they bought a little bit here for some of the oil industry and a little bit there for others of the oil industry and when you added it all up it was $33 billion.

The Senators from Kansas and Minnesota are well aware of what the majority leader had said. I quote at 19227 of the RECORD on July 31: "There will not be a rollcall vote on Saturday."

Now, I can understand how the conferees wanted to voice vote this right through. They effectively robbed the Treasury on Friday night and they would like to get this thing comfortably through on Saturday night. But we are here in the broad daylight so that the Members of the Senate will be able to vote on this issue about whether we want to give $33 billion away to the oil industry.

I yield 5 minutes to the Senator from Connecticut.

WINDFALL PROFIT TAX REDUCTION

Mr. DODD. I thank the Senator for yielding.

Mr. President, at the outset let me compliment the people who stayed up all night Friday night. The Senator from Kansas is absolutely correct. I showed up around 2 o'clock and they were working very hard at that hour. I finally decided they did not need me at that particular point. They seemed to be doing all right on their own. Maybe we should have had the Lone Ranger down here at that hour to carry the day.

I know they did work hard and spent all evening trying to reach a compromise on various matters in disagreement between the Senate and the other body. So I am not here this afternoon to chide or in any way be critical of that effort, but really to comment on the outcome of that effort.

It is in that regard, Mr. President, that I will stand this afternoon with my colleague from Massachusetts in expressing my disappointment over the result of that effort. I do not in any way want to lead my colleagues here to the conclusion that our colleagues did not try. So, it is not on the effort; on the effort they get an A, an A-plus. It is really the result of that effort that troubles me, and that is where I have my disagreements.

Mr. President, I came to the floor last Friday along with several of my colleagues to urge the Senate conferees on the present tax bill to limit the windfall profit tax reductions to those already contained in the Senate bill.

The Senate bill was already very generous to the Nation's most profitable industry, the oil industry. It provided a tax reduction of $6.6 billion during the next 5 years and $20 billion by 1990. At a time when we apparently cannot find even enough revenue to maintain the $122 per month minimum benefit for social security recipients, when we apparently cannot find the revenue to provide the most elemental nutritional benefits to hundreds of thousands of schoolchildren, the poor and the elderly, I felt that even the Senate bill contained an excessive transfer of wealth from the poor to the rich.

As the Senator from Missouri (Mr. EAGLETON) stated on the floor last week, the budget bill passed by the Congress last week fundamentally alters the social and economic priorities of this Nation by taking from the poor and giving to the rich. The tax measure we will vote on today more than simply reinforces this reversal. It compounds it to a serious degree.

The administration's budget bill will lead to massive cuts in funds to assist the

poorest as well as the middle class in our society.

This tax bill will substantially reduce the contribution of the wealthiest members of our society to the revenues needed to finance all functions of Government.

The so-called compromise on the windfall profit tax reductions reached by the conferees violates the most basic standards of social justice. While providing a $33 billion tax reduction for the oil industry during the next 10 years, the conferees could not find it in their hearts to approve a 1-year tax credit for escalating home heating costs with only a $500 million price tag.

Mr. President, the administration has been pressing the conferees on this bill to adopt the full $46 billion, 10-year, boon to the oil industry that was contained in the House bill. That was excessive.

What we have done in the conference is, in my mind, still too excessive. By failing to limit the windfall tax reduction to the $20 billion provided in the Senate bill we have made it virtually impossible to have a restraining impact on inflation.

I am under no illusion, Mr. President, that this bill will be rejected by the majority of the Senate.

May I add at this point that I understand what we are doing in this tax bill is not just aiming for a redistribution of wealth, but we are also trying to increase the productivity of this country. But I think we have lost the sense of balance over the last couple of weeks. This is largely the result of a desire to please those who already share in the greatest benefits this bill will offer.

So, Mr. President, I will join this afternoon with the Senator from Massachusetts and others in expressing our opposition to the conference report despite the valiant effort of the conferees during that allnight session on Friday. I yield back any remaining time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 5 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MITCHELL. Mr. President, I rise in support of the motion to recommit the bill before us to the members of the conference committee with instructions to return with a lesser revenue loss in the windfall profit tax provision.

As I indicated during the Senate's debate on the bill last week, the provision for oil producers was a cause of deep concern. Despite those concerns I voted for the Senate bill because I felt that its passage was essential to prevent further erosion of working Americans' incomes through inflation caused tax increases, and I will vote for final passage of the conference report. But I did not, and I do not now, feel that either the Senate bill or the conference report's oil tax provision were necessary to provide a production incentive, to speed capital formation, or to relieve any inequities in the tax burden.

The oil industry has not suffered from inflation. Rather, the inflation-induced price increases that have afflicted the remainder of the economy are in very large part due to the extremely high price of oil, which doubled just 2 years ago.

The oil industry may not have been responsible for that doubling but it has reaped the benefits of it, while no other sector of our economy has been able to do so.

The windfall profit tax was so named and enacted principally because all were agreed that the unprecedented price increase represented a true windfall to oil producers, not an earned return on investment. For that reason, Congress agreed that it was only rational and just to return some small portion of that windfall to the public through a tax that could be used to offset the effects of oil price inflation on individuals and businesses.

So the provisions in the Senate bill which halved the tax rate on so-called new oil and increased the royalty owners' credit from $1,000 to $2,500 were matters of serious concern. Those Senate provisions would have cost $6.5 billion in the first 5 years in revenues returned to the oil producers, a truly generous tax reduction to an already prosperous industry.

Unnecessary as these provisions were, however, the result of the House leadership's bidding war with the administration presented the oil industry with even more generous tax relief, $16 billion in the first 5 years, compared to the Senate's $6.5 billion.

The Senate could not have responsibly gone along with those House provisions. Fortunately, we do not face that choice today. Fortunately, the conference report does not give the oil industry the full $16 billion the House and the administration promised. Rather, it gives about $11 billion over the next 5 years. And yet the conference report also tragically eliminates the Senate's home heating cost credit, a modest credit which would only permit a maximum $200 credit for poor people against heating costs. It phases out as a family's income approaches $25,000. The cost of this provision would have been $400 million a year—that is not billions; that is millions—$400 million for the poor of the North who confront the hard choice between heating and eating in the winter. That could not be afforded even though it was perfectly consistent with the rationale behind the windfall profit tax when it was first enacted.

The conference report also eliminates the modest, very modest, House credit for wood stoves, a credit the administration has repeatedly refused to implement, even though it has the authority to do so. That would have provided a 15-percent credit against wood stove costs.

Both of these provisions represented a way to get some money back to working people for the enormous transfer of wealth they have all paid to the oil industry over the past couple of years. These two provisions apparently could not be saved. They did not represent a high priority to this administration. Instead, we read in the papers where Treasury Secretary Regan fought all through the night to save the oil depletion allowance.

Mr. President, the need for a tax cut is clear. There has been no dispute over that since last year when the Senate Finance Committee wrote a good bill.

There has been no dispute over the need to relieve the tax burden on working Americans. The Federal income tax burden is at an all-time high. In 1981, if there is no tax cut, Federal income taxes will reach 15.9 percent of personal income. This compares to only 12.7 percent a decade ago. The rise in the tax burden occurred in spite of a number of tax cuts over the last 10 years.

If we do not cut taxes now, there will be a further tax increase next year, and this increase will fall most heavily on low- and middle-income workers. The combined effect of inflation and higher social security taxes would result in a $23 billion tax increase in 1982. As I say, this increase falls most heavily on low- and middle-income workers. Taxpayers earning between $5,000 and $10,000 face a 25-percent increase in their taxes, and those making between $10,000 and $15,000 face a 12-percent increase. In contrast, the worker with an income of $50,000 to $100,000 only faces a 6-percent increase. Thus, not only are those built-in tax increases now scheduled harmful to the economy, they will make the tax system less progressive.

That is why we need a tax cut.

Many of the specific problems confronting our economy are related to the rising tax burden.

But nowhere throughout the entire debate over the tax cuts has there ever been evidence offered that these massive reductions to the oil industry are needed, are warranted or are justifiable. The public debate has concentrated upon the need for savings incentives, capital formation, investment incentives, marriage tax relief, commodity straddles and the different ways in which these admirable needs might best be met.

There has been little public debate about the need for additional incentives to the oil industry, and there is no evidence that they are short of investment capital or that they are having a cash flow problem.

We should have a tax cut, Mr. President. We must have a tax cut. But we can and should have a tax cut that does not provide unwarranted, indefensible tax reductions to the oil industry. We should recommit this bill, improve it by reducing the oil industry tax reductions, and then pass it unanimously.

I thank the Chair.

Mr. KENNEDY. Mr. President, I am going to yield to the Senator from New York, but there was some question that was raised by the Senator from Kansas about whether the Senator from Massachusetts was the only one who was interested in this issue. I am glad to see that we have now our sixth speaker, Senator MOYNIHAN, and Senator BUMPERS will make seven speakers who will speak in opposition to this amendment. There will be only three speakers who have supported it.

I yield 4 minutes to the Senator from New York.

The PRESIDING OFFICER. The

Senator from New York is recognized for a period not to exceed 4 minutes.

Mr. MOYNIHAN. Mr. President, I cannot say what I would wish this Chamber to hear in the space of 4 minutes. What I do say I want to preface with the statement of the very gracious regard that I and, I think all the members of the Committee on Finance and of this Chamber have for the chairman of the committee, who performed so splendidly in that long conference from Friday night to Saturday morning. I recognize that what was brought back in the conference report was a compromise with respect to the reductions of windfall profit taxes on oil. In the circumstances, that is what was perhaps to be expected, but not, Mr. President, what we need accept.

A year ago, I was a member of the conference committee, as was the Senator from Kansas, on the windfall profit tax. The conference went on week after week and we finally settled the issue so that all who received the windfall would return part of it in the form of the windfall profit tax. Now with this tax cut bill, we are beginning to make distinctions among those who need do so. Royalty owners, for example, need not do so. On what grounds? That they are making less of a profit? Not at all.

Most importantly, Mr. President, the idea that a group known as independent producers is somehow apart from the general structure of this industry and, therefore, entitled to special exemptions is fallacious to the point of being outrageous.

The same proposition came up in the course of the debate on the windfall profits tax; at that time, I had the opportunity to remind this Chamber that if, by some happy circumstance, Abu Dhabi were to be located on the eastern end of Long Island, Abu Dhabi would qualify for exemption from taxes as an independent producer under the legislation then being considered and which we are about to adopt.

The overwhelming amount of oil production in this country is done by organizations technically called independent producers; the annual revenues of such producers range in the upper two-thirds of a billion dollars. In the case of Abu Dhabi, it could be in the upper range of some $16 billion and still, absent refining capacity, Abu Dhabi would still qualify as an independent. I point out, Mr. President, that we distort the petroleum industry when we make such a large advantage available only to those with a low capacity in refining. The obvious decision is to go to small, inefficient, and fragmented facilities.

This is very much to be deplored. It verges on breaking understandings reached a year ago after a long and difficult tax conference. I hope we shall decide to recommit the tax cut bill, make this change, and then adopt the legislation unanimously.

Mr. President, I thank the Chair for his respectful attention. I thank the Senator from Massachusetts for giving me this opportunity.

Mr. DOLE. Mr. President, I yield 3 minutes to the Senator from Oklahoma and 3 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for a period not to exceed 3 minutes.

Mr. NICKLES. I thank the Chair.

Mr. President, I compliment the distinguished Senator from Kansas, the chairman of the committee, for what I believe to be an outstanding job. I think the bill that is before us and the improvements he made in the conference committee are excellent.

Mr. President, there has been a lot of rhetoric anti-big oil, that the big oil industry is going to make $33 billion and rip off the taxpayers. Mr. President, this is an unbelievable statement that cannot be backed up. This tax cut, if we look over the next 5 years, totaled $11.7 billion. The Senate had already approved $6 billion of that, so this is an improvement, or an increase of about $5 billion over 5 years.

Mr. President, we have to look at what this so-called industry is paying over the next 5 years. They are paying an additional $100 billion in so-called windfall profit tax that no other industry, not one, pays. This is in addition to corporate taxes, in addition to personal income tax. Out of $5 or $11.7 billion, who is going to receive the benefit? Is it big oil, is it Exxon, is it Conoco, is it Mobil? No, Mr. President, it is the millions of independent producers and the millions of royalty owners.

Mr. President, there are 2.5 to 3 million royalty owners in America today. I have met with people and all these people have very, very limited income. One individual in Oklahoma showed me a monthly check that used to be for $1.49. Then came the windfall profit tax that took away 50 cents, so his net check was 99 cents.

Mr. President, the vast majority of the people who benefit from this bill are the small people. They are the small people; not Exxon's, not Mobil's. That is campaign rhetoric, but it does not apply to this bill.

Over half the benefit of the conference report will go to the royalty owners, Mr. President, the other half will go to the independent producers. Who are the independent producers? Something like 12,000 independent producers all over this country. In Oklahoma, if we look at the average amount of production coming from stripper wells, stripper wells would be exempt. Those are the wells that produce 10 barrels or less a day.

The average production from these wells was 3.3 barrels a day. That is not Exxon. Exxon does not own those wells. They cannot afford to. It is economically unfeasible for the big boys to own those wells. Half the wells of this country are owned by small, independent producers. Most of those wells produce 3 barrels a day. The wells in the State of the Senator from Kansas produce something like 2.3 barrels a day.

Those are the people who will be exempt. Those are the people who will allow us to get the marginal production that is now unfeasible.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOLE. I yield 3 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for not to exceed 3 minutes.

Mr. LONG. Mr. President, I hope the conference report will be agreed to. This is a very significant bill.

For years we have continued what basically were the wartime tax rates, starting back in World War II. There was a time when income was taxed at more than 90 percent at the top rate for individuals. There was a time when we had an excess profits tax of 90 percent in addition to an income tax of more than 50 percent.

Mr. President, the President of the United States campaigned on the basis that we should have a supply-side tax cut. He advocated an across-the-board cut of 10 percent a year each year for 3 years, or an overall 30-percent cut in rates. This bill does not go quite that far, but it goes for a three-stage 25-percent across-the-board cut.

Mr. President, it was the feeling of this Senator that we should do more than have just an across-the-board cut. The feeling of this Senator is that we should do things that encourage savings and investment. That is very much a part of this bill. I am pleased that there are provisions in this bill that would help those we would like to help. We would like to encourage the hiring of those who are less fortunate in our economy. The targeted jobs credit is extended in this bill.

We would like to provide help for those who hire persons for day care, where both spouses are working. That is part of the bill. We would like to do something to reduce the marriage penalty. That is part of the bill.

I am pleased that we have provisions in this bill that move forward, by giant strides, our effort to encourage employee stock ownership. I believe we should see that workers have the opportunity to own stock in the companies for which they work.

We fought hard to bring back what we did. I would have liked to have brought back all the Senate provisions. We had to yield on some significant provisions, but most of them are still here.

I believe that this bill is what the American people expected when they voted for President Reagan. He went to the American people on television to urge that this type of bill be passed by the Congress, to give the supply-side economic theory a try, and I believe this bill does that.

I will be happy to support the bill.

The PRESIDING OFFICER. Who seeks recognition?

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 3 minutes and 53 seconds.

Mr. KENNEDY. And the opposition?

The PRESIDING OFFICER. The Senator from Kansas has 3 minutes and 6 seconds.

I yield 3 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for not to exceed 3 minutes.

Mr. BUMPERS. Mr. President, right after this bill was passed last Wednesday, President Reagan went to Atlanta, and, said that the country is off and running now, that everybody is going to be brought along, and that nobody will be left behind.

That is a very persuasive, compelling, and interesting thing to say, unless we look at what we have done. This bill leaves 50 percent of the American people behind in the starting blocks. Fifty percent of the American people make less than $20,000 a year; and, under this bill, they are not even protected from the increased cost of inflation and the increase in social security taxes. So, at the end of 3 years, 50 percent of the American people will be worse off than they are today. That is hardly bringing all America along.

Senator KENNEDY and I pleaded with this body to increase this bill by $13 billion in the total amount for those very people who make less than $20,000 a year. That would not have given them a windfall, but simply made them even with inflation and their increased social security taxes.

How can we sit in the Senate and be a part of a nation, the governing body of a nation which professes to be a Christian nation, cherish those absolute values, such as fairness and justice, cherish the rights of every individual, no matter how lowly, and still pass a tax bill which gives the American oil industry more than we give the 50 percent of the people who earn below $20,000 a year?

This is supposed to be a nation that is short of money, and the high interest rates are attributable to the terrible shortage of money. Yet, five American companies trying to take over Conoco have $30 billion of credit tied up in this Nation that can be used for other purposes. Who are they? I do not need to name them, because you know who they are.

Mr. President, what social or economic value is served, what part of America is served, with this amendment, which gives the American oil industry $33 billion over the next 10 years?

Finally, Mr. President, I want to say, simply, that passage of this particular part of the bill that betrays 50 percent of the people and gives $33 billion to the very wealthiest of the wealthiest of the wealthy, say a lot more about Congress than it does about the oil companies.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. KENNEDY. I yield the Senator an additional 45 seconds.

Mr. BUMPERS. Mr. President, President Reagan never asked for this. When he submitted this tax bill, he said, "I want a clean tax bill," and he told you the few provisions that he wanted. Nowhere did he say, "I want to relieve the oil companies of this Nation from the windfall profits tax." He did not ask for it. The people who asked for it were the people in the House of Representatives who were doing the shameless bidding, on both sides of the aisle, for votes, and the oil companies, who lobbied this body and urged on that bidding war.

It will be a travesty if this motion is not adopted.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Massachusetts has 6 minutes remaining.

The Senator from Kansas has 3 minutes and 6 seconds.

Mr. DOLE. I yield 30 seconds to the Senator from Tennessee.

Mr. BAKER, I thank the Senator.

Mr. President, a few moments ago, I talked with the Senator from Ohio (Mr. METZENBAUM) on the telephone. He was in Atlanta.

At that time, Senator METZENBAUM asked me to agree to a unanimous-consent request to try to extend the time for voting on the Kennedy motion. I had to tell the Senator from Ohio that that was not feasible to do, that a great number of Senators are committed to the voting sequence that has been established for 2:15 and then 2:30.

The Senator from Ohio, I believe, understood why that unanimous-consent request could not be agreed to.

That, together with the complications of the air controllers' strike, apparently indicates that the Senator from Ohio will not be here. I promised to put in the RECORD, as I am doing now, the fact that he made a very diligent and good-faith effort to be here, including his request to extend the time for voting, which I regret I could not grant.

Mr. DOLE. Mr. President, after a great deal of give and take during the 16-hour marathon conference the House and Senate reached agreement resolving the differences between the House and Senate tax bills. There were accommodations made on both sides, as there must be in any conference.

I know there are those in this body that have some concern about the provisions in the bill relating to the so-called windfall profit tax. The House-passed tax bill had about $16.2 billion in windfall profit and income tax relief for oil producers and royalty owners. The Senate-passed tax bill had about $6.6 billion in such relief. The final compromise resolved early Saturday morning had about $11.7 billion in windfall profit tax relief. This compromise is just slightly above the midpoint between the House and Senate bills. Thus, the conferees essentially split the difference between the House and Senate positions. Splitting the difference is hardly a novel or inappropriate way of resolving differences between two bills.

It is important to recognize that despite the talk about "major oil companies" and "big oil," the conference decision did not add one additional nickel for the big oil companies. It is true that the phase down of the tax rate on newly discovered oil will give some relief to major oil companies as well as independents and royalty owners.

Nevertheless, the new oil provision was the same in both bills and thus not subject to change in conference. Moreover, the new oil provision should be no surprise to the Senator from Massachusetts, since he negotiated the phase down with this Senator when the tax bill was on the floor last week.

The windfall profit tax relief added to the Senate bill in conference will entirely go to independent producers and royalty owners. They are not big oil. Independent producers are generally little oil. The relief for independents applies only to marginal wells producing less than 10 barrels per day.

In Kansas the average well produces only 3.3 barrels per day. These wells did not benefit from decontrol since stripper oil had long been exempt from price controls.

Thus, these wells received no so-called windfall from President Carter's decision to decontrol the price of crude oil and it should never have been subject to the windfall profit tax. Imposing an additional tax burden on economically marginal strippers just accelerates the premature abandonment of wells that collectively play an important role in our effort to produce more oil here in the United States.

Royalty owners likewise should never have been subject to windfall profit tax. There are about 2 million royalty owners throughout the United States. These are typically little people—farmers, ranchers, retired people. These are not the giant oil companies at which this tax was supposed to be aimed. How can anyone justify imposing a windfall profit tax on an 80-year-old widow who depends on her royalty checks to buy food, clothing, and pay her rent.

In my view, if we have any windfall profit tax at all, it should apply only to the big producers and not to little people or even to middle-class families. The royalty owner provisions in the conference report accomplish this objective.

ROYALTY OWNER RELIEF

The windfall profit tax has worked an unconscionable hardship on the approximately 2 million small royalty owners throughout the country. There are royalty owners in literally every State of the United States.

The vast majority of royalty owners are retired persons who depend on royalty checks to supplement their social security checks and farmers, who are currently hard pressed by low farm prices and high interest rates.

On May 23, 1980, the Finance Committee held field hearings on the royalty owner issue in Oklahoma City and Great Bend, Kans. Nearly 4,000 angry royalty owners turned out to those hearings.

Over 50 percent of the people who attended these field hearings identified themselves as being retired and approximately 75 to 80 percent identified themselves as farmers.

How can anyone justify taxing away 36 percent of the income on 80-year-old retired couples who have not had sufficient income to pay income taxes in years?

The royalty owners were almost completely ignored during the consideration of the windfall profit tax. Unlike the major oil companies or the independents, royalty owners had no Washington lob-

byists or even any national organizations to plead their case.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter I have received from a constituent, together with an attached article.

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

STOCKTON, KANS.,
*May 1, 1980.*

Senator BOB DOLE: I'm writing this letter to you in regard to "Windfall Profits Tax." Now I am a widow trying to get along on my S.S., which is $239. I am 76 years old and get a small oil check and in my last check the "Permian" Corporation, in Houston, Tex, held $81.00 WPT out of my check, which is very unfair to us consumers. Every day you see the big profits the oil companies are getting. What good is the tax if they are putting it all on consumers. The Rooks Co. people are up in arms about this matter.

I am the mother of Georgia (Guthrie) Penner and Les her husband, which have been Dole supporters.

I pay $17.31 for Blue Cross and Blue Shield per month, $9.40 for Medicare and they are not paying what most Dr's. and Hospitals are charging, they are really ripping us off. I have spent over $500 for prescriptions, let alone over the counter medicine, have to drive to Hays for medicine and medical treatments.

Please make President Carter read this.

Sincerely,

EULA M. GUTHRIE.

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THE WINDFALL PROFIT PINCH

(By Scott Seirer)

PLAINVILLE.—Henry Desaire looks nothing like an oil baron. He's a Plainville painter. Paint spots his clothing; white paint hasn't washed completely from his hands.

Yes Desaire, who owns a fraction of four Rooks County oil wells pumping a tiny amount of black gold, has been swept up into the same oil windfall profits tax dustpan as oil biggies such as Exxon, Texaco and Mobil.

He felt the blow of the tax for the first time last week when his oil royalty check arrived in the mail. About 34 percent of that check had been eaten by the tax that Carter signed into law April 2, becoming effective retroactively on March 1.

"It about floored me," said Desaire. "I don't think anybody realized this was going to happen—that the small royalty owner would be chopped. How can anybody come along and take 34 percent of anything from you?"

Desaire isn't alone in his anger. He's one of a legion of some 150,000 Kansans who own oil royalty rights. Those rights belong to the landowner, who traditionally receive one-eighth of the production of a well pumping on his property. The royalty rights can be sold, given away or divided among heirs. Desaire receved his royalty rights from his father in the form of Christmas gifts.

The effects of the windfall tax became apparent to Desaire and others when the monthly royalty checks arrived, as is traditional, soon after the 20th of the month.

"A lot of them (landowners) were not aware of this," said Joe Hess of Dreiling Oil Company, Victoria. They were aware of the windfall profits legislation, he added, "but they thought (lawmakers) were talking about the major oil companies."

Royalty owners are being surprised.

"They treated the royalty owner terribly," Hess said of lawmakers. "They treated him just like a major oil company."

The windfall profits tax is a complex maze that spans three classes of oil, two classes of oil producers and numerous tax rates.

The "windfall" is the difference between a fluctuating "base price" of oil and the market price, which has been decontrolled by the government and allowed to escalate. In March, the base price was computed to be about $16.50 a barrel; the market price was about $39. The windfall tax, therefore, is levied on the difference, about $22.50.

There are, Hess explains, three "tiers" of oil. The tax is most severe in tier one, which includes oil from wells in production before 1979. On these wells, major oil companies and the royalty owners must fork over 70 percent of the "windfall."

Independent oil companies, those drawing fewer than 1,000 barrels per day from their various wells, are given a windfall tax break. They must fork over only 50 percent of the "windfall."

The oil companies suffer less of a windfall bite, Hess explained, because they bear the cost of maintaining the well and its location; the royalty owner has no expenses.

Most of Kansas oil falls into the second tier, Hess said. This tier gives special consideration to wells producing fewer than 10 barrels per day—socalled stripper wells. Desaire's Rooks County wells fall into this category.

For these wells, major oil companies and royalty owners such as Desaire must surrender 60 percent of the windfall in the name of the tax. Independent oil companies give up 30 percent of the windfall.

Tier three recognizes new oil wells, put into production after Jan. 1, 1979. In this tier, the tax for all parties is 30 percent of the windfall.

Desaire is disgusted that he's shouldering the windfall burden with the likes of Big Oil. He sees the skyrocketing profits of the large companies as the catalyst of the legislation that is taxing him.

"Everybody got emotional and said 'Boy, look at these oil companies.' And sure. Exxon reports that profits are up 104 percent for the quarter. But they're not the ones who stand to lose anything."

As the owner of the royalty rights, Desaire insists that his oil should be marketed at the price set by free enterprise. Even with the windfall tax, of course, his oil checks are on the increase.

"Where's my windfall. I live in one of the oldest houses in Plainville."

The windfall profits taxes, Desaire contends, will siphon money from Kansas to fund social programs in the urban areas.

"I wouldn't mind helping (poor people) heat their homes with this because to me it's a gift from God," Desaire said. He fears, though, that the menu of social welfare is becoming so vast the work incentive is lost.

Too many poor people are poor because they have a distaste for work, he said. "No amount of money I could give them would help them."

"I'll admit, some people are born to poverty and there's nothing they can do about it—I saw Coal Miner's Daughter (a movie)."

Desaire, oil royalty owner that he is, doesn't count his family of six, including a set of infant twins, among the wealthy.

He says his income, derived from painting jobs as well as oil royalties, is only slightly higher than the government's poverty level for a family of six, which is $8,900.

"There is nobody around here getting filthy rich off their oil checks," he said. "I don't think we have anybody in Plainville flying off and putting their money in a Swiss bank."

The oil checks Desaire receives are spent on such mundane projects as kitchen remodeling and repairs to his pickup. He demonstrates by pointing to a pair of occasional chairs and other furniture.

"Our oil check bought those two chairs right there—and that chair you're sitting on and that used couch.

With oil income being siphoned from the area economy, Plainville merchants will suffer, he predicts.

Banker Paul VanDyke of the Plainville State Bank agrees. Because oil is big business in Rooks County, the tax "will make a lot of difference in this community."

VanDyke noticed many unhappy depositors in his bank last week when they carried their oil checks to the teller's windows.

Many royalty owners in Plainville, he said, rely on their oil checks to help them meet the cost of living. "All at once a third of (their oil income) is gone and they're going to have a hard time making it. I think it's unfortunate."

Don Schnake, Wichita, executive vice-president of the Kansas Independent Oil and Gas Producers Association, says the tax will take some $400 million from the pockets of Kansans every year.

"That's an awfully big bite for a small state that's trying to stay in the oil business."

Hays oilman Steve Pratt, in business with his father, Don, an oil developer, doesn't doubt that the economic impact will be severe.

"It's a blow to our economy that we just don't need right now," he said, noting that cattle and wheat prices have fallen substantially in recent weeks.

Pratt calls the windfall tax a national ripoff tax. It was designed to tax the big oil companies but big oil companies can recoup some of that at the gas pumps. The land owner has no recourse. He's losing an asset under his ground and it'll never be there again.

"I don't mean to make a speech but the people who can least afford it are being taxed the most. It's going to be awfully tough on a lot of people."

Besides that, Pratt says the tax alters the economics of keeping low producing wells pumping.

An oil company is exposed to considerable costs, including maintenance of the well, maintenance of roads to lease sites and the ever-higher costs of fuel to power the pumps. Wells producing less than five barrels per day, he said, are operating dangerously close to the break-even point.

"We're going to have to take a long, hard look at these," he said. Some may be shut down, even though the operator can receive a windfall profit rebate if his well loses money. (The royalty owner wouldn't receive such a rebate, though.)

Desaire fears his wells may be among those shut down. "I think mine might fall into that category because they are very marginal."

None of his four wells pump more than five barrels per day. Often one or more of the wells are shut down for repairs of one kind or another. "I've never been out there when all four of them were pumping," he said.

Desaire's wells are operated by a tiny independent oil company formed with the partnership of two Denver men. They're not to be confused with big oil, he says.

"These little independent oil companies, if something goes wrong (with the well) they have to wait until they get an oil check before they can fix it."

Mr. DOLE. Mr. President, there is an error in the Statement of Managers. On page 271 item 86 is the provision for charitable contributions by corporations. The statement says that the House provision prevailed. This is not correct. The House actually receded to the Senate.

Under present law, a corporation's deduction for charitable contributions may not exceed 5 percent of its taxable income. The conference bill increases

the limitation on a corporation's charitable contributions deduction to 10 percent of taxable income. The provision is effective for taxable years beginning after December 31, 1981.

The statute is correct, however.

The President, this Senator is one who thinks that windfall profits tax relief for royalty owners is long overdue. Thus I applaud the conference committee's decision to provide a permanent windfall profit tax exemption for royalty owners beginning in 1982. Under the conference bill, qualified royalty owners will be exempt on two barrels per day of royalty interest in 1982, 1983, and 1984 and on three barrels per day after 1984.

Mr. President, I would like to clarify one point about the royalty owner relief. During our discussions of royalty owner relief during the conference there was some indication that the Treasury Department would find it somewhat easier to administer an exemption that was stated in terms of dollars, rather than in terms of barrels.

It was the intention of this Senator and those other Senators who fashioned this compromise proposal that the Treasury Department should be authorized by regulation to translate the barrel exemption into an equivalant dollar figure for administrative purposes. This would presumably be done on an annual or quarterly basis and would involve different dollar figures for each tier of oil.

I think it is appropriate that the Treasury and the IRS should have this authority to insure the most efficient functioning of this relief.

Mr. LONG. Mr. President, I appreciate the remarks of the Senator from Kansas. I share his view of what was intended and I think it should be made clear that the Treasury Department has the authority indicated to effectively administer the provisions.

Mr. President, the bill allows taxpayers who do not itemize their deductions to deduct charitable contributions. It is my understanding that these contributions will be subject to the substantiation requirements now contained in the regulations pertaining to charitable contributions and that the conferees intended that the Secretary may modify these regulations and prescribe additional requirements for the substantiation of above-the-line charitable deductions.

Is that correct?

Mr. DOLE. Yes, it is.

Mr. LONG. Under the provision of the bill relating to section 483, certain deferred-payment sales of land between related parties, described in section 483(g), will be subject to a special imputed interest rate. The maximum rate of imputed interest under section 483(b) will be 7 percent, compounded semiannually, for sales qualifying under new section 483(g).

In effect, this means that, if there is a total unstated interest, within the meaning of section 483(c), then the imputed interest rate provided in the regulations will be no greater than 7 percent, compounded semiannually.

However, the bill does not seem to specify what rate would be used as a test rate to determine whether, under section 483(c), there is total unstated interest.

Mr. DOLE. We anticipate that the Internal Revenue Service will provide by regulation that, for sales of land between related parties qualifying for the maximum 7 percent imputed interest rate under new section 483(g), the test rate will be 6 percent simple interest.

Mr. MATSUNAGA. Mr. President, I should like to address a question to the distinguished chairman of the Finance Committee, Senator DOLE, and to the ranking minority member of the committee, Senator LONG.

During the Senate debate on the Finance Committee reported tax bill, on July 23, 1981, the distinguished chairman of the committee, Senator DOLE, was kind enough to explain to me the committee's intention with regard to the income tax withholding provisions in the bill. He stated that the provisions contemplated prompt Treasury implementation to allow adjustment of withholding to prevent overwithholding of income tax.

Do the withholding provisions in the conference report have the same legislative intent?

Mr. DOLE. My response to the Senator from Hawaii is "Yes."

Mr. MATSUNAGA. Does the Senator from Louisiana (Mr. LONG) agree with the response of the committee chairman?

Mr. LONG. Yes, I do.

Mr. President, we have had a good debate here. There has been a great deal of talk about $33 billion. That is over a 10-year period. We have never talked about a 10-year period on anything until the Senator from Massachusetts put out his press release. We have been talking about 5 years.

If you talk about a 10-year impact of this bill, it is between $2 and $3 trillion. So let us take this $33 billion figure and compare it to $2 or $3 trillion, and it indicates that it is not very substantial. Much of that $33 billion was never in conference, I say to the Senator from Massachusetts.

Mr. President, I shall ask unanimous consent to have printed in the RECORD a story in yesterday's New York Times about oil activity in New England, Vermont, New York, and those States that do not seem to want us to produce any more. They are going to have an opportunity to produce some of their own. It is referred to as "Oil Treasure Hunt Begins in New York State." It is not only New York State but the eastern overthrust belt.

Maybe they can help out in that part of the country and not have all this rhetoric about oil companies.

Mr. President, I ask unanimous consent to have that article printed in the RECORD.

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

OIL TREASURE HUNT BEGINS IN NEW YORK STATE

(By Richard D. Lyons)

FORT ANN, N.Y.—Visions of oil wealth are wafting across the counties along the upper Hudson River and Lake Champlain.

Agents for oil and gas companies are combing the hilly region, leasing the mineral rights of farmers; seismologists are taking soundings of the rock strata, and geologists are estimating that the chances of finding at least natural gas rising as more of the underground structure is mapped.

"It really is incredible to find a classic exploration play for oil and gas here in the Hudson Valley," said Henry B. Bailey of the State Geological Survey.

While some experts doubt that drilling in this area will be productive, legislation awaiting Governor Carey's signature would add 20 engineers and environmental specialists to the state agency regulating oil and gas production. The staff now numbers only seven.

"It's a multibillion-dollar treasure hunt," said Harry Fairbanks, one of the leasing agents for Columbia Gas Transmission Company, a major national retailer of natural gas.

The optimism extends beyond the Hudson River Valley, where Columbia Gas has leased the mineral rights on 300,000 acres in Albany, Rensselaer, Saratoga and Warren Counties, as well as here in Washington County. Many other acres are being leased by intermediaries, state officials say, making it possible for companies to conceal their interests in the region.

On the Vermont side of the state line a dozen miles east of here, as many as a million acres have been leased for mineral rights in the five counties that border New York and extend northward to the Quebec border. In addition, several companies, including the Ohio Oil and Gas Company, have leased acreage this year near the New York border.

Geologic surveys that led to handsome oil and gas production over the last 20 years in nearby Quebec and Ontario have led scientists to conclude that there should be amounts in commercial quantity south of the border, certainly in natural gas and perhaps in oil as well.

With demands and prices for natural gas rising, particularly in the Northeast, as price controls are lifted, the economic potential is thought to be enormous.

Most of the new excitement has been generated by recent geologic discoveries along what are called overthrust belts, that is, areas in which one thick rock layer has been shoved atop another by mighty pressures within the earth's crust, masking the identity—and thus the economic potential—of the lower layer.

SEARCH PAYING OFF

Enormous quantities of oil and gas have been found over the last decade in the Western Overthrust Belt along the Rocky Mountains, while the hunt in the Eastern Overthrust Belt along the Appalachians is just beginning to pay off in some southern areas.

The Eastern belt snakes northward through New Jersey, where no major leasing activity has been reported, up the Hudson Valley and the New York-Vermont border, envelopes Lake Champlain and its shores, and finally thins out in Quebec.

"The center of the overthrust belt goes right through my farm," said Dick McGuire of Salem, N.Y.

Mr. McGuire, who is president of the State Farm Bureau Federation, said the Farm Bureau had worked with the various oil and gas companies in drafting the model lease now in use, which gives farmers $1 per acre per year for 10 years, plus a royalty of one-eighth of any oil and gas produced, as well as lesser considerations.

Dr. John Matochik, a Washington County neighbor and veterinarian, said he believed that "the prospects for finding something around here are very good," and continued:

"A lot of people are optimistic, but many of the farmers in the county have refused to sign because they don't want to be obli-

gated to doing something they might later regret."

For one farmer, however, the reason for not signing was totally different.

"The oil companies have the country by the throat, and I for one won't play along with them," said Ralph Tilford, 69, of Kingsbury.

NEIGHBOR NEEDS MONEY

Yet a neighbor, Larry White, 32, is happy to lease the mineral rights to his 400-acre dairy farm.

"I hope the companies do strike oil or gas," Mr. White said. "Even though I intend to stay in farming, I could use the extra money what with having four children."

The prospect of extra income is also the main reason this part of New York is being explored at all. Here, as elsewhere throughout the country, areas previously held to be of only marginal interest in oil and gas production are coming under increased scrutiny.

The American side of Lake Erie, for example, is believed to contain 300 billion cubic feet of natural gas on the basis of production on the Canadian side of 20 million cubic feet a day. Even though the cost of drilling is higher than on land, interest has increased lately as the price of natural gas has risen.

"The gas is there and it will be recovered," said Stanley F. Kiersznowski, a petroleum engineer with the State Department of Environmental Conservation.

Mr. Kiersznowski noted that the number of permits to drill oil and gas wells in New York State had risen from about 500 in 1978 to almost 900 last year. That increase mirrors an increase in drilling activity throughout the country.

Indeed, while for years the number of new gas wells had averaged 20 or so a year, in 1974, the year the Arab oil embargo ended, the number shot to 250. It has since continued to rise, reaching 450 last year, while gas production has risen tenfold in 20 years, to 15.7 billion cubic feet last year.

He estimated that this amount would triple by the end of the decade because of the combination of greater demand, higher price and new discoveries.

MODEL DRAWN IN 1974

Richard Beardsley, who is in charge of the exploration activities here for Columbia Gas, and others said the initial idea that commercial quantities of oil and gas might be present stemmed from a geological model drawn in 1974 by Dr. Brian Keith and Dr. Gerald Friedman of Rensselaer Polytechnic Institute in Troy. It forecast the presence of formations containing hydrocarbons beneath the overthrust stratum.

Shortly afterward, outcrops of 450-million-year-old limestone were found on North Hero and South Hero islands in Lake Champlain several miles from the junction of New York, Vermont and Quebec. The finding was significant since oil and gas had been produced from these limestones in Quebec.

And just as important was the development in the last few years of computer-assisted methods of interpretation of seismic data that make subsurface mapping much more accurate than it had been in the past.

The combination of these findings and new technology has, according to specialists, substantially increased the chances of finding oil and gas in this region. Columbia Gas is investing about $10 million in the search and plans to drill an exploratory well next year.

Two earlier efforts, in Orange County, N.Y., in 1978, and in Franklin County, Vt., in 1964, found only small amounts of hydrocarbons.

Few specialists are willing to predict when or if a gas or oil field will be found in this area, but many agree with Mr. Beardsley.

"My job is optimism," he said.

Mr. DOLE. Mr. President, I close by suggesting that what we had is one of the best media events I have ever participated in. A lot of people showed up and took notes and a lot of Senators are going to have a chance to vote on this very important issue.

I am certain there will be some votes for the motion, and I am going to permit that we have an up and down vote so it will be totally above board, with no motion to table, just an up and down vote on the motion to recommit.

There are no dollar figures in the motion to recommit. "Just be fair," it said in the motion to recommit.

I think we have been fair, and I hope my colleagues will support the Finance Committee and the Senate and defeat this motion resoundingly.

The PRESIDING OFFICER. All time has expired.

Mr. KENNEDY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. Do I not have 6 seconds remaining?

The PRESIDING OFFICER. The Senator is correct. The Senator has 6 seconds remaining.

Mr. KENNEDY. Mr. President, the issue is not the President's tax bill. The issue is oil. I say that $33 billion is too much, and I hope the Senate will vote for my motion which will send the conference back to reduce that figure.

## THE CALENDAR

Mr. BAKER. Mr. President, I ask unanimous consent that the distinguished minority leader and I may proceed for 2 minutes to take up certain housekeeping details before we vote on this motion to recommit.

Mr. KENNEDY. Let us have the yeas and nays.

Mr. BAKER. They have been ordered.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank all Senators. This will not take but only a moment.

Mr. President, I ask the distinguished minority leader if he is in a position to consider two items on the legislative calendar of business for today? I am referring to Calendar Order No. 95, S. 1191, and Calendar Order No. 234, Senate Joint Resolution 65.

Mr. ROBERT C. BYRD. Mr. President, those matters are cleared on this side of the aisle, and I am ready to proceed.

## PROCLAIMING RAOUL WALLENBERG AS HONORARY CITIZEN OF THE UNITED STATES

The Senate proceeded to consider the joint resolution (S.J. Res. 65) proclaiming Raoul Wallenberg to be an honorary citizen of the United States, and requesting the President to ascertain from the Soviet Union the whereabouts of Raoul Wallenberg and to secure his return to freedom.

● Mr. BOSCHWITZ. Mr. President, today the Senate is considering a resolution to honor and aid an extraordinary and courageous man, Raoul Wallenberg, a Swedish diplomat who saved thousands of people from death during World War II. I am proud to be one of the original cosponsors of Senate Joint Resolution 65, to grant honorary citizenship to this man. A similar resolution, House Joint Resolution 220, is pending in the House.

As one of the original members of the "Free Raoul Wallenberg" Committee, I have long been concerned about Mr. Wallenberg, one of the few genuine heros of our time. Last year, I cosponsored Senate Concurrent Resolution 117.

This resolution, approved overwhelmingly in both the House and Senate, expressed the sense of Congress that the President should convey to the Soviet Government the deep concern of Congress and the American people for the fate of Raoul Wallenberg.

Raoul Wallenberg saved as many as 100,000 Hungarian Jews by extending Swedish citizenship and protection to these victims of Nazi persecution. Daily, this incomparable humanitarian showed impressive bravery and ingenuity as he faced Nazi soldiers and death squads to save thousands of prisoners, people who were unrelated to him by birth or ethnic group or citizenship or religion.

He followed the death marches and went to the deportation trains in Hungary. There he literally pulled people out of the clutches of the Nazis, consistently endangering his own life.

In 1945, when the Russian Army occupied Budapest, they arrested Wallenberg. For 12 years, the Soviet disclaimed any knowledge of his existence.

Finally, in 1952 Soviet authorities said he was dead. Despite these official Soviet statements, numerous former Russian prisoners claim that they have seen or spoken with Wallenberg during the past 36 years. As recently as January of this year, witnesses reported having seen Wallenberg alive.

In addition to honoring this self-sacrificing individual, the resolution will give our State Department additional diplomatic leverage to pursue the case of this heroic prisoner. We must continue in our efforts to emphasize to the Soviets our commitment to Wallenberg's survival. We hope that the Soviet Government will take notice of our deep concern, reexamine the situation and conduct a thorough search for Wallenberg.

During World War II, at a time when people were paralyzed by fear, Raoul Wallenberg rescued thousands by conferring Swedish citizenship upon them. What he accomplished, risking his own life to save the lives of tens of thousands of innocent people, is unparalleled in history.

It is only appropriate to confer honorary U.S. citizenship upon him, both as part of the effort to secure for him the same life and liberty he brought to so many others, and to honor this great individual. Only once before has Congress taken such an action. In 1916, we honored Winston Churchill for his unique contribution to preserve free societies.

I am confident that the Senate will join in this resolution, thus, granting to Mr. Wallenberg the high and unique honor of honorary U.S. citizenship and demonstrating that the strong bonds of human spirit transcend race, religion, and nationality.●

Mr. PROXMIRE. Mr. President, I am pleased to support Senate Joint Resolution 65 to make Raoul Wallenberg an honorary citizen of the United States of America and to seek his status in the Soviet Union.

I hardly need to recall the dramatic story of Raoul Wallenberg. It has been repeated in magazines, in books, and on the CBS documentary program "60 Minutes." Again and again America has heard the story of the noble Swedish citizen who over the course of years risked his life in an effort to save as many Jews as he humanly could from the awful fate that awaited them as victims of Nazi persecution, forced labor and death camps.

Raoul Wallenberg didn't hesitate to do all he possibly could in this noble cause. Can we now hesitate to take action that may well save him further agony as a man lost in the maze of the Soviet prison system? Across the world, individuals and organizations have called for any action that might spur the Soviet Union to forward an investigation into his whereabouts.

We have heard on many separate occasions from the victims of Soviet camps who had known Wallenberg in his work in Germany. These men and women swear that they without a doubt recognized Wallenberg's face during their time in the U.S.S.R. The evidence is sketchy, but it is possible that Raoul Wallenberg may still be alive somewhere in Russia.

If this Senate agrees to make Wallenberg an honorary citizen, there is the further possibility that the request of an American President would mean that the long and troubled story of Raoul Wallenberg might come to light, and, perhaps, that Wallenberg might be at long last freed.

Mr. President, this great man whom we honor, this man who saved almost 100,000 innocent men, women, and children, who was not afraid to risk even his life, provides a very high standard as we look at our own accomplishments.

While our duties may not demand heroism, we do have the responsibility to accomplish legislatively what Raoul Wallenberg did through his action.

We can demonstrate to the world our dedication to the right of a man and of a people to life. Let us follow the passage of this resolution with the swift consideration and passage of the Genocide Treaty.

● Mr. PELL. Mr. President, I am very pleased that the Senate is about to pass Senate Joint Resolution 65, proclaiming Raoul Wallenberg to be an honorary citizen of the United States and requesting the President to ascertain from the Soviet Union the whereabouts of Raoul Wallenberg and to secure his return to freedom. A Swedish citizen, Wallenberg went to Hungary during World War II at the behest of the U.S. Government and, ignoring the constant danger to himself, courageously saved the lives of an estimated 100,000 innocent people who had been marked for death by the Nazis.

In the spring of 1944, the United States requested the help of Sweden in protecting the lives of Hungarian Jews facing extermination at the hands of the Nazis. Specifically, the United States suggested that the number of Swedish diplomatic and consular officials in Hungary be increased to deal with this situation. Such personnel would receive instructions and financial support from the U.S. War Refugee Board, arrangements to be handled through Iver Olsen, the Board's official representative in Sweden.

Raoul Wallenberg, a young Swedish businessman who had been educated in the United States, volunteered to undertake this perilous assignment for the War Refugee Board, and in the summer of 1944, Wallenberg was sent to Hungary as the Secretary of the Swedish Legation.

With funds provided by the War Refugee Board, Wallenberg began his efforts to save Hungarian Jews from deportation to the death camps or violent deaths in the ghetto of Budapest. He printed and issued thousands of Swedish protective passports of his own design. He purchased and rented scores of houses in Budapest, equipped them with Swedish flags and declared them to be Swedish Embassy property, and protected and cared for the refugees he gathered within these safe houses.

Risking his own life time and time again, Wallenberg followed the death marches and went daily to the deportation trains where he literally pulled people out of the clutches of the Nazis. And, when the Nazis decided to blow up the ghetto in Budapest and all its inhabitants with it, Wallenberg confronted the Nazis leaders, threatened to see to it personally that they were hanged as war criminals if they proceeded with their plan, and thus prevented its execution. Altogether, it is estimated that Raoul Wallenberg save the lives of 100,000 innocent people in Hungary during World War II. Among those saved through Wallenberg's efforts were Congressman TOM LANTOS and his wife .

In January 1945, Raoul Wallenberg was seized in Hungary by Russian authorities in direct violation of his diplomatic immunity. At first the Soviets said they had taken him into protective custody. A few months later, however, they denied any knowledge of him or his fate. But over the years evidence mounted that the Soviets were holding Wallenberg prisoner. Former inmates of Soviet prisons who were released and escaped from the Soviet Union reported talking to or hearing about Raoul Wallenberg. Finally, in 1957 Soviet authorities acknowledged that Wallenberg had been taken prisoner in 1945, but they claimed that he died of a heart attack while in a Soviet prison in 1947.

More recent reports from within the Soviet Union, however, indicate that Wallenberg might still have been alive as recently as a few years ago. In 1975 a Soviet Jew named Jan Kaplan was arrested on charges of black marketeering shortly after applying for an exit visa to Israel. When he was freed 18 months later for health reasons, he called his daughter in Israel, and in the course of the conversation he mentioned a Swede he had met in prison who had been held by the Russians for some 30 years. Kaplan was then rearrested, and his daughter heard nothing further until July 1979, when her mother smuggled out a letter explaining that Kaplan had been rearrested because he had mentioned "a Swiss or Swede named Wallberg" whom he had met in the prison infirmary.

Mr. President, I have long had a special interest in Hungary and the Raoul Wallenberg case. My father was the U.S. Minister to Hungary just prior to World War II, and later, after serving as the U.S. Representative to the United Nations War Crimes Commission, he was responsible for the State Department reversing itself and agreeing that genocide would be considered a war crime. I, myself served as vice president of the International Rescue Committee and was responsible for the IRC's refugee relief effort in Europe following the Hungarian uprising in 1956.

Two years ago, Senators BOSCHWITZ, CHURCH, MOYNIHAN and I founded the Free Raoul Wallenberg Committee, and last year, along with those same distinguished colleagues, I sponsored Senate Concurrent Resolution 117, expressing the sense of Congress that the President should convey to the Soviet Government the deep concern of Congress and the American people for the fate of Raoul Wallenberg. That resolution was approved overwhelmingly in both the House and the Senate.

At my request, Secretary of State Vance raised this matter with Soviet Ambassador Dobrynin, and Ambassadors Toon and Watson were asked to make similar approaches in Moscow. I also made an appeal on behalf of the Wallenberg family at a press conference in Madrid last year in connection with the review Conference on Security and Cooperation in Europe. Unfortunately, the Soviet Union still refuses to account in a credible manner for the whereabouts and fate of Raoul Wallenberg.

It is true that it has never been the general practice in the United States to award honorary citizenship to foreigners. The only person so honored in the past was Winston Churchill.

Nonetheless, I strongly believe that it is entirely fitting and proper that we honor Raoul Wallenberg in this manner. It must be remembered that Wallenberg undertook his perilous mission and put his own life in jeopardy at the behest of the U.S. Government. His efforts in Hungary were supported and financed by our War Refugee Board. Hence, the United States has a much greater responsibility in this matter than would otherwise be the case. The United States has an obligation to Raoul Wallenberg and his family to try to secure for him the same life and liberty he saved for so many others, and passing this resolution is one real step we can take toward meeting that obligation.

In making Raoul Wallenberg an honorary U.S. citizen, we are not confer-

ring citizenship upon him in any technical sense. Rather, we are giving concrete expression to our gratitude and respect for his heroic actions in saving the lives of 100,000 people. By so doing we will greatly increase his renown as a courageous humanitarian, not only among those whose lives he saved, but among all groups and individuals who value human life and human rights. Moreover, conferring honorary citizenship upon Raoul Wallenberg will underscore the seriousness with which the American people and Government view Soviet behavior in this case, and reaffirm to Sweden our firm support for the quest to resolve Wallenberg's fate.

Before closing, Mr. President, I would like to thank all of my colleagues who have joined with me in supporting this legislation. The resolution now has 58 cosponsors in the Senate, and 275 in the House. I would also like to acknowledge the tremendous effort put forth on behalf of this measure by Congressman TOM LANTOS and his wife Annette, both of whom were saved in Hungary as a result of Raoul Wallenberg's actions. They more than anyone else have kept this matter alive, refusing to let Raoul Wallenberg's name slide quietly into the history books with his ultimate fate still unresolved. They have been our conscience in this case, and for that we all owe them our gratitude.●

● Mr. BIDEN. Mr. President, I am pleased to speak in behalf of granting Raoul Wallenberg honorary U.S. citizenship. The fact that the resolution is cosponsored by over half of the U.S. Senate attests to the significance of this legislation.

Because of the systematic mass murders and organized brutality by the Nazi regime, President Franklin Roosevelt on January 22, 1944, established, by Executve order, the War Refugee Board. The Board's purpose was to rescue innocent victims of Nazi persecutions.

Raoul Wallenberg, a Swedish businessman volunteered to undertake this dangerous assignment. Wallenberg was sent to Hungary as the Secretary of the Swedish Legation. There he printed and issued thousands of Swedish passports. In Budapest he purchased houses and declared them property of the Swedish Embassy. Wallenberg daily risked his own life by defying Nazi troops as he marched along the Danube River where Hungarian Jews were lined up for deportation trains.

He saved the Hungarians' lives by giving them cards designating them as having diplomatic immunity. Congressman TOM LANTOS and his wife Annette were two of the people Wallenberg pulled out of the line. It is estimated that Wallenberg saved the lives of over 100,000 Hungarian Jews.

When the Nazis threatened to blow up the ghetto in Budapest, Wallenberg again confronted the Nazis and threatened that they would be hung as war criminals if Budapest was bombed.

In January 1945 Wallenberg was seized by Russian authorities. This was in direct violation of his diplomatic immunity. It was first thought that the Soviets had taken him into protective custody. Later the Soviets denied any knowledge of him. Recent reports from Soviet prisoners indicate that Wallenberg might still be alive as recently as a few years ago.

Granting Raoul Wallenberg honorary citizenship will underscore the seriousness the American Government and people view Soviet behavior in this case. Honoring Wallenberg will greatly increase his renown as a courageous humanitarian not only among those whose lives he saved, but among all individuals who value human life and human rights. Honorary citizenship will also reaffirm to the Government of Sweden that the United States offers great moral support in the quest to determine Wallenberg's fate.

Conferring honorary citizenship on Raoul Wallenberg will not give the United States any new legal right, duty, or privilege under international law. Nor will the Soviet Union be brought under any additional legal obligation by treaty, international covenant or act to respond to U.S. inquiries regarding Wallenberg.

I realize the importance and significance of granting U.S. citizenship. It has only been done on one occasion in more than 200 years. In 1963, President John F. Kennedy, exercising the authority granted to him by the 88th Congress (Public Law 88–6) proclaimed Winston Churchill to be an honorary U.S. citizen.

There are many people who have helped save innocent victims of the Holocaust, but there are no others who can be so readily and conclusively identified by so many survivors as the single reason they are alive today. Because of his courageous and successful efforts to save Hungarian Jews from the Holocaust, I believe that Raoul Wallenberg is an exemplary world citizen and that he should be granted honorary U.S. citizenship.●

● Mr. LEVIN. Mr. President, I am proud to speak on behalf of Senate Joint Resolution 65, granting Raoul Wallenberg honorary U.S. citizenship.

Raoul Wallenberg was a bright light in modern history's darkest hour. A Christian Swede who graduated from the University of Michigan's architectural program in 1935, his life was one of gentility and refinement. Yet, he risked his life to deliver tens of thousands of Hungarian Jews from the throes of Nazi genocide during the final months of World War II, on a mission financed by the American War Refuge Board.

He set an example that few have followed, or perhaps, could follow. His life, once as orderly as the buildings he designed, became a jagged line of dashes and danger. In 1944 Wallenberg accepted the assignment of first secretary of the Swedish Legation in Budapest, Hungary, in charge of a special department responsible for the protection and relief of Jews. Arriving in the city in July, Wallenberg worked heroically at his task for the next 7 months. He had the measure of good will, decency and courage, skills and means, and a fertile imagination.

Raoul Wallenberg issued thousands of protective passports of his own elaborate design, complete with official seals and the triple crown insignia of Sweden. In addition, he rented 32 apartment houses, raised the Swedish flag over them and used them as safe houses for the sheltering of Jews who were constantly in danger of their lives.

Working around the clock, he built up a city-wide relief organization of hospitals, nurseries, and soup kitchens, staffing these institutions with 400 Jews. Negotiating directly with the S.S. and the Hungarian authorities, he prevented the deportation of thousands of Jews. On more than one occasion he went down to the railroad station, and under the rifles of the S.S., took refugees out of the cattle cars. He even organized an undercover group of young Jews, who raided Nazi prisons and released Jews held in custody.

Heedless of the personal danger to himself, Wallenberg personally engineered and aided in the rescue and escape of tens of thousands of Hungarian Jews. In 1945, following the Russian occupation of Budapest at the close of World War II, Raoul Gustaf Wallenberg disappeared. He disappeared on his way to meet with the "liberating" Russian forces. At first the Soviets denied knowing anything about his whereabouts. Then, years later, they admitted he had been taken prisoner but had died in 1947—of a heart attack at age 36—in a Soviet prison.

However, clear and persuasive reports persist from within the Soviet Union that Wallenberg has been seen alive long after 1947. The most recent of these reports being just a few years ago. He may still be alive today.

Mr. President, Roaul Wallenberg saved nearly 100,000 lives at the behest of the American War Refugee Board. By granting him honorary U.S. citizenship we may in fact save his life. We can at least show our appreciation and dedication to the principles he donated his life for. Our greatest gift, U.S. citizenship, is our fitting response to Roaul Wallenberg, a citizen of whom the whole world can be proud.●

The joint resolution was considered, read the third time, and passed.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The joint resolution (S.J. Res. 65), and the preamble, as amended, are as follows:

S.J. RES. 65

Whereas the United States has conferred honorary citizenship on only one occasion in its more than two hundred years, and honorary citizenship is and should remain an extraordinary honor not lightly conferred nor frequently granted;

Whereas during World War II the United States was at war with Hungary, and had no diplomatic relations with that country;

Whereas in 1944 the United States Government through Secretary of State Cordell Hull requested the cooperation of Sweden, as a neutral nation, in protecting the lives of Hungarian Jews facing extermination at the hands of the Nazis;

Whereas Raoul Wallenberg agreed to act at the behest of the United States in Hungary, and went to Hungary in the summer of 1944 as Secretary of the Swedish Legation;

Whereas Raoul Wallenberg, with extraordinary courage and with total disregard for the constant danger to himself, saved the lives of almost one hundred thousand innocent men, women, and children;

Whereas Raoul Wallenberg, with funds and directives supplied by the United States, provided food, shelter, and medical care to those whom he had rescued;

Whereas the Soviet Union, in violation of Wallenberg's Swedish diplomatic immunity and of international law, seized him on January 17, 1945, with no explanation ever given for his detention and subsequent imprisonment;

Whereas Raoul Wallenberg has been a prisoner in the Soviet Union since 1945;

Whereas reports from former prisoners in the Soviet Union, as recent as January 1981, suggest that Raoul Wallenberg is alive;

Whereas history has revealed that heroic acts of salvation were tragically rare during the massacre of millions of innocent human beings during World War II; and

Whereas the significance of this symbol of man's concern for his fellow man has been tainted by the wall of silence that surrounds the fate of Wallenberg: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. Raoul Wallenberg is proclaimed to be an honorary citizen of the United States of America.

SEC. 2. The President is requested to take all possible steps to ascertain from the Soviet Union the whereabouts of Raoul Wallenberg and to secure his return to freedom.

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.

## REIMBURSEMENT FOR U.S. FISHERMEN

The bill (S. 1191) to extend for 1 year the authority of the Secretary of Commerce to reimburse commercial fishermen of the United States for certain losses incurred as a result of the seizure of their vessels by foreign nations, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1191

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 7 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977) is amended—

(1) in subsection (c) by inserting the following new sentence immediately after the fourth sentence thereof: "Those fees not currently needed for payments under this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States, and all revenues accruing from such deposits or investments shall be credited to such separate account."; and

(2) in subsection (e) by striking "October 1, 1981;" and substituting "October 1, 1982;".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill 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.

## AUTHORIZATION FOR BUDGET COMMITTEE TO FILE REPORT

Mr. BAKER. Mr. President, I ask unanimous consent that the Budget Committee be authorized to file a report until 6 p.m. today.

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

## BORROWING AUTHORITY OF THE DISTRICT OF COLUMBIA

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 640.

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

*Resolved,* That the bill from the Senate (S. 640) entitled "An act to amend the District of Columbia Self-Government and Governmental Reorganization Act with respect to the borrowing authority of the District of Columbia", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That section 723(a) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–241 note) is amended by striking out "October 1, 1980, or upon enactment of the fiscal year 1981 appropriation Act for the District of Columbia government, whichever is later" in the first sentence and inserting in lieu thereof "October 1, 1982, or the date of the enactment of the appropriation Act for the fiscal year ending September 30, 1983, for the government of the District of Columbia, whichever is later".

Amend the title so as to read: "An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to extend the authority of the Mayor to accept certain interim loans from the United States and to extend the authority of the Secretary of the Treasury to make such loans.".

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

Mr. BAKER. I yield to the Senator from Maryland.

Mr. MATHIAS. Mr. President, I express my thanks to the majority leader for bringing up this matter. It is a matter of urgent concern to the District of Columbia, and while it is not perhaps the optimum solution to the District's fiscal problems, it is a practical step that the Senate can take today, and I urge it be adopted.

Mr. BAKER. Mr. President, I move that the Senate concur in the amendments of the House.

The motion was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill 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 FOR PROVISIONAL RECESS

Mr. BAKER. Mr. President, finally, earlier I asked unanimous consent in respect to recessing of the Senate. I wish to change that request in the following way:

I ask unanimous consent that when the Senate completes its business today it stand in recess until 12 noon on Thursday, August 6, 1981, unless the House of Representatives has previously agreed to Senate Concurrent Resolution 27 or Senate Concurrent Resolution 28.

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

Mr. BAKER. Mr. President, I thank all Senators for permitting us to take care of these details at this time.

## CONFERENCE REPORT ON H.R. 4242, ECONOMIC RECOVERY TAX ACT OF 1981

### REAL ASSETS IN RETIREMENT PLANS

Mr. HELMS. Mr. President, section 314(b) would restrict the use of certain tangible assets in IRA and Keogh retirement plans.

Under present law, taxpayers can self-direct their investments, and the Federal prudent man and diversification standards of the Employee Retirement Income Security Act of 1974, are not applicable.

According to one report, the Ways and Means Committee language was adopted in the conference report because—

The committee is concerned that collectibles divert retirement savings from thrift institutions and other traditional investment media and that investments in collectibles do not contribute to productive capital formation.

The upshot is that section 314(b) specifically excludes a wide variety of investments. The action taken by Congress in approving this section of the act will have a major disruptive effect on the pension plans of hundreds of thousands of Americans, and, Mr. President, it will not result in the accomplishment of the stated goals of the section.

It is a fair proposition, I believe, that people should not have any assets in a retirement account, which are basically consumer goods, or household items, or even jewelry. In other words, people should not enjoy the tax benefits afforded IRA and Keogh plans in order to buy a luxury item or something that might be related to a hobby or personal tastes. I understand that some people have even taken to investing in old wine.

I would go along with a proposition that the tax laws should not subsidize personal consumption. The tax laws should not subsidize someone's hobby. But, Mr. President, if an individual believes that it is foolish to put hard-earned money into an investment that does not even keep up with inflation, I would say he was an intelligent man. If that individual puts his money in a speculative stock, that might go up or might go down, then he is taking a risk, but it may turn out for the better. If that individual puts his money in gold bullion, then he may be hoping that gold will go up. He has a risk that it might go down in price.

Investing in gold, silver, or other tangible goods takes place because it is not prudent to do otherwise. The marketplace tells us that people are looking for investments that will provide a good return. That is the simple truth of the matter.

But, Mr. President, the action of the Congress to adopt this section does exactly what Congress should not do and said it would not do when it adopted the basic law applicable to IRA and Keogh plans. That rule is that individuals are the best judge of how their retirement plans should be run.

The culprit, of course, is inflation. It has distorted values throughout the economy. It has crippled traditional financial markets. It has forced intelli-

gent people to find investments outside traditional areas.

The solution, of course, is to stop the distortions caused by inflation by ending inflation. In the meantime, we do a great disservice to individuals and the economy as a whole, when we act to reallocate resources from one sector to another. We show arrogance by pretending to have more knowledge than the individuals personally involved in these plans. We lower the ability of people to care for their own retirement, and we do no service to the financial markets that have been hurt by inflation.

Mr. President, I think that the bill before the Senate will have to be amended in the future. I plan to offer such legislation as soon as possible. I hope it will be given speedy consideration by the Finance Committee.

Mr. CHAFEE. Mr. President, the Senator from North Carolina is correct. Neither the subcommittee which I chair on savings, pensions and investment policy, nor the full Senate has considered specifically the issue, the inclusion of tangible assets in retirement plans.

If the Senator introduces legislation on this subject, it would be my intention to give it priority for hearings this year before my subcommittee.

Mr. HELMS. I thank my friend and the distinguished chairman of the Savings and Pensions Subcommittee. I appreciate his offer of assistance and I will work closely with him on this important issue.

Mr. President, I ask unanimous consent that the relevant portions of the bill be printed in the RECORD following my remarks, along with a letter from Mr. Harry Lamon, and a summary of a section from the Ways and Means Committee report.

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

PORTIONS OF BILL

"(n) INVESTMENT IN COLLECTIBLES TREATED AS DISTRIBUTIONS.—

"(1) IN GENERAL.—The acquisition by an individual retirement account or by an individually directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost of such account of such collectible.

"(2) COLLECTIBLE DEFINED.—For purposes of this subsection, the term 'collectible' means—

"(A) any work of art,

"(B) any rug or antique,

"(C) any metal or gem,

"(D) any stamp or coin,

"(E) any alcoholic beverage, or

"(F) any other tangible personal property specified by the Secretary for purposes of this subsection."

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HARRY V. LAMON, Jr.,
*Atlanta, Ga., August 3, 1981.*

Hon. JESSE HELMS,
*U.S. Senate, Washington, D.C.*

DEAR SENATOR HELMS: I know of your interest in preserving the integrity of the federal pension law and, more specifically, the rights of individuals to direct investments in whatever medium they choose. For this reason, I believe that Section 314(b) of the Economic Recovery Tax Act of 1981 is contradictory to past Congressional actions relating to retirement plans, and is poor tax policy.

I am founder and past president of the Southern Pension Conference and the Southern Federal Tax Institute, and served as a member of the ERISA Advisory Council representing the general public from 1975 through 1979. In my view, the conference committee report language is unfortunate for a number of reasons.

Current tax law generally permits individuals to self-direct investments in individual retirement accounts (IRA's) or in accounts held under qualified retirement plans. Many individuals have chosen to invest in coins, metals, gems, stamps, art and other items of tangible personal property. To avoid current taxation on such investments, current law requires that such investments be held under the earmarked account, and not be held as a personal possession of the individual. A little known provision of the Economic Recovery Tax Act of 1981, Sec. 314, would change current law effective January 1, 1982, and would provide that any investment in a "collectible" automatically would be deemed a current distribution subject to current taxation. This provision should be repealed for the following reasons:

1. The provision was adopted without prior notice to the public and without hearings.

2. The provision effectively prohibits a form of investment which has substantially outperformed more traditional investments in recent years.

3. The provisions substantially curtails the freedom of individuals to invest their own money as they determine is in their own best interest.

4. The provision discriminates against individuals who wish to invest their own money in tangibles as opposed to intangibles.

5. The provision will have a substantial and detrimental impact on thousands of businesses, most of which are small, which trade in coins, stamps, gems, antiques, art, precious metals, antique automobiles, and other items of tangible personal property.

6. The provision grants to the Internal Revenue Service through the Secretary of Treasury, extremely broad powers to expand the restrictions to "any other tangible personal property". It would appear that the IRS could assert the authority to extend the restrictions to investments in commodities and equipment and items not even contemplated by the Congress.

7. Portions of the provision are unclear. Does it extend to jointly owned property? To property owned in a joint venture or general partnership? To property owned through a limited partnership? To property owned by a corporation? To property owned by an electing corporation under Subchapter "S" of the code? To property owned by a trust?

8. The provision is limited to IRA's or individually-directed accounts. It apparently does not apply to non-directed accounts under qualified plans. This would permit a trustee to invest plan assets in "collectibles" for all participants, whether the individual participants desired such investments or not, but would not permit individuals to direct their own investments.

In conclusion, I wish to emphasize that Sec. 314(b) applies not only to Individual Retirement Accounts (IRAs) but also applies to acquisitions of "collectibles" by participants in all self-directed qualified retirement plans described in Internal Revenue Code Sec. 401(a).

This is a major reversal of tax policy and one which will begin a rush, in the coming months before December 31, 1981, by individuals to earmark "collectibles" which they may never have considered had they been given the option to acquire them over a period of years. This is simply bad tax policy. It focuses millions of dollars in a direction which might never have been considered by participants under qualified plans had collectibles not been singled out for elimination as a permissible investment in "individually-directed accounts".

In the hearings leading to enactment of ERISA, much testimony was given in favor of exempting "Individually-directed accounts" from the normal rules on diversification and prudence. The concept adopted was to allow individuals to invest their own money as they saw fit. This policy is now being attacked by defining as imperishable investments, those "hard assets" which have always been the ground rock of our American democracy.

This opportunity to protect one's purchasing power at his actual retirement date is now, by this section, being eliminated without the benefit of any hearings or public discussion of this important tax policy change.

Sincerely,

HARRY V. LAMON, Jr.

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SUMMARY OF SECTION FROM THE WAYS AND MEANS REPORT

Investments in collectibles by an individual account or individually-directed account under a qualified plan (sec. 305(b) of the bill and sec. 408 of the Code).

*Present Law.*—Under present law, broad discretion generally is allowed with respect to investments by qualified plans and IRAs (Individual Retirement Accounts) where self-dealing is not involved.* The Federal prudent man and diversification standards of the Employee Retirement Income Security Act of 1974 (ERISA) do not apply to IRAs or to individually-directed accounts of employees under qualified plans.

Under present law, only a bank, insurance company, or other qualifying financial institutions can act as an IRA trustee or custodian; however, the owner of an IRA can self-direct the investment of assets in the account.

*Reasons for Change.*—In recent years there has been increasing interest in investing retirement savings in collectibles (coins, antiques, art, stamp collections, etc.) under IRAs an individually-directed accounts in qualified plans. The committee is concerned that collectibles divert retirement savings from thrift institutions and other traditional investment media and that investments in collectibles do not contribute to productive capital formation.

*Explanation of Provision.*—Under the bill, an amount in an IRA or in an individually-directed account in a qualified plan which is used to acquire a collectible would be treated as if distributed in the taxable year of the acquisition. The usual income tax rules for distributions from an IRA or from a qualified plan apply.

A "collectible" is defined in the bill as any work of art, rug, antique, metal, gem, stamp, coin, alcoholic beverage, or any other item of tangible personal property specified by the Secretary.

Although the bill changes the tax treatment of the acquisition of collectibles under individually-directed accounts, it does not modify the tax qualification standards of the Code for pension, profitsharing, or stock bonus plans or the nontax rules of ERISA. For example, the tax qualification of a pension plan would not be adversely effected merely because an amount was treated as distributed to a participant under this provision at a time when the plan is not permitted to make a distribution to the participant.

The committee expects that Treasury regulations will provide for appropriate adjustments that will avoid double taxation of benefits under a plan where the collectible is not actually distributed.

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* Special rules apply to investments by qualified plans in employer real estate. Also, investments by pension plans in employer securities are subject to a special limitation.

*Effective Date.*—The provision is effective for property acquired after December 31, 1981, in taxable years ending after that date.

*Revenue Effect.*—This provision will have a negligible effect upon budget receipts.

TAX STRADDLES

● Mr. SYMMS. Mr. President, I simply want to clarify one small point. When the Finance Committee changed the tax treatment of Treasury bills to a capital asset, we did so to end the tax abuse that existed due to differing tax treatment of physical Treasury bills and Treasury bill futures. I commend the chairman of the Finance Committee and the conferees for achieving this. I also want to stress that while ending the abuse, it was the intention of the committee to insure that physical Treasury bill transactions, such as arbitrage transactions by individuals, remain tax neutral.

It is my understanding that it is the committee's intent to insure a tax neutral situation which allows for an income stream equal to the pro rata share of the bill's acquisition discount regardless of market fluctuations, and regardless of which side of the transaction long or short, an individual is on. This would be similar to treatment for U.S. Government Treasury bonds and notes, and corporate stock and corporate bonds. In each case, a stable income stream is separate from the value of the capital asset which fluctuates according to market conditions in a tax neutral way.

I appreciate the opportunity to clarify this matter.●

THE VOTE TO RECOMMIT THE TAX BILL

● Mr. CHAFEE. Mr. President, I am not going to vote to recommit this tax bill because, I think on balance, it is a good piece of legislation. It represents the best compromise that could be worked out between the Senate and House conferees, and it contains many of the important ingredients for getting our economy moving in the right direction.

I want the record to show, however, that I share many of the same concerns Senator KENNEDY and others have expressed this afternoon. The amount of favoritism that has been shown to the oil industry and to oil-related income is astonishing. To many millions of hard-working taxpayers, frankly, it is reprehensible.

Not only does the conference agreement give owners of oil royalties a permanent tax credit of $2,500 to offset windfall profit taxes, but it takes away a 1-year $200 home heating tax credit in the Senate bill targeted to lower income families. And to put icing on the cake, royalty owners will be given an additional exemption from the tax of up to four barrels a day. It may be that a lot of royalty owners are elderly, retired, living on small incomes, and so on, but is their plight worse or more deserving of relief than that of the elderly, retired New Englander living on a fixed income who pays $1,200 to $1,500 a year just to keep his house warm? Mr. President, I think some priorities have been misplaced in Congress.

Speaking of priorities, I believe the voters and the taxpayers will be outraged to know that while their own income taxes are being cut 25 percent over the next 3 years, the tax on new oil production is being slashed 50 percent. But that is not all. The first 1,000 barrels of stripper oil produced by the independent companies will not be subject to any windfall profit tax at all.

What is the cost of all this, Mr. President? Between now and 1986, it will cost the taxpayers almost $12 billion to grant these favors to the owners and producers of America's oil. What is most distressing is that these favors have been handed out so easily and so soon after cuts in many social programs were made with such difficulty.

While I am disappointed that these oil giveaways have found their way into the Economic Recovery Tax Act, I believe strongly that the overall legislation is very important and should be enacted without delay. A billion dollars taken in any context is obviously a lot of money, but $12 billion for oil in the context of a $700 billion total package will have to be accepted so we can get on with the economic recovery program.●

PROVISIONS IN H.R. 4242 AFFECTING DR. SUSAN AND PHILLIP LONG

● Mr. JACKSON. Mr. President, I would like to call attention to one particular provision of the conference report which is minor in the overall bill but of great significance to two of my constituents, Phillip and Dr. Susan Long.

Section 701 would effectively moot several lawsuits which the Longs have successfully pursued against the IRS over a period of 7 years. This section is an injustice to the Longs and it was unnecessary to protect the IRS's legitimate concerns.

In brief, the Longs have sued the IRS and the Bureau of Economic Analysis of the Department of Commerce to obtain certain statistical data generated by the taxpayer compliance measurement program. The IRS has contended that release of the data sought by the Longs would jeopardize the effective enforcement of the tax laws and provide a "roadmap for tax avoidance." The Longs dispute this contention and claim that the data is valuable for economic research and analysis of the effectiveness of the IRS audit and compliance program. Whether disclosure of the data would be harmful is a technical debate about which experts disagree. I express no view on this issue.

The Longs have won a lawsuit, affirmed by the ninth circuit, which was soon to be appealed to the Supreme Court by the Government. If the Government's appeal were denied, the judgment of the ninth circuit would become final and the TCMP data sought by the Longs would be immediately released.

Claiming irreparable harm if this data were released the IRS sought legislative relief which would authorize the Secretary of the Treasury to refuse to disclose data if he determines that it would impair the enforcement of the tax laws. The legislation sought by the IRS would effectively moot the Longs' lawsuits. It was introduced by request in the Senate on May 22.

Because there was no opportunity for a hearing on this narrow issue prior to Senate consideration of the tax bill, the IRS asked that it be added to the Senate bill as a floor amendment. Senator GORTON and I objected to this procedure on the sole basis that the Longs had not had an opportunity for a hearing to explain their side of this dispute. Senator DOLE agreed to honor our request that no such legislation be added to the Senate bill. The administration asked me to withdraw my objection to Senate consideration of the amendment but I indicated I could not do so unless hearings were held at which the Longs could testify.

The IRS then obtained approval of the provision in the last markup of the House Ways and Means Committee and also obtained inclusion of the provision in the Hance-Conable substitute.

I proposed a compromise to the Senate conferees which would protect the Government's interest in preventing an immediate and potentially damaging disclosure of the data sought by barring its disclosure until January 1, 1983. This would have allowed the IRS an opportunity to obtain legislation permanently barring disclosure if it could convince the Congress that such a bar was justified. I do not object to the concept of such legislation and I would have voted for it if it was shown as hearings that disclosure of the data would damage enforcement efforts.

The administration objected to my proposal and proposed a compromise which would have delayed disclosure of the data sought by the Longs until all actions filed prior to July 19, 1981 seeking data the disclosure of which the Secretary deemed would impair tax enforcement were final. Since the Longs have several other suits and there are an unknown number of lawsuits pending around the Nation by unrelated parties in which the Secretary might make this finding, this proposal would have delayed a final decision on disclosure for many years. This proposal was worse than the proposed House language and at the request of the Longs, my staff advised the Finance Committee staff that it would be better to recede to the House position than to take this new proposed compromise. The conferees did recede and take the House position.

In an effort to assure that the record is clear on this issue I ask that a copy of my proposal and the language which my staff was provided as representing the administration proposal be printed in the RECORD.

I simply do not believe that it was necessary for the IRS to insist on effectively mooting the Longs case without a congressional hearing. I regret that the conferees did not accept my proposal.

The material is as follows:

In H.R. 4242 strike section 701 and insert the following new section as appropriate:

"SEC. PROHIBITION OF DISCLOSURE OF METHODS FOR SELECTION OF TAX RETURNS FOR AUDITS.

(a) GENERAL RULE.—Paragraph (2) of section 6103(b) (defining return information) is amended by adding at the end thereof the following new sentence: 'Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that

such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to disclosures after July 19, 1981.

(2) TRANSITIONAL RULE.—The amendments made by subsection (a) shall not apply to any person—

(A) which has filed before the date of enactment of this Act an action against the United States seeking to compel disclosures of standards used or to be used for the selection of returns for examination, or data to be used for determining such standards (including but not limited to taxpayer compliance measurement program computer tapes), and

(B) which agrees not to take possession of such standards or data (whether pursuant to an order of any Federal court or otherwise) before January 1, 1983.

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ADMINISTRATION PROPOSAL

(2) TRANSITIONAL RULE.—The amendments made by subsection (a) shall not apply to disclosures made more than one year from the date of, and pursuant to, final judicial resolution of all actions against the United States, seeking to compel disclosure of standards used or to be used for the selection of returns for examination, or data to be used for determining such standards (including but not limited to taxpayer compliance measurement program computer tapes), which was filed prior to July 19, 1981.●

● Mr. DIXON. Mr. President, I am a supporter of H.R. 4242, the Economic Recovery Tax Act of 1981. While I do not fully support all its provisions, I do agree with its objectives. I believe that all Americans, including both individual taxpayers and businesses, need tax relief. Inflation has increased the individual taxpayer's tax burden to unjustifiable levels. Business needs tax cuts to stimulate new investment, increase productivity, and to increase its competitiveness in the world market.

However, I am extremely concerned about the provisions in the bill covering the tax straddle issue. The Senate and House conferees, as I understand it, agreed to include the Senate straddle provisions in the conference bill, eliminating the House approach. As I have stated on the Senate floor on a number of occasions, I believe that the marked-to-market approach now included in the conference bill could have severe adverse consequences.

It would cause significant disruptions of our Nation's commodity markets, markets which play a necessary and important role in our agricultural marketing and distribution system. The conferees acted to close a tax loophole used by wealthy speculators, but the real victims of the conference bill are likely to be the Nation's farmers, food processors and others who depend on the smooth functioning of the commodity markets.

I must continue to oppose, therefore, the approach taken in the conference bill. The risks of serious harm to the agriculture community is too great to justify taking the precipitious action the Senate is about to take today. I am sorry that the commodity markets will have to be seriously disrupted in order to convince my colleagues that the marked-to-market approach is not the way to go.●

● Mr. JACKSON. Mr. President, I disagree with a number of provisions in this tax bill. For example, I believe we have gone too far in rolling back the windfall profit tax on the oil industry. In addition, I favored amendments which would have given a larger share of the individual tax cuts to the middle-income groups. There are many other provisions about which I have reservations and would change if I had the power to do so.

However, the choice before us is between passing a tax cut bill or not passing a bill. We are beyond the point where individual amendments may be proposed to correct specific inadequacies. The Senate passed its version of the tax cut bill overwhelmingly and the House passed a similar bill by a narrower but decisive margin. It is clear that the American people want and need a tax cut and there is substantial ecoonmic justification for a tax cut though not necessarily with all the elements of this bill. The compromise worked out by the conferees fairly represents the will of the House and the Senate as reflected in the two bills.

The President's economic program is an experiment, probably the greatest economic experiment since the New Deal. The tax bill is one of the basic elements of the President's program and its passage is essential if this program is to have a fair test. The administration has raised the expectations of the American people to a high level about the benefits of this program. I have reservations about the efficacy and the equity of this program which I have attempted to articulate during the debate on the budgetary and tax bills. That debate is now over.

The President has now won decisive congressional approval of all the major elements of his program and its success or failure will be determined on the correctness of his economic theories alone. Like most Americans, I hope this program works.●

● Mr. BENTSEN. Mr. President, I would like to clarify the intent of the language in section 128(d)(3)(G) of H.R. 4242, "The Economic Recovery Tax Act of 1981." This section defines "qualified residential financing," for purposes of investing the proceeds of tax-exempt savings certificates, to include mortgage-backed securities issued or guaranteed by the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation. Section 128(d)(3)(G) reads:

> The purchase of securities issued or guaranteed by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or securities issued by any other person if such securities are secured by mortgages originated by a qualified institution, but only to the extent the amount of such purchases exceeds the amount of sales of such securities by an institution, and . . .

Mr. President, it is my understanding that all securities issued or guaranteed by these federally chartered or federally sponsored entities are eligible for purchase by qualified depository institutions with the proceeds of tax-exempt savings certificates whether or not these securities are by mortgages.

Mr. DOLE. The understanding of the Senator from Texas is correct.●

● Mr. ARMSTRONG. Mr. President, the enactment of the Economic Recovery Tax Act of 1981 signals that the long-promised new beginning has begun.

Never in the history has an elective body ever dared to enact a tax bill like the one Congress will approve today. This is the largest tax cut in history.

This bill is the greatest transfer of wealth from the Government into the hands of individuals. During the next 6 years, some $750 billion that would have been spent by the Federal Government will now be kept in the pockets, in the businesses, in the savings accounts, and in the stocks of American taxpayers.

Chalk this one up to the Guinness Book of World Records, and to the American taxpayers.

This bill sets a new direction for the country. In essence, the bill says "Americans, we hear you. You want lower taxes, less government, greater individual freedom to prosper."

This bill delivers. This tax bill:

Reduces tax rates for all Americans by over 25 percent over the next 3 years;

Allows American businesses to recoup capital investment at a faster rate;

Provides incentives for Americans to save more of their paychecks;

Reduces corporate tax rates;

Encourages individuals to set aside money now to finance future retirement;

Provides small businesses a fair and easy-to-use method of tax accounting;

Encourages universities to work more closely with businesses in the research and development of new technology;

Reduces substantially estate and gift taxes so that in the future, spouses and children will not have to sell inherited property to pay Federal taxes;

Eliminates the confiscatory 70 percent tax imposed on investment income;

Reduces taxes on newly discovered energy resources; and

Encourages Americans to contribute more to worthwhile charitable and civic activities.

On top of all this, this bill provides permanent tax reform by guaranteeing that in the future, taxpayers will no longer pay higher tax because of inflation. This tax indexing provision goes into effect after the individual rate reductions contained in the bill are implemented. So that by 1984, Americans will have their tax rates reduced by 25 percent, and will then no longer have to pay higher taxes if inflation jumps their income into higher tax brackets.

What a tax bill.

Already this legislation has sparked a sense of optimism that America is finally on the right course. The stock markets posted sharp gains the past week. The value of the dollar in international markets continues to rise. Americans are already personalizing the bill. They are figuring out how much their taxes will be reduced, and how this windfall ought to be best spent or invested.

America has turned the corner. But to realize how far we have come, and how far we have to go, some perspective is needed.

Twenty years ago there was no question that America was the world's eco-

nomic power. Its average inflation rate for the previous decade was 1.9 percent. The United States exported far more than it imported. It dominated international finance; 8 of the 10 largest banks in the world were American. Americans applied for and received more patents than the rest of the world combined. We launched an ambitious program to put a man on the moon by the end of the decade. The total Federal budget in 1960 was $77 billion, and the national debt was $284 billion, or $1,572 for each American. The typical American family spent only 20 percent of its budget on taxes. That family saved more than 9 percent of its income. Interest rates on mortgages were no more than 6 percent. Some 61 percent of Americans eligible voted in the 1960 Presidential election.

And where is the United States today?

We are in economic decline. We know it. The world knows it, and treats us accordingly. Our average inflation rate for the past decade was 11 percent. Our annual trade deficit is more than $28 billion. Only 2 American banks rank among the world's top 10. Japan has replaced America as the leader in successful patents. Our Federal budget exceeds $700 billion, and our national debt exceeds $1 trillion, or more than $4,000 for each man, woman, and child in the United States. The typical American family spends 44 percent of its budget on taxes. Americans save less than 4 percent of their income. Home mortgage interest rates exceed 15 percent. In terms of real purchasing power, Americans are less well off than they were a decade ago.

President Carter 2 years ago declared that Americans had lost confidence that their Government could govern, and less than 40 percent of Americans voted in the last Presidential election.

In short, by nearly every conceivable measure, America has been in economic and political decline. Americans today feel poorer than they did 20, 10, even 5 years ago. They lost confidence in the future, in their dollar, and in their Government. This lack of confidence was reflected in many ways. Americans turned to artwork as a better investment than savings or stocks. An underground, untaxed economy—unheard of 2 years ago—now counts for some 20 percent of our gross national product, according to many experts. Tax shelters of dubious economic worth flourished, even became a national craze as more and more Americans sought tax relief. Business decisions were made not because they would create future profits, but because they would provide tax breaks.

What is needed to reverse this trend is bold, decisive action that signals a new economic era for Americans? An era that says Americans will keep more of what they earn, and can spend or invest it as they choose.

This tax bill signals this new era, this new beginning.

This bill will restore a degree of fairness to our overburdened tax system by giving every taxpayer in America a reduction in their tax rates in each of the next 3 years. Thereafter, this bill provides for indexing the tax code to automatically lower taxes to offset the effects of inflation. To individual working men and women and their families, this legislation means welcome relief from the constant tax increases of recent years.

Moreover, this legislation is an important aspect of President Reagan's overall program for the economic revitalization of the Nation. Together with budgetary restraint needed to balance Federal spending and revenues by no later than 1984 and the President's proposed regulatory reforms, this tax bill holds the promise of restoring a large measure of economic incentive to the private sector.

While I do not expect overnight response from our sluggish private sector, I do believe that such incentives will foster increased private savings, investment, entrepreneurship and, in consequence set the stage for increased productivity, rising employment, and greater growth and prosperity for the Nation as a whole.

I submit for the RECORD the following summary of the principal provisions of the act prepared by the staff of the Senate Finance Committee.

The summary follows:

SUMMARY

INDIVIDUAL TAX RELIEF

Across-the-board marginal tax rate reductions of 5 percent on October 1, 1981, with additional reductions of 10 percent on July 1, 1982, and 10 percent on July 1, 1983.

The top marginal rate on investment income will be lowered from 70 percent to 50 percent, effective January 1, 1982.

The maximum rate of tax on capital gains will drop to 20 percent for transactions occurring after June 9, 1981.

Indexing of individual rate brackets, the personal exemption, and the zero bracket amount will begin in 1985. These items will be adjusted to reflect the change in the CPI.

Marriage tax penalty relief in the form of a 5-percent exclusion up to $1,500 in 1982 and a 10-percent exclusion up to $3,000 in 1983 and thereafter.

Americans working abroad will be entitled to an exclusion of $75,000 as well as a housing allowance, effective January 1, 1982. The exclusion increases to $95,000 (in $5,000 increments) by 1986.

Taxpayers who do not itemize will be able to take a deduction for charitable contributions. The deduction is a percentage of contributions up to a fixed dollar amount: 25 percent (up to $100) in 1982 and 1983; 25 percent (up to $300) in 1984; 50 percent in 1985; 100 percent in 1986.

BUSINESS INCENTIVE PROVISIONS

Effective January 1, 1981, under the accelerated cost recovery system (ACRS), 10-year, 5-year, and 3-year classes of property will be written off using rates that approximate the 150-percent-declining-balance method through 1984. Certain long-lived utility property will be in a 15-year class. For property placed in service in 1985 and 1986 and thereafter, recovery rates will be increased to 175 percent and 200 percent, respectively. Assets in the 3-year class will get a 6 percent investment credit and those in the 5-, 10-, and 15-year classes a 10-percent credit. Taxpayers can elect in 1982 to expense $5,000 annually, increasing in stages to $10,000 in 1986.

All real estate will receive a 15-year audit-proof cost recovery period and will be written off using rates equivalent to 175-percent-declining-balance (low-income housing, 200-percent declining balance).

A liberalized leasing rule will be provided to facilitate the transfer of the ACRS tax benefits to companies which can utilize these tax benefits.

For small business additional benefits are provided:

Corporate rates are reduced in two steps to 15 percent on the first $25,000 of income and 18 percent on the next $25,000 by 1983.

The investment credit limitation on used equipment will increase from $100,000 to $125,000 for 1981–84 and to $150,000 thereafter.

The maximum number of permitted Subchapter S shareholders will increase to 25, and under certain circumstances trusts will be permitted to be shareholders.

The minimum accumulated earnings credit will increase from $150,000 to $250,000.

Inventory accounting will be simplified for businesses with average gross receipts of less than $2 million.

To encourage research and development, a new tax credit is included, equal to 25 percent of incremental R&D expenses after June 30, 1981. All R&D conducted in the United States will be allocated to U.S.-source income, for two years.

The 10-percent investment tax credit for rehabilitation expenditures will be replaced by a credit that is 15 percent for buildings that are at least 30 years old, 20 percent for buildings that are at least 40 years old, and 25 percent for certified historic structures.

Employees will be entitled to favorable tax treatment on stock options qualifying as incentive stock options.

SAVINGS PROVISIONS

Individuals will have a lifetime exclusion of $1,000 ($2,000 on joint returns) of interest paid on depository institution tax-exempt savings certificates issued after September 30, 1981 and before January 1, 1983.

The maximum contribution to an individual retirement account (IRA) will be increased from $1,500 to $2,000 up to 100 percent of an individual's earnings for the year. The maximum contribution to a spousal IRA will be increased from $1,750 to $2,250. Both of these changes will be effective January 1, 1982.

Individuals who are active participants in an employer-sponsored retirement plan will be able to deduct up to $2,000 per year of contributions to individual retirement accounts.

The maximum deductible contributions to a Keogh plan will be increased from $7,500 to $15,000, effective January 1, 1982.

ENERGY

The windfall profit tax credit for royalty owners will be raised from $1,000 to $2,500 for 1981, and go to 2 barrels per day in 1982, 1983, and 1984, 3 barrels in 1985, and 3 barrels in 1986.

The windfall profit tax on newly discovered oil will be reduced from 30 to 15 percent, in stages from 1982 through 1986. The windfall profit tax on stripper oil of independent producers will be eliminated beginning in 1983.

ESTATE AND GIFT TAX RELIEF

An increase in the credit against the unified estate and gift tax to $192,800 will be phased in over six years exempting 99.7 percent of all estates from the estate tax. This corresponds to an exclusion of $600,000.

The maximum estate tax rate will be reduced from 70 to 50 percent over four years.

The marital deduction will be unlimited, effective January 1, 1982, as contrasted with present law, which limits the marital deduction to one-half of the adjusted gross estate or $250,000, whichever is greater. The terminable interest rule will be repealed.

The annual gift tax exclusion will be increased from $3,000 to $10,000 per donee, effective January 1, 1982.

OTHER PROVISIONS

A series of provisions will substantially limit the use of transactions such as tax straddles to defer gains from noncommodity-

related income or to convert such income into long-term capital gains.

Administrative changes include several increased interest and penalty provisions, increased exemption from the individual estimated tax penalty, and safeguards from disclosure of certain IRS audit data.

The moratorium on the issuance of regulations on fringe benefits will be extended until December 31, 1983.

Special rules are provided to facilitate the reorganization of financially troubled thrift institutions.

The targeted jobs tax credit is extended through 1982.

Repeal of the "away from home" rule for state legislators, retroactive to 1976 and an extension of the per diem deduction.

A new income tax credit is allowed for contributions to a tax credit Employee Stock Ownership Plan. The credit is limited to .5 percent of compensation in 1983 and 1984 and .75 percent through 1987.

Allow utility corporations to establish dividend reinvestment plans under which individuals may exclude stock dividends through such plan from income up to $750 ($1,500 for a joint return).

See attachment for estimate of revenue effects.

SUMMARY OF ESTIMATED REVENUE EFFECTS OF THE PROVISIONS OF H.R. 4242 AS APPROVED BY THE CONFERENCE, FISCAL YEARS 1981-86

[In millions of dollars]

| Provision | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 |
|---|---|---|---|---|---|---|
| Individual income tax provisions | −39 | −26,929 | −71,098 | −114,684 | −148,237 | −196,143 |
| Business tax cut provisions | −1,562 | −10,657 | −18,599 | −28,275 | −39,269 | −54,468 |
| Energy tax provisions | | −1,320 | −1,742 | −2,242 | −2,837 | −3,619 |
| Savings incentive provisions | | −263 | −1,821 | −4,215 | −5,740 | −8,375 |
| Estate and gift tax provisions | | −204 | −2,114 | −3,218 | −4,248 | −5,568 |
| Tax straddles | 37 | 623 | 327 | 273 | 249 | 229 |
| Administrative provisions | | 1,182 | 2,048 | 1,856 | 718 | 592 |
| Miscellaneous provisions | −1 | −88 | 267 | 561 | 61 | −275 |
| Total revenue effect | −1,565 | −37,656 | −92,732 | −149,944 | −199,303 | −267,627 |

SECTION 861 NEEDS EQUITABLE ADMINISTRATION

● Mr. SCHMITT. Mr. President, I would like to express my gratification at the action taken by the Senate on Monday, July 27, and the House-Senate conference, to suspend for a year an inequitable administrative interpretation of section 861 of the Internal Revenue Code that for the last 4 years has created a serious disincentive to the performance, let alone sorely needed expansion, of research and development activity in the United States.

During this period of suspension, the Treasury Department is ordered to study the adverse effects of these 861 regulations and report back to Congress with recommendations for corrective action. If common sense prevails, Mr. President, these confiscatory tax regulations will be permanently abolished.

It was unfortunate, Mr. President, that the otherwise outstanding tax legislation we are now debating, the Economic Recovery Tax Act of 1981, did not initially address this disincentive to R. & D. But the omission was corrected, I am glad to say, when the leadership on both sides of the aisle, and the distinguished chairman and members of the Finance Committee, agreed to a bipartisan amendment offered by the distinguished Senator from Ohio (Mr. GLENN) in behalf of himself, the Senator from Missouri (Mr. DANFORTH), and the Senator from Wyoming (Mr. WALLOP). The Senate wisely and promptly concurred.

These 861 regulations have been forcing a shift of R. & D. activities by this country's research-oriented industries to overseas locations. American companies have had to do this to minimize what amounts to double taxation, caused by this administration interpretation, of income generated by their overseas operations.

Speaking on the basis of my own background, and as chairman of the Subcommittee on Science, Technology, and Space, I fully concur in a statement made by President Reagan, shortly after his election, calling for bold action to make our companies competitive with the dynamic industries in Japan and Western Europe. And, Mr. President, I should emphasize that this is a true bipartisan concern. Former President Carter, referring to stifling Government restraints on innovation in the United States, stressed the need for a Government partnership with the private sector to restore the scientific and technological productivity of the American free enterprise system.

We can make a start toward that critical goal by nullifying the 861 regulations relating to R. & D. Prior to 1977, the regulations under section 861 had remained essentially unchanged for over 50 years. However, in 1977 the Treasury Department added a new and complex set of rules relating to the manner in which companies with foreign sales must treat expenses for research and development conducted in the United States. Under these rules, U.S. companies must allocate a portion of these expenses to income earned in other countries. This arbitrary allocation effectively reduces the amount of foreign tax credit available to offset the taxes imposed by those other countries. Since foreign countries in question frequently will not recognize the allocations for their tax purposes, the U.S. company ends up paying tax on the same income twice.

There is convincing evidence that the 861 regulations create strong disincentives for U.S. companies to initiate or expand R. & D. programs in the United States and a corresponding incentive to undertake them in Canada, the United Kingdom, France, and other foreign countries whose governments do not have a policy that frustrates discovery and innovation in the private sector.

The consequences of this inequitable tax policy are inevitable: Discouragement of R. & D. in the United States and the resulting loss of highly-skilled jobs; construction of research laboratories overseas; increased employment at those American-owned laboratories of foreign scientists and technicians; and the conduct on foreign soil of millions of dollars of R. & D. projects conceived by American minds.

Mr. President, let me leave with you and Members of the Senate this closing thought:

If we allow the number of scientists and related skilled workers to be diminished by reason of R. & D. facilities moving to foreign countries, our country will suffer a severe and lasting loss.●

RESTRICTED STOCK PLANS

● Mr. BENTSEN. Mr. President, I ask that the distinguished floor manager clarify one aspect of the bill in the area of incentive stock options. The bill includes a provision which is designed to avoid the necessity, and attendant administrative costs, of amending existing employee stock purchase plans which are substantially the same as incentive stock options in order to qualify them as such options. I am specifically referring to section 422A(c)(4)(c), which would be created by section 251 of the bill, and the language on page 100 of the committee report, which expands on that provision.

Am I correct in assuming that the intent of that provision is to qualify as an incentive stock option the transfer of stock for nominal consideration under arrangements which would be considered the granting of an option for Federal income tax purposes? For example, if a company pursuant to a plan otherwise qualifying under the bill transferred stock for a nominal amount to an employee which could not be sold until the employee completed a required period of employment, could such a transfer qualify as an incentive stock option?

Mr. DOLE. I would be happy to respond to the Senator from Texas. The answer to the question is yes. In the situation the Senator describes, if the transfer of stock were, for instance, granted subject to an indebtedness for which there was no personal liability to pay, it would be considered an option. Under these circumstances the transfer of stock would be an option for Federal income tax purposes and if it met the requirements of new section 422A(b), it would qualify as an incentive stock option. One of these requirements is that the employee pay 100 percent of the fair market value of the stock at granting—a payment which would usually occur when the option is exercised, or in Senator BENTSEN's example, when the restrictions upon the transferred stock lapse.●

LENGTH OF SERVICE, PRODUCTIVITY, AND SAFETY AWARDS

● Mr. GARN. Mr. President, my cosponsor, Mr. CHAFEE, and I would like to clarify the purpose and effect of an important amendment that was made on

the Senate floor. Because of his great concern and knowledge on this subject, I would like to yield at this time to the distinguished junior Senator from Rhode Island.

Mr. CHAFEE. I thank the senior Senator from Utah. Mr. President, under present law a deduction is allowable to an employer for a tangible item of personal property, such as a watch or a service emblem, that is awarded to an employee in recognition of length of service or safety achievement, but only if the cost of the item does not exceed $100. Such items are awarded to motivate employees, cement employment relations, recognize loyalty, employment longevity, or achievement, or for other purposes of the employer. No change has been made in the dollar limit for such deductions since 1962, however, and during that time the Consumer Price Index has nearly tripled and the price of gold, silver, and other basic raw materials has gone up more than 1,000 percent. Unless this 20-year-old ceiling of existing law were raised, it would continue to impose an outmoded and unrealistic restriction upon the recognition of employee loyalty and achievement.

Furthermore, under current law no deduction is allowable for any item if the cost of it exceeds $100, and no provision currently exists for productivity awards. Finally, although such awards are often made as part of a broad-based plan which recognizes achievement without regard to compensation levels—for example, by recognizing service with increasingly attractive awards at 5-year intervals with the most meaningful award, frequently a gold watch, at retirement—deductions for recognition awards cannot currently be taken on an average cost, planwide basis.

The measure that was introduced in the Senate by the distinguished senior Senator from Utah, and that I cosponsored, would resolve these problems. Under that amendment (UP No. 325), first, the per item deduction limit would be raised from $100 to $400. As thus amended, the code would continue to impose a reasonable dollar limit on recognition awards, but it would also at least partially recognize the increased cost of materials used in the manufacture of such awards.

Second, the amendment would allow a deduction for the first $400 of each item even if the cost of that item exceeded $400. This removes an unintended technical problem under prior law.

Third, the amendment would allow the per item cost of awards to be computed on a planwide, average cost basis, as long as the plan does not discriminate in eligibility or benefits in favor of officers, shareholders, or highly compensated employees. This provision recognizes that average cost is the logical and reasonable way to calculate the deduction limits when a broad-based, nondiscriminatory plan is involved.

In addition, to prevent any possibility of abuse, no deduction will be allowed, even on a plan-wide basis, for that portion of any award that exceeds $1,600. Finally, the amendment would allow deductions for productivity awards as well as length of service and safety achievement awards. This addition is consistent with the overall purpose of the Economic Recovery Tax Act of 1981, for it will make it possible to provide meaningful, tangible incentives for increased productivity, such as efficiency, attendance, and achieving goals.

Mr. GARN. I would like to thank the Senator for that very clear and thorough explanation of the provision, in which I concur.

Might we have the distinguished floor manager's views on the amendment.

Mr. DOLE. I appreciate the remarks of the Senators and I agree with their views. When section 274(b)(1)(C) was originally added to the code in 1962, the Senate made it clear that:

> Gifts for these purposes . . . serve to strengthen the relationship between business and its employees [and] should not be discouraged by the tax laws. (S. Rep. 87-1881, at 34).

Our action today reaffirms that intention. Furthermore, the amendment is consistent with the overall purposes of the Economic Tax Recovery Act of 1981.

Mr. GARN. Does the distinguished minority floor manager of the measure share this understanding?

Mr. LONG. Yes, I do.

Mr. GARN. I thank both floor managers and I yield the floor.●

● Mrs HAWKINS. Mr. President, Congress has labored long and hard on this tax bill. I think that the imagination of the public has been captured by the leadership of the President. People responded to his message by pressing their case with the Senate and with the House of Representatives. If our telephones and our mail are indicative, then Floridians wholeheartedly support the President's economic policy.

The symbolism of passage of the tax bill has already had an effect. The stock market is firming up and the dollar is doing well against foreign currencies. This morning's Wall Street Journal showed the dollar advancing against the German mark, the French franc, and the Japanese yen.

This early improvement is largely the result of a psychological effect. The real economic impact, needless to say, has not yet been felt. I am convinced, Mr. President, that this tax bill will reduce disincentives to saving and investment; I am convinced that it will stimulate personal and business investment; I am convinced that productivity will increase; I am convinced that the lower marginal tax rates will induce some of the underground economy to return to the tax rolls; some of the tax shelters will no longer hold the attraction they have held, and will be exchanged for productive investment.

Mr. President, I believe that the chairman of the Finance Committee, the other members of the committee, and their staffs, deserve an ovation from all of us, and from Floridians in particular. I have been gratified by the level of expertise and cooperation, not only on the committee and committee staff, but on the part of my colleagues, and their staff as well. This debate has shown that the country is well-served by this process and by those who have labored on this tax bill. I am proud to have been associated with them and with this legislation.●

● Mr. EAST. Mr. President, Congress will this week send to President Reagan the greatest single piece of tax-cutting legislation in our history.

This is an achievement of which we can be very proud. The bill we had to consider was lengthy, and the issues involved were intricate and wide ranging. Nevertheless we persevered, and the final product represents a bipartisan effort to give the American people the tax relief that they so urgently needed. The people have expressed their views on this issue in no uncertain terms, and Congress has made an appropriate reply.

It is impossible to exaggerate the salutary effect that this legislation will have on all taxpayers. The allegation that it will chiefly serve to benefit the well-to-do just does not hold up under close examination.

The cornerstone of this measure is an across-the-board reduction in individual tax rates of 25 percent: 5 percent on October 1 of this year, with two 10 percent cuts to follow in July of 1982 and July of 1983. All taxpayers will thus have their rates slashed.

The reductions are essential. For years, Government has been playing a con game called bracket creep. By inflating the money supply, it forces more and more of our people into higher tax brackets so it can collect a larger share of their earnings. Assistant Secretary of the Treasury Paul Craig Roberts has pointed out that in 1965, a middle-income family faced a top Federal tax rate of 17 percent. Today, it faces a rate of 28 percent. In 1984, if the current tax law were to remain unchanged, it would face a rate of 32 percent.

Instead, the new law will reduce the top rate to 24 percent by 1984. Furthermore, it will index tax rates to eliminate bracket creep for good. Starting in 1985, rates will be adjusted to reflect the cost-of-living increases of the previous year as measured by the consumer price index.

These lower personal tax rates will also help small business. The vast majority of business enterprises in this country are sole proprietorships. Partnerships are second, and corporations are a distant third. Since proprietors and partners pay only personal income taxes on what their enterprises take in, a major tax cut gives them more money to plow back into their enterprises and make them flourish. This in turn will help to reduce unemployment, since most new jobs are created by small business.

Personal tax rates will be adjusted to offset the so-called marriage penalty. At last our tax laws will recognize that an increasing number of married women are pursuing careers outside the home, and that couples should not be taxed at a higher rate because both spouses must work to make ends meet. The new tax bill will allow the spouse with the lesser income to deduct 5 percent of that income (up to $1,500) in 1982, 10 percent (up to $3,000) in 1983.

The bracket-creep phenomenon also gives a confiscatory edge to Federal estate and gift taxes. For too long it has

been the bitter complaint of those who own family farms and businesses that they "live poor and die rich." In other words, they work all their lives to create something of value, only to have it snatched from their heirs by the tax man because inflation has artificially boosted the value of their estates.

Inflation has likewise made interfamily giving more difficult. The current $3,000 exemption from Federal gift taxes may have served well enough in an earlier day, but it is wholly inadequate now. As a practical matter, one cannot support an aged parent, send a child to college, or give newlyweds the downpayment for a home without incurring Federal taxes. Most of our people feel that this is unjust, and are properly resentful.

The new tax bill takes a giant step toward eliminating both these taxes. The top estate tax will be reduced from 70 to 50 percent, and will apply only to estates valued at more than $2 million. The vast majority of smaller estates will escape taxation entirely through a gradual increase in the Federal exemption. Ultimately, a mere 0.3 percent of all estates will be subject to taxes.

The gift tax exemption will be increased from $3,000 to $10,000. This means that a husband and wife could give away as much as $20,000 tax free.

I should mention here as well that the so-called widow's tax will be eliminated through the creation of a 100-percent marital deduction. This means that the death of one spouse will no longer be treated as a capital gain by the survivor.

Some of the changes in business taxes contained in this bill have also been criticized as favoring the few over the many. Again the criticism is unfounded. The new liberalized depreciation allowances will benefit our people in general as much as the business community in particular, because they will enable business to create jobs and increase productivity. In the course of these remarks I have repeatedly emphasized the negative distortions that inflation has introduced into our economy. Business must contend with additional distortions. Over the past decade and a half, Federal regulations have forced private firms to divert literally billions of dollars of capital from productive to nonproductive uses.

Now I am not opposed to safer working conditions or a cleaner environment. In some cases these goals cannot be realized without major capital investments. I do feel strongly, however, that social and economic goals should not be mutually exclusive. The depreciation provisions of this bill will help us to realize both.

The current rules governing depreciation are unduly complex and cumbersome. The new plan would replace the old useful life categories with four basic depreciation categories: 3 years for autos, light trucks, research and development equipment, and other special tools; 5 years for all other machinery and equipment; and 15 years for most depreciable real estate.

Here again, I would like to make plain that the small business has not been slighted in favor of large corporations. It is true that small business is less capital intensive, but the sheer complexity of present depreciation rules has kept many entrepreneurs from taking full advantage of them. Simplifying the rules cuts the Gordian knot, and puts small firms in a position to take advantage of tax write-offs that were previously available only to the corporate giants.

These then are some of the highlights of the new tax bill. In reviewing them, one feature in particular stands out: incentives. By allowing our people to keep more of the fruits of their labors, we encourage them to be more thrifty and productive. By making these incentives permanent, through indexation, we go a long way toward limiting the size of the National Government and its role in our way of life.

I should mention here as well that the bill also contains a provision that should help private charitable organizations assume a larger role in helping the poor and unfortunate as the National Government assume a smaller one. Beginning in 1982, taxpayers who take the standard deduction will be able to deduct up to $25 in charitable contributions. This would be raised to $75 in 1984, and would be unlimited in 1985 and 1986. The charitable contributions provision should cushion the impact of the budget cuts that have been made thus far, and those that will be required in the years ahead.

In conclusion, Mr. President, I would like to say how proud I am to have been able to play a role in the passage of this vital legislation. Throughout this century, real tax reductions have been invariably followed by real economic growth. I am convinced that this tax bill will have the same effect.●

Mr. LEVIN. Mr. President, it is abundantly clear that, except for those earning over $50,000, this tax bill will not offset the upcoming social security tax increases and inflation induced bracket creep. In effect, those earning less than $20.000 will see their earning power in 1980 dollars reduced by 1984 under the Reagan tax plan, those earning between $20,000 and $50,000 will stay about even, while those earning over $50,000 will see their purchasing power increase in real terms by 1984.

Take an example of a family of four earning $15,000 in 1980. The family's take-home pay is $12,838 after Federal and social security taxes are removed. In 1984 under the Reagan tax program, the family's take-home pay is $12,632 in 1980 dollars. The purchasing power for this family has decined by $206. A family of four earning $35,000 in 1980 takes home $28,347. In 1984, under the Reagan tax plan, take-home pay for this family will be $28,163, a reduction of $184. On the other hand, a family of four earning $100,000 which now takes home $70,534 in 1980 after taxes, will take home $72,754 in 1984 under the Reagan program, a real increase of $2,200, again as expressed in 1980 dollars.

Mr. President, taxes are too high. They should be cut. But I cannot support this conference report on the tax bill because it fails to protect those most hurt by upcoming social security tax increases and inflation induced bracket creep.

This conference report maintains the Senate provisions on small savers, those persons with $13,000 or less in savings. Those Senate provisions are terrible for small savers leaving them worse off in future years than they are now, in terms of tax treatment of the interest earned on their savings accounts.

I note that this conference report deletes the home heating oil credit approved by the Senate. The Senate bill allowed a maximum credit of $200 for a portion of home heating costs. It is unfortunate that the conference removed this provision, designed to protect individuals against rising heating costs, at the same time it approved an additional $13 billion in tax breaks for oil companies, above and beyond the $20 billion bonanza for oil companies in the Senate bill.

As the case with most voluminous bills, there are many commendable features in this tax bill. Reducing the top marginal rate on unearned income from 70 to 50 percent should stimulate greater risk taking and capital formation. Expanded deductions for retirement savings should meet the twin goals of greater retirement income and savings. The marriage tax penalty deduction reduces the inequitable treatment of two earner couples. Numerous business tax cuts will strengthen capital formation and productivity. Accelerated and simplified depreciation is a much needed reform as are the expanded incentives for research and experimentation.

I am happy that the conferees retained the Jepsen-Levin amendment which provides tax deductions for expenses of adopting special needs children, thereby increasing the number of adoptions of those children.

But while there are laudable elements in this tax cut, it is overall a bad gamble. We are told that this tax bill promises economic recovery, low inflation, low unemployment, low interest rates, and balanced budgets. These are hollow promises. This $750 billion tax cut, coupled with $1.5 trillion increase in defense spending is like throwing gasoline on the fire. The administration's commitment to a tight money policy guarantees high interest rates even as we cut taxes and budgets. Higher inflation and interest rates increase budget costs resulting in more deficits. The need to borrow money from the private sector to finance these deficits will keep interest rates high and remove valuable resources from capital formation and productive investments. This bill does not offer relief from the high interest rates that have crippled the auto industry, paralyzed the construction industry, and dealt a mortal blow to hundreds of thousands of small businesses.

This tax bill is hollow. It promises tax relief for all taxpayers when only those earning more than $50,000 receive a tax cut. It is a phantom tax cut for those earning less than $50,000. Promises of economic recovery will soon turn into pessimistic forecasts for high interest rates, high inflation, and larger deficits. Those forecasts will not prove hollow.

The PRESIDING OFFICER. All the time having expired, the question is on agreeing to the motion of the Senator from Massachusetts to recommit the conference report on H.R. 4242.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. INOUYE (When his name was called). Mr. President, on this vote I have a live pair with the Senator from Michigan (Mr. RIEGLE). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. STEVENS. I announce that the Senator from North Dakota (Mr. ANDREWS), the Senator from Missouri (Mr. DANFORTH), the Senator from Arizona (Mr. GOLDWATER), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from Vermont (Mr. STAFFORD), and the Senator from Idaho (Mr. SYMMS) are necessarily absent.

I further announce that, if present and voting, the Senator from Idaho (Mr. SYMMS) would vote "nay."

On this vote, the Senator from Pennsylvania (Mr. HEINZ) is paired with the Senator from Illinois (Mr. PERCY).

If present and voting, the Senator from Pennsylvania would vote "yea" and the Senator from Illinois would vote "nay."

Mr. ROBERT C. BYRD. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from Texas (Mr. BENTSEN), the Senator from Florida (Mr. CHILES), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. DIXON), the Senator from Nebraska (Mr. EXON), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. MELCHER), the Senator from Ohio (Mr. METZENBAUM), the Senator from Arkansas (Mr. PRYOR), and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. DIXON) and the Senator from Nebraska (Mr. EXON) would vote "nay".

On this vote, the Senator from Vermont (Mr. LEAHY) is paired with the Senator from Montana (Mr. MELCHER).

If present and voting, the Senator from Vermont would vote "yea" and the Senator from Montana would vote "nay."

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

The result was announced—yeas 20, nays 55, as follows:

[Rollcall Vote No. 250 Leg.]

YEAS—20

| | | |
|---|---|---|
| Biden | Kennedy | Pell |
| Bumpers | Levin | Roth |
| Byrd, Robert C. | Mathias | Rudman |
| Cohen | Matsunaga | Sarbanes |
| Dodd | Mitchell | Tsongas |
| Eagleton | Moynihan | Weicker |
| Hollings | Nunn | |

NAYS—55

| | | |
|---|---|---|
| Abdnor | Byrd, Harry F., Jr. | Denton |
| Armstrong | Cannon | Dole |
| Baker | Chafee | Domenici |
| Boren | Cochran | Durenberger |
| Boschwitz | D'Amato | East |
| Bradley | DeConcini | Ford |
| Burdick | Glenn | Garn |
| Gorton | Jepsen | Schmitt |
| Grassley | Kassebaum | Simpson |
| Hatch | Kasten | Specter |
| Hatfield | Long | Stennis |
| Hawkins | Lugar | Stevens |
| Hayakawa | Mattingly | Thurmond |
| Heflin | Nickles | Tower |
| Helms | Packwood | Wallop |
| Huddleston | Proxmire | Warner |
| Humphrey | Quayle | Williams |
| Jackson | Randolph | Zorinsky |
| | Sasser | |

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Inouye, against.

NOT VOTING—24

| | | |
|---|---|---|
| Andrews | Goldwater | Metzenbaum |
| Baucus | Hart | Murkowski |
| Bentsen | Heinz | Percy |
| Chiles | Johnston | Pressler |
| Cranston | Laxalt | Pryor |
| Danforth | Leahy | Riegle |
| Dixon | McClure | Stafford |
| Exon | Melcher | Symms |

So Mr. KENNEDY's motion to recommit the conference report with instructions was rejected.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the conference report, H.R. 4242. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislation clerk called the roll.

Mr. BUMPERS (after having voted in the negative). Mr. President, on this vote I have a live pair with the distinguished Senator from Montana (Mr. MELCHER). If he were present and voting, he would vote "aye." If I were at liberty to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. STEVENS. I announce that the Senator from North Dakota (Mr. ANDREWS), the Senator from Missouri (Mr. DANFORTH), the Senator from Arizona (Mr. GOLDWATER), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from Vermont (Mr. STAFFORD), and the Senator from Idaho (Mr. SYMMS) are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania (Mr. HEINZ) and the Senator from Illinois (Mr. PERCY) would each vote "yea."

Mr. ROBERT C. BYRD. I announce that the the Senator from Montana (Mr. BAUCUS), the Senator from Texas (Mr. BENTSEN), the Senator from Florida (Mr. CHILES), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. DIXON), the Senator from Nebraska (Mr. EXON), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. MELCHER), the Senator from Ohio (Mr. METZENBAUM), the Senator from Arkansas (Mr. PRYOR) and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. RIEGLE), the Senator from Nebraska (Mr. EXON), and the Senator from Illinois (Mr. DIXON) would each vote "yea."

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

The result was announced—yeas 67, nays 8, as follows:

[Rollcall Vote No. 251 Leg.]

YEAS—67

| | | |
|---|---|---|
| Abdnor | Glenn | Nunn |
| Armstrong | Gorton | Packwood |
| Baker | Grassley | Pell |
| Biden | Hatch | Proxmire |
| Boren | Hatfield | Quayle |
| Boschwitz | Hawkins | Randolph |
| Burdick | Hayakawa | Roth |
| Byrd, Harry F., Jr. | Heflin | Rudman |
| Byrd, Robert C. | Helms | Sarbanes |
| Cannon | Huddleston | Sasser |
| Chafee | Humphrey | Schmitt |
| Cochran | Inouye | Simpson |
| Cohen | Jackson | Specter |
| D'Amato | Jepsen | Stennis |
| DeConcini | Kassebaum | Stevens |
| Denton | Kasten | Thurmond |
| Dole | Long | Tower |
| Domenici | Lugar | Wallop |
| Durenberger | Matsunaga | Warner |
| East | Mattingly | Weicker |
| Ford | Mitchell | Williams |
| Garn | Moynihan | Zorinsky |
| | Nickles | |

NAYS—8

| | | |
|---|---|---|
| Bradley | Hollings | Mathias |
| Dodd | Kennedy | Tsongas |
| Eagleton | Levin | |

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Bumpers, against.

NOT VOTING—24

| | | |
|---|---|---|
| Andrews | Goldwater | Metzenbaum |
| Baucus | Hart | Murkowski |
| Bentsen | Heinz | Percy |
| Chiles | Johnston | Pressler |
| Cranston | Laxalt | Pryor |
| Danforth | Leahy | Riegle |
| Dixon | McClure | Stafford |
| Exon | Melcher | Symms |

So the conference report (H.R. 4242) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BAKER. 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 ask unanimous consent that there now be a brief period for the transaction of routine morning business, to extend not more than 20 minutes in length, in which Senators may speak.

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

The Senator from Virginia is recognized.

## A POLICY FOR SOUTH AFRICA

Mr. HARRY F. BYRD, JR. Mr. President, I commend President Reagan for personally meeting with the Foreign Minister of the Republic of South Africa, Mr. Botha, during his recent visit to this country. This suggests the Reagan administration is changing our Government's official attitude toward South Africa.

I hope that is the case. I believe that it is time for the leadership of this country to conduct foreign affairs in such a way that the future well-being of the United States is placed in the highest priority position.

At the outset of these remarks, I want to make it clear that I do not personally agree with the apartheid policy of South Africa; I wish that this racial situation did not exist in that country. But undesirable political situations do exist in many countries. Because such situations do exist does not mean that we should cut ourselves off from such countries.

The real issue now is: How can we best live within existing conditions, while we encourage those in power in South Africa as well as other countries to work for improved conditions for their citizens?

I met with Foreign Minister Botha during his recent visit, and I had an extended conversation with him about his country. I am convinced that time will bring change to that country as it has done to others.

South Africa is friendly to the United States—and supportive. South Africa is also of great importance to the United States and to the Western World. The Western nations need to remember this.

We also need to remember that, for the past several years, we have pursued a policy that has not worked to improve conditions, and I feel a continuation of that policy will not work in the future.

Today, I wish to review what South Africa currently means to her southern African neighbors and what the impact would be on the industrialized nations should the leadership of South Africa fall into the Soviet orbit.

Whereas there has been criticism of racial policies around the world for many years, the disestablishment of colonial empires in the late 1940's and during the 1950s brought about the strongest and most bitter criticism of white influence and leadership on the continent of Africa.

At a conference of African states in 1960, the first regional step was taken by African countries to isolate the republic of South Africa from the world community by initiating a trade boycott.

The Organization of African Unity, organized in 1963, has provided the institutional framework for activity against South Africa.

Various African leaders and nations have been very outspoken in their condemnation of white-ruled South Africa. At the moment, the leader of this group is Nigeria.

The United Nations has been a forum for constant denouncements and harassment of South Africa.

But let us look beyond these words of condemnation. If we do, hypocrisy is apparent.

It is difficult to obtain precise information on the degree of trade that South Africa does with neighboring states, and therefore it is difficult to determine the degree of dependence on South Africa by other southern African countries. Most of the African nations will not release detailed information concerning trade.

However, South Africa is the dominant trade partner with the southern African countries. These countries are very dependent on South Africa for their day-to-day existence.

In 1980, South African trade with these African countries was greater than ever before and all indications are that this trade is accelerating. As trade accelerates, so does the dependence of these countries on South Africa.

South Africa's transportation systems—railways, highways, seaports, and equipment—are utilized by neighboring countries for export and import trade. Often these transportation systems are the only means of export-import trade. In other instances they are the most efficient.

Without the utilization of these systems, much of the trade with the outside world by several of these countries would be lost entirely and trade by other nations would be substantially reduced.

Mr. President, reports show that South Africa's exports to her neighbors reached an all-time high in 1980—up about 50 percent from the previous year.

In one recent year, an estimated 73 percent of machinery and spare parts, 55 percent of the chemicals, 89 percent of the plastics and rubber products, and 75 percent of the transport equipment imported by southern African countries came from South Africa.

South Africa, the only country on the African Continent able to be a major food exporter, provides more foodstuffs to southern African nations than all other countries. Without these foodstuffs the quality of life would be reduced and famine in southern Africa would be on the increase.

A number of neighboring states currently purchase electricity from South Africa and more are trying to work out agreements to do so. There is no other way for them to obtain electricity. South Africa has also been a purchaser of electric current from Mozambique's Cabora Bassa hydroelectric power dam.

South Africa is a major supplier of refined oil to five of her neighbors.

South Africa has substantial ongoing capital investments in all of the southern African countries except Angola and Tanzania.

An estimated 200,000 migrant workers from all of the neighboring countries except Zambia are wage-earners in the South African business community.

South Africa is the major supplier of aid funds to southern Africa. According to the recent study of South Africa by the Foreign Policy Study Foundation, which was funded by the Rockefeller Foundation, South Africa spent $200 million on development aid and technical assistance in the region during 1980. This corporation and aid assistance to African countries was primarily on soil conservation, health and medical services, famine relief, and veterinary science. All other nations combined did not equal South Africa's financial contribution.

Comparing South Africa to the whole of Africa, South Africa produces 86 percent of the steel; generates 50 percent of the electric power; has 43 percent of the registered vehicles; and 42 percent of the telephones.

South Africa has the highest per capita income and longest life expectancy of any nation on the continent.

Mr. President, South Africa not only performs an essential role in the well-being of her neighbors to the north, but she also is an integral part of the Western world's economy. Without the raw materials which she alone can supply, the industrial nations would face possible disastrous consequences.

South Africa occupies less than 1 percent of the world's land surface, yet in volume it is the world's fourth largest supplier of nonfuel minerals. It possesses the world's largest known deposits of chromium, manganese, platinum-group metals, vanadium, and gold.

In addition, South Africa has major reserves of many other minerals including asbestos, coal, copper, diamonds, iron, nickel, phosphates, silver, uranium, antimony, beryllium, vermiculite, and zinc. All of these are essential to the industrialized nations because of strategic, industrial, and economic uses.

Many nations, while increasing trade relations, are vocally condemning South Africa.

The United Kingdom, West Germany, and France as part of the European Economic Community, have condemned apartheid without reservation. However, commerce between the three and South Africa is on the increase.

EEC trade with South Africa is three times more than that of the United States with that nation.

European banks, particularly West German and French, are very active in South Africa. Banks from these two nations placed an estimated $6 billion in South African enterprise during the past decade.

Japan also has taken an active role in the denunciation of South Africa. However, during the late 1970's South African exports to Japan rose 85 percent in a 3-year period (to $1 billion) and imports from Japan rose 33 percent in this same time frame (to $950 million). Estimates for the first 6 months of 1980 show a 45 percent increase in trade between these two nations. Japanese banks have also made substantial investments in recent years.

Western nations and Japan will continue to increase trade with South Africa because of the location of raw materials.

Furthermore, the economic dependency of surrounding States on South Africa is likely to grow rather than decrease.

So it is blatant hypocrisy for these nations to demand that the United States impose economic sanctions on South Africa, when they, themselves, carry on a robust trade with that country.

Some 2,300 ships ply the water around the Cape of Good Hope each month. These ships deliver about two-thirds of Western Europe's imported oil, and about three-fourths of the strategic raw materials used by these NATO countries.

Today, Soviet and Soviet surrogate forces are in many African states where they are impacting upon governments.

Up to 20,000 Soviet and Cuban personnel are in Angola. The leadership of Mozambique and Zimbabwe consists of

avowed Marxists. Zambia has concluded a number of agreements with the U.S.S.R. and is utilizing Soviet military equipment.

The Soviet Union is not satisfied with dominance of the sub-Sahara above the Tropic of Capricorn. The Russians recognize that any military force north of Capricorn is threatened so long as South Africa possesses its military power.

There can be no doubt about Soviet objectives. Clearly, the principal long-range objective of the U.S.S.R. is South Africa. Southern Africa and the U.S.S.R. together represent the major resource areas for many key minerals.

There are some obvious reasons why Soviet control of this area of the world could place Western nations in jeopardy. They are:

First. Ability to deny access to strategic and critical nonfuel minerals in a war situation.

Second. Ability to obtain hard foreign currency for access to these minerals.

Third. Ability through exorbitant prices to bring down capitalistic systems.

Fourth. Ability to curtail other national influences in Africa.

Fifth. Ability to control from the littoral of southern Africa the sea lanes of commerce.

There is no historical evidence to show that deposing the white minority would result in representative government and individual freedom in South Africa. There is considerable evidence to show that this would not be the case. Surely, we cannot be so naive as to believe, based on reason, that economic progress would continue.

I find it difficult to identify a single government in that part of the world that is truly representative of its people. There is not one government on the continent that is a representative government by our standards.

I am advised that a majority of the members of the United Nations has a ready-made solution to the separation of South West Africa (also known as Namibia) from South Africa. That simplified solution is to turn the areas over tc the South West Africa People's Organization (SWAPO). This is an Angola-based Communist group.

These readymade solutions concern me very much.

I feel sure that there are some who feel that a SWAPO-type organization could take over South Africa. If such an organization did prevail, I fear for progress that had been made to improve the way of life of South Africa. I am not aware of any Communist takeover that improved representative government, and I am aware of economic disaster following such a takeover.

I say that the United States and the industrial countries must not stand by and let the Communists gain their objective.

The many nations in sub-Sahara Africa depend on South Africa. The quality of life as well as the lifespan of all southern Africa will be reduced if rhetoric prevails and logic fails.

Should the white minority be arbitrarily deposed, those who would cheer the loudest would be those first on the doorsteps of every Western capital demanding aid for that country that used to supply aid to others, and they would also demand aid for those countries that used to receive aid from South Africa.

There are four options for our conduct of foreign policy with respect to South Africa.

One option is continuation of what may be called drifting and hoping.

Another option would be to treat South Africa as an outcast among nations—cut her off from commerce and communication with the free world. That would be a disaster.

The Carter administration appeared to veer between these two options.

But there is a third option of placing South Africa in the same position as other historically friendly nations. I recommend this option.

We should normalize our relations.

We should encourage unrestricted trade.

We should consider the utilization of South African facilities for future ports of call for American naval vessels.

We should assist in the buildup and modernization of South African air and naval forces by selling appropriate new weapons systems.

It is particularly important that we strengthen the naval and air forces of free world nations in the Southern Atlantic and Indian Ocean areas.

We should give careful consideration to the establishment of an international air and naval force for that part of the world. Involvement should include those noncommunist nations bordering on these waters which are dependent on sea commerce for survival: South Africa, Australia, New Zealand, Brazil, Argentina, the United States, and perhaps others.

I will have more to say on this later.

I believe it is time for the free world to take a strong stand in support of progress and stability in South Africa, and we should take whatever actions are necessary to insure that South Africa does not fall into the Soviet orbit.

### EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for morning business be extended to 3:15 p.m.

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

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### EXPIRATION OF EMERGENCY PETROLEUM ALLOCATION ACT

Mr FORD. Mr. President, the Emergency Petroleum Allocation Act (EPAA), expires on September 30. Implementation of this act with its myriad of allocation and price controls has been far short of a complete success. However, the fact remains that it did work to a degree. What we have never faced in this country is a chaotic market resulting from a severe petroleum crude and product shortage with no mechanism in place to address the problem.

The Senate Energy and Natural Resources Committee has concluded a series of hearings on the issue: Do we need a Federal mechanism, preferably much less complex than that under EPAA?

Mr. President, I, for one, believe that we do and will cooperate with my colleagues to that end. The prevailing theology seems to be that the "free market" will take care of everything; everything, that is, except nuclear.

I, for one, do not believe that this will work when we have an emergency condition resulting from a severe cutoff of oil supplies. And this cutoff could happen at any time. The chances of it happening are much greater than the chances of it not happening.

Mr. President, the administration's position is set forth in the U.S. Department of Energy's July 1981 report on "Domestic and International Energy Emergency Preparedness":

> The Administration is opposed to enactment of any petroleum allocation or price control authority, including extension of the Emergency Petroleum Allocation Act . . . Adequate levels of private and government stocks and reliance on the market will assure that the adverse effects of oil supply disruptions are minimized and that the various groups of procedures and consequences and different regions of the country will be treated equitably.

The report goes on to take the position that in an emergency:

> Authority will be available under the Defense Production Act to allocate oil supplies for national defense purposes should that become necessary during a major disruption.

I agree with this position. However, I and many of my colleagues will take issue with the administration when it adds:

> Other Authorities also exist that could be used to restrict demand, encourage additional domestic oil production, encourage fuel switching, increase fuel use efficiency, and encourage private stock drawdown by reducing the tax impact of such action.

Only July 28, W. Kenneth Davis, Deputy Secretary of DOE, reiterated the administration's position in testimony before the Energy and Natural Resources Committee. He specified that—

> Relying on market forces for the development of adequate levels of private petroleum stocks, combined with SPR fill, is the most effective measure available for reducing shortfalls in petroleum supplies and the associated economic losses and national security threats.

Well, Mr. President, private stocks are not increasing. They are decreasing. Worldwide, in the first 6 months of this year the drawdown was one billion barrels. And they will continue to decrease as long as they are being held at 20-percent interest on investment.

Mr. President, I ask unanimous consent to have printed in the RECORD a Cabinet Council "Memorandum for the President" relating to the eventual decision to opt for solutions by "free market."

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

THE WHITE HOUSE,
*Washington, D.C.*

Memorandum for the President.

From: James G. Watt, Chairman Pro Tempore, Cabinet Council on Natural Resources and Environment.

Issue: Should the Administration support enactment of some form of petroleum regulatory authority for essential emergency services, to replace the Emergency Petroleum Allocation Act (EPAA), which expires September 30?

BACKGROUND

In the wake of the 1973 oil embargo, Congress enacted the EPAA, giving the President virtually complete control over the domestic petroleum market.

This authority was exercised through allocation and price controls, along with a number of special provisions sought by specific constituencies, such as farmers and small refiners. All such controls were abolished on January 28, 1981. The authority to re-impose such controls, which the President currently retains, will expire on September 30, 1981.

As a result of the embargo, the United States joined with twenty other free world countries in the International Energy Agency, committing itself to sharing oil supplies in the event of severe supply disruptions. There is authority in continuing law for the President to direct whatever actions are necessary to comply with our IEA obligations. There is a separate statute which allows a limited antitrust exemption so that oil companies may participate in this international agency's planning and operational programs. This exemption will also expire on September 30, but it is relatively uncontroversial, has been extended already on several occasions, and should be extended again, as an unrelated matter.

DISCUSSION

From campaign pledges and general philosophy, there is no doubt that the Administration opposes government intervention in the energy markets generally. All Council participants agree that government controls exacerbate, rather than solve, most shortages; disagreement comes only as to whether, in a very extreme disruption, the market would adequately provide for a few essential services.

After September 30, there will be a number of emergency authorities which vary in application and triggering mechanism, such as the Defense Production Act, the Trade Expansion Act, the Emergency Energy Conservation Act, and others. The Administration will also have power over specific crude oil supplies, including the Strategic Petroleum Reserve, and some oil from the Naval Petroleum Reserve, and royalty oil from federal lands.

The Justice Department has done a legal analysis and concluded that, without additional legislation, the President will have sufficient authority after the expiration of EPAA to meet our international obligations. To calm any remaining doubts on this, Justice could testify on its interpretation of EPCA, and we would seek confirmatory committee report language. However, Justice has concluded that there will not be sufficient authorities to duplicate the comprehensive price controls and allocation authority available under EPAA. There is debate as to whether remaining authorities could provide the best response to any future crisis.

Both House and Senate Committees have held hearings on this issue, and there is considerable pressure by various special interest groups for "protective" legislation upon expiration of EPAA. The Republican Chairman of the Senate Energy Committee has indicated that the United States cannot responsibly be dependent on anything less than full preparation for allocation after EPAA has expired, including appropriate legal authority and clear Administration commitments to take decisive federal action, if necessary. GOP leaders on the House Energy Subcommittee are not favorable to new allocation authority.

OPTION 1

Oppose any new legislation authorizing controls on petroleum markets. Indicate that any emergencies caused by oil supply interruptions would be met by primary reliance on the market to restore equilibrium, supplemented by other existing authorities.

Without new legislation, the Defense Production Act would allow for meeting defense needs, use of government-owned supplies, such as Strategic Petroleum Reserve, could meet some part of a general shortfall, or could be used to meet essential emergency needs, and the Trade Expansion Act would allow for quotas or tariffs on imports. To provide back-up for our IEA international sharing obligation, we would develop a plan for fair sharing among U.S. oil companies which the President could use if he deemed it necessary to meet our obligations.

In addition, general emergency preparedness operations in DOE and FEMA would continue to evaluate potential threats, and update plans for facilitating private and government response to them, including continuing evaluation of potentially useful legislation. Since the actual crisis that could occur in the future may be far different from that contemplated today, legislation based on today's thoughts may well be ineffective when the crisis occurs.

Advantages:

Consistent with administration opposition to federal regulation in energy markets.

Avoids support of concept of legislation which could invite passage of unnecessarily broad authority.

Prevents enactment of statutory authority which could be abused by a different administration.

Maximizes Presidential flexibility to meet unpredictable crises.

Reduces disincentives to private stockpiling and other means of self-protection in an emergency.

Disadvantages:

Existing authorities might not allow control of petroleum supplies if that were to be needed to prevent catastrophic consequences for certain users.

Political pressure at the time of a crisis could be almost irresistible, and may result in passage of a more disruptive and inefficient law.

Might be perceived by our allies as unwillingness to take measures necessary to deal with an emergency.

Without administration leadership for a very limited bill, Congress may pass far more extensive and onerous legislation, perhaps even extending EPAA.

Without some federal legislation, states may be free to pass control laws of their own, unless pre-empted by federal action.

OPTION 2

Propose legislation to grant the President authority to declare a severe petroleum shortage, and in such cases to direct petroleum supplies to meet "essential emergency needs." The proposed would not include explicit price control authority, but the President could order that sales be made at "nondiscriminatory" prices. It would be anticipated that this authority would not be used except in situations far more severe than any we have so far experienced.

This authority would allow the President to direct supplies to meet the direct needs of farmers, police services, etc., in the event that such supplies were not available in the marketplace. It would not directly meet the problems of users who were unable to afford supplies due to the higher prices caused by a disruption.

Advantages:

The legislation would be sufficiently broad and flexible that the President could restrict its use to only those cases where some action was clearly warranted to alleviate critical situations.

Such authority would provide the President with an available tool to meet an emergency.

The proposal might prevent Congressional enactment of broader, and more disruptive, legislation.

Existence of standby legislation would prevent conflicting state legislation.

Enactment of standby authority would provide public confidence that there could be an immediate response to a very severe shortage.

Disadvantages:

Use of such authority could worsen any crisis by disrupting market adjustments.

Any standby legislation might quickly become obsolete, necessitating repeated amendments.

Such authority could be abused by a different Administration.

Existence of such authority could distort investment and private stockpiling decisions.

The existence of such legislation would create pressure for its use in advance of government intervention being wise.

Requesting such authority could be considered a retreat from the Administration's support for deregulation.

RECOMMENDATION

The preponderance of the Cabinet Council discussion favored Option 1.

Interior, Transportation, Commerce, OMB, and CEA specifically recommend Option 1.

Agriculture recommends Option 1, but notes that if any measures for allocation were undertaken, Agriculture should have top priority.

Energy and Justice specifically recommend Option 2.

Mr. FORD. Mr. President, this memorandum has two points that open to question the final decision.

However, Justice has concluded that there will not be sufficient Authorities to duplicate the comprehensive price controls and allocation authority available under EPAA. There is debate as to whether remaining Authorities could provide the best response to any future crisis.

This is precisely the point that the Energy and Natural Resources Committee has been examining.

Second, the memorandum notes that Energy and Justice specifically recommended an option other than the one chosen.

Energy and Justice, in the course of the decision development, would suggest:

Propose legislation to grant the President authority to declare a severe petroleum shortage, and in such cases to direct petroleum supplies to meet essential emergency needs. The proposal would not include explicit price control authority, but the President could order that sales be made at "nondiscriminatory" prices. It would be anticipated that this authority would not be used except in situations far more severe than any we have so far experienced.

Mr. President, I submit that the Departments of Justice and Energy were correct at the time they recommended this option.

I hope that my colleagues realize that one possible effect to "no Federal law under any circumstances" will be up to 50 State laws covering allocation and pricing of petroleum products.

Two timely reports on this possibility recently have been developed, one by the

State Relations Department of the American Petroleum Institute, the other by the Congressional Research Service.

The CRS study has the following conclusions and observations:

The expiration of EPAA marks the termination of nearly ten years of extensive Federal regulation of petroleum, and petroleum product, regulation. That regulation has involved both allocation and pricing regulation during periods of seemingly major shortages of supplies.

It seems likely that unless the Congress moves to continue EPAA in its present standby status, or enacts other laws preventing state regulation by preemption, many states are likely to provide new statutory authority to regulate some aspects of pricing and allocation which were subject to regulation under EPAA.

In addition to moving to fill the void of Federal regulation, the expiration of EPAA also marks a point where state regulation may be expanded for purposes of providing tax revenue, carrying on production conservation, and other forms of regulation which may have formerly conflicted with EPAA.

While EPAA's expiration is presently automatic, it would seem that the impact of total termination of Federal regulation should be carefully assessed at the national level because of the enormous economic significance of petroleum and because of what has now become our obvious dependence upon unreliable foreign sources for petroleum.

The potential impact of numerous differing state laws regarding allocation and distribution of petroleum, even though they may be constitutional, is difficult to assess in a practical sense.

The need for national laws to be used in the event of an emergency or in the event of short supplies involves a matter of such major importance that only Congress can pass final judgment.

Mr. President, I ask unanimous consent that the API report and pertinent portions of the CRS report be printed in the RECORD at this point.

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

STATE RESPONSE TO DECONTROL: EMERGENCY ENERGY MANAGEMENT, MARKET WITHDRAWAL LEGISLATION, AND RELATED 1981 LEGISLATIVE ACTIVITY IN THE STATES

The following report has been prepared to indicate state legislative activity on a number of related issues which have taken on additional importance in light of federal decontrol of petroleum product prices. Pending legislation on market withdrawals; energy emergency management, including data collection; attempts at price regulation and changes in traditional business practices will be examined.

MARKET WITHDRAWALS

New Mexico (1979) and Virginia (1980) had enacted market withdrawal legislation prior to action taken in Maine. Within seven hours, shortly after decontrol went into effect, the Maine Legislature enacted, and the Governor signed into law, Chapter 3, 1981, which, as an emergency measure, would prohibit a petroleum supplier from discontinuing supply to state customers or reducing a monthly allocation by more than 25% unless the supplier furnishes a "reliable alternative source" or continues to supply the customer for twelve months following notice to the customer and the Governor of an intent to withdraw.

Covered customers include jobbers, wholesalers, consignees, commission agents, distributors, bulk purchasers and any other purchaser from a supplier. The act covers gasoline, distillates, residual, avgas and LPG. Under a "sunset" provision, the act terminates on April 1, 1981. However, recent introduction of L. 977 would repeal this April 1 termination date and make permanent the act's provisions. Hearings are being held on the matter.

Oklahoma S. 271 would require a product supplier to give 30 months' notice of withdrawal or a reduction of 25% or more in allocations to distributors. The supplier would be required to continue deliveries or furnish an alternate source of product supply during the notice period.

ENERGY EMERGENCY MANAGEMENT

*State agencies*

Although eleven states currently have measures pending which would revise or reorganize state-level energy agencies, only two states are examining potentially onerous legislation: Indiana and Georgia. The Indiana bill (H. 1769) would establish a state energy agency designed to collect statewide energy data and "regulate certain uses of energy." Georgia's proposal (H. 268) would establish an energy council whose mandate it would be to review and oversee the production, output, use and price of all energy resources in the state.

In Washington State (H. 402, H. 403) and Oregon (H. 2258) bills are pending to require the states' energy offices to prepare comprehensive, long-range energy forecasts on costs, conservation, production and distribution.

*Data collection*

An issue closely related to state agencies' activities, data collection requirements imposed on the industry at the state level are under consideration in five states. Hawaii H. 279 would require the state's public utility commission to report every two years to the Governor on energy trends, supply/demand and conservation.

Maine L. 762 would expand the state's Office of Energy Resources' authority to obtain petroleum supply data by amending an already-existing state law. The preamble to the legislation notes that the Office of Energy Resources now depends on copies of reports now submitted to the federal DOE, which may no longer be available. The measure would require primary suppliers to furnish semi-monthly data on actual deliveries during the preceding month and anticipated deliveries for the following month, plus any allocation factors. It would also expand the definition of products covered to include avgas, Bunker C and gasohol, along with the gasoline, propane, distillate and residual reports currently required.

In Massachusetts, a perennial introduction (S. 421) has been filed to require "major" oil companies to submit detailed inventory, sales and other data to the State Energy Resources Department. A Montana bill (H. 16), which would allow the state to collect various supply/demand data from suppliers and distributors, has already passed the House. Ohio H. 6 would establish procedures in the state for making long-range energy forecasts.

None of these measures has received final legislative action; all are currently pending.

*Allocations of product*

State-controlled allocations of product—or continued operation of state set-aside programs—are being addressed in legislative form in eight states. A brief description of the various proposals follows:

California A. 489 would make it "an unfair practice" for certain franchisors to fail to supply or offer to supply their franchises starting December 1, 1982, with the same amounts of products, under the same conditions and terms, that were generally available to their franchisees on January 1, 1981.

Maryland H. 381 would transfer state fuel allocation authority from the State Controller's Office to the Natural Resources Department.

Lieutenant Governor O'Neill and several Massachusetts legislators have filed legislation (H. 4193) which has been described as a "Fair Supply Act." It would require oil producers, refiners or suppliers to allocate to independent oil dealers at least the same amount of oil as they received in 1980. The measure appears to be specifically aimed at the state's heating oil supply allocations.

Legislation is expected in Minnesota which will continue the state set-aside program for gasoline, fuel oil and other fuels used in transportation or agriculture. Distributors would be required to keep available each month an amount equal to one-twelfth of 3 percent of that distributor's 1980 sales of gasoline, and one-twelfth of 4 percent of the 1980 sales of fuel oil. As in the past, the State Energy Agency would operate the program and determine where the set-aside program would be terminated on June 30, 1983.

New York A. 197 would extend to July 1, 1985, an existing law (due to expire on July 1, 1982) which provides for stand-by authority, effective on termination of the federal allocation program, to institute a 3 percent set-aside program and to require prime suppliers to submit monthly reports on products subject to the set-aside.

Rhode Island H. 5326 is a resolution which asks Congress to develop a 10-million to 20-million barrel petroleum reserve for the New England states. It has already been approved by the House.

Texas H. 110 would permit the State Division of Disaster Emergency Services to allocate additional supplies of gasoline to service station owners in each county experiencing a substantial increase in gasoline consumption as the result of a disaster, with inquiries and applications for additional supplies of gasoline to be handled by the Texas Energy and Natural Resources Advisory Council (TENRAC).

In West Virginia, H. 809 would authorize the governor to mandate the equitable allocation or distribution of gasoline and special fuels by any producer, refiner or jobber/distributor of petroleum products in the state during the period of any fuel emergency. It would also prohibit the inequitable transfer of such fuels to any company-owned and operated service station during a fuel emergency.

*State energy emergency response*

Currently, fifteen states' legislatures are examining proposals to extend, amend or broaden the powers of the governor in a state of "energy emergency." Because of the diverse nature of the proposals—and the complexity of their current status—it is best if we examine each state's activity separately.

Arizona S. 1122 would specifically define a "petroluem supply emergency" and propose methods for use by the state in coping with such a situation. In Georgia a proposal, which is very comprehensive (H. 121), would create a state emergency management agency with the authority to act as the result of a broad range of defined emergencies (including threatened shortages of usuable energy resources, their transportation, oil spills and other related actions). "Energy resources" are defined in the bill to include all forms of energy or power, including oil, gasoline and other petroleum products.

By amending the governor's powers to allow him to set rules without a legislative hearing, Hawaii H. 771 would allow the imposition of various controls to handle shortages of petroluem products during emergency situations.

Indiana S. 72, which has already been approved by the Senate, would authorize the governor to declare an energy emergency, exercise emergency powers and order into effect programs, controls, standards, priorities and quotas for production, allocation, conservation and consumption of energy. These powers would be valid for a 60-day period, renewable for another 60 days, after which legislative approval would be needed. A House bill

on the same subject is still pending in committee (H. 1190).

Approved by the House, Maryland H. 44 would extend until March 15, 1982, the authorization of the governor to exercise certain powers during energy crisis emergency situations.

Mississippi's House has already approved H. 367 which would allow the governor to subpoena witnesses, records and other materials in the event of an energy emergency. Amended on the House floor prior to its passage, the bill would also create a state office of petroleum allocation and a state set-aside program, which would only be in effect during an energy emergency declared by the governor. An additional amendment, also approved, requires that the governor have the concurrence of the lieutenant governor or speaker of the house before such an emergency can be declared. (S. 2012, a similar measure, is still pending.)

Approved by the House and currently in the Senate Natural Resources Committee, Montana H. 90 would amend the governor's energy emergency supply powers. H. 16, reported above under "Data Collection," was amended before House passage to also enhance the powers of the governor during energy supply emergencies.

Four 1980 New Jersey bills, which were carried over to 1981 legislative deliberations, address a variety of "emergency" responses. A. 625 would prohibit "price gouging" by sellers of home heating oil when the governor declares that there is an "abnormal shortage." A. 629 defines the rights and obligations of retailers and consumers of home heating oil and gives the state DOE certain powers to initiate fuel oil service in emergencies. A. 1362 (approved by the Assembly) would create a state "energy emergency preparedness committee" to advise the commissioner of the state DOE concerning allocation of scarce energy supplies. A. 3658 would prevent home heating oil dealers from adopting retail credit policies that are more stringent that those that were in effect during the 1978–1979 winter heating season.

New Mexico H. 261 would extend the state's "energy emergency powers act" to July 1, 1983. North Dakota H. 1363 (approved by the House and awaiting imminent passage in the Senate) gives the governor power to declare energy supply "alerts" and an "energy emergency" and creates guidelines for action by public and private entities. Pennsylvania H. 494 further delineates the governor's powers and duties in the event of energy or fuel supply emergencies, resource shortages, or supply or distribution problems.

Already on the governor's desk awaiting signature, Utah S. 70 establishes a comprehensive emergency management organization for the state and permits the establishment of an "emergency advisory council." Vermont S. 51 would extend the governor's energy emergency powers until June 30, 1983, and has received Senate approval. A joint resolution (S.J. Res. 13), already approved by the Senate and under consideration in the House, would revamp the state's emergency energy plan.

A Virginia bill (S. 667), which was passed by indefinitely during the state's just completed 1981 legislative session, would have added a paragraph to the governor's emergency powers to allow him to authorize reductions by producers and refiners of their monthly allocable supplies to purchasers of petroleum products for any region or area in the state by 5% and to increase the total quantity of any allocation products available in another region or area experiencing shortages (to meet regional imbalances). However, the legislature did approve a measure (H. 1119) which amends the state's "emergency services and disaster law" to use the term "emergency" in place of the word "disaster" as the trigger for the governor's powers to go into effect.

Two Washington State bills would modify the governor's powers during energy shortages, to permit him to delegate limited authority to local governments during energy shortages (S. 4208) and would extend the expiration date of his powers during energy shortages from June 30, 1981 to June 30, 1985.

PRICING REGULATION

Various proposals have been introduced at the state level which would, for the most part, ask that "freezes" be placed on prices charged for certain petroleum products.

Massachusetts S. 162 proposes that an investigation be undertaken on major oil companies' price and supply practices. A. 3001 proposes the creation of a special committee to review "discrepancies" in retail prices levied on certain petroleum-derived products for sale in the State of New Jersey.

Rhode Island's Legislature will be considering two resolutions asking Congress to freeze the prices of oil and gasoline in New England at a "ceiling" no higher than the charges that were in effect on January 27, 1981 (already approved by the House) and petitioning Congress to "shield" consumers from the high price of No. 2 heating oil (passed by the Senate). Another proposal, S. 416, would require wholesale fuel oil distributors to give retail dealers two-days' notice of price increases.

CHANGES IN TRADITIONAL BUSINESS PRACTICES

A number of loosely-related proposals that would fall under a general classification entitled "Changes in Traditional Business Practices" have been introduced. They tend to be, at present, more specific than general in focus and include:

Measures in Connecticut to prevent fuel oil dealers from requiring minimum delivery quantities (H. 6093), to prohibit retail fuel oil dealers from requiring security deposits (H. 5333); a bill in Maryland (H. 1145) which would prohibit home heating oil suppliers from assessing service charges on certain sales of home heating oil; bills in Massachusetts to initiate an "Interstate Fuel Oil Compact" covering the production, marketing and distribution of home heating oil (H. 3038), to create a "strategic petroleum reserve," and to authorize Sunday deliveries of gasoline, diesel, and heating oil (H. 3694—currently a practice banned under the state's "Blue Laws").

New Jersey A. 324 would prohibit "providers" of electric and gas service and fuel oil dealers from discriminating against customers who are using "alternate energy systems." A New York measure (S. 1176) would require a contractor with home heating oil burner service contracts to conduct yearly oil burner efficiency tests.

Rhode Island H. 5525 would require fuel oil suppliers (of grades No. 1, No. 2 and No. 3), upon delivery of fuel to a consumer, to supply the consumer with an invoice stating: the number of gallons delivered; the retail price per gallon; the total sales price; and the per-gallon wholesale price. Every fuel oil supplier/seller would be required, on a daily basis, to conspicuously post the per-gallon wholesale and retail price at his principal place of business. Failure to comply carries with it penalties of a fine in an amount equal to twice the retail value of the fuel oil delivered, with 50 percent of the fine revenue to the consumer and 50 percent to the state, plus a $100 fine for each day of violation.

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## Legal Effect of the Expiration of the Emergency Petroleum Allocation Act, Termination of Federal Statutory Preemption of State Law

INTRODUCTION

The purpose of this report is to examine the legal effect of the expiration of the Emergency Petroleum Allocation Act (EPAA) [1] as it relates to issues involving the preemption of state law. EPAA has provided since its enactment in 1973 the principal source of Federal authority for the regulation of price and allocation of crude oil and petroleum products in the United States.

Under the terms of Section 18 of EPAA, as amended,[2] the Act is presently scheduled to expire at midnight on September 30, 1981. However, because EPAA provided for a broad series administrative decontrol actions, most recently by the President without the approval of Congress, price and allocation regulations which were originally mandated by EPAA have now been completely lifted.

The most recent action suspending the then remaining controls was taken by President Reagan on January 28, 1981, through the issuance of Executive Order 12287.[3] This Order had the effect of lifting all remaining price and allocation controls under EPAA on crude oil, gasoline, and propane, effective immediately. Although suit was brought challenging this decontrol,[4] the validity of the Order was sustained by the U.S. District Court for the District of Columbia on March 4, 1981.

Although all price and allocation controls are now removed, EPAA continues to have the force and effect of law and could technically authorize the administrative reinstitution of some, or all, controls until its expiration September 30, 1981, when the entire Act as amended expires thereby removing all authority to impose controls.

The price and allocation regulation carried on under EPAA has had the legal effect of preventing conflicting state regulation. The expiration of EPAA appears to have the effect of reviving existing state laws and regulations whose enforcement may have been forestalled during the life of EPAA, as well as permitting states to undertake new forms of regulation within the constitutional scope of state powers.

This report addresses several issues relating to those matters. Specifically, this report analyzes the nature of the preemption carried on under EPAA. Then, the report examines the relationship of state conservation laws with Federal laws. The Constitutional limitations on state regulation of petroleum are also significant, and this report addresses the broad framework of state intrusions upon the Commerce Clause. Finally, the report will present, and briefly analyze, current state statutes relating to the regulation of retail sales of petroleum, including some statutes that provide for certain allocation authority. [*Note:* This detailed analysis is omitted from this insertion in the RECORD.]

CASE LAW ON EPAA PREEMPTION

The expiration of EPAA will entail, among other things, the expiration of Section 6(b) of EPAA, which provides:

"The regulation under section 4 [providing for price and allocation rules for crude oil and petroleum products] and any order issued thereunder shall preempt any provision of any program for the allocation of crude oil, residual fuel oil, or any refined petroleum product established by any State or local government if such provision is in conflict with such regulation or any such order." [5]

In essence, this provision made clear that EPAA was intended to supplant any inconsistent regulatory activity at the state or local level. There appears to be little in the way of legislative history relating to the provision as it was enacted in 1973. The conference report offers no analysis of the provision [6] and the House Report merely paraphrazes it.[7]

The expiration of EPAA, along with its preemption provision, appears to allow the return to the regulatory status prior to the enactment of EPAA. There is no known statutory provision which would operate to further preempt state activities of the sort that might have conflicted with EPAA during its effectiveness.

Footnotes at end of article.

An appropriate beginning point in the discussion of what powers of the states will become unrestrained after the expiration of EPAA is to consider, first, the case law which has been litigated under Section 6(b) of EPAA. Although there has not been extensive litigation under Section 6(b) regarding the scope of EPAA preemption of state law, the cases which have been brought are instructive on many of the issues which may be raised in connection with state regulation or state legislation after the expiration of EPAA.

Many of the early cases touching on Section 6(b) issues involved the question of whether EPAA has the effect of invalidating contracts for crude oil and petroleum products which would have been lawful under state law. In answering this question consistently in the affirmative, the cases, to one degree or another, pointed out the supremacy of the Federal enactment, EPAA, or more generally characterized the preemptive powers of Congress to invalidate contracts.[8]

In addition to these cases, a number of cases were decided in state courts involving the issue of the scope of Section *(b) preemption. These cases almost uniformly found that Section 6(b) operated to preempt only allocation regulations of the states and not pricing matters.[9]

Other state court cases have addressed the matter of actual conflict between Federal regulations and specific state regulations observing that under Section 6(b) only those state provisions which are in actual conflict with Federal regulations must give way.[10]

One of the significant Federal cases involving the scope of Section 6(b) preemption is Consumers Power Co. v. Federal Energy Administration,[11] where the District Court in Michigan concluded that the Federal Energy Administration had no authority to take a series of actions relating to the use and price of synthetic natural gas made from natural gas liquids subject to regulation under EPAA. Among other things the Court observed that preemption of state regulation of end uses and pricing of synthetic natural gas was not necessary in order for FEA to carry out its equitable allocation responsibilities under EPAA.

It is worth noting that virtually all of the cases under Section 6 are somewhat limited in reach, and apparently none of the Section 6 cases fully explored a reasoned definition of the complete scope of Section 6(b), but instead focused upon the conflicts between Federal and state regulation immediately presented by the litigation.

The state court holdings confining the reach of EPAA to allocation under Section 4 somewhat curiously ignore the pricing component of Section 4 regulation, and for this reason these cases may not constitute the final word on precisely what EPAA preempted and did not preempt.

The paucity of Section 6(b) cases is somewhat remarkable in itself, although it does suggest a high degree of deference to the Federal Government by the states on matters of petroleum allocation and pricing. It may, for example, signal nothing more than an unwillingness of states to undertake significant regulation that would raise potential conflicts with EPAA.

Perhaps the most significant decisions, with regard to the present discussion, are those which focused, not on the scope of Federal regulatory preemption, where there were Federal and state regulations in conflict, but instead upon the nature of preemption under EPAA even in the absence of Federal regulation.

Such an issue was raised in Mobil Oil Corp. v. Dubno,[12] a case in which the U.S. District Court for the District of Connecticut struck down a provision contained in a recently enacted Connecticut tax law which imposed a gross receipts tax on companies engaged in refining and distributing petroleum production and further prevented the companies from raising their wholesale prices in Connecticut. In effect the anti-passthrough provision of the Connecticut law precluded the possibility of raising retail prices beyond an average amount such price might be raised in other eastern seaboard areas.

The gross receipts tax itself—applied to earnings derived from activity within the State of Connecticut—was conceded by the companies in the suit to be valid.[13] However, the cost passthrough prohibition contained in Section 13(b) of the Connecticut Act[14] applied to prices of certain petroleum products subject to regulation under EPAA, but for which the regulatory controls had been removed. It was the exempted status of these products from regulation under EPAA which became the focal point for the discussion in Dubno. After a review of the provisions and legislative history of EPAA, the court found that—

"Analysis of the EPAA, its legislative history, and its administrative implementation reveals that "exemption"—far from relinquishing petroleum product pricing to state regulation—constitutes an affirmative federal decision that petroleum products should be free from all price regulation, and that EPAA objectives will best be served by an unregulated free market subject only to standby federal controls. Section 13(b) [of the Connecticut statute] is plainly in direct conflict with the federal regulatory scheme outlined above—i.e., it directly conflicts with the federal determination reached by the President and approved by Congress, that such products should be free of price regulation and their prices established by an "unimpeded free market." [Emphasis in original][15]

It should be apparent that this interpretation of the preemptive nature of EPAA is perhaps the most far reaching of the opinions relating to Section 6(b), both because it specifically addressed the pricing component of EPAA regulations and because it found an intention to preempt even when Federal regulatory controls under EPAA had been removed.

A similar issue was addressed in another case involving a New York gross receipts tax which was challenged in Mobil Oil Corp. v. Tully.[16] There, the Court struck down provisions of New York tax for essentially the same reasons as in Dubno. Both the Dubno case and the Tully case were appealed to the Second Circuit Court of Appeals, where the Court dismissed both actions[17] on the basis that the questions raised were within the exclusive jurisdiction of the Temporary Emergency Court of Appeals (TECA) which has jurisdiction over cases involving EPAA. The Tully case has been appealed to TECA and was argued on April 4, 1981 and a decision is pending.

Along with these judicial challenges to the New York and Connecticut tax statutes, the oil companies requested permission from the Department of Energy to pass through the cost of Connecticut's tax on those products which were then still subject to EPAA controls. On September 24, 1980, the Department of Energy granted all gasoline producers relief permitting price increases which included the Connecticut tax.[18]

Assuming the lower court decisions in Dubno and Tully stand, it would seem that during the present period of all lifted controls until EPAA expires, the rules of those cases would prevent state regulation of price or allocation irrespective of the fact that Federal controls have been removed.

What occurs after September 30, 1981 when EPAA expires is another matter. It seems most unlikely that Dubno or Tully, or even in a broader sense the entire EPAA, would be read so as to displace thereafter the wide range of state police powers to provide for the retail, and other, regulation of allocation and pricing of petroleum products.

Although it may be observed as in Dubno that during the period of potential standby controls Congress favored a "free market" without interference from state police powers, there is no support which appears to require such an interpretation in connection with the final expiration of even the standby authority in September.

Thus, it seems clear that the expiration of EPAA will mark the termination of all Federal policies regarding pricing and allocation—including whatever policy results from the final litigation of Dubno or Tully. The termination of all Federal policies seems to clearly permit the states to conduct any constitutional regulation they may wish.

### FEDERAL RECOGNITION OF STATE LAWS CONSERVING OIL

Although the imminent expiration of EPAA will mark the termination of a significant exercise of Federal power over the pricing and allocation of petroleum, Federal law will continue to have an important relationship.

Many states have established state oil and gas conservation laws which date back as far as 1878, when the state of Pennsylvania enacted a statute relating to the plugging and casing of wells.[19] The discovery and development of new oil and gas fields in California, Oklahoma, and Texas in the 1920's which resulted in the production of oil and gas in excess of market demand, wasting these resources, renewed earlier state efforts at conservation.[20] Much of the early legal activity arose out of the need to develop legal rules establishing the rights of surface owners to oil and gas obtained from pools running under land owned by many. In addition to these rules of capture, other technical aspects of oil production led to the need for legal rules establishing the means for efficient production and recovery.[21]

The growth of the oil and natural gas industries during the early 1900's, inevitably brought the subject matter into the legal framework of the Federal government in connection with the power of Congress to regulate interstate commerce under the Commerce Clause of Article I, Section 8 of the United States Constitution.

It appears that the first case in which the U.S. Supreme Court considered state conservation regulation of oil and natural gas was Ohio Oil Company v. Indiana (No. 1),[22] in which an Indiana statute that prevented the escape of natural gas into the open air was upheld as constitutional. It was argued that the effect of the statute was a taking of property without adequate compensation in violation of the Fourteenth Amendment. In analyzing the rights of surface owners to the oil and gas beneath the surface, the Court concluded that the State had a valid interest in protecting the rights of several surface owners, where the action of one owner might divest another of gas or oil derived from a common natural reservoir. Thus, because the issues involved were matters of the regulations of real property, the State could validly carry on such regulation.

This principle was later reaffirmed by the Supreme Court in Lindsley v. Natural Carbonic Gas Company.[23] However, in the same year, the court struck down an Oklahoma statute which sought to prevent the transportation of natural gas in interstate commerce in West v. Kansas Natural Gas Company.[24] There, the Court held that state prohibitions on transportation of natural gas in interstate commerce violated the due process clause of the Fourteenth Amendment and constituted an unconstitutional interference with, and restraint upon, interstate commerce, even though Congress had not legislated on the matter.

The theory advanced by the Justice Mc-

Footnotes at end of article.

Kenna in his opinion for the Court was that states did not have the authority to intrude upon matters of interstate commerce:

"If the states have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining states their minerals. And why not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one state had it, all states have it: embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that 'in matters of foreign and interstate commerce there shall be no state lines.' " [25]

In effect, the status of the law following these decisions would have permitted state regulation of wastage in oil and gas production, but would not have allowed a state to prevent transportation of oil or gas outside of the state. In 1923, the Supreme Court struck down a state statute requiring that a preference for supplies of natural gas be granted to local consumers prior to interstate shipment.[26]

But, the Supreme Court upheld a California statute providing for natural gas conservation to maintain oil production on the theory that the correlative rights of surface owners with respect to a common source of supply of oil and gas was a valid matter for state regulation.[27]

In 1937, the Supreme Court struck down a Texas Railroad Commission regulation providing for prorationing of natural gas production, on the theory that the effect of the regulation required private producers to purchase gas from others in order to fulfill their contract obligations and that such action constituted a taking of private property in violation of the Fourteenth Amendment.[28]

Through the enactment of the Connally "Hot Oil" Act, the Congress recognized and gave implicit approval to state conservations laws by aiding state enforcement of limitations on production. The Connally Act [29] makes it unlawful to ship or transport in interstate commerce contraband oil.[30] "Contraband oil" is defined under the Act as being petroleum, or any constituent part of which is produced, transported or withdrawn from storage in excess of the amounts permitted to be produced, transported or withdrawn under the laws of a state.[31]

The case law under the Connally Act has acknowledged that the purpose of the Act was to provide for Federal legislation to aid in the enforcement of state laws in a manner that the states were legally unable to undertake:

"The purpose of the Connally Act . . . is to aid the states in enforcing law limiting the amount of oil permitted to be produced in designated fields by prohibiting shipment of excess oil in interstate commerce.[32]

Interpretative case law under the Connally Act indicates a continuing effort on the part of the Federal government to enforce its provisions.[33]

In addition to the Connally Act, the Federal government has given its imprimatur to state conservation laws through the initial and periodic approval of the Interstate Oil Compact of 1935.[34]

Under the Compact, the most recent version of which involved application to twenty-nine states,[35] producing states agreed to enact laws to prevent waste of oil and natural gas. Article III [36] of the Compact contains the principal thrust of the Compact:

*Article III*

"Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

"(a) The operation of any oil well with an inefficient gas-oil ratio.

"(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

"(c) The avoidable escape into the open air or the wasteful burning of gas from a natural-gas well.

"(d) The creation of unnecessary fire hazards.

"(e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

"(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any State."

But, as the Compact provides in Article 5, the concept of conservation was not intended to include limitations on production or price-fixing:

"It is not the purpose of this compact to authorize the States joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving the available waste thereof within reasonable limitations." [37]

The important constitutional nexus between the Connally Act and the initial efforts to put into place the Compact are highlighted by this excerpt from the 1969 Report of the Attorney General of the United States: [38]

"Coincident with the Compact in timing and concern with production control was the Connally Hot Oil Act. As we have seen, the Compact binds the States to limited action in defined spheres and provides no authority for States action in these or any other conservation areas. But essential to the purposes and any effectiveness of the Compact was the firm establishment of an effective basis for individual State production regulation. Just prior to Compact negotiations the validity of State production controls had been sustained. However, serious challenge was still pending to the temporary Federal statute, section 9(c) of the National Industrial Recovery Act—the Connally Amendment—under which Federal assistance was given to stop the movement in interstate commerce of oil produced in violation of State controls, an area the States individually were powerless to reach. In the midst of the Compact negotiations the Supreme Court declared this legislation an unconstitutional delegation of legislative power.

"Quick action was taken to reenact it on a firmer basis; the Connally Act was hastily introduced and enacted within six weeks, just a week after conclusion of the Compact negotiations. Like its predecessor, it provided for Federal assistance in prohibiting the interstate movement of "contraband" oil. But unlike its predecessor, it also made a specific finding that such contraband obstructed and unduly burdened interstate commerce; moreover, section 4 implicitly acknowledged that the State production controls to which the Act was conjoined could also unduly burden such commerce, and provided a Federal regulatory remedy for such eventuality. Thus, in retrospect the Connally Act provided a firm base for State conservation, particularly market demand regulation, against later challenge of its constitutionality under rapidly expanding concepts of the reach of the Commerce Clause.

"Production limitation under Texas law was upheld in *Amazon Petroleum Corp.* v. *Railroad Commission of Texas*, 5 F. Supp. 633 (E.D. Texas, 1934). In the companion case, Federal regulation in this area under section 9(c) of the Recovery Act was struck down as beyond the scope of the Act, 5 F. Supp. 639 (E.D. Texas, 1934). On appeal this decision was reversed; *Ryan* v. *Amazon Petroleum Corp.*, 71 F. 2d 1 (CCA 5, 1934). In a further appeal the Supreme Court on January 5, 1935 declared section 9(c) itself unconstitutional, *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935). The replacement measure, the Connally Hot Oil Act, was enacted on February 22, 1935.

"It is not suggested that the constitutionality of State market demand laws and regulation depends entirely on the Connally Act. However, the existence of this expression of Federal policy, together with the actual and potential Federal regulatory operations under it, have since served to forestall any attacks under the Federal constitution on such State legislation. For more detailed discussion of this Act and its significance see Att'y Gen., Third Report Pursuant to Section 2 of the Joint Resolution of July 28, 1955, Consenting to an Interstate Compact to Conserve Oil and Gas, 15–30 (1958)." [39]

"As in the case of the Compact, the Connally Act was also regarded as a standby expedient pending a more complete Federal regulation system. It was enacted as temporary legislation, and for a time was periodically renewed for the same effective periods as the Compact. In 1942, however, it was finally enacted as permanent legislation."

Several points are significant regarding these observations of Attorney General John Mitchell in 1969. First, the time at which these comments were made precedes the significant development of price and allocation of crude oil and petroleum products under EPAA at the Federal level. The suggestion as to the nature and degree of State powers in conjunction with the Compact and with the Hot Oil Act is significant in providing a descriptive characterization of the scope of state powers immediately preceding EPAA.

Secondly, the rather straightforward manner in which the eleventh extension of the Compact was considered underscores the significant change, particularly in the Congress, resulting from the events of the 1973 OPEC oil embargo which served as the principal stimulant for EPAA.

Finally, it is important to observe on the basis of the 1969 analysis that a return to the status quo of state regulation before EPAA raises important issues with respect to the policies underpinning both the Hot Oil Act and the Compact.

The discussion of the twelfth extension of the Compact in 1972, a date by which international oil supply problems were most imminent, reveals a more comprehensive Congressional consideration of the underlying purposes of meaning of the Compact.[40]

Two issues were raised at that time with respect to the continuation of the Compact: (1) the usefulness of the state prorationing laws [41] and (2) the constitutional necessity of Congressional approval of the Compact.[42]

The most recent extension of the Compact occurred on October 16, 1976,[43] more than two years following the expiration of the prior renewal. In the Senate Report accompanying this most recent extension several important observations were made. First, the Senate Interior Committee expressed the view contrary to that offered by the Compact Commission's General Counsel, who argued that Congressional consent was not required for the continuation of the Compact.[44] Secondly, and perhaps more significantly, the Committee reviewed in some detail the activities undertaken by the Compact Commission.[45] On several matters the Senate Report was critical of positions taken by or activities of the Compact Commission. For example, a number of issues were critically discussed in conjunction with Commission recommendations relating to the definition of physical waste under the Compact.[46]

One observation made by the Committee Report suggests a broader reading of the charter of the Commission than might have been earlier understood:

Footnotes at end of article.

"Ironically, a novel series of recent recommendations on a subject never before seriously considered by the Compact Commission would seem to come squarely within the terms of its charter—the promotion of specific measures designed to minimize or avoid physical waste by *consumers* of oil and gas, as distinct from producers. (Emphasis contained in original)" [47]

Despite its presently expired status, the Compact continues to raise a series of legal issues with regard to the type of regulation which might be undertaken by the states under the rationale of preventing waste.

Since the last Congressional consideration of the Compact, two significant Supreme Court decisions have raised further doubts with regard to the legal need for Congressional approval of the Compact. In New Hampshire v. Maine,[48] a case decided immediately prior to the last extension, the Supreme Court applied the longstanding constitutional test of Virginia v. Tennessee [49] and found that an interstate agreement resolving an ancient boundary dispute did not require the consent of the Congress under the Compact Clause.

Even more recently the Supreme Court upheld, in United States Steel Corp. v. Multistate Tax Commission,[50] the so-called "Multistate Tax Compact" as valid despite congressional refusal to give consent to the Compact. In its analysis of the effect of the Multistate Tax Commission upon the Federal structure, the Court made this observation:

"The test is whether the Compact enhances state power quoad the National Government. This pact does not purport to authorize the member States to exercise any powers they could not exercise in its absence. Nor is there any delegation of Sovereign power to the [Multistate Tax] Commission; each State retains complete freedom to adopt or reject the rules and regulations of the Commission. Moreover . . . each State is free to withdraw at any time." [51]

The Supreme Court further found that the object of the Commission to promote uniformity in the application of state-taxing principles would not run afoul of the supremacy of the Federal Government.

It would seem that even without further congressional approval of the Compact, that the objects of the Interstate Oil Compact might be continued, since any actual regulation adopted by any state seems wholly dependent upon the authorities of each state. Yet, the approval of the Compact by Congress may raise, by implication, the notion that something more than simply individual state actions is authorized under the Compact, perhaps by implication permitting coordinated state regulation which would otherwise run afoul of the Commerce Clause.

The status of the Compact and its implications for new state regulation after EPAA expiration, especially in light of the broad reading sometimes accorded the Compact, pose significant issues for the Congress to consider in connection with the expiration of the EPAA.

Both the Compact, and the Connally Act, have been understood historically to enhance the ability of states to carry on production regulation. That the scope of production regulation might be expanded, with the arguable imprimatur of the Federal Government, raises numerous potential legal issues in connection with the termination of nearly ten years of Federal regulation of pricing and allocation of petroleum products under preemptive Federal law.

CONSTITUTIONAL ISSUES

It should be observed that after the initial approval of the interstate Compact and the enactment of the Connally Act, the Federal Government, in effect, permitted actions by the states both individually, and collectively, and undertook no exercise of Federal jurisdiction over the matter of conservation of oil and natural gas.

Thereafter, the question of the type and nature of state conservation was presented to the Supreme Court in Railroad Commission of Texas v. Rowan & Nichols Oil Co.,[52] In that case the issue raised was the validity under the Fourteenth Amendment of the Texas Railroad Commission order limiting and prorating production of an oil field at 2.32% of its hourly potential, with exception granted for certain marginal wells, which if their low capacity was curtailed would result in their premature abandonment. The Supreme Court, however, refused to intrude on the state administrative decision. "[W]hether a system of proration based upon hourly potential is as fair as one based upon estimated recoverable reserves or some other factor or combination of factors, is in itself a question for administrative and not judicial judgment.[53] In effect, the Court found that the regulation did not constitute a taking of property in violation of the due process clause of the Fourteenth Amendment.[54]

In 1950, the Supreme Court was presented with the question of whether Oklahoma could validly fix minimum wellhead prices on all natural gas taken from fields located within the state. The Cities Service case arose after a state commission proceeding established minimum gas prices on the basis of evidence that low prices would make enforcement of conservation more difficult, would result in the abandonment of wells before all recoverable gas had been extracted, and would contribute to an uneconomic rate of depletion and economic waste of gas by promoting "inferior" uses. The Court sustained the state action over objection that it was violative of the Fourteenth Amendment and constituted a burden to interstate commerce in violation of the Commerce Clause. In relying on Thompson v. Consolidated Gas, supra, the Court said:

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a statewide interest in conservation . . .

"We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that field price as herein set may have little or no effect on the domestic delivered price. Some industrial consumers, who get bargain rates on gas for "inferior" users, may suffer. But strong arguments have been made that the national interest lies in preserving this limited resource for domestic and industrial uses for which natural gas has no completely satisfactory substitute." [55]

Curiously, the question whether state orders fixing minimum prices intruded upon the Natural Gas Act was not raised in this case, and the issue awaited the determination by the Court in Natural Gas Pipeline v. Panoma Corporation,[56] before state minimum prices for natural gas were struck down as an intrusion upon the exclusive authority of the Federal Power Commission under the Natural Gas Act, in Northern Natural Gas Co.[57]

And more recently, the Court under the Natural Gas Act, struck down state requirements that purchases of natural gas be made ratably from all wells in a particular field as being an intrusion upon the exclusive jurisdiction of the Federal Power Commission.[58]

But, unlike natural gas, oil was not permanently subject to Federal well-head pricing until the 1970's. Thus, the argument advanced in Northern Natural Gas was then inapplicable to oil, since there was no preemptive regulation. And, it does not appear that the Supreme Court ever struck down oil prorationing through either minimum state prices or production limitations as an intrusion upon interstate commerce even in the absence of Federal legislation. Despite the view set forth in West, supra that states could not prevent the export of natural resources to other states, the doctrinal significance of Cities Service, supra, as it applies to oil, has continued, since there is no analogue to the Natural Gas Act governing the production of oil.

To the extent that state conservation measures governing the production and recovery of oil are currently acting as limitations on production beyond that technically necessary to assure maximum efficiency and reservoir development, it would appear that the repeal of the Connally Act would place the states in the position of not being able to artificially restrict development of oil under the view set forth in West. A restriction of quantity of production might be constitutionally viewed in light of EPAA preemption of petroleum regulation as an unwarranted intrusion on interstate commerce.

This view is buttressed by the 1979 U.S. Supreme Court decision in Hughes v. Oklahoma,[59] in which the high court, citing with approval the decision in West v. Kansas struck down an Oklahoma statute prohibiting the transporting or shipping outside the state sale of natural minnows seined or procured from waters within the state. Although the Court's focus in this recent decision was upon the discriminatory treatment accorded the interstate commerce in minnows, the Court clearly announced the conceptual reaffirmation of the notion that the pertinent economic unit is the Nation, and that restrictions on interstate commerce, in an effort to preserve and conserve state resources, constitutes a violation of the Commerce Clause.

While the Court in Hughes acknowledged some local latitude to promote legitimate local purposes, the blanket discrimination against interstate commerce was deemed an unacceptably stringent burden.

Another recent case, Arizona Public Service Co. v. Snead,[60] struck down a New Mexico tax on electricity transmitted outside the state as discriminatory under a Federal statute.[61]

The issues with regard to the precise constitutional limits to which states may regulate or tax natural resources moving into interstate commerce without running afoul of the Commerce Clause continue to present vexing legal problems. Currently pending before the Supreme Court is the matter involving the constitutionality of Montana's severance tax on coal.[62]

It should be observed, however, that with the expiration of EPAA any preemptive effect upon state conservation laws may also expire. But so long as the Connally Act, and any remnants of the Compact, give the states Federal approval, states may be in the position to regulate oil beyond the scope of prior conservation laws without intruding upon the Commerce Clause.

There are indeed numerous constitutional decisions which might be cited in one fashion or another in an attempt to posit a precise delineation between state police powers and the Commerce Clause dealing with the issue of the extent to which states may regulate in the absence of Federal regulation. Although many of the cases cited above provide some guidance with regard to historical constitutional interpretations, the full range

Footnotes at end of article.

of possible state legislative actions which might occur upon the expiration of EPAA can only be broadly addressed.

For example, the relatively recent effort of states, during EPAA, to provide certain protections to independent gasoline stations have been upheld in Exxon Corp. v. Governor of Maryland.[63] The State of Maryland had enacted a statute which provided that a producer or refiner of petroleum products could not operate a retail service station within the state and that such producer or refiner must extend "voluntary allowances" to all retail stations supplied with products.

The statute was challenged as violating the Commerce and Due Process Clauses of the Constitution and as having been Federally preempted by the Clayton Act, as modified by the Robins-Patman Act.

In addressing the Commerce Clause issue, and in eventually upholding the statute as valid, the Court made this important observation:

"Finally, we cannot adopt appellant's novel suggestion that because the economic market for petroleum products is nationwide, no State has the power to regulate the retail marketing of gas. Appellants point out that many state legislatures have either enacted or considered proposals similar to Maryland's, and that the cumulative effect of this sort of legislation may have serious implications for their national marketing operations. While this concern is a significant one, we do not find that the Commerce Clause, by its own force, pre-empts the field of retail gas marketing. To be sure, 'the Commerce Clause acts as a limitation upon state power even without congressional implementation.' . . . But this Court has only rarely held that the Commerce Clause itself pre-empts an entire field from state regulation, and then only when a lack of national uniformity would impede the flow of interstate goods. The evil that appellants perceive in this litigation is not that the several States will enact differing regulations, but rather that they will all conclude that divestitute provisions (such as those at issue here) are warranted. The problem thus is not one of national uniformity. In the absence of a relevant congressional declaration of policy, or a showing of a specific discrimination against, or burdening of, interstate commerce, we cannot conclude that the States are without power to regulate in this area."[64]

Thus, the Court has only recently rearticulated the broad constitutional principles with regard to the scope of state authority and intrusion upon the Commerce Clause in the specific context of retail regulation of petroleum products.

It seems clear from the foregoing analysis that while EPAA may have acted to preempt certain limited state regulation, following the expiration of EPAA broad powers to regulate both production and marketing of petroleum and petroleum products will again devolve upon the states.

ANALYSIS OF PRESENT STATE LAWS

For the purpose of providing some notion of the kinds of state regulation which are currently in place, we have surveyed state laws relating to marketing and allocation of petroleum products. For the purposes of this survey, we have not undertaken to identify or assess all state laws relating to petroleum. Notably absent from our assessment, by virtue of our earlier more general assessment and references, are state laws relating to production and conservation as well as state laws providing for taxation relating to petroleum.

We have surveyed all fifty states, and although we have attempted to provide a reasonably current list of statutes, we note the difficulties of reporting on newly enacted laws. We do believe the list will provide some insight and indication of state interest in petroleum marketing and allocation legislation.

A few general observation about the state statutes are appropriate.

First, at least three states—Maine, New Mexico, and Virginia—have state laws which require continuation of allocation of supplies to dealers, with certain withdrawal, substitution, or other termination provisions. These laws would appear to require a mandated allocation mechanism during a period of short supply.

Second, several other states have provisions which have allocation components. For example, California and New York have statutes creating a state set-aside authority which might be used to divert products from the market place during periods of short supply for emergency or hardship purposes. Florida and Nevada have statutory authority to create emergency plans, the possible content of which might be to provide for some sort of allocation mechanism during shortages of supplies.

Another large group of states including Connecticut, Georgia, Hawaii, Louisiana, Maryland, Massachusetts, New Hampshire, Pennsylvania, Tennessee, Utah, Vermont, Virginia and West Virginia—have statutes which through a variety of methods regulate petroleum distribution or franchise relationships. Several of the laws of these states require some kind of advance notice before the termination of a supply relationship, thereby appearing to compel continued supply to dealers for at least a limited period.

In addition to these state laws specifically relating to petroleum, we note (but have attempted no analysis) that more general emergency statutes, or state constitutional provisions may authorize petroleum regulation.

In addition to the identified state laws, we are aware that a number of other legislative proposals are pending before legislatures—both of states which are mentioned above and other states.

According to a recent survey of legislative proposals pending before state legislatures conducted by the American Petroleum Institute,[65] twelve states are currently considering measures to either modify or authorize state emergency energy agencies.[66] In addition, at least two states—Massachusetts and Rhode Island—are considering pricing regulations.

The following state statutes were identified in our survey of laws:[67]

CONCLUSIONS AND OBSERVATIONS

The expiration of EPAA marks the termination of nearly ten years of extensive Federal regulation of petroleum, and petroleum product, regulation. That regulation has involved both allocation and pricing regulation during periods of seemingly major shortages of supplies.

It seems likely that unless the Congress moves to continue EPAA in its present standby status, or enacts other laws preventing state regulation by preemption, many states are likely to provide new statutory authority to regulate some aspects of pricing and allocation which were subject to regulation under EPAA.

In addition to moving to fill the void of Federal regulation, the expiration of EPAA also marks a point where state regulation may be expanded for purposes of providing tax revenue, carrying on production conservation, and other forms of regulation which may have formerly conflicted with EPAA.

While EPAA's expiration is presently automatic, it would seem that the impact of total termination of Federal regulation should be carefully assessed at the national level because of the enormous economic significance of petroleum and because of what has now become our obvious dependence upon unreliable foreign sources for petroleum.

The potential impact of numerous differing state laws regarding allocation and distribution of petroleum, even though they may be constitutional, is difficult to assess in a practical sense.

The need for national laws to be used in the event of an emergency or in the event of short supplies involves a matter of such major importance that only Congress can pass final judgment.

FOOTNOTES

[1] 15 U.S. Code Section 751 *et seq.*

[2] 15 U.S. Code Section 760g.

[3] 46 Fed. Reg. 9909 (January 30, 1981).

[4] See, *Metzenbaum* v. *Edwards*, Civil Action No. 81–0405, Memorandum Opinion filed March 4, 1981, U.S. District Court for the District of Columbia.

[5] 15 U.S. Code Section 755(b).

[6] See (House Report 93–628, 93d Cong., 1st. Sess. (1973).

[7] House Report 93–531, 93d Cong., 1st Sess. (1973), at 58.

[8] See, *Exxon Corporation* v. *FEA*, 398 F. Supp. 865 (D.D.C. 1975), affirmed, 531 F. 2d 1071, cert. denied, 426 U.S. 941; *TWA* v. *FEO*, 380 F. Supp. 560 (D.D.C. 1974); *Citronelle-Mobil Gathering Inc.* v. *Gulf Oil Corp.*, 420 F. Supp. 162 (D.C. Ala. 1976), reversed on other grounds, 578 F. 2d 1149; and, *Bell* v. *Exxon*, 575 F. 2d 714 (9th Cir. 1978).

[9] See, *New England Petroleum Corp.* v. *County of Suffolk*, 383 N.Y.S. 2d 405 (App. Div. 1976); *New York State Office of Parks and Recreation* v. *Vantage Petroleum Corp.*, 431 N.Y.S. 2d 779 (Supp. 1980); *Governor of Maryland* v. *Exxon Corp.*, 370 A. 2d 1102 (Md. 1977), affirmed on different grounds, 437 U.S. 117 (1978).

[10] See, *Atlantic Richfield Co.* v. *Tribbitt*, 399 A. 2d 535 (Del. Ch. 1977); and, *Opinion of the Justices*, 376 A. 2d 118 (N.H. 1977).

[11] 413 F. Supp. 1024 (E.D. Mich. 1976).

[12] 492 F. Supp. 1004 (D. Conn. 1980).

[13] The validity of such a tax would seem to be supported by *Washington Rev. Dept.* v. *Stevedoring Assn.*, 435 U.S. 734 (1978); *Complete Auto Transit Inc.* v. *Brady*, 430 U.S. 274 (1977); and, *Colonial Pipeline Co.* v. *Traigle*, 421 U.S. 100 (1975).

[14] Public Act 80–71 (1980).

[15] *Mobil Oil Corp.* v. *Dubno*, *supra*, at 1013–1014.

[16] 499 F. Supp. 888 (N.D. N.Y. 1980).

[17] See, 40 USLW 2218 (Sept. 30, 1980). For additional background on both *Dubno* and *Tully*, see *Legal Times of Washington* (October 6, 1980), at p. 13.

[18] See, *Legal Times of Washington*, *supra*.

[19] See, Legal History of Conservation of Oil and Gas, A Symposium, published by the Section of Mineral Law of the American Bar Association (1938), at p. 1.

[20] *Id.*, at p. 1.

[21] See generally, Economic Aspects of Oil Conservation Regulation, by Wallace F. Lovejoy and Paul T. Homan (The Johns Hopkins Press, Baltimore, 1967).

[22] 177 U.S. 190 (1900).

[23] 220 U.S. 61 (1911).

[24] 221 U.S. 229 (1911).

[25] 221 U.S. at 255.

[26] *Pennsylvania* v. *West Virginia*, 262 U.S. 533 (1923).

[27] *Bandini Petroleum Co.* v. *Superior Court* 284 U.S. 8 (1931).

[28] *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55 (1937).

[29] 15 U.S. Code Section 715, *et seq.*

[30] 15 U.S. Code Section 715b.

[31] 15 U.S. Code Section 715a.

[32] *President of the U.S.* v. *Skeen*, 118 F. 2d 58, at 59 (5th Cir. 1941).

[33] See, *U.S.* v. *Gilliland*, 312 U.S. 86 (1941); *Federal Tender Board No. 1* v. *Haynes Oil Corp.*, 80 F. 2d 468 (5th Cir. 1935); *Griswold* v. *President of U.S.*, 82 F. 2d 922 (5th Cir. 1936); *Atlas Pipeline Corp.* v. *Federal Tender Board No. 1*, 86 F. 2d 802 (5th Cir. 1936); *Hurley* v. *Federal Tender Board No. 1*, 108 F. 2d 58 (5th Cir. 1941); *Genecov* v. *Federal Petroleum Board*, 146 F. 2d 596 (5th Cir. 1945); *U.S.* v. *Thompson-Powell Drilling Co.*, 196 F. Supp. 571 (N.D. Tex. 1961); and *Standard Oil of Texas* v. *U.S.*, 307 F. 2d 120 (5th Cir. 1962).

[34] For a history and background on the development of the Interstate Oil Compact see, Economic Aspects of the Oil Conservation Regulation, by Wallace F. Lovejoy and

Paul T. Homan (The Johns Hopkins Press Baltimore 1976), Chapter 2, See also, Murphy, The Interstate Oil Compact to Conserve Oil and Gas: An Experiment in Co-operative State Production Control, 17 Mississippi Bar Journal 314 (1946). And see generally, Interstate Compact on Oil and Gas (11th Extension), Hearing before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 91st Cong., 1st Sess. (1969); Compact to Conserve Oil and Gas, Hearing before the Subcommittee on Minerals, Materials, and Fuels of the Senate Committee on Interior and Insular Affairs, 92d Cong., 1st Sess. (1971); Interstate Compact on Oil and Gas (12th Extension), Hearings before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 92d Cong., 2d Sess. (1972); and Consenting to Extension of Interstate Compact To Conserve Oil and Gas, Senate Report 94–771, 94th Cong., 2d Sess. (1976).

[35] The original compact, 49 Stat. 939 (1935), involved application to six producing states: New Mexico, Kansas, Oklahoma, Illinois, Colorado, and Texas. The most recent version of the approved Compact was Public Law 94–493, 90 Stat. 2365 (1976).

[36] 90 Stat. 2365, 2366 (1976).

[37] See, 90 Stat. 2366 (1976).

[38] Report of the Attorney General Pursuant to Section 2 of the Joint Resolution of December 11, 1967, Consenting to an Interstate Compact to Conserve Oil and Gas (April 1969); reprinted in Interstate Compact on Oil and Gas (11th Extension) Hearing, *supra*, 19 at 33–34.

[39] The preceding two paragraphs were contained in a footnote in the original Report of the Attorney General.

[40] See generally, Interstate Compact on Oil and Gas (12th Extension), Hearings, *supra*.

[41] See, for example statement of Congressman Silvio O. Conte, *Id.*, at 37.

[42] The U.S. Department of Interior expressed the view that even in light arguments that Congressional approval might not be necessary, the past history of the Compact approval was such that a refusal by the Congress to renew the Compact "would remove the legal basis upon which it rests." *Id.*, at 69.

[43] See, Public Law 94–493, 90 Stat. 2365 (1976), which provided for "Consent of the Congress . . . to an extension and renewal from September 1, 1974 to December 31, 1978" of the Compact. Since that time no Congressional action has occurred to further extend the Compact, although Senator Jackson did introduce S.J. Res. 72 on May 2, 1979 on request to extend the Compact from January 1, 1979 until Congress withdrew its consent.

[44] See footnote 45 at page 9 of Senate Report 94–771, *supra*.

[45] See Interstate Oil Compact Extension, Hearing before the Senate Committee on Interior and Insular Affairs, 94th Cong., 2d Sess. (1976).

[46] Senate Report 94–771, *supra*, at p. 10 *et seq.*

[47] *Id.*, at 15.

[48] 426 U.S. 363 (1976).

[49] 148 U.S. 503 (1893).

[50] 434 U.S. 452 (1978).

[51] *Id.*, at 473.

[52] 310 U.S. 573 (1940).

[53] 310 U.S. 573, at 581.

[54] See also, *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 311 U.S. 570 (1941), and *Railroad Commission of Texas* v. *Humble Oil & Refining Co.*, 311 U.S. 578 (1941).

[55] *Cities Service Gas Co.* v. *Peerless Oil & Gas.*, 340 U.S. 179, 187 (1950).

[56] 349 U.S. 44 (1955).

[57] See, also *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190 (1950).

[58] *Northern Natural Gas Co.* v. *State Corporation Commission*, 372 U.S. 84 (1963).

[59] 441 U.S. 322 (1979).

[60] 441 U.S. 141 (1979).

[61] 15 U.S. Code Section 391.

[62] See, *Commonwealth Edison Co.* v. *State of Montana*, No. 80–581 (U.S. Sup. Ct.).

[63] 437 U.S. 117 (1978).

[64] *Id.* at 128–129.

[65] Special Report, State Response to Decontrol: Emergency Energy Management, Market Withdrawal Legislation, and Related 1981 Legislative Activity in the States, American Petroluem Institute (March 1981).

[66] This list includes: Arizona, Hawaii, Indiana, Maryland, Mississippi, Montana, New Jersey, New Mexico, North Dakota, Vermont, Virginia, and Washington.

[67] These statutes were assembled with the assistance of Thomas P. Carr, Paralegal Assistant in the American Law Division.

## THE AIR TRAFFIC CONTROLLERS' STRIKE

Mr. STENNIS. Mr. President, I shall not detain the Senate more than a few minutes.

I was on my way to the Chamber this morning to take part in the discussion with reference to the situation concerning the strike by the air traffic controllers in the airports of our Nation. I did not get to the Chamber in time to take part in that discussion. However, I am not going to let the opportunity pass to express a sentiment that is deliberate on my part.

At the same time, I do not want to be rash and intemperate. However, I feel very strongly that if we do not take recognition of the gravity of this occasion and give fair warning, at least, as to future occurrences, we will pay a terrible price.

Mr. President, I have a high regard for the air traffic controllers and for their responsibility. Some years ago, I handled an appropriation bill for the Department of Transportation which included funds for the operation of the air traffic controllers. They were in a distressing condition then, in that there were not enough of them to take care of the work required. I visited with them and saw their working conditions in many places. They took me all across the Nation, from East to West, to see other matters that had to do with air transportation—safety devices and other requirements.

One of the most pleasant experiences I have had here was to try to get into those problems and help to make recommendations which were passed here, far beyond the budget limitations that already had been set here by resolution.

We had a reconsideration of those limits in order to allow enough money. I do not think a pay increase for the controllers was involved; it was mainly additional employees to train to be controllers.

So I have a background of understanding and appreciation for this work and for the men who have been carrying it out.

But it makes no difference about that or anything else. When people take an oath to carry out the functions and duties of their job and responsibilities without going on strike and in particular when it is a highly sensitive employment or situation where the lives of countless of thousands of innocent people are imperiled by the hour with reference to the functions of these controllers and, as I said, have taken an oath to that effect in their promises and we have a law to that effect in our law, as I understand these men are under a court order of injunction, if those are the correct facts and we let that be tolerated, we will be nothing less than meagerly miserably small and indecisive and weak about meeting the situation.

There must be protection of the people where they are so helpless, and no nation can continue to be strong, in my opinion, unless we really resort to firm resolve and action to back up that resolve.

So in this case, the situation is so grave that I think, in speaking in terms unless there are of necessary circumstances that I do not know, or extenuating circumstances that I cannot imagine now, there will have to be a penalty applying along the lines for a breach of promise like this of imperiling the people. That carries with it the penalty of being disenfranchised, so to speak, toward future employment as well as being discharged from present employment.

That is not a mild remedy, but it will be as near an effective remedy as anything that I can imagine in this field, and I speak these sentiments now from my special knowledge and understanding of these operations and the necessity for them and out of a sense of obligation to the millions and millions of people who use our skyways by the hour and not for pleasure by any means, although it is partly that, but as a necessity.

So, of course, I hope that something is done to settle this strike, but I am trying to think in terms of what we are going to do and not only now but in the future.

So I rest this case now on a hope that it will be settled but further that our committees in this field can give it special attention and that we will have the resolve to come up with a remedy that will be effective and protective.

## AWARD TO SENATOR QUENTIN N. BURDICK

Mr. STENNIS. Mr. President, let me call attention to the fact that one of our Members has received a unique and exceptional honor. I refer to the fact that the Senator from North Dakota, QUENTIN N. BURDICK, recently received the Distinguished American Award from the National Football Foundation and Hall of Fame. I know that we will all agree that this honor and distinction is richly deserved.

Senator BURDICK earned this award for his achievements both on the playing fields of football and his accomplishments in life. In football he played blocking back and fullback for the University of Minnesota Golden Gophers during the days when they were a true national power. One of his teammates was the legendary Bronko Nagurski. The fact that Senator BURDICK played on the team with this all-time great is adequate evidence of the fact that, even in his youth, he had outstanding qualities and ability.

The Senator from North Dakota has earned even greater distinction and honor in the field of life. He has had outstanding career of public service which commenced with his election to the House of Representatives in 1958 and continued with his election to the U.S. Senate in 1960. My friendship with him and esteem for him have grown over the 21 years during which he has been

a Member of this body and I have had the privilege of working with him.

I know that my fellow Senators share my high regard for QUENTIN BURDICK. He has been a solid and influential Senator in a quiet but highly effective way. He has been dogged and tenacious in support of matters and principles which he believed to be right. He is a member of the Committee on Appropriations, the Committee on Environment and Public Works, the Special Committee on Aging, and the Democratic Policy Committee. In these and other positions he has made essential and valuable contributions to the public welfare. He is a positive force for good and an asset to the U.S. Senate.

Therefore, Mr. President, I commend the distinguished Senator from North Dakota, not only on this award, but for his many achievements and distinctions throughout his career. The Distinguished American Award which he has received is awarded each year to a Member of Congress who is an athlete who has been active in football. The selection is made by the Washington, D.C. Chapter of the National Football Foundation and Hall of Fame, and I commend that organization for its fine judgment and perception in selecting QUENTIN BURDICK.

It is very possible, Mr. President, that, as the plaque presented to him reads, Senator BURDICK carried the lessons which he learned on the football field into a life of service. In any event, we all know that he has served and continues to serve his State and Nation in an outstanding manner. I again congratulate the distinguished Senator from North Dakota on the justly deserved honor which he has received.

## THE RETIREMENT OF JOHN PRICE

Mr. STENNIS. Mr. President, until his recent retirement, John Price, a native of West Point, Miss., had been an employee of the Sergeant at Arms for 31 years. During that period, he has consistently rendered efficient and faithful service of the highest order and is esteemed by every Member of the Senate as well as all those who worked with and under him while he served many years in charge of the care and upkeep of the interior of the Senate wing of the Capitol.

Mr. President, I personally knew John Price's family at West Point, Miss., while I was a circuit judge there. I esteemed them very highly, as did others. After, I knew John here later and offered him a job on my staff more than 10 years ago. He desired to stay with his work.

I congratulate John, his wife, and family and extend them fond good wishes for many years of happiness.

Mr. President, I yield the floor.

## AGRICULTURE AND FOOD ACT OF 1981

Mr. MATSUNAGA. Mr. President, when we return from the August recess one of the important measures awaiting floor action will be the Agriculture and Food Act of 1981. We, in Hawaii, are particularly interested in that bill because it contains a sugar provision establishing a simple nonrecourse sugar loan program.

The loan level in that program is set at 19.6 cents per pound of raw cane sugar. Some have charged that level is excessive. But by any reasonable analysis, it is not.

To those who argue excessive cost, I would remind them first, that 19.6 cents is less than two-thirds of the average price of sugar last year. Second, that it is well under the average cost of production even if we exclude the cost of land. It is clear that we will not encourage a sugar surplus even if we were not importing almost half of the sugar we use.

Nevertheless, a reasonable relationship should exist between the loan rate and the average cost of production. Despite the many risks in farming no one argues that farmers are entitled to a support program with full production costs covered by the Government, and the sugar growers are no exception.

Production costs are important as a measure of a proper level for a Government support program. Recently the U.S. Department of Agriculture filed a preliminary report on production costs in the sugarcane sugar beet industries following an exhaustive survey of both industries for the 1978–79 and for the 1979–80 crops. I wish to share portions of that preliminary report relative to the cane industry with my colleagues. While it is a preliminary report and subject to minor revisions it is exhaustive and utilizes the same procedure used by the USDA in other cost surveys.

The report, prepared by the National Economics Division of the Economics and Statistics Service of the USDA estimates the cost of production for 1981–82 at 24 cents per pound for raw cane sugar with no land costs included. Given even an 8-percent-per-year increase in nonland costs, that will place production costs in 1985–86 at 32 cents per pound for raw cane sugar. Unfortunately, the mandated loan rate under the Senate Agriculture Committee bill will still be only the 19.6 cents per pound in deference to the administration's strong opposition to any indexing of support programs. Far from being excessive, that loan level will clearly be inadequate to assure the survival of the major share of our domestic sugar industry.

With 75 percent of Hawaii's crop land in sugar and with no viable alternative crops for that land or employment for the 9,000 employees working directly with sugar in my State, we are understandably concerned. We are also concerned that the American consumer will be inadequately protected from product shortages and from periods of excessive sugar prices, should our domestic industry not survive.

Mr. President, I ask unanimous consent that portions of the preliminary report on the cost of producing sugarcane and sugar beets in the United States including projections for the 1981–82 crops be printed in the RECORD.

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

PORTIONS OF PRELIMINARY REPORT

PREFACE

This preliminary report presents initial estimates from 1980/81 surveys of sugarcane producers and processors. The estimates presented are subject to minor revisions before the final report is released. This preliminary report is made available for use for policy makers, the sugar industry, and the general public. Comments and suggestions on the study are welcome.

This report was prepared by the staff of NED's Fruits, Vegetables and Sweeteners and Economic Indicators and Statistics Branches. Principal contributors to the report include Luigi Angelo, Robert Bohall, Ron Krenz, Hosein Shapouri, Ludwin Speir, and Glenn Zepp. Other key contributions were made by Pauline Cook, Rhodia Ewell, Robert Graham, Stanley Johnson, Larry Larkin, Nadine Lofton, Jerry McCall, Robert Olson, Joan Pearrow, and the staff of State Statistical Offices in sugarcane.

SUMMARY

Net production and processing costs, excluding land, are estimated at 24.0 cents per pound of raw cane sugar and $50.05 per ton of sugarcane in 1981/82. This represents an increase from 1980/81 when costs per pound were estimated at 21.4 cents for raw sugar and $44.32 per ton of sugarcane.

Nonland production costs for sugarcane are projected at $1,029 per acre in 1981/82 or $28.80 per ton of sugarcane. This assumes a trend yield of sugarcane of 35.7 tons in 1981/82 with a trend U.S. average recovery of sucrose or raw sugar of 210 pounds per ton. Projected production cost per pound of raw sugar would increase to 13.8 cents by 1981/82.

Sugarcane processing costs are projected to increase 8 percent over 1980/81 to $25.41 per ton by 1981/82. Processing costs would increase to 12.2 cents per pound of raw sugar in 1981/82, compared with 11.3 cents in 1980/81.

Byproducts of sugarcane production and processing—molasses and bagasse—would contribute revenue of 2.0 cents per pound of raw sugar in 1981/82 to help offset costs.

Land allocation for sugarcane could not be determined in a reliable and consistent manner to reflect agricultural value. Cash rent, share rent, and current market value cost estimates vary widely. The land allocation would add 2 to 6 cents per pound to the projected costs of production and processing.

Fuel, interest, and machinery costs are expected to lead the 1981/82 cost increases.

AVERAGE PRODUCTION AND PROCESSING COSTS PER ACRE, PER TON, AND PER POUND, RAW CANE, UNITED STATES, PRELIMINARY 1980–81 AND PROJECTED 1981–82

| Cost item | 1980/81 | | | 1981/82 | | |
|---|---|---|---|---|---|---|
| | Acre | Ton | Pound (cents) | Acre | Ton | Pound (cents) |
| Sugarcane: | | | | | | |
| Production excluding land | $911.78 | $24.30 | 11.807 | $1,029.18 | $28.80 | 13.776 |
| Processing | | 23.58 | 11.342 | | 25.41 | 12.206 |
| Total | | 47.88 | 23.149 | | 54.21 | 25.982 |
| Byproduct credits | | 3.56 | 1.714 | | 4.16 | 1.995 |
| Net cost, excluding land | | 44.32 | 21.435 | | 50.05 | 23.987 |

| Cost item | 1980/81 | | | 1981/82 | | |
|---|---|---|---|---|---|---|
| | Acre | Ton | Pound (cents) | Acre | Ton | Pound (cents) |
| Land allocation: | | | | | | |
| Share rent | $237.29 | $4.74 | 2.264 | $243.24 | $5.04 | 2.357 |
| Cash rent | 136.14 | 4.46 | 2.208 | 153.16 | 5.26 | 2.586 |
| Current market value | 325.61 | 10.69 | 5.246 | 349.54 | 12.31 | 6.038 |
| Composite | 269.18 | 7.18 | 3.486 | 285.91 | 7.84 | 3.750 |
| Yield per acre (tons) | | 37.51 | | | 35.73 | |
| Recovery per ton (pounds) | | 206.8 | | | 209.8 | |

INTRODUCTION

The Agriculture and Consumer Protection Act of 1973 directed the Secretary of Agriculture to estimate the annual costs of producing certain major commodities. That responsibility was delegated to the Economics and Statistics Service (ESS). Within the National Economics Divisions of ESS, a comprehensive program of research on agricultural costs of production is conducted. This report is the first on sugar. Estimates for the 1978/79 and 1979/80 crop years are considered to be final, (see Appendix), estimates for 1980/81 are preliminary, and those for 1981/82 are projected.

Responsibility for the collection and maintenance of data on cost of producing sweeteners was transferred from the Agricultural Stabilization and Conservation Service (ASCS) to the ESS in September of 1975, following termination of the domestic sugar program in 1974. ESS attempted to update sugar production costs in 1976, but was unable to obtain sufficient cooperation from industry representatives. Therefore, indexing procedures were used to update survey information last obtained by ASCS in 1970–72 based on data for the 1967–71 crops. As a result, estimates of input requirements and costs became seriously out-of-date and could only be considered as rough estimates.

The average costs presented are based on methods that provide total cost estimates for sugarcane production and processing on a per acre, per ton (cane), and per pound (raw cane) basis. Some inputs for producing or processing are used up each year, labor and fuel for example. Some, such as machinery, last more than 1 year, but become obsolete and wear out. Others—stock inputs such as management and land—provide a flow of services and output when combined with other inputs. The cost estimates include the cost of all inputs used up, an allowance sufficient to replace the portion of depreciable inputs used, and a return to remaining stock inputs sufficient to keep them employed in their present use.

Interest and taxes on owned land require estimates of the value of land for agricultural purposes. Estimates on the value of owned land were not available for Hawaii. Federal Land Banks estimates of current land values were obtained for Florida. Farm Real Estate Market Development values were utilized for all other areas. However, all the indicators of current land values are estimates of the value of land for agricultural purposes plus its speculative value for other purposes including urban development. In both Florida and Hawaii this speculative component was especially evident and, to a lesser extent, in the other sugarcane and sugarbeet production regions. As a result, a reliable and consistent indication of land allocation cost could not be obtained for sugarcane and sugarbeet production.

COST OF PRODUCING AND PROCESSING SUGARCANE

The estimated nonland costs of producing and processing sugarcane in 1980/81 and projected costs for 1981/82 are summarized in tables 5 and 6. Net production and processing costs per ton of cane were estimated at $44.32 for 1980/81 and were expected to increase to $50.05 for 1981/82, equal to 24.0 cents per pound for raw cane sugar. Estimated net costs of producing and processing raw cane sugar in 1980/81 were 18.0 cents per pound in Florida, 23.3 cents in Hawaii, 25.1 cents in Texas and 25.8 cents in Louisiana.

United States weighted average production cost, excluding land, in 1980/81 averaged $24.30 per ton of sugarcane with Louisiana having the lowest cost and Hawaii the highest. For 1981/82, U.S. production costs, excluding land, are projected to increase to $28.80 per ton, 19 percent over 1980/81. Cost per pound of raw cane sugar is projected at 13.8 cents per pound.

The U.S. preliminary processing cost for 1980/81 was estimated at $23.58 per ton of sugarcane or 11.3 cents per pound of raw cane sugar. Costs per pound were lowest in Florida at 8.8 cents and highest in Louisiana at 16.9 cents. By 1981/82, U.S. processing costs are expected to increase 8 percent to an average of 12.2 cents per pound. Based on trend yields and recovery, cost increases in Florida and Hawaii are projected to be larger than for Louisiana and Texas.

Detailed sugarcane production costs per acre, and per ton and production costs per pound of raw cane sugar are indicated in tables 7, 8, 9, and 10. Total estimated nonland production costs in 1980/81 ranged from $443 in Louisiana to $2,810 in Hawaii (table 7). Composite land allocations were lowest in Texas at $122 and highest in Florida at $335 and Hawaii at $379 (based on share rent) per acre.

Average U.S. cash rent for survey firms in 1980/81 was only 42 percent of the land allocation when based on interest and taxes on owned land at current market value. Share rent in Hawaii and Louisiana reflects the relatively higher sugar prices of 1980/81. U.S. production costs, excluding land, per ton of sugarcane were $24.30 or 11.8 cents per pound, for 1980/81 (table 8).

Fertilizer, labor, repairs, interest, replacement of machinery, and general and administrative expenses represent some of the more important cost categories. When yields and recovery rates are taken into account, raw cane sugar production costs in 1980/81 were comparable for Florida and Louisiana with Texas and Hawaii 2 to 3 cents higher

TABLE 5.—SUGARCANE: PRELIMINARY PRODUCTION AND PROCESSING COSTS PER TON OF CANE AND PER POUND OF RAW SUGAR, BY COST ITEM, SPECIFIED AREAS, 1980–81 CROP YEAR

| Cost item | Florida | | Hawaii | | Louisiana | | Texas | | United States | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) |
| Production | $22.69 | 10.800 | $29.59 | 13.305 | $19.28 | 10.942 | $22.71 | 12.788 | $24.30 | 11.807 |
| Variable | 18.31 | 8.715 | 23.67 | 10.643 | 11.47 | 6.510 | 19.74 | 11.115 | 18.73 | 9.098 |
| Machinery ownership | 2.33 | 1.109 | 2.47 | 1.111 | 5.42 | 3.076 | 1.30 | .732 | 2.99 | 1.455 |
| General and administration | 2.05 | .976 | 3.45 | 1.551 | 2.39 | 1.356 | 1.67 | .941 | 2.58 | 1.254 |
| Processing | 18.55 | 8.831 | 25.05 | 11.250 | 29.73 | 16.875 | 25.93 | 14.598 | 23.58 | 11.342 |
| Variable | 10.09 | 4.803 | 15.57 | 6.998 | 12.35 | 7.011 | 12.61 | 7.100 | 12.68 | 6.098 |
| Ownership | 7.65 | 3.639 | 7.48 | 3.356 | 16.52 | 9.375 | 11.71 | 6.595 | 9.62 | 4.628 |
| General and administration | .81 | .389 | 2.00 | .896 | .86 | .489 | 1.61 | .903 | 1.28 | .616 |
| Total production and processing excluding land | 41.24 | 19.631 | 54.64 | 24.555 | 49.01 | 27.817 | 48.64 | 27.386 | 47.88 | 2.149 |
| Credits | 3.40 | 1.622 | 3.63 | 1.269 | 3.55 | 2.015 | 4.03 | 2.266 | 3.56 | 1.714 |
| Molasses | 3.33 | 1.590 | 2.73 | 1.226 | 3.50 | 1.987 | 4.03 | 2.266 | 3.21 | 1.542 |
| Bagasse | .01 | .004 | | | .05 | .028 | | | .01 | .007 |
| Other | .06 | .028 | .90 | .043 | | | | | .34 | .165 |
| Net production and processing excluding land | 37.84 | 18.009 | 51.01 | 23.286 | 45.46 | 25.802 | 44.61 | 25.120 | 44.32 | 21.435 |
| Land allocation: | | | | | | | | | | |
| Share rent | | | 3.99 | 1.794 | 6.60 | 3.746 | | | 4.74 | 2.264 |
| Cash rent | 5.10 | 2.427 | | | 2.09 | 1.186 | 2.81 | 1.582 | 4.46 | 2.208 |
| Current market value | 11.44 | 5.445 | | | 8.83 | 5.011 | 5.06 | 2.849 | 10.69 | 5.245 |
| Composite | 10.17 | 4.840 | 3.99 | 1.794 | 6.93 | 3.933 | 4.43 | 2.494 | 7.18 | 3.486 |
| Yield per acre (tons) | 32.90 | | 94.97 | | 23.00 | | 27.58 | | | |
| Recovery per ton (pounds) | | 210.1 | | 222.7 | | 176.2 | | 177.6 | | |

TABLE 6.—SUGARCANE: PROJECTED PRODUCTION AND PROCESSING COSTS PER TON OF CANE AND PER POUND OF RAW SUGAR, BY COST ITEM, SPECIFIED AREAS, 1981–82 CROP YEAR

| Cost item | Florida | | Hawaii | | Louisiana | | Texas | | United States | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) |
| Production | $26.65 | 12.813 | $34.04 | 15.265 | $23.84 | 12.547 | $26.86 | 14.598 | $28.80 | 13.776 |
| Variable | 21.48 | 10.327 | 27.25 | 12.220 | 14.24 | 7.495 | 23.29 | 12.658 | 22.22 | 10.629 |
| Machinery ownership | 2.76 | 1.327 | 2.87 | 1.287 | 6.67 | 3.511 | 1.57 | .853 | 3.53 | 1.689 |
| General and administration | 2.41 | 1.159 | 3.92 | 1.758 | 2.93 | 1.541 | 2.00 | 1.087 | 3.05 | 1.458 |
| Processing | 19.95 | 9.591 | 27.09 | 12.149 | 33.31 | 17.534 | 28.80 | 15.650 | 25.41 | 12.206 |
| Variable | 11.33 | 5.449 | 17.32 | 7.766 | 14.38 | 7.569 | 14.53 | 7.895 | 14.31 | 6.809 |
| Ownership | 7.72 | 3.710 | 7.59 | 3.406 | 17.91 | 9.428 | 12.52 | 6.804 | 9.65 | 4.717 |
| General and administration | .90 | .432 | 2.18 | .977 | 1.02 | .537 | 1.75 | .951 | 1.45 | .680 |
| Total production and processing excluding land | 46.60 | 22.404 | 61.13 | 27.414 | 57.15 | 30.081 | 55.66 | 30.248 | 54.21 | 25.982 |
| Credits | 4.01 | 1.932 | 4.06 | 1.920 | 4.27 | 2.247 | 4.17 | 2.266 | 4.16 | 1.995 |
| Molasses | 3.94 | 1.897 | 2.99 | 1.440 | 4.21 | 2.217 | 4.17 | 2.266 | 3.74 | 1.788 |
| Bagasse | .01 | .004 | | | .06 | .030 | | | .02 | .007 |
| Other | .06 | .031 | 1.07 | .480 | | | | | .40 | .200 |
| Net production and processing excluding land | 42.59 | 20.472 | 57.07 | 25.494 | 52.88 | 27.834 | 51.49 | 27.982 | 50.05 | 23.987 |

| Cost item | Florida | | Hawaii | | Louisiana | | Texas | | United States | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) |
| Land allocation: | | | | | | | | | | |
| Share rent | | | $3.89 | 1.745 | $8.10 | 4.263 | | | $5.04 | 2.357 |
| Cash rent | $5.96 | 2.865 | | | 2.56 | 1.347 | $3.36 | 1.826 | 5.26 | 2.586 |
| Current market value | 12.66 | 6.087 | | | 13.20 | 6.947 | 6.05 | 3.288 | 12.31 | 6.038 |
| Composite | 11.32 | 5.442 | 3.89 | 1.745 | 8.52 | 4.485 | 5.29 | 2.875 | 7.84 | 3.750 |
| Yield per acre (tons) | 31.60 | | 92.90 | | 21.20 | | 26.30 | | | |
| Recovery per ton (pounds) | | 208.0 | | 223.0 | | 190.0 | | 184.0 | | |

TABLE 7.—SUGARCANE: PRELIMINARY PRODUCTION COSTS PER ACRE, BY COST ITEM, SPECIFIED AREAS, 1980–81 CROP YEAR

| Cost item | Florida | Hawaii | Louisiana | Texas | United States |
|---|---|---|---|---|---|
| Variable | $602.54 | $2,247.74 | $263.81 | $544.45 | $702.63 |
| Seed | 1.58 | | | | 0.74 |
| Fertilizer | 42.79 | 280.03 | 38.30 | 53.01 | 73.48 |
| Chemicals | 34.12 | 95.25 | 40.71 | 51.26 | 45.44 |
| Custom operations | 17.04 | 86.25 | 14.2 | 74.28 | 28.22 |
| Labor | 302.87 | 1,015.20 | 55.21 | 125.77 | 303.63 |
| Fuel and lubrication | 41.56 | 96.61 | 48.05 | 33.37 | 50.75 |
| Repairs | 105.90 | 394.47 | 40.37 | 116.23 | 122.39 |
| Purchased irrigation water | | | | | 2.03 |
| Purchased electricity | 1.53 | 50.37 | | | 7.45 |
| Miscellaneous | 4.90 | | | | 2.30 |
| Interest | 50.25 | 229.56 | 26.96 | 50.60 | 66.20 |
| Machinery ownership | 76.62 | 234.45 | 124.52 | 35.96 | 112.20 |
| Replacement | 36.27 | 107.93 | 63.02 | 17.71 | 24.15 |
| Interest | $27.22 | $107.37 | $51.36 | $13.16 | $45.56 |
| Taxes and insurance | 13.13 | 19.15 | 10.14 | 5.09 | 12.49 |
| General farm overhead | | | | 14.80 | 8.60 | 5.35 |
| Management | | | | 40.31 | 35.75 | 15.73 |
| General and administration | 67.43 | 328.11 | | 1.71 | 75.67 |
| Total excluding land | 746.59 | 2,810.30 | 443.44 | 626.48 | 911.78 |
| Land allocation: | | | | | |
| Share rent | | 378.62 | 151.76 | | 237.29 |
| Cash rent | 167.64 | | 48.03 | 77.46 | 136.14 |
| Current market value | 376.26 | | 203.02 | 139.55 | 325.61 |
| Composite | 334.54 | 378.62 | 159.36 | 122.16 | 269.18 |
| Yield per acre (tons) | 32.90 | 94.97 | 23.00 | 27.53 | 37.51 |

TABLE 8.—SUGARCANE: PRELIMINARY PRODUCTION AND PROCESSING COSTS PER TON OF CANE AND PER POUND OF RAW SUGAR, BY COST ITEM, SPECIFIED AREAS, 1980–81 CROP YEAR

| Cost item | Florida | | Hawaii | | Louisiana | | Texas | | United States | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) |
| Variable | $18.31 | 8.715 | $23.67 | 10.643 | $11.47 | 6.510 | $19.74 | 11.115 | $18.73 | 9.098 |
| Seed | .05 | .024 | | | | | | | .02 | .010 |
| Fertilizer | 1.30 | .619 | 2.95 | 1.326 | 1.67 | .948 | 1.92 | 1.081 | 1.96 | .952 |
| Chemicals | 1.03 | .490 | 1.00 | .450 | 1.77 | 1.005 | 1.86 | 1.047 | 1.21 | .587 |
| Custom operations | .52 | .248 | .91 | .409 | .62 | .352 | 2.69 | 1.515 | .75 | .367 |
| Labor | 9.20 | 4.379 | 10.69 | 4.807 | 2.40 | 1.362 | 4.56 | 2.568 | 8.09 | 3.931 |
| Fuel and lubrication | 1.26 | .600 | 1.02 | .459 | 2.08 | 1.180 | 1.21 | .681 | 1.35 | .656 |
| Repairs | 3.22 | 1.533 | 4.15 | 1.866 | 1.76 | .999 | 4.22 | 2.376 | 3.26 | 1.585 |
| Purchased irrigation water | | | | | | | 1.45 | .817 | .05 | .026 |
| Purchased electricity | .05 | .024 | .53 | .238 | | | | | .20 | .097 |
| Miscellaneous | .15 | .071 | | | | | | | .07 | .030 |
| Interest | 1.53 | .727 | 2.42 | 1.088 | 1.17 | .664 | 1.83 | 1.030 | 1.77 | .857 |
| Machinery ownership | 2.33 | 1.109 | 2.47 | 1.111 | 5.42 | 3.076 | 1.30 | .732 | 2.99 | 1.454 |
| Replacement | 1.10 | .524 | 1.14 | .513 | 2.74 | 1.555 | .64 | .361 | 1.44 | .701 |
| Interest | .83 | .395 | 1.13 | .508 | 2.23 | 1.266 | .48 | .270 | 1.22 | .590 |
| Taxes and insurance | .40 | .190 | .20 | .090 | .45 | 2.55 | .18 | .101 | .33 | .163 |
| General farm overhead | | | | | .64 | .363 | .31 | .175 | .15 | .072 |
| Management | | | | | 1.75 | .993 | 1.30 | .732 | .42 | .203 |
| General and administration | 2.05 | .976 | 3.45 | 1.551 | | | .06 | .034 | 2.01 | .979 |
| Total excluding land | 22.69 | 10.800 | 29.59 | 13.305 | 19.28 | 10.942 | 22.71 | 12.788 | 24.30 | 11.806 |
| Land allocation: | | | | | | | | | | |
| Share rent | | | 3.99 | 1.794 | 6.60 | 3.746 | | | 4.74 | 2.264 |
| Cash rent | 5.10 | 2.427 | | | 2.09 | 1.186 | 2.81 | 1.582 | 4.46 | 2.208 |
| Current market value | 11.44 | 5.445 | | | 8.83 | 5.011 | 5.06 | 2.849 | 10.69 | 5.245 |
| Composite | 10.17 | 4.840 | 3.99 | 1.794 | 6.93 | 3.933 | 4.43 | 2.494 | 7.18 | 3.486 |
| Yield per acre (tons) | 32.90 | | 94.97 | | 23.00 | | 27.58 | | | |
| Recovery per ton (pounds) | | 210.1 | | 222.4 | | 176.2 | | 177.6 | | |

For the 1981/82 crop U.S. sugarcane production costs, per acre, excluding land, are projected at $1,029 (table 9). On the basis of per ton of sugarcane or per pound of raw sugar, projected 1981/82 variable costs were generally well over two-thirds of production costs with labor the largest component (table 10). Projected fertilizer and labor costs were high in Hawaii compared with other areas reflecting wage rates and cultural practices.

Custom operations were highest in Texas. Projected machinery ownership costs were lowest in Texas and highest in Louisiana, reflecting intensity of use of machinery as a substitute for labor in growing and harvesting of cane. The 1981/82 composite land allocation averaged $7.84 per ton for all areas ranging from a low of $3.89 per ton in Hawaii for share rent to a composite $11.32 in Florida.

Information on processing costs is presented in tables 11 and 12. Total U.S. costs per pound of raw cane sugare are projected to increase from $23.58 per ton of cane in 1980/81 to $25.41 in 1981/82. Preliminary estimates for 1980/81 and projections for 1981/82 indicate that Florida has the most efficient facilities and the lowest processing cost.

Fuel, supplies and materials, and interest expenses are major contributors to expected cost increases. With an expected increase to trend recovery of raw sugar per ton of sugarcane offset by inflation, 1981/82 projected total processing costs per pound are 8 percent above 1980/81.

TABLE 9.—SUGARCANE: PROJECTED PRODUCTION COSTS PER ACRE, BY COST ITEM, SPECIFIED AREAS, 1981–82 CROP YEAR

| Cost item | Florida | Hawaii | Louisiana | Texas | United States |
|---|---|---|---|---|---|
| Variable | $678.86 | $2,531.70 | $301.92 | $612.43 | $793.09 |
| Seed | 1.73 | | | | .81 |
| Fertilizer | 48.66 | 318.47 | 43.56 | 60.28 | 83.56 |
| Chemicals | 38.25 | 106.77 | 45.63 | 57.46 | 50.93 |
| Custom operations | 18.76 | 94.95 | 15.64 | 81.78 | 31.07 |
| Labor | 335.95 | 1,126.09 | 61.24 | 139.51 | 336.78 |
| Fuel and lubrication | 51.46 | 119.62 | 59.49 | 41.32 | 62.83 |
| Repairs | 119.88 | 446.53 | 45.70 | 131.57 | 138.54 |
| Purchased irrigation water | | | | 43.96 | 2.23 |
| Purchased electricity | 1.89 | 62.36 | | | 9.23 |
| Miscellaneous | 6.07 | | | | 2.87 |
| Interest | 56.21 | 256.91 | 30.66 | 56.55 | 74.24 |
| Machinery ownership | 87.30 | 266.66 | 141.46 | 41.32 | 127.64 |
| Replacement | 40.64 | 120.94 | 70.62 | 19.85 | 60.67 |
| Interest | $31.24 | $123.22 | $58.94 | $15.10 | $52.28 |
| Taxes and insurance | 15.42 | 22.50 | 11.90 | 6.37 | 14.69 |
| General farm overhead | | | | 16.03 | 9.32 | 6.01 |
| Management | | | | 45.94 | 40.40 | 17.91 |
| General and administration | 76.01 | 363.70 | | 3.04 | 84.53 |
| Total excluding land | 842.17 | 3,162.06 | 505.35 | 706.51 | 1,029.18 |
| Land allocation: | | | | | |
| Share rent | | 361.32 | 171.79 | | 243.24 |
| Cash rent | 188.34 | | 54.37 | 88.27 | 153.16 |
| Current market value | 399.90 | | 229.82 | 159.03 | 349.54 |
| Composite | 357.59 | 361.32 | 180.62 | 139.21 | 285.91 |
| Yield per acre (tons) | 31.60 | 92.90 | 21.20 | 26.30 | 35.73 |

TABLE 10.—SUGARCANE: PROJECTED PRODUCTION COSTS PER TON OF CANE AND PER POUND OF RAW SUGAR, BY COST ITEM, SPECIFIED AREAS, 1981-82 CROP YEAR

| Cost item | Florida | | Hawaii | | Louisiana | | Texas | | United States | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) |
| Variable | $21.48 | 10.327 | $27.25 | 12.220 | $14.24 | 7.495 | $23.29 | 12.658 | $22.22 | 10.629 |
| Seed | .04 | .024 | | | | | | | .02 | .010 |
| Fertilizer | 1.54 | .740 | 3.43 | 1.538 | 2.05 | 1.079 | 2.29 | 1.245 | 2.36 | 1.128 |
| Chemicals | 1.21 | .582 | 1.15 | .516 | 2.15 | 1.132 | 2.18 | 1.185 | 1.41 | .674 |
| Custom operations | .59 | .284 | 1.02 | .457 | .74 | .389 | 3.12 | 1.696 | .87 | .415 |
| Labor | 10.63 | 5.111 | 12.12 | 5.435 | 2.89 | 1.521 | 5.30 | 2.880 | 9.45 | 4.521 |
| Fuel and lubrication | 1.63 | .784 | 1.29 | .578 | 2.81 | 1.479 | 1.57 | .853 | 1.74 | .831 |
| Repairs | 3.79 | 1.822 | 4.80 | 2.152 | 2.16 | 1.137 | 5.01 | 2.723 | 3.88 | 1.856 |
| Purchased irrigation water | | | | | | | 1.67 | .908 | .06 | .029 |
| Purchased electricity | .06 | .029 | .67 | .300 | | | | | .27 | .126 |
| Miscellaneous | .19 | .091 | | | | | | | .08 | .036 |
| Interest | 1.79 | .860 | 2.77 | 1.244 | 1.44 | .758 | 2.15 | 1.168 | 2.08 | 1.001 |
| Machinery ownership | 2.76 | 1.327 | 2.87 | 1.287 | 6.67 | 3.511 | 1.57 | .853 | 3.53 | 1.689 |
| Replacement | 1.29 | .620 | 1.30 | .583 | 3.33 | 1.753 | .76 | .413 | 1.68 | .803 |
| Interest | .99 | .476 | 1.33 | .596 | 2.78 | 1.463 | .57 | .310 | 1.45 | .695 |
| Taxes and insurance | .48 | .231 | .24 | .108 | .56 | 2.95 | .24 | .130 | .40 | .191 |
| General farm overhead | | | | | .76 | .400 | .35 | .191 | .16 | .078 |
| Management | | | | | 2.17 | 1.141 | 1.53 | .831 | .49 | .231 |
| General and administration | 2.41 | 1.159 | 3.92 | 1.758 | | | .12 | .065 | 2.40 | 1.149 |
| Total excluding land | 26.65 | 12.813 | 34.04 | 15.265 | 23.84 | 12.547 | 26.86 | 14.598 | 28.80 | 13.776 |
| Land allocation: | | | | | | | | | | |
| Share rent | | | 3.89 | 1.745 | 8.10 | 4.263 | | | 5.04 | 2.357 |
| Cash rent | 5.96 | 2.865 | | | 2.56 | 1.347 | 3.36 | 1.826 | 5.26 | 2.586 |
| Current market value | 12.66 | 6.087 | | | 13.20 | 6.947 | 6.05 | 3.288 | 12.31 | 6.038 |
| Composite | 11.32 | 5.442 | 3.89 | 1.745 | 8.52 | 4.485 | 5.29 | 2.875 | 7.84 | 3.750 |
| Yield per acre (tons) | 31.60 | | 92.90 | | 21.20 | | 26.30 | | | |
| Recovery per ton (pounds) | | 208.0 | | 223.0 | | 190.0 | | 184.0 | | |

TABLE 11.—RAW SUGAR: PRELIMINARY PROCESSING COSTS PER TON OF CANE AND PER POUND OF RAW SUGAR, BY COST ITEM, SPECIFIED AREAS, 1980-81 CROP YEAR

| Cost item | Florida | | Hawaii | | Louisiana | | Texas | | United States | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) |
| Variable | $10.09 | 4.803 | $15.57 | 6.998 | $21.35 | 7.011 | $12.61 | 7.100 | $12.68 | 6.09 |
| Cane transportation | 2.22 | 1.056 | 2.42 | 1.086 | 1.71 | .972 | 3.09 | 1.741 | 2.23 | 1.075 |
| Processing: | | | | | | | | | | |
| Labor | 1.70 | .811 | 2.43 | 1.097 | 1.70 | .965 | 1.10 | .619 | 1.95 | .940 |
| Fuel | .46 | .221 | .96 | .430 | 1.52 | .860 | .91 | .512 | .88 | .421 |
| Supplies and materials | .72 | .343 | 1.23 | .553 | 1.23 | .701 | 1.25 | .702 | 1.03 | .497 |
| Repair and maintenance | 1.88 | .895 | 3.70 | 1.659 | 4.22 | 2.395 | 3.57 | 2.013 | 3.09 | 1.484 |
| Labor benefits | .55 | .260 | 1.49 | .670 | .72 | .407 | .30 | .169 | .91 | .439 |
| Marketing | 2.02 | .960 | 2.42 | 1.086 | .49 | .278 | 1.63 | .918 | 1.85 | .888 |
| Interest | .54 | .257 | .92 | .417 | .76 | .433 | .76 | .426 | .74 | .354 |
| Ownership | 7.65 | 3.639 | 7.48 | 3.356 | 16.52 | 9.375 | 11.71 | 6.595 | 9.62 | 4.628 |
| Depreciation | .89 | .422 | 1.39 | .622 | 1.77 | 1.003 | 2.31 | 1.300 | 1.30 | .628 |
| Interest | 6.43 | 3.058 | 5.93 | 2.662 | 14.33 | 8.135 | 8.64 | 4.866 | 8.01 | 3.852 |
| Taxes and insurance | .33 | .159 | .16 | .072 | .42 | .237 | .76 | .429 | .31 | .148 |
| General and administration | .81 | .389 | 2.00 | .896 | .86 | .489 | 1.61 | .903 | 1.28 | .616 |
| Labor | .32 | .154 | .37 | .167 | .40 | .228 | .71 | .396 | .37 | .180 |
| Nonlabor | .49 | .235 | 1.63 | .729 | .46 | .261 | .90 | .507 | .91 | .436 |
| Total processing cost | 18.55 | 8.831 | 25.05 | 11.250 | 29.73 | 16.875 | 25.93 | 14.598 | 23.58 | 11.342 |
| Recovery per ton (pounds) | | 210.1 | | 222.7 | | 176.2 | | 177.6 | | 206.8 |

TABLE 12.—RAW SUGAR: PROJECTED PROCESSING COSTS PER TON OF CANE AND PER POUND OF RAW SUGAR, BY COST ITEM, SPECIFIED AREAS, 1981-82 CROP YEAR

| Cost item | Florida | | Hawaii | | Louisiana | | Texas | | United States | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) | Ton | Pound (cents) |
| Variable | $11.33 | 5.449 | $17.32 | 7.766 | $14.38 | 7.569 | $14.53 | 7.895 | $14.31 | 6.809 |
| Cane transportation | 2.48 | 1.193 | 2.78 | 1.246 | 1.88 | .992 | 3.52 | 1.915 | 2.52 | 1.200 |
| Processing: | | | | | | | | | | |
| Labor | 1.89 | .908 | 2.71 | 1.216 | 1.88 | .992 | 1.22 | .662 | 2.19 | 1.035 |
| Fuel | .58 | .277 | 1.19 | .531 | 1.88 | .987 | 1.13 | .612 | 1.07 | .514 |
| Supplies and materials | .79 | .382 | 1.36 | .608 | 1.36 | .716 | 1.37 | .746 | 1.13 | .541 |
| Repair and maintenance | 2.16 | 1.040 | 4.06 | 1.821 | 5.15 | 2.713 | 4.24 | 2.303 | 3.50 | 1.685 |
| Labor benefits | .59 | .283 | 1.65 | .741 | .83 | .436 | .34 | .187 | 1.04 | .486 |
| Marketing | 2.31 | 1.111 | 2.65 | 1.189 | .58 | .303 | 1.93 | 1.047 | 2.12 | .994 |
| Interest | .53 | .255 | .92 | .414 | .82 | .430 | .78 | .423 | .74 | .354 |
| Ownership | 7.72 | 3.710 | 7.59 | 3.406 | 17.91 | 9.428 | 12.52 | 6.804 | 9.65 | 4.717 |
| Depreciation | 1.02 | .489 | 1.52 | .684 | 2.07 | 1.092 | 2.73 | 1.483 | 1.46 | .705 |
| Interest | 6.32 | 3.037 | 5.89 | 2.643 | 15.35 | 8.078 | 8.89 | 4.832 | 7.86 | 3.846 |
| Taxes and insurance | .38 | .184 | .18 | .079 | .49 | .258 | .90 | .489 | .33 | .166 |
| General and administration | .90 | .432 | .218 | .977 | 1.02 | .537 | 1.75 | .951 | 1.45 | .680 |
| Labor | .34 | .163 | .41 | .184 | .49 | .256 | .81 | .439 | .41 | .197 |
| Nonlabor | .56 | .269 | 1.77 | .793 | .53 | .281 | .94 | .512 | 1.04 | .483 |
| Total processing cost | 19.95 | 9.591 | 27.09 | 12.149 | 33.31 | 17.534 | 28.80 | 15.650 | 25.41 | 12.206 |
| Recovery per ton (pounds) | | 208.0 | | 223.0 | | 190.0 | | 184.0 | | 209.8 |

## STATUS REPORT ON UNITED STATES-PANAMANIAN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, the U.S. Ambassador to Panama, Mr. Ambler H. Moss, Jr., recently completed a report on the status of United States-Panamanian relationships.

In light of the tragic death of Panama's President Torrijos and the important role played by him in the negotiation of the Panama Canal Treaties, I ask unanimous consent that Ambassador Moss' report be printed in full in the RECORD.

PANAMA UPDATE—JULY 1, 1981

This paper addresses the various aspects of our country's economic and political relationships with Panama, the business and investment climate, and the new partnership created under the Panama Canal Treaties which entered into force on October 1, 1979. The Embassy' mailing address and phone number are included on the last page; please do not hesitate to contact me or any other officer directly.

RECENT HISTORY

During the past several years, the focal point of United States-Panamanian relations has been the completion and entry into force of the Panama Canal Treaties. These agreements were the product of 14 years of negotiations, carried out during the administrations of four presidents, two Democrats and two Republicans. When the treaties were signed on September 7, 1977, all of the countries of Latin America and the major shipping nations of the free world such as Japan, Britain, France, and Germany endorsed them and indicated that they supported them as a just resolution of the canal issue. These nations also viewed the treaties as protective of their interests in using the canal in the future.

During the first months of 1978 the United States Senate debated ratification of the treaties. At that time, public opinion in the United States was very much divided. The Senate debate stretched on from January until mid-April, to the exclusion of all other Senate business during that time, making it the longest and most thorough Senate consideration of any treaties since the Treaty of Versailles after World War I.

Then, after a period of painstaking, detailed work by Panamanian and United States officials, both in the civilian services and in the military, both countries prepared for the treaties to take effect on October 1, 1979.

Fortunately, many of today's leaders of the Panamanian Government were heavily involved in the treaty process over the last few years. They were extremely knowledgeable, therefore, about the treaty arrangements and felt a personal stake in their success. President Aristides Royo, a young lawyer who became President of Panama in October, 1978, was a chief treaty negotiator for Panama and was personally active in all phases of planning for treaty implementation. He has a particular sensitivity toward the needs and concerns of the United States citizens who live and work in the former Canal Zone. Prior to the entry into force of the treaties, President Royo visited both Atlantic and Pacific sides of the Canal Zone and met with American and Panamanian citizens employed there. There is certainly strong evidence of good will and determination on both sides to make the treaties work.

The canal organization today is strong and efficient, and the people who work in the canal enterprise are as dedicated to the success of their endeavor as they have been in the past. The Administrator of the Panama Canal Commission is a retired Lieutenant General, Dennis P. McAuliffe, who previously held the position of Commander-in-Chief, United States Southern Command here in Panama. The Deputy Administrator, for the first time in history, is a Panamanian citizen, Fernando Manfredo, a former cabinet minister and businessman. There is no one who doubts that the canal enterprise is in good hands.

This is not to say that the two countries will not have disagreements of one sort or another during the lifetime of the treaties; to be sure, this is true of any partnership. Nevertheless, differences are resolved in a business-like manner, and both parties share common objectives and a common understanding of the underlying relationship and the way in which it ought to function.

We have now had "track record" of a little over a year by which to measure the effectiveness of the canal enterprise. One good yardstick is the number of ocean going commercial transits made through the canal. In 1980, the canal performed 13,507 such transits, as compared to 12,935 in 1979. That averages out to about 50 more ships per month in 1980, as compared to 1979. In terms of Panama Canal net tons, the basis on which tolls are assessed, the 1980 tonnage figures were up by roughly nine percent over 1979.

The years immediately preceding signature of the canal treaties were marked by an uncertainty as to the future of the relationship between Panama and the United States. Such a climate was a strong contributing factor to the virtual halt to Panama's economic growth. Now, with the stability in the country which has been brought about by a clear definition of Panama's relationship with the United States, we expect to see a period of economic expansion. Such signs of growth have been apparent already, even though world economic conditions are difficult.

PANAMA'S ECONOMY AND INVESTMENT CLIMATE

Panama's economic structure is essentially based upon private enterprise. Government policy has traditionally favored private investors, both domestic and foreign, and the economy has remained open and relatively free from restrictions. There are no controls on external capital flows; the repatriation of of capital and profits is unrestricted. Panama's unit of currency, the balboa, is the same as the dollar. There are generous incentives to investors, and Panama has traditionally maintained a liberal import policy even during periods of balance-of-trade difficulties. Foreign banks have been welcomed to Panama through liberal banking legislation, and funds of around $37.5 billion are now being handled through Panama.

The country is now a major banking center which includes some 110 banks from the United States, Japan, Western Europe and Latin America. International banks continue to open for business. Two major Japanese banks and an important French bank have just begun operations within the last two months. The banking sector employs about 6,500 people in Panama, making it an employer of almost the same order as the canal enterprise.

Panama has embarked on a program to seek private foreign investment on a large scale. It is in our national interest to assist in that effort. We must never lose sight of the fact that Panama is the "habitat" of the canal. Its political climate will depend upon its economic performance.

In October, 1979, more than 70 American companies formed the American Chamber of Commerce and Industry in Panama, the first time in history that such a chamber has existed. It has now expanded its membership to 98. The American business community feels welcome here. Prsident Royo inaugurated our Chamber and told its members that he considered that it would be good for American business and also good for Panama. This country is also a good customer for our exports. Apart from petroleum, U.S. products have a market share in Panama of about 49 percent.

Last year, the value of U.S. exports to Panama amounted to about $700 million, up 32 percent over the 1979 totals and up 102 percent since 1977. Industrial machinery, transportation equipment, telecommunications equipment, paper and paperboard products, and medical and pharmaceutical products were important components of our export mix. U.S. imports from Panama in 1980 amounted to about $330 million, up about 70 percent. Shrimp, sugar and bananas accounted for the bulk of these imports.

Panamanians are justly proud of the social progess made in the last 10 years. Certainly the achievement in this area promise a far more stable society than does the familiar pattern of great disparity between wealth and poverty and the absence of hope by the very poor which is the case in so many Latin American countries. The literacy rate is now very high, close to 86 percent. Greatly expanded housing and health programs and agrarian reform programs have eradicated many of the inequalities between the standards of living of rural and urban inhabitants. Panama is happily free from terrorism, kidnapping, "liberation fronts" and the like. It is one of the safest places in the world for foreign businessmen and their families.

This social progress has been achieved at heavy cost to the Panamanian Government's budget, however. Public sector debt is very high in Panama, although the country is very credit-worthy in the international financial market and its record for meeting international obligations is enviable. But this means that private sector expansion is crucial in dealing with unemployment and other major economic problems.

The Panama Canal Treaties not only have removed a principal psychological obstacle to business confidence, but they will have a direct effect upon the economy and will provide major benefits which the government is eager to exploit in cooperation with business. Under the treaty, more than 1,000 square kilometers have been transferred to Panamanian use, or about 64 percent of the former Canal Zone. There are houses and other valuable buildings and installations on this territory. The amount of exchange earnings Panama will receive from the canal will rise, not only because of an increase in the annual cash payments under the treaty (about $75 million as compared with $2.3 million before the treaty), but also because of the development of lands and facilities which have reverted to Panamanian use.

Among the first group of businesses to benefit by the expansion opportunities offered under the Panama Canal Treaty has been the Colon Free Zone, the oldest and largest free trade zone in the Western Hemisphere. With over $4 billion in trade, it is second only to Hong Kong among the free zones of the world. Since its founding in 1948, the Colon Free Zone has been limited to a 94-acre area in the city of Colon. Until the entry into force of the treaty, neither Colon nor its Free Zone, enveloped as they were by the territory of the Canal Zone, was able to grow. With the treaty-mandated reversion of much of the surrounding land to Panamanian use, vast new acreage has become available for the Free Zone's expansion, necessary to accommodate the more than 100 new firms which have expressed interest in joining the 350 companies already operating there. Many U.S. firms use the Free Zone as a warehouse and marketing center for the sale and distribution of their products throughout Latin America.

To stimulate the development of a light-industrial base, and to combat unemployment in Colon and in other high unemployment areas in the Republic, the Panamanian

Government recently instituted a program to attract export-oriented, labor-oriented assembly operations to the Isthmus, through the offer of an attractive package of tax and other benefits named "Maquila", after the highly successful program initiated by Mexico on its border with the United States.

New business opportunities are being created constantly, such as the shrimp farms along extensive areas of the Pacific Coast. In Latin America, Panama now ranks second in farmed shrimp production. The completely new fishing port of Vacamonte, not far from Panama City, is now in operation. It affords a modern facility for Panama's shrimp fleets and facilities for Panamanian and foreign tuna fleets. The port will also stimulate a variety of new businesses in the area.

Though it imports all of its petroleum needs, and consumes some 19,000 barrels per day of such products, Panama is well underway with development of alternative energy sources, chief among them hydroelectric power, which will significantly lessen the country's vulnerability to OPEC price increases. As recently as 1976 Panama relied almost exclusively on thermal generation to supply electricity. The commissioning of two major hydroelectric projects in 1976 and 1979 made dramatic inroads on oil dependency, to the point where Panama's power generation is now 50 percent hyroelectric. Two additional projects, to be completed in 1983 and in 1990, will make Panama's electric power production 93 percent hydroelectric in 1990. Other projects to reduce petroleum dependency—biogas, biomass and "gasohol" production—cannot match the hydrolectric projects in dramatic effect, and are still in various stages of study and discussion, but they demonstrate a willingness on the part of the government to employ the nation's traditional agricultural strengths in finding solutions to problems of new energy generation.

You may have noticed discussion in the press from time to time about the prospects for a new sea-level canal. The United States Government has an open mind about this project at present. Interest in such a canal was embodied in Article XII of the Panama Canal Treaty, which commits both governments to study its feasibility. Last year an impressive delegation from Japan, headed by Mr. Shigeo Nagano, President of the Japanese Chamber of Commerce and Industry, spent four days here studying prospects for such a new canal, and President Royo visited Japan subsequently.

In April a Panamanian delegation headed by the Minister of Commerce and Industry went to Japan to follow up specific areas of trade and investment prospects. The delegation included the Presidents of the Panamanian Chamber of Commerce and other private sector representatives. Mr. Nagano returned to Panama at the end of the month with several representatives of the Japanese Government.

A by-product of the new relationship which has developed under the Panama Canal Treaties is the new spirit of cooperation which both countries feel in the international arena. You are aware, of course, that in December, 1979, Panama demonstrated its helpfulness to a grave world situation by inviting the former Shah of Iran to come here from the United States, after many other nations had refused our plea for help. When the USSR launched its brutal invasion of Afghanistan, Panama joined us in denouncing that aggression and participated in the boycott of the Moscow Olympics last year.

We have a healthy relationship with Panama and find increasingly that Panama's vision of the role and the importance of the canal to the world is, in fact, the same as ours. The slogan on Panama's coat of arms is Pro Mundi Beneficio—For the Benefit o the World. During the struggle of Latin America for its independence in the last century, the great Liberator Simon Bolivar saw Panama as becoming the emporium of the world. Bolivar's dream could come true.

AMBLER H. MOSS, Jr.,
*Ambassador.*

## INTERNATIONAL MILITARY EDUCATION AND TRAINING PROGRAMS

Mr. HAYAKAWA. Mr. President, in the course of hearings held by the East Asia Subcommittee of the Committee on Foreign Relations on U.S. policy in Southeast Asia, July 21, 1981, we heard testimony from Deputy Assistant Secretary of Defense for International Security Affairs, Richard L. Armitage. In discussing our relations with Asian governments dominated by military officers, Mr. Armitage emphasized the value of the international military education and training program (IMET). I agree thoroughly with his assessment. From my own experience with the IMET program, I have long felt that it represents one of our most effective foreign policy tools. I would like to share with you some of my observations and thoughts on the IMET program.

Mr. President, one of the critical pillars of stability in the United States and the Western World is the democratic values held by the military establishments of these countries. The men and women who form the officers corps of these nations are dedicated to the principle of civilian control of government and the military forces of their respective countries. These men and women belong to military services that have shed much blood and national treasure over the past several decades to protect freedom and preserve human rights and national social values.

I strongly believe that the cause of human liberty and the principal of civilian control of government are goals that the American people and their government should pursue throughout the world. Over the years we have furthered that goal through our military assistance programs and more specifically through the international military education and training program (IMET).

Under IMET, which began in 1950, hundreds of thousands of military personnel from around the world have undergone training in U.S. military schools and universities, which are of course among the finest in the world.

All participants who come to the United States are exposed to the constitutional freedoms and institutions of this Nation. They are exposed to the American press and the role it plays in American democracy. They read daily of its successes and even its failures. Regardless of the content they observe in our printed press and our electronic media, they go home realizing that the American press is truly free.

Should they be here during an election year, they will observe the workings of a truly representative democracy in action. They are exposed through the media to the winners and the losers of our local, State, and National elections. They are exposed to our culture, our material values, our social successes, and our social failures. They see our dedication to human rights and our overemphasis upon consumerism and materialism.

More importantly these foreign military personnel are trained in the values of American military traditions. Their course material contains no reference to military coups or takeovers in the United States because there have been none. They are exposed to a military command structure where the President and the civilian leadership in the Department of Defense hold the final authority. They learn about our separation of powers and our system of checks and balances. They observe that the Congress, not the President, has the final say in the level of defense funding.

In their military courses they are trained in U.S. military organization, tactics, strategy, command and control. They train using American equipment, weapons systems, and nomenclature.

In most cases, these foreign military personnel either learn or improve their English language capability during their stay in the United States.

Perhaps the most valuable personal benefit accruing to the foreign officers and enlisted men are friendships and personal relationships which they forge with U.S. military personnel. These relationships often endure for many years during the young officer's career, thus allowing the U.S. military officers to maintain close personal contact with people who frequently move into top command positions or high civilian government posts. Of course, many of the IMET participants come from countries with forms of government quite different than the United States.

They range from strong military to weak civilian governments. Frequently the most stable force in these countries is the military or the Army. It is in the interest of U.S. foreign policy to have developed personal relationships with key officers, especially in those countries where stability of the government is closely tied to the military forces.

Let me list, without specifying the countries, or the names of the individuals involved, some selected comments submitted by U.S. diplomatic and military officers stationed in countries that have received IMET training or have been required to terminate the IMET program due to cost.

Spirit of cooperation in Air Force is strong due to U.S. training. Since not true of Army due to longstanding training program.

As a result of not having an IMET program since 1977, we have lost contact with the younger officers in the military.

Among the older officers who were trained in the United States, there is a clear, softer edge on their political views, a more humble concept of the military, and a more rational approach to its role in society.

In September 1978, officers dissatisfied with the movement toward a return to civilian government tried to disrupt the process. Six key general staff officers representing the three services, all of whom had received extensive training in the United States and the Canal Zone, were pivotal in keeping the process on tracks.

Moreover, the majority of the officers who formed the nucleus of their supporters also had received IMET sponsored training.

General * * * was a graduate of the U.S. Command and General Staff College. He, and a significant number of senior military officers occupying key government positions, were instrumental in maintaining and strengthening western orientation of * * * Armed Forces as well as that of the Government as a whole during the years 1972–1979, a period in which * * * was under continued military rule. The * * * revolution, with a marked potential for radical action by junior enlisted personnel, was tempered in large measure by U.S. military-school-trained captain * * * and certain other western-oriented officers * * *

Ambassador proposes increasing IMET program over next 5–10 years from $400,000 to about $1.2 million. He would be willing to trade some of the FMS credit for an IMET increase.

Trainees very impressed with the dynamism and equalitarianism of U.S. society and become advocates of close * * * defense cooperation (with the United States).

Graduates' changed attitudes are reportedly demonstrated by improved officer/enlisted relationships and a reduction in tribal favoritism, both of which are essential for greater efficiency and integrity in the * * * Armed Forces.

Mr. President, we must also accept the fact that the Soviet Union is very actively and successfully offering military training to several governments around the world, especially those among the developing nations. Some are turning to the Soviet Union because they cannot get the required training in the United States at a cost they can afford. Unfortunately, many of these countries receive their training from the Soviet Union at no cost.

Mr. President, we should not deceive ourselves. Soviet training is considerably different than American training. The political and social values of the two systems and the role of the military are radically different. The objectives of the two governments vis-a-vis the recipient countries are also very different. Where in the American military schools the foreign officers are exposed to the separation of powers, civilian control, and the values of our bill of rights, the Soviet system represents one party dictatorship, state control of the means of production and the peoples' lives and a police system that severely restricts the rights of free press, religion, speech, and a free political process.

In the past several years, the United States has tended to be shortsighted concerning the IMET program. As a result of Vietnam and the views which were formed as a result of our failure there, the funding levels for IMET were steadily reduced and a different pricing system was imposed which immediately cut the number of participants in the program. Under the new system each government sending students to IMET was charged a pro rata share of the cost of maintaining and operating the training facilities in the United States. The end product of this costing procedure was that several governments could not afford to send as many students to the United States and some terminated participation completely.

Last year, fortunately, I succeeded in changing the law under which training costs are allocated. Now the program is charged on the basis of any additional costs incurred by the American military installation and not on the previous pro rata system. This prudent change, taken at my initiative, allows the United States to offer training to 40-percent more foreign participants than under the previous cost sharing system.

Mr. President, let me focus for just a moment on Thailand, our longtime friend and ally in Southeast Asia. To this courageous member of ASEAN, facing a Communist insurgency in its northeast provinces, housing thousands of refugees from Laos and Cambodia, and constantly facing a Vietnamese military threat on its western borders, the military is critical to its stability and long-range survival. On April 1, 1981 I addressed the Senate concerning the IMET program and I should like to repeat again here a point which I made in that speech concerning Thailand. It is as valid now as it was then.

I believe there is near unanimity among those who are responsible for projecting the U.S. image abroad that the miscellaneous "exchange-of-persons" programs are our most effective tool. Many of these programs have been in existence since the end of World War II, and many of today's national leaders have become our friends under the influence of their early experiences as guests of this country. When I visited Thailand last year and called on General Prem, the commander-in-chief of the Thai Army, he and all the senior staff officers in the room remarked with visible pride that they had some training in the United States.

## WHEN UNCLE SAM GOES INTO BUSINESS FOR HIMSELF

Mr. HAYAKAWA. Mr. President, on June 22, 1981, I introduced Senate Joint Resolution 93, which if passed, would reaffirm a long-standing 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 have the article printed 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:

[From the U.S. News & World Report, July 27, 1981]

WHEN UNCLE SAM GOES INTO BUSINESS FOR HIMSELF

(By Manuel Schiffres)

(NOTE—From controlling pests to fixing tires, the government finds itself competing more and more with the private sector. Now, President Reagan wants to reverse the trend.)

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 employees 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: "Offutt 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 product loud outcrys 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 revenues 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 250,000-member American Federation of Government Employes, 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.

WHERE THE GOVERNMENT COLLIDES WITH PRIVATE INDUSTRY

[Here is a sampling of industrial and commercial activities performed for the Federal Government by its own employees]

| Agency and activity | Number of employees | Cost per year |
|---|---|---|
| Department of Energy, Washington, D.C., printing and binding | 28 | $1,249,000 |
| U.S. Coast Guard, Governor's Island, N.Y., maintaining golf course | 6 | 45,000 |
| Federal Aviation Administration, Oklahoma City, data-processing services | 182 | 7,172,000 |
| Federal Aviation Administration, Washington National and Dulles International Airports, janitorial services | 60 | 1,004,000 |
| Federal Railroad Administration, Alaska RR | 474 | 37,000,000 |
| Department of Energy, Portland, Oreg., power-systems operation | 395 | 11,500,000 |
| International Communication Agency, Washington, D.C., guard services | 10 | 209,349 |
| Federal Trade Commission, Washington, D.C., cigarette laboratory | 7 | 200,000 |
| Federal Trade Commission, Washington, D.C., micrographics | 5 | 131,132 |
| Veterans' Administration, Department of Memorial Affairs, Farmingdale, N.Y., gravedigging and backfilling | 23 | 512,000 |
| Bureau of Engraving and Printing, Washington, D.C., ink manufacturing | 40 | 4,000,000 |
| Department of Justice, Justice Management Division, Washington, D.C., chauffeur services | 10 | 277,165 |

## THE THIRD WORLD AND THE WEST

Mr. HAYAKAWA. Mr. President, in early July, the Prime Minister of Australia, the Honorable Malcolm Fraser, visited our Nation and discussed a variety of political, economic and defense issues with President Reagan.

Australia is not only a trusted ally, having been one of only two countries which fought alongside America in four major wars in this century, but is also an emerging economic power in the world and a powerful force in the Pacific region.

I recently chaired hearings in the Senate Subcommittee on East Asian and between the United States and ASEAN—the Association of South East Asian Nations. Both the United States and Australia firmly support the ASEAN community, which has facilitated regional cooperation since its founding in 1967. Also, both countries have actively sought to contribtue to the continued economic and social progress of the Asian and Pacific affairs.

With this in mind, I feel it is pertinent that an address given by Prime Minister Fraser at the University of South Carolina, entitled "The Third World and the West," be printed in the RECORD. I ask unanimous consent that that be done.

Thank you, Mr. President.

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

THE THIRD WORLD AND THE WEST

(An address by the Rt. Hon. Malcolm Fraser, C.H., M.P., Prime Minister of Australia, University of South Carolina, July 8, 1981.)

You have asked me here today as the Prime Minister of Australia. Had I the time

and you the patience, there are many aspects of my country that I could enlarge upon: Australia's role as a significant, independent-minded middle power; Australia as a leading member of what people are starting to think of as the Pacific community, a region which contains the most rapidly growing economies in the world; Australia as an ally of the United States (and, incidentally, one of only two countries which have fought alongside America in four major wars in this century); Australia as the world's leading exporter, or very near to it, of a range of important minerals—iron ore, coal, alumina, mineral sands, lead, zinc and several others; Australia as, along with the United States and Canada, one of the worlds major efficient producers and exporters of food.

But it is another aspect of Australia that I particularly want to draw your attention to today, for it is pertinent to my theme. Along with New Zealand, Australia is the only stable democratic, liberal, Western society in the Southern Hemisphere. While we are thoroughly Western in our values and institutions, all our neighbours are Third World countries. They belong to the "South" in terms of the "North-South" dichotomy that is now widely used, while by almost every test except geography we belong to the "North." Living near to these countries—and, I might add, associated closely with many more of them through the Commonwealth—we are of necessity very much aware of their perspectives and problems, more so perhaps than other developed countries of the Northern Hemisphere. Our situation requires us to give serious, constant attention to relations between the West and the Third World.

It is about this subject that I want to talk today. But before I do let me make one thing very clear. If I concentrate on these questions on this occasion, it is not because Australia is indifferent to or complacent about East-West questions, about the seriousness of the military threat of the Soviet Union to freedom and democracy in the world. On the contrary, we are most concerned.

Since assuming office in 1975, I and my Government have constantly emphasised the gravity of this threat and the need for an effective response by the West. We did so even when belief in detente was in the ascendancy, and the views we expressed were unfashionable and characterized as provocative.

Now, and none too soon, things have changed, partly due to the blatant nature of Soviet behaviour and partly to the remobilisation of will in the United States which President Reagan embodies. In my talks with the President last week, I made it clear that Australia profoundly welcomes the refound resolve and firmness of the United States towards the Soviet Union. As a middle power, Australia will do all within its means to encourage and support strong and purposeful American leadership in this respect.

I say with absolute conviction that such leadership from you is an essential precondition for the security of peace, freedom and democracy in the world. I say also, and with equal conviction, that you are entitled to and must receive support from other democratic Governments in this task.

The American nation has carried a huge burden in defence of freedom over the last four decades. Its shoulders are strong. But morally and materially the burden must be shared, shared by other democracies which have grown wealthier and more powerful behind the protection you have provided and, in the case of Western Europe, as a result of the economic help you gave in the immediate post-war years. (The Marshall Plan still stands out as a magnificent example of enlightened self-interest, a definitive reminder that generosity is often very sound policy.)

We all know now that there is no such thing as a free lunch. Western coutries should also recognise that in the long run there is no such thing as a free ally. Australia well understands this. It is because we do, and also because we owe it to those Australians who fought and died in earlier wars, that we have spoken out and will continue to speak out about the need for a concerted effort on the part of the West. For such an effort is the surest guarantee of peace.

I stress this not only because it is of vital importance in its own right, but because it is a necessary background to what I have to say about relations between the West and the Third World. For my position is somewhat untypical.

In the West, those who are tough-minded and realistic about East-West relations sometimes tend to be sceptical and dismissive about the Third World and North-South issues. They are disinclined to take them very seriously.

Conversely, those who are concerned about North-South issues, who accept they are important, only too often dismiss a serious preoccupation with the Soviet threat as outdated, exaggerated and a diversion from the crucial problem of managing global interdependence.

I believe that both groups—and the either/or mentality they represent—are profoundly mistaken. I believe that East-West and North-South issues are of the utmost importance. I believe moreover that the two sets of issues are closely interlinked, that what happens—or equally important what does not happen—with respect to one will have crucial implications for what happens to the other.

There is no question of choice involved. As a matter of basic, rational self-interest they must both be attended to and attended to urgently. As I judge it, the most immediate danger to guard against at present with respect to relations between the West and the Third World is that of scepticism and indifference.

There are thoughtful, honest and responsible people who maintain that there is really no such entity as the "South" or the "Third World", that it is merely the figment of the imagination of intellectuals, ideologues and journalists. They point to the heterogeneity of the Third World, the great differences which exist among its claimed members, to their disparate and conflicting interests. And they conclude that there is no substance behind the labels. They maintain therefore that Western dealings with the countries involved should be bilateral and selective and that we should refuse to accept the notion of a North-South dialogue.

There are others who say that even if there is some substance there, it is fast disappearing as memories of colonialism fade and as a significant number of Third World states become more developed and wealthy. They anticipate a process of "graduating out" which will leave the Third World an increasingly unimportant rump. On this basis, they argue that what the West should do is to stall and play for time—to keep issues "on the back-burner" as the saying goes—in anticipation that pressure and demands will diminish with time.

Most important of all, perhaps, there are those who maintain that even if the Third World exists and continues to exist, it need not be taken too seriously. The advantages, they claim, are all with the developed industrial countries.

You remember that Stalin once contemptuously asked the question, "The Pope? How many divisions has the Pope?" These people take a similar attitude towards the Third World. Overall, they point out, it is poor, it lacks political and military power, it is dependent on Western capital, know-how, aid and managerial capacity. It needs us much more than we need it.

Therefore, they complacently conclude, we can afford to resist its demands, to drive a hard bargain—or, indeed, to refuse to make any bargain at all. I believe all these views to be profoundly mistaken.

Everything that is said about the diversity and conflicting interests of Third World countries is true. But as well as this, and despite it, there is also a real sense of identity, of unity and solidarity among these countries.

You may recall that it was said of the Holy Roman Empire that it was not holy, Roman or an empire; yet it was a potent actor in European politics for centuries. In the same way, the Third World is today a potent reality despite its internal diversity and divisions. That reality is evident in the voting patterns of the United Nations. It is evident in the institutions that the recently independent countries have forged for themselves, particularly the Group of 77 and the Non Aligned Movement.

It is evident in the degree of support the non-producing countries have given OPEC despite their interest in low oil prices; in the willingness of non-African states to support the Africans in their opposition to South Africa and apartheid; in the willingness of non-Arab states to support the Arabs over Palestine; in their ability to agree on the programme for a new international economic order. It is evident most of all in their ideology.

Those who dismiss this ideology as "merely rhetoric" are, I suggest, ignoring the overwhelming and cruel evidence which this century has provided of the decisive importance of ideology in modern politics. I agree with Senator Daniel Patrick Moynihan that, "the beginning of wisdom in dealing with the nations of the Third World is to recognise their essential ideological coherence". For in political terms the Third World is essentially a state of mind: a matter of shared memories, frustrations, aspirations and sense of what is equitable and just. Like the working classes in the domestic politics of the 19th century, they want to have full citizen rights in the world, to be subjects who act rather than objects who are acted upon. Just as Stalin was foolish in overlooking the spiritual power of the Papacy, so it would be foolish to underestimate the binding and motivating force of this aspiration in the Third World.

As to the claim that the Third World will disintegrate before long, that there will be a "graduating out", I simply observe that twenty years after the main wave of decolonisation there is no evidence of it. Many Third World countries have made great economic progress in that time—some have transformed themselves—but none has sought, as a result, to diassociate itself from the group or shows any sign of doing so.

Surely, if there were substance in this thesis of a natural "graduating out" process there would be some evidence to support it by now. In this respect I am sceptical of the sceptics. The Third World or the "South", exists and is likely to continue to do so for the foreseeable future.

But is it important? Should the West take seriously what it represents? My answer to that is an emphatic "yes". In economic terms, something of the order of 25 percent of the West's entire trade is with the Third World. In the case of the United States the figure is over 40 percent and in the case of Japan 50 percent. This means that hundreds of thousands of jobs in Western countries depend on this trade and that the serious unemployment we are now experiencing would reach crisis proportions—proportions which would threaten the existence of democracy itself—if it were disrupted.

There are many in this audience and there are many in my own country who can remember the demoralising effect of the mass

unemployment that occurred in the 1930s. In my own country over 30 percent of the workforce was jobless during the worst period. A recurrence of unemployment on that scale would threaten the existence of democracy itself. Rising living standards and growing markets in Third World countries may play a critical role in ensuring that we do not. In addition, of course, the trade we have with the Third World involves commodities which are vital to Western economies and societies.

Oil is the clearest and most important example, with 60 percent of the West's oil coming from a handful of Third World countries. Out of conviction or prudence, or a mixture of both, those countries have shown themselves unwilling to divorce the question of oil from other matters of concern to their fellow members of the Third World. Beyond this there is the fundamental point that the West's commitment to a global market system requires and depends on the participation of the 120 or so countries of the Third World, over two thirds of all the countries which exist in the world.

One should not talk of these economic relationships purely in terms of potential danger. The language of opportunity is equally relevant. Over the last decade a number of Third World countries—the so-called newly industrializing countries—have sustained growth rates well in excess of those achieved by the rest of the world, including the West. By doing so they have prevented the world recession from being much more severe than it would otherwise have been. Insofar as this vigorous growth is maintained and extended to other Third World countries, insofar as countries which are now clients are converted, through rising living standards, into customers and consumers, the economies of the West will benefit. And insofar as this does not happen they will be impoverished.

This is why it is essential that, in its dealings with the Third World, the West should be true to its faith in the market system, should allow the newly industrialized countries access to its markets and should reject firmly the temptation to resort to protectionist measures which deny those countries the rewards for their own efforts and enterprise. In saying this I am emphatically rejecting the Marxist notion that the prosperity of the West depends on the impoverishment of the Third World.

Thomas Jefferson's observation that, "it is a kind of law of nature that every nation prospers by the prosperity of others", seems to me to be much closer to the mark and a much better guide to policy. Australia is in as good a position as anyone to appreciate all this.

We happen to live in a part of the world where many of these newly industrialized countries are concentrated, countries whose economics have been growing at twice the world average, or better, over recent decades. They—together with Japan, which in many respects has provided a model for them—have proved invaluable to Australia at a time when structural changes were threatening our traditional markets in Europe. They have made possible a remarkable change in our pattern of trade.

Of course, it is true that if the West is dependent on trade with the Third World, the Third World is even more dependent on trade with the West. Over 70 percent of its trade is with the developed industrialized countries. But it is a serious error to assume, as some do, that because of this—or for that matter because of the substantial OPEC investments in the West—the Third World can be taken for granted, that in the last resort it has no option but to cooperate with the West on Western terms.

The basic error here is to assume the primacy of economic rationality over politics, an assumption that runs counter to the fundamental experience and character of the Third World. We would do well to remember the advice given by President Nkrumah of Ghana to African nationalists: "Seek ye first the political kingdom". We would do well to remember too Sukarno's "Go to hell with your aid", uttered when the economy of Indonesia was a shambles and when it desperately needed all the American aid it could get. For these words represent widespread and deep-seated attitudes in the Third World.

More recently, despite its irrationality and intolerance, what has happened in Iran has pointed the same lesson: the lesson, that is, that many countries in the Third World will not hesitate to sacrifice their own immediate economic interests for political reasons of status, independence and what they believe is justice.

Those of us who fail to understand the force of this, do so only because we have forgotten our own history—because we have possessed freedom and independence for so long, have come to take them so much for granted, that we do not recall the passionate intensity of feeling they invoke when they are newly acquired. But the author of the Declaration of Independence understood that feeling and shared it. "By the God that made me", he wrote in 1775, "I will cease to exist before I yield to a connection on such terms as the British Parliament proposes". That, or something very like it, could have been said by many Third World leaders in our time.

It is also worth contemplating the potential power of the weak, of those who feel they have little left to lose—the power to threaten collapse, disorder and chaos. This is a potent power against those who have a large stake in stability and in the efficient working of the existing order. In this respect, the question that should be asked is not whether the Third World could conceivably reject the existing system and establish a viable one of its own, but how much damage would be done in any attempt to do so.

Edmund Burke said it better when he observed, in the process of cautioning Britain on its treatment of the American colonies, "that discontent will increase with misery; and that there are critical moments in the fortunes of all states, when they who are unable to contribute to your prosperity may be strong enough to complete your ruin." Today, all the Western countries need to heed that advice.

Apart from all this, there are compelling strategic and geopolitical reasons for taking the Third World seriously. Some of the most sensitive areas in the world—the Middle East, the Caribbean and Central America, Southern Africa, the Korean peninsula—are Third World areas. Most of the key "choke points" in the world—the Straits of Hormuz, the Panama Canal, the entrances to the Red Sea, the passages from the Indian Ocean to East Asia—lie within the Third World. Over and above this, East-West rivalry has been and is largely fought out in the Third World and the West is extremely sensitive, rightly so, concerning any significant gains made by the Soviet Union in the Third World.

Moreover, despite its poor overall record in providing aid to developing countries, the Soviet Union can exploit tensions in relations between the West and the Third World. Given the unprecedented military strength it has at present, the Soviet Union is likely to make a particular effort in this respect during the next few years.

If the West is concerned to prevent these efforts from succeeding there are several things it should do. First, it should act to ensure that Third World perceptions of the East-West conflict are not of a declining West and an ascendant Soviet Union. For, as a political leader of a country allied to the United States once succinctly put it on returning from a visit to Moscow, "no-one wants to be caught on the wrong side".

Secondly, the West should act in ways which minimize the need for Third World countries to contemplate turning to the Soviet Union in order to get the aid and assistance they desperately need. That in turn means maintaining a constructive and forthcoming relationship which does not systematically frustrate Third World hopes.

Thirdly, the West should do what it can to emphasize and show understanding of the economic dimensions of Third World affairs and the development aspirations of the Third World; for as long as the principal issues are economic the Soviet Union is not in the race as a competitor to the West.

What is needed, in other words, is an integrated policy which combines a stress on restoring, and then maintaining, a military balance which can preserve world peace and a positive attitude towards economic relations with the South.

I repeat, there is no real choice involved between these two components of policy. Both are essential. So far, I have deliberately concentrated on making the case for a serious Western concern with the Third World in terms of direct political and economic self-interest, for that case has to be established if Western Governments are to respond. But that does not mean that I do not recognise other aspects and arguments. I should like to mention two of these.

First, there are the altruistic, humanitarian dimensions of the problem. We should never forget the extent of the stark human suffering that is involved in the Third World, never allow annoyance at the posturing and hypocrisy which sometimes characterise North-South relations to obscure it.

According to the World Bank, not a body given to emotional exaggeration, 800 million people are living in conditions of "absolute poverty" in the Third World. The infant mortality rate in low income Third World countries is twelve times as high as it is in Western countries. Life expectancy in them is still under 50 years. Thousands are dying every week from malnutrition and outright starvation.

As a society which holds Christian and humanitarian values, we must be diminished and damaged as long as we continue to live in a world where such conditions are commonplace. It is not a question of our masochistically accepting guilt for creating these conditions; that is an absurd oversimplification of the historical record. It is a question of our responsibility, in terms of our own professed values rather than of the demands of others, to work for the abolition of these intolerable conditions. And, again, of our interest in seeing them abolished.

My second observation is that, even apart from the claims of the Third World, there is another dimension of international relations which points to a clear and urgent need for action. This is the one covered by the now familiar phrase "the management of interdependence".

It is true that in recent years the case for this has sometimes been overdrawn and it is foolish to maintain, as some have done, that this task somehow renders obsolete the traditional concerns of power and national interest. But even after this exaggeration has been discounted, the basic case is sound enough.

The trebling of the number of states in the world; the very rapid increase in the volume of transactions among these states; revolutionary changes in communication, transport and other technologies; much greater demands and pressures on man's physical environment; the emergence of trans- or multinational corporations as a major force in international economic relations: all of these

point to the necessity for developing multilateral negotiating processes to deal with the new and unprecedented complexity and to respond to the new awareness of global environmental problems. The quality of the world in which our children will live will depend crucially on whether we succeed or fail in this respect.

But improving the management of interdependence and the North-South dialogue are intimately linked and progress in one depends on progress in the other. They must be approached as parallel enterprises. If the second is stalemated so will be the first. At present the North-South dialogue is stalemated. The global negotiations which were to be held have been postponed and postponed again. There is little evidence at present of the political will necessary to break that stalemate and to initiate progress.

As I have indicated, I believe that there are compelling reasons why the effort to marshal that will must be made. There will be opportunities to make that effort in the near future: in the Ottawa Summit this month; at the Commonwealth Heads of Government Meeting which I shall chair in Melbourne in October; and at the summit meeting in Mexico on North-South issues shortly afterwards. If these opportunities are not seized, if by the end of the year no progress has been made, the outlook will be very bleak indeed and the last decades of this century will promise tension, frustration, and instability rather than hope. The Western nations should seize these opportunities.

In doing so I suggest that there are a number of guidelines we should follow if we are to succeed:

First, and fundamentally, we should accept and take seriously the reality of the South or the Third World as a political presence on the world stage.

Second, we should accept that, given the great transformation that has occurred in the world in the past 40 years, significant changes in international institutions and processes are inevitable. The question is whether these changes are to be orderly negotiated ones or imposed by disruption and breakdown.

Third, substantively we should adopt an innovative, constructive attitude towards the North-South dialogue, rather than be reactive or passive, leaving all the initiative to the Third World. For we have very important interests of our own in seeing progress made.

Fourth, procedurally the efforts of the West should be directed to forging more effective and efficient forms of multilateral negotiations, rather than to avoiding, delaying or frustrating them.

Fifth, if we want to retain credibility we should not play fast and loose with our commitment to the market economy. We should not preach it in order to dismiss Third World claims while simultaneously pleading special circumstances to justify exceptions in our own case. If exceptions can be made for our needs, why not for those of the Third World? Conversely, if it is an overriding commitment, why not apply it in dealing with the Third World's claims for access to markets?

Sixth, we should always bear in mind the interrelationship between North-South and East-West issues and not treat them as two separate categories. Success in dealing with the Soviet Union will always require the maintenance of a military balance. But in the middle to long term it will also depend significantly on the resolution of North-South differences. If Third World leaders come to us for the teachers, the advisers, the technologies, the capital, and in some cases the political support they desperately need; if they make it evident that, given a choice, they do not want to deal with the monolithic bureaucracy of the Soviet Union, that they are suspicious of its demands for political association as the price for aid; and if we still refuse to respond to them, then we do so at our own peril and the consequences should come as no surprise. The needs of the Third World are such that, in the last resort, it will turn for assistance to wherever it is available, rather than go without. The West must ensure that that last resort is not the Soviet Union.

Seventh, we should act in such ways as to support and strengthen the moderate elements in the Third World, those elements which seek co-operation and want to achieve accommodation with us. Too often in the past we have behaved in ways which weaken the moderates and strengthen extreme forces hostile to us.

Eighth, as well as working to reinvigorate the North-South dialogue, each of us should do what is within our means, bilaterally and regionally, to contribute independently towards improving the prospects of the developing countries and relations between them and the West. Important as the North-South dialogue is, everything should not be made to wait on it.

Ninth and last, we should work on the assumption that time is a wasting asset, that the longer the delay in addressing them the more intractable will the problems become.

I should make it clear that in advancing these principles, I am not suggesting that it is only the West which must revise its attitudes and behavior if progress is to be made. The same is true of the Third World and I hope that there will be voices in it which will urge a moderate and constructive approach.

Neither am I suggesting that the developed countries should simply accept the package of demands made by the Third World. Rather that the approach should be a positive one which seeks to identify what is justified and sound in the Third World case and respond to it. In that process wider criteria than economic rationality should be employed because more than economic interests are involved.

In conclusion let me say that to respond to the North-South dialogue adequately we must be prepared to see it in broad historical perspective. In little over a generation, over a hundred new countries have come into existence. Nearly all of them have a colonial past. Nearly all of them are very poor compared with Western countries—how poor it is difficult for us in our prosperity to conceive. Think of how long it takes you to spend $200; then contemplate that there are over one billion people in the world whose average annual income is less than that amount.

Again, and equally important in political terms, all these countries are deeply concerned about their place in the world, their dignity, status and influence. These countries and their needs have to be accommodated, and accommodated in a world which is simultaneously becoming smaller, more crowded and more complex. The conditions must be created which give them opportunities to break the grinding circle of poverty in which they are caught. There is much they can and must do for themselves. But simply to tell an undernourished man who is working hard, arid, poor soil with a wooden plough, in the certain knowledge that his crop will be at best meager—and there are millions of such men—simply to tell him that he must work harder and show more enterprise is insulting and dangerous nonsense. We cannot solve the Third World's problems; but we can help to create the conditions under which they can be tackled with some hope of success; and perhaps only we can.

This is essentially what the North-South dialogue is about and the atmospherics and frictions of day to day events should not be allowed to obscure it. Developing the statecraft and the will to achieve this accommodation is one of the decisive challenges of our time. It is not an easy challenge to meet. It lacks the drama and crisis of war and political confrontations. It invites the resigned answer that "the poor are always with us." If we fail, the effects are unlikely to be immediately catastrophic. They may not be felt this week or this year. But, make no mistake, they will be felt and felt with cumulative force over the next decades, and we will be cursed by our children for our shortsightedness, our selfishness, our failure to seize opportunities in good time.

Mr. President, before I came to the United States on this visit I had been told that the current mood of the American people was not receptive to accommodating the Third World. Given the burden that you have carried in world affairs and given also the need for that renewal at home which President Reagan called for in his inaugural address, I could understand that some might feel like that. I will not presume to assess the American mood on the basis of a brief visit, though I can say that I did not find indifference or lack of understanding in Washington last week. In any case, I believe that there are certain periods in history when timely and bold adjustments to new forces are necessary to forestall convulsion, disarm revolution and preserve peace. I believe also that conciliation and magnanimity are usually sound policy.

At the time of the dispute between England and the American people in the 18th century, a dispute not without relevance to the contemporary situation, one of the wisest and most penetrating of political observers said: "It is not whether you have the right to render your people miserable, but whether it is in your interest to make them happy. It is not what a lawyer tells me I may do; but what humanity, reason and justice tell me I should do. Is a political act the worse for being a generous one?"

In the 19th century, the countries which enjoyed domestic peace were those who responded in good time to the aspirations of emerging groups and adopted democratic political institutions.

In our lifetime we have the evidence of the magnificently generous American response represented by the Marshall Plan to novel and dangerous circumstances. It is worth recalling, too, the enlightened recognition of and response to the "wind of change" in Africa which in a matter of three or four years transformed a continent of colonies into a continent of independent states with minimum bloodshed. I believe profoundly that we are now at a turning point in global history which is at least as critical and important as these great episodes I have referred to. The magnitude of the problems, the scale of the adjustments necessary, the vision required should be conceived in these terms. Mr. President, ladies and gentlemen, for the sake of this and succeeding generations, I trust that they will be.

## SENATOR DANIEL PATRICK MOYNIHAN

Mr. ROBERT C. BYRD. Mr. President, today's Washington Post contained an article by Clayton Fritchey which discussed the emerging role of the senior Senator from New York, DANIEL PATRICK MOYNIHAN, as a spokesman for the Democratic Party.

I was very pleased to be able to appoint Senator MOYNIHAN as a spokesman in reaction to the President's address last week on the tax and social security issues. His articulate, incisive critique of the Reagan program was a credit to all of us whom he represented.

I ask unanimous consent that the article from the Washington Post be printed in full in the RECORD.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

THE NEW MOYNIHAN

(By Clayton Fritchey)

One of the most surprising developments of the 97th Congress has been the emergence of a famous "neo-conservative," Sen. Daniel Patrick Moynihan (D-N.Y.), as a leading neo-liberal critic of the Reagan administration.

Who would have believed a few months ago that Moynihan would end up as the choice of the liberal-oriented Democratic congressional leadership to make the party's reply to the president's televised pitch last week for his tax program?

Yet, only two hours after Reagan finished, there was Moynihan also on the networks firing away at Reagan's arguments. Even before going on the air, however, the senator was already saying, "Something like an auction of the Treasury has been going on. This administration is seemingly willing to pay any price to win votes for their version of the tax cut, simply to gain a victory on their own terms."

The honor of speaking for the Democrats, though, was not bestowed on the supposedly conservative New York senator solely because of his opposition to Reagan's fiscal policies. He was picked because, in contrast to some of his supposedly liberal but cautious Democratic collegues, he has not hesitated in recent months to challenge the administration on any number of fronts.

As vice chairman of the Senate Intelligence Committee, he has been concentrating on an investigation into the tangled personal affairs of William J. Casey, director of the CIA. It has, of course, been acutely embarrassing to the White House, but no more so than some of the senator's other attacks on the Reagan regime.

He accused the administration of conducting "a campaign of political terrorism" to frighten Congress into slashing Social Security. He opposed efforts to cut housing subsidies and raise rents for low-income tenants. In defending Medicare, the senator said, "In all the talk of these budget cuts, there's almost no attention paid to the most dramatic effect of Medicare. It's changed the lives of old people." He was equally concerned about what would happen to children in foster care if assistance were jeopardized by administration plans to abdicate federal control. The senator thinks the cities, especially New York, are being shortchanged in the Reagan budget, with its reduction of social programs and increases in military spending.

Moynihan has been toughest of all on the administration's foreign policy. He says it doesn't have one—just "a series of speeches and trips and press statements." He was "appalled at the way we have handled ourselves in Asia and Pakistan." He criticized Secretary of State Alexander Haig for offering arms to the Chinese and getting "nothing in return."

Moynihan himself has never appreciated being called a neo-conservative, yet that is the way he has been widely perceived in recent years. The New York Times has referred to him as "a leading apostle of neo-conservative philosophy." In The Washington Post, he was described as "a leading spokesman for a melange of hard-line foreign policies and 'free enterprise liberalism' that has come to be called neo-conservative politics."

As such, Moynihan was closely identified with a prominent group of defecting Democrats and former Democrats who found their party's foreign and military policies too "soft" and its domestic social policies too "extreme." But, unlike Moynihan, many of these old associates are now serving in the Reagan administration or uncritically supporting it.

When Norman Podhoretz, editor of Commentary and a spokesman for the neo-conservatives, first began promoting Moynihan for president, he said, "If I had to invent a candidate to suit the political mood of the country, it would be somebody like Moynihan."

That was in 1978. What would he say today?

The senator used to blast Democratic liberals on the grounds that they believed "government should be powerful and America should be weak." Still, in speaking for the Democrats at the Gridiron dinner this spring, the new Moynihan said, "We believe in American government, and we fully expect that those who now denigrate it, and even despise it, will sooner or later find themselves turning to it in necessity, even desperation."

It is hardly surprising, then, that the Democratic leadership is turning to the senator as a liberal spokesman. The Democratic National Committee, in fact, has just launched a fund raising drive with a letter appealing for help in resisting Sen. Jesse Helms (R-N.C.) and other ultra-conservatives who, the committee claims, "now control the Republican Party."

The letter, signed by Moynihan and Rep. Morris Udall, contends that the "mandate" of November has been distorted into a demand, among things, for repealing the Voting Rights Act, outlawing all abortions, subverting Social Security, crippling day-care centers and allowing developers to exploit public lands.

The senator will be up for re-election next year. He also may be a candidate for president in 1984. In either event, he apparently won't be running as a neo-conservative.

## ON GENERAL ERNEST GRAVES' RETIREMENT

Mr. STENNIS. Mr. President, I wish to join with my colleagues Senators TOWER, PERCY, and GLENN in paying tribute to Lt. Gen. Ernest Graves, U.S. Army, who retired on July 31, after over 37 years of distinguished service. He is truly a man for all seasons. He was a highly successful troop leader in three wars; a platoon leader in Germany, a battalion commander in Korea and a group commander in Vietnam. He is a highly trained and skilled scientist in the nuclear energy field, starting with his receiving a Ph. D. degree in physics from Massachusetts Institute of Technology and culminating as director of military applications, U.S. Energy Research and Development Administration.

He is an accomplished engineer and planner, having served as a division engineer and later as the director of civil works for the U.S. Army Corps of Engineers. Lastly he has demonstrated the highest degree of capability in the foreign relations/diplomatic area during his superb performance as the Director, Defense Security Assistance Agency.

It has been my privilege to have known and worked with General Graves in his capacity as division engineer, director of military applications and director of civil works in his many appearances before the Appropriations Committee and also in his current assignment with his work with the Armed Services Committee. He was always superbly prepared and ably presented his program.

I would particularly mention his work in handling the most difficult and sensitive problems occasioned by the cancelation of many military procurement contracts by the Iranian Government 2 years ago.

I would also mention his outstanding work as director of civil works during the so-called project review of the water projects by the previous administration. Through his diligent marshaling of the facts and his articulate and logical presentation he was able to convince the new administration that with few exceptions the 292 projects under review were environmentally sound, economically justified, and physically safe.

The country will miss the service of this outstanding soldier, scientist, engineer, and diplomat. I wish him well and thank him again for all that he has done.

## REPORTS OF COMMITTEES SUBMITTED DURING RECESS

Under the authority of the order of the Senate of August 1, 1981, the following report of a committee was filed on August 1, 1981, during the recess of the Senate:

By Mr. DOLE, from the committee of conference:

Conference report on the disagreeing votes of the two Houses on 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 (Rept. No. 97–176).

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs:

Special Report entitled "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," report of the Permanent Subcommittee on Investigations (Rept. No. 97–177).

Mr. ROTH. Mr. President, on behalf of the Senate Committee on Governmental Affairs, I submit a report of its Permanent Subcommittee on Investigations entitled: "Report of the Permanent Subcommittee on Investigations Regarding Its Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund."

This report reflects the extensive investigation performed by the Permanent Subcommittee on Investigations last year under the very able chairmanship of Senator SAM NUNN. In the report the subcommittee finds serious deficiencies in the Department of Labor's investigation of the Teamsters Union's Central States Pension Fund and makes a variety of recommendations for widerranging improvements.

By Mr. DOMENICI, from the Committee on the Budget, without amendment:

S. Res. 190. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 859; and

S. Res. 192. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 778 (without recommendation).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BAKER (for Mr. PERCY), from the Committee on Foreign Relations:

Winifred Ann Pizzano, of Virginia, to be Deputy Director of the ACTION Agency.

(The above nomination was reported from the Committee on Foreign Relations 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. ROBERT C. BYRD (for Mr. CRANSTON):

S. 1584. A bill to designate certain public lands in the State of California as wilderness, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROBERT C. BYRD:

S. 1585. A bill for the relief of Inder Vir Khokha, doctor of medicine; to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 1586. A bill to establish a national policy of promoting and facilitating the operation, maintenance and development of deep-draft seaports, inland river ports and waterways necessary to domestic and foreign waterborne commerce; and to require recovery of certain expenditures of the U.S. Army Corps of Engineers for the operation, maintenance and construction of inland shallow-draft and deep-draft navigational channels and other projects as appropriate; to the Committee on Finance.

By Mr. BAKER:

S. 1587. A bill for the relief of Camel Manufacturing Co.; to the Committee on the Judiciary.

By Mr. ROTH:

S. 1588. A bill to provide for a temporary suspension of the duty on bulk fresh carrots; to the Committee on Finance.

By Mr. HEFLIN:

S. 1589. A bill to improve the security of the electric power generation and transmission system in the United States; to the Committee on the Judiciary.

By Mr. THURMOND:

S. 1590. A bill to amend title 10, United States Code, to provide for legal assistance to members of the Armed Forces and their dependents, and for other purposes; to the Committee on Armed Services.

By Mr. HOLLINGS:

S. 1591. A bill to eliminate certain provisions of the Federal Food, Drug, and Cosmetic Act relating to colored oleomargarine; to the Committee on Labor and Human Resources.

By Mr. SYMMS:

S. 1592. A bill to provide protection from requirements and prohibitions imposed upon citizens of the United States by foreign nations concerning the disclosure of confidential business information, and for other purposes; to the Committee on the Judiciary.

By Mr. GORTON (for himself, Mr. STENNIS, Mr. KASTEN, and Mr. INOUYE):

S. 1593. A bill to revise regulation of international liner shipping operating in the U.S. foreign commerce; to the Committee on Commerce, Science, and Transportation.

By Mr. SYMMS:

S. 1594. A bill to amend the Internal Revenue Code of 1954 to apply the civil fraud penalty only to that portion of an underpayment which is attributable to fraud; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. STEVENS):

S. 1595. A bill to provide for the designation of income tax payments to the U.S. Olympic Development Fund; to the Committee on Finance.

By Mr. MATHIAS (by request):

S. 1596. A bill to amend the act relating to the Commission of Fine Arts to provide for private donations; to the Committee on Rules and Administration.

By Mr. DOLE:

S. 1597. A bill to establish a Corporation for Prison Industries; to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD:

S.J. Res. 106. Joint resolution to authorize and request the President to designate June 20, 1982, as "Bicentennial Emblem Day"; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROBERT C. BYRD (for Mr. CRANSTON):

S. 1584. A bill to designate certain public lands in the State of California as wilderness, and for other purposes; to the Committee on Energy and Natural Resources.

CALIFORNIA WILDERNESS ACT OF 1981

(By request of Mr. ROBERT C. BYRD, the following statement was ordered to be printed in the RECORD:)

● Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to designate 3.5 million acres in California as wilderness—2.1 million acres of national forest land and 1.4 million acres of national park land.

This bill is nearly identical to Congressman PHIL BURTON's California wilderness bill, H.R. 4083, which passed the House on a voice vote on July 17. The deletion of 600 acres from the Sheep Mountain wilderness to permit the expansion of the Mount Baldy ski area on the northeast face of Mount San Antonio and the addition of 88,843 acres to the Sequoia-Kings Canyon wilderness to conform the acreage with the National Park Service's wilderness recommendation for this park are the only difference between this bill and the House bill.

For national forest lands, this legislation designates 53 separate wildernesses and wilderness additions ranging from the lush forests of the Trinity Alps to the endangered California condor habitat in the Dick Smith area of the Los Padres Forest and the Nation's highest desert mountains in the Boundary Peak area. The legislation also resolves the California lawsuit on RARE II, freeing up some 590,000 acres with 86 million board feet of annual potential yield currently under injunction for timber harvestng. Another 245,000 acres with 35.1 million board feet of annual potential yield in administrative further planning areas are released to nonwilderness through House committee report language, and I would hope for similar Senate report language.

The bill permits expansion of existing ski areas like Mammoth Mountain and relocation and development of others like Mount Shasta. It assumes that the development of important known deposits of minerals like the cobalt around the North Fork of the Smith River will not be hampered by wilderness designation or further wilderness study. And the bill keeps open many trails and other areas which have been used by recreational vehicles.

For the national parks, this legislation adds the 253-acre Crocker Ridge area and 7,000 acres of Sierra National Forest lands to Yosemite National Park, completing watershed protection along the park's southern boundary. The bill adds 12,000 acres of highly scenic Sequoia National Forest lands to Sequoia-Kings National Park, rounding out the park for better management. The bill also establishes two park wilderness areas—a 677,600-acre Yosemite wilderness and an 825,853-acre Sequoia-Kings Canyon wilderness area.

Mr. President, I want to commend Congressman PHIL BURTON for developing this legislation. For the past 2½ years, Congressman BURTON has worked closely with every member of the California congressional delegation whose district is affected by the Forest Service RARE II proposals. His bill is a product of these extensive negotiations and committee hearings, both in California and Washington, D.C. It is a compromise between earlier California wilderness bills calling for a maximum of 5.1 million acres of national forest wilderness and a minimum of 1.3 million acres of forest wilderness. Personally I feel that this bill represents a good balance between environmental and commercial interests.

I am introducing my own California wilderness bill today to expedite Senate action on the California RARE II issue. Since the Forest Service finalized its wilderness recommendations, I have sought the counsel and views of all parties affected by the proposals, most especially those of the California timber industry as I have been concerned about the impact of the proposed wilderness designations on jobs, timber supply and lumber for housing. Based on these conversations, I am convinced of the need for Congress to pass legislation at an early date: First, to settle the California RARE II lawsuit and second, to identify for the Forest Service the land base on which to plan timber sales in the future. I am also convinced that this can only be accomplished through enactment of a California wilderness bill which designates some wilderness in California while at the same time lifts the injunction and releases other RARE II lands to multiple use.

As I have previously mentioned, this bill is a compromise worked out in the House. However, I anticipate that there will be further modifications to this bill, both in the Senate committee and in conference. What I believe is most important is to keep the process going so we can resolve the RARE II issues in California and protect for all time some of the most beautiful parts of the State.

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

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

S. 1584

*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 "California Wilderness Act of 1981".

DESIGNATION OF WILDERNESS

SEC. 2. (a) In furtherance of the purposes of the Wilderness Act, the following lands, as generally depicted on maps, appropriately referenced, dated July 1980 (except as otherwise dated) are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System—

(1) certain lands in the Inyo National Forest, California, which comprise approximately forty-nine thousand nine hundred acres, as generally depicted on a map entitled "Boundary Peak Wilderness—Proposed", and which shall be known as the Boundary Peak Wilderness;

(2) certain lands in the Cleveland National Forest, California, which comprise approximately five thousand nine hundred acres, as generally depicted on a map entitled "Caliente Wilderness Proposal" dated July 1980, and which shall be known as the Caliente Wilderness;

(3) certain lands in the Eldorado National Forest, California, which comprise approximately fourteen thousand acres, as generally depicted on a map entitled "Caples Creek Wilderness—Proposed", dated November 1980, and which shall be known as the Caples Creek Wilderness;

(4) certain lands in the Lassen National Forest, California, which comprise approximately one thousand eight hundred acres, as generally depicted on a map entitled "Caribou Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Caribou Wilderness as designated by Public Law 88–577;

(5) certain lands in the Stanislaus and Toiyabe National Forests, California, which comprise approximately one hundred ninety thousand acres, as generally depicted on a map entitled "Carson-Iceberg Wilderness—Proposed", and which shall be known as the Carson-Iceberg Wilderness: *Provided, however*, That the designation of the Carson-Iceberg Wilderness shall not preclude continued motorized access to those previously existing facilities which are directly related to permitted livestock grazing activities in the Wolf Creek Drainage on the Toiyabe National Forest in the same manner and degree in which such access was occurring as of the date of enactment of this Act;

(6) certain lands in the Shasta Trinity National Forest, California, which comprise approximately seven thousand three hundred acres, as generally depicted on a map entitled "Castle Crags Wilderness—Proposed", and which shall be known as the Castle Crags Wilderness;

(7) certain lands in the Shasta Trinity National Forest, California, which comprise approximately eight thousand two hundred acres, as generally depicted on a map entitled "Chanceluila Wilderness—Proposed", and which shall be known as Chanceluila Wilderness;

(8) certain lands in the Lassen National Forest, California, which comprise approximately fifteen thousand five hundred acres, as generally depicted on a map entitled "Cinder Buttes Wilderness—Proposed", and which shall be known as the Cinder Buttes Wilderness;

(9) cetrain lands in the Angeles National Forest, California, which comprise approximately four thousand four hundred acres, as generally depicted on a map entitled "Cucamonga Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Cucamonga Wilderness as designated by Public Law 88–577;

(10) certain lands in the Inyo National Forest, California, which comprise approximately seven thousand six hundred acres, as generally depicted on a map entitled "Deep Wells Wilderness—Proposed", and which shall be known as the Deep Wells Wilderness;

(11) certain lands in the Los Padres National Forest, which comprise approximately sixty-seven thousand acres, as generally depicted on a map entitled "Dick Smith Wilderness—Proposed", dated October, 1979, and which shall be known as Dick Smith Wilderness: *Provided*, That the Act of March 21, 1968 (82 Stat. 51), which established the San Rafael Wilderness is hereby amended to transfer four hundred and thirty acres of the San Rafael Wilderness to the Dick Smith Wilderness and establish a line one hundred feet north of the centerline of the Buckhorn Fire Road as the southeasterly boundary of the San Rafael Wilderness, as depicted on a map entitled "Dick Smith Wilderness—Proposed", and wherever said Buckhorn Fire Road passes between the San Rafael and Dick Smith Wildernesses and elsewhere at the discretion of the Forest Service, it shall be closed to all motorized vehicles except those used by the Forest Service for administrative purposes;

(12) certain lands in the Sierra National Forest, California, which comprise approximately thirty thousand acres, as generally depicted on a map entitled "Dinkey Lakes Wilderness—Proposed", and which shall be known as the Dinkey Lakes Wilderness: *Provided*, That within the Dinkey Lakes Wilderness the Secretary of Agriculture shall permit nonmotorized dispersed recreation to continue at a level not less than the level of use which occurred during calendar year 1979;

(13) certain lands in the Sequoia National Forest, California, which comprise approximately thirty-one thousand acres, as generally depicted on a map entitled "Domeland Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be part of the Domeland Wilderness as designated by Public Law 88–577;

(14) certain lands in the Stanislaus National Forest, California, which comprise approximately six thousand one hundred acres, as generally depicted on a map entitled "Emigrant Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Emigrant Wilderness as designated by Public Law 93–632;

(15) certain lands in the Inyo National Forest, California, which comprise approximately forty-six thousand four hundred acres, as generally depicted on a map entitled "Excelsior Wilderness—Proposed", and which shall be known as the Excelsior Wilderness;

(16) certain lands in the Angeles National Forest, California, which comprise approximately thirty-two thousand nine hundred acres, as generally depicted on a map entitled "Fish Canyon Wilderness—Proposed", and which shall be known as the Fish Canyon Wilderness;

(17) certain lands in the Tahoe National Forest, California, which comprise approximately twenty-five thousand acres, as generally depicted on a map entitled "Granite Chief Wilderness—Proposed", and which shall be known as the Granite Chief Wilderness;

(18) certain lands in the San Bernardino National Forest, California, which comprise approximately ten thousand six hundred acres, as generally depicted on a map entitled "Granite Peak Wilderness—Proposed", and which shall be known as the Granite Peak Wilderness;

(19) certain lands in the Cleveland National Forest, California, which comprise approximately eight thousand acres, as generally depicted on a map entitled "Hauser Wilderness Proposal" dated July 1980, and which shall be known as the Hauser Wilderness;

(20) certain lands in Toiyabe National Forest, California, which comprise approximately forty-nine thousand two hundred acres, as generally depicted on a map entitled "Hoover Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Hoover Wilderness as designated by Public Law 88–577;

(21) certain lands in and adjacent to the Lassen National Forest, California, which comprise approximately forty-one thousand eight hundred and forty acres as shown on a map entitled "Ishi Wilderness—Proposed", and which shall be known as the Ishi Wilderness;

(22) certain lands in the Inyo National Forest, California, which comprise approximately nine thousand acres, as generally depicted on a map entitled "John Muir Wilderness Additions, Inyo National Forest—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the John Muir Wilderness as designated by Public Law 88–577;

(23) certain lands in the Sierra National Forest, California, which comprise approximately eighty-one thousand acres, as generally depicted on a map entitled "John Muir Wilderness Additions, Sierra National Forest—Proposed", dated November 1980, and which are hereby incorporated in, and which shall be deemed to be a part of the John Muir Wilderness as designated by Public Law 88–577: *Provided*, That the Secretary of Agriculture is authorized to modify the boundaries of the John Muir Wilderness Additions and the Dinkey Lakes Wilderness as designated by this Act in the event he determines that portions of the existing primitive road between the two wilderness areas should be relocated for environmental protection or other reasons. Any relocated wilderness boundary shall be placed no more than three hundred feet from the centerline of any new primitive roadway and shall become effective upon publication of a notice of such relocation in the Federal Register: *Provided further*, That the nonwilderness jeep corridor between Spanish Lake and Chain Lakes which is surrounded by the John Muir Wilderness Additions as designated by this Act shall be open to the public only for one week each year between July 15 and August 15 and one week between September 15 and October 15;

(24) certain lands in the Lassen National Forest, California, which comprise approximately three thousand nine hundred acres, as generally depicted on a map entitled "Lassen Volcanic Wilderness Additions—Proposed", and which are hereby incorporated in, and shall be deemed to be a part of the Lassen Volcanic Wilderness as designated by Public Law 92–510;

(25) certain lands in the Klamath National Forest, California, which comprise approximately thirty-eight thousand acres, as generally depicted on a map entitled "Marble Mountain Wilderness Additions—Proposed", and which are hereby incorporated in, and shall be deemed to be a part of the Marble Mountain Wilderness as designated by Public Law 88–577;

(26) certain lands in the Sierra and Inyo National Forest, California, which comprise approximately nine thousand acres, as generally depicted on a map entitled "Minarets Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Minarets Wilderness as designated by Public Law 88–577;

(27) certain lands in the Eldorado, Stanislaus, and Toiyabe National Forests, California, which comprise approximately sixty thousand acres, as generally depicted on a map entitled "Mokelumn Wilderness Additions—Proposed", dated November 1980, and which are hereby incorporated in, and which shall be deemed to be a part of the Mokelumne Wilderness as designated by Public Law 88–577;

(28) certain lands in the Sierra and Sequoia National Forests, California, which

comprise approximately forty-five thousand acres, as generally depicted on a map entitled "Monarch Wilderness—Proposed", and which shall be known as the Monarch Wilderness;

(29) certain lands in the Shasta Trinity National Forest, California, which comprise approximately thirty-seven thousand acres, is generally depicted on a map entitled "Mt. Shasta Wilderness—Proposed", and which shall be known as Mt. Shasta Wilderness;

(30) certain lands in the Six Rivers National Forest, California, which comprise approximately eight thousand one hundred acres, as generally depicted on a map entitled "North Fork Wilderness—Proposed", and which shall be known as the North Fork Wilderness;

(31) certain lands in the Shasta Trinity National Forest, California, which comprise approximately twenty-eight thousand acres, as generally depicted on a map entitled "Pattison Wilderness—Proposed", and which shall be known as the Pattison Wilderness;

(32) certain lands in the Cleveland National Forest, California, which comprise approximately thirteen thousand one hundred acres, as generally depicted on a map entitled "Pine Creek Wilderness—Proposed", and which shall be known as the Pine Creek Wilderness;

(33) certain lands in the San Bernardino National Forest, California, which comprise approximately seventeen thousand acres, as generally depicted on a map entitled "Pyramid Peak Wilderness—Proposed", and which shall be known as the Pyramid Peak Wilderness;

(34) certain lands in the Klamath and Rogue River National Forests, California, which compromise approximately twenty-five thousand three hundred acres, as generally depicted on a map entitled "Red Buttes Wilderness—Proposed", and which shall be known as the Red Buttes Wilderness;

(35) certain lands in the Klamath National Forest, California, which comprise approximately twelve thousand acres, as generally depicted on a map entitled "Russian Peak Wilderness—Proposed", and which shall be known as the Russian Peak Wilderness;

(36) certain lands in the San Bernardino National Forest, California, which comprise approximately twenty-one thousand five hundred acres, as generally depicted on a map entitled "San Gorgonio Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the San Gorgonio Wilderness as designated by Public Law 88–577;

(37) certain lands in the San Bernardino National Forest, California, which comprise approximately ten thousand nine hundred acres, as generally depicted on a map entitled "San Jacinto Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the San Jacinto Wilderness as designated by Public Law 88–577: *Provided however,* That the Secretary of Agriculture may pursuant to an application filed prior to January 1, 1983, grant a right-of-way for, and authorize construction of, a transmission line or lines within the area depicted as "potential powerline corridor" on the map entitled "San Jacinto Wilderness Additions—Proposed": *Provided further,* That if a power transmission line is constructed within such corridor, the corridor shall cease to be a part of the San Jacinto Wilderness and the Secretary of Agriculture shall publish notice thereof in the Federal Register;

(38) certain lands in the Sierra and Inyo National Forests and the Devils Postpile National Monument, California, which comprise approximately one hundred and ten thousand acres, as generally depicted on a map entitled "San Joaquin Wilderness—Proposed," and which shall be known as San Joaquin Wilderness: *Provided however,* That nothing in this Act shall be construed to prejudice, alter, or affect in any way, any rights or claims of right to the diversion and use of waters from the North Fork of the San Joaquin River, or in any way to interfere with the construction, maintenance, repair, or operation of the Jackass-Chiquito hydroelectric power project (or the Granite Creek-Jackass alternative project) as proposed by the Upper San Joaquin River Water and Power Authority: *Provided further,* That the designation of the San Joaquin Wilderness shall not preclude continued motorized access to those previously existing facilities which are directly related to permitted livestock grazing activities nor operation and maintenance of the existing cabin located in the vicinity of the Heitz Meadow Guard Station within the San Joaquin Wilderness, in the same manner and degree in which such access and operation and maintenance of such cabin were occurring as of the date of enactment of this Act;

(39) certain lands in the Cleveland National Forest, California, which comprise approximately thirty-nine thousand five hundred and forty acres, as generally depicted on a map entitled "San Mateo Canyon Wilderness—Proposed", and which shall be known as the San Mateo Canyon Wilderness;

(40) certain lands in the Laos Padres National Forest, California, which comprise approximately two thousand acres, as generally depicted on a map entitled "San Rafael Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the San Rafael Wilderness as designated by Public Law 90–271;

(41) certain lands in the San Bernardino National Forest, California, which comprise approximately twenty thousand one hundred and sixty acres, as generally depicted on a map entitled "Santa Rosa Wilderness—Proposed", and which shall be known as the Santa Rosa Wilderness;

(42) certain lands in and adjacent to the Sequoia National Forest, California, which comprise approximately forty-eight thousand acres, as generally depicted on a map entitled "Scodies Wilderness—Proposed", and which shall be known as the Scodies Wilderness;

(43) certain lands in the Angeles and San Bernardino National Forests, California, which comprise approximately forty-four thousand acres, as generally depicted on a map entitled "Sheep Mountain Wilderness—Proposed", and which shall be known as Sheep Mountain Wilderness;

(44) certain lands in the Cleveland National Forest, California, which comprise approximately five thousand two hundred acres, as generally depicted on a map entitled "Sill Hill Wilderness Proposal" dated July 1980, and which shall be known as the Sill Hill Wilderness;

(45) certain lands in the Six Rivers, Klamath, and Siskiyou National Forests, California, which comprise approximately one hundred and one thousand acres, as generally depicted on a map entitled "Siskiyou Wilderness—Proposed", and which shall be known as the Siskiyou Wilderness;

(46) certain lands in the Mendocino National Forest, California, which comprise approximately thirty-seven thousand acres, as generally depicted on a map entitled "Snow Mountain Wilderness—Proposed", and which shall be known as Snow Mountain Wilderness;

(47) certain lands in the Sequoia and Inyo National Forests, California, which comprise approximately seventy-seven thousand acres, as generally depicted on a map entitled "South Sierra Wilderness—Proposed", and which shall be known as the South Sierra Wilderness;

(48) certain lands in the Modoc National Forest, California, which comprise approximately one thousand nine hundred and forty acres, as generally depicted on a map entitled "South Warner Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the South Warner Wilderness as designated by Public Law 88–577;

(49) certain lands in the Lassen National Forest, California, which comprise approximately seven thousand acres, as generally depicted on a map entitled "Thousand Lakes Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Thousand Lakes Wilderness as designated by Public Law 88–577;

(50) certain lands in and adjacent to the Lassen National Forest, California, which comprise approximately twenty-two thousand acres, as generally depicted on a map entitled "Timbered Crater Wilderness—Proposed", and which shall be known as the Timbered Crater Wilderness;

(51) certain lands in and adjacent to the Klamath, Shasta Trinity and Six Rivers National Forests, California, which comprise approximately five hundred thousand acres, as generally depicted on a map entitled "Trinity Alps Wilderness—Proposed", and which shall be known as the Trinity Alps Wilderness;

(52) certain lands in the Los Padres National Forest, California, which comprise approximately two thousand seven hundred and fifty acres, as generally depicted on a map entitled "Ventana Wilderness Addition—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Ventana Wilderness as designated by Public Laws 91–58 and 95–237; and

(53) certain lands in and adjacent to the Six Rivers and Mendocino National Forests, California, which comprise approximately forty-six thousand acres, as generally depicted on a map entitled "Yolla-Bolly Middle Eel Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Yolla-Bolly Middle Eel Wilderness as designated by Public Law 88–577.

(b) The previous classifications of the High Sierra Primitive Area, Emigrant Basin Primitive Area, and the Salmon-Trinity Alps Primitive Area are hereby abolished.

MONACHE WILDERNESS STUDY AREA

SEC. 3. (a) In furtherance of the purposes of the Wilderness Act, the following lands shall be reviewed by the Secretary of Agriculture as to their suitability for preservation as wilderness. The Secretary shall submit his report and findings to the President and the President shall submit his recommendation to the United States House of Representatives and the United States Senate no later than three years from the date of enactment of this Act:

(1) certain lands in the Sequoia National Forest, California, which comprise approximately forty-two thousand acres, as generally depicted on a map entitled "Monache Wilderness Study Area", dated July 1980, and which shall be known as the Monache Wilderness Study Area.

(b) Subject to valid existing rights, the wilderness study area designated by this section shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System: *Provided,* That within the Monache Wilderness Study Area the level of use existing during the year ending June 30, 1980, shall be permitted to continue.

ADMINISTRATION OF WILDERNESS AREAS

SEC. 4. (a) Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary concerned in accordance with the provisions of the Wilderness Act: *Provided,* That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(b) Within the National Forest wilderness areas designated by this Act—

(1) as provided in subsection 4(d)(4)(2) of the Wilderness Act, the grazing of livestock, where established prior to the date of enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies and practices as the Secretary deems necessary, as long as such regulations, policies and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act and this Act;

(2) as provided in subsection 4(d)(1) of the Wilderness Act, the Secretary concerned may take such measures as are necessary in the control of fire, insects, and diseases, subject to such conditions as he deems desirable; and

(3) as provided in section 4(b) of the Wilderness Act, the Secretary concerned shall administer such areas so as to preserve their wilderness character and to devote them to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

(c) Within sixty days of the date of enactment of this Act, the Secretary of Agriculture shall enter into negotiations to acquire by exchange or otherwise (on a willing-buyer-willing-seller basis and at the landowner's option) all or part of any privately owned lands within the Trinity Alps, Granite Chief, Castle Crags, and Mount Shasta Wilderness areas as designated by this Act. Such acquisition shall to the maximum extent practicable, be completed within three years after the date of enactment of this Act. Market and exchange values shall be determined without reference to any restrictions on access or use which arise out of designation as a wilderness area.

FILING OF MAPS AND DESCRIPTIONS

SEC. 5. As soon as practicable after enactment of this Act, a map and a legal description on each wilderness area shall be filed with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and description shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

ADDITIONS TO NATIONAL PARK SYSTEM

SEC. 6. (a) The following lands are hereby added to the National Park System:

(1) certain lands in the Sierra National Forest, California, which comprise approximately seven thusand acres, as generally depicted on a map entitled "Mt. Raymond Addition, Yosemite National Park—Proposed", dated July 1980, and which are hereby incorporated in, and which shall be deemed to be a part of Yosemite National Park;

(2) certain lands in the Sequoia National Forest, California, which comprise approximately twelve thousand acres, as generally depicted on a map entitled "Jennie Lakes Additions, Kings Canyon National Park—Proposed", dated July 1980, and which are hereby incorporated in, and which shall be deemed a part of Kings Canyon National Park.

(b) Upon enactment of this Act, the Secretary of Agriculture shall transfer the lands described in subsection (a) of this section, without consideration, to the administrative jurisdiction of the Secretary of the Interior for administration as part of the national park system. The boundaries of the national forests and national parks shall be adjusted accordingly. The areas added to the national park system by this section shall be administered in accordance with the provisions of law generally applicable to units of the national park system.

(c) The Secretary of the Interior shall study the lands added to the national park system by subsection (a) of this section for possible designation as national park wilderness, and shall report to the Congress his recommendations as to the suitability or nonsuitability of the designation of such lands as wilderness by not later than three years after the effective date of this Act.

(d) The Secretary of Agriculture is authorized and directed to transfer to the jurisdiction of the Secretary of the Interior for administration as part of Yosemite National Park, two hundred and fifty-three acres of the Stanislaus National Forest at Crocker Ridge, identified as all that land lying easterly of a line beginning at the existing park boundary and running three hundred feet west of and parallel to the center line of the park road designated as State Highway 120, also known as the New Big Oak Flat Road, within section 34, township 1 south, range 19 east, and within sections 4, 9, and 10, township 2 south, range 19 east, Mount Diablo base and meridian. The boundary of Yosemite National Park and the Stanislaus National Forest shall be adjusted accordingly.

The Secretary of the Interior is authorized and directed to transfer to the jurisdiction of the Secretary of Agriculture one hundred and sixty acres within the boundary of the Sierra National Forest identified as the northwest quarter of section 16, township 5 south, range 22 east, Mount Diablo base meridian, subject to the right of the Secretary of the Interior to the use of the water thereon for park purposes, including the right of access to facilities necessary for the transportation of water to the park.

NATIONAL PARK WILDERNESS

SEC. 7. The following lands are hereby designated as wilderness in accordance with section 3(c) of the Wilderness Act (78 Stat. 890; U.S.C. 1132(c)) and shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act:

(1) Yosemite National Park Wilderness, comprising approximately six hundred and seventy-seven thousand six hundred acres, and potential wilderness additions comprising approximately three thousand five hundred and fifty acres, as generally depicted on a map entitled "Wilderness Plan, Yosemite National Park, California" numbered 104–20, 003–E dated July 1980, and shall be known as the Yosemite Wilderness;

(2) Sequoia and Kings Canyon National Parks Wilderness, comprising approximately eight hundred and twenty-five thousand eight hundred and twenty-three acres; and potential wilderness additions comprising approximately one hundred acres, as generally depicted on a map entitled "Wilderness Plan—Sequoia-Kings Canyon National Parks—California", numbered 102–20, 003–F and dated August 1981, and shall be known as the Sequoia-Kings Canyon Wilderness.

MAP AND DESCRIPTION

SEC. 8. A map and description of the boundaries of the areas designated in section 7 of this Act shall be on file and available for public inspection in the Office of the Director of the National Park Service, Department of the Interior, and in the Office of the Superintendent of each area designated in section 7. As soon as practicable after this Act takes effect, maps of the wilderness areas and descriptions of their boundaries shall be filed with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, and such maps and descriptions shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in such maps and descriptions may be made.

CESSATION OF CERTAIN USES

SEC. 9. Any lands (in section 7 of this Act) which represent potential wilderness additions upon publication in the Federal Register of a notice by the Secretary of the Interior that all uses thereon prohibited by the Wilderness Act have ceased, shall thereby be designated wilderness. Lands designated as potential wilderness additions shall be managed by the Secretary insofar as practicable as wilderness until such time as said lands are designated as wilderness.

ADMINISTRATION

SEC. 10. The areas designated by section 7 of this Act as wilderness shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and where appropriate, any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

SIX RIVERS PLANNING AREAS

SEC. 11. (a) The following planning areas shall be reviewed by the Secretary of Agriculture as to their suitability or nonsuitability for preservation as wilderness. The Secretary shall submit his report and findings to the President, and the President shall submit his recommendations to the United States House of Representatives and the United States Senate no later than three years from the date of enactment of this Act:

(1) certain lands in the Six Rivers and Klamath National Forests, California, which comprise approximately sixty thousand acres, as generally depicted on a map entitled "Eightmile and Blue Creek Planning Areas", dated July 1980; and

(2) certain lands in the Six Rivers National Forest, California, which comprise approximately thirty thousand acres as generally depicted on a map entitled "Orleans Mountain Planning Area," dated July 1980: *Provided*, That within the area shown on such map as the "Ski Study Area" the Secretary shall conduct a special study as to the suitability or nonsuitability of the area for location of an alpine ski facility. In conducting such ski study the Secretary shall consider the need for an alpine ski facility in the region, climatological factors, the feasibility and location of possible road access to any ski facility and the impact of ski development on other multiple uses.

(b) Subject to valid existing rights, the planning are as designated by this section shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character.

(c) Until Congress determines otherwise, timber volumes within the planning areas designated by this section shall be included in the base used to determine potential yield for the national forest concerned.

(d) Notwithstanding any existing or future administrative designation or recommendation, mineral prospecting, exploration, development, or mining of cobalt and associated minerals undertaken under the United States mining laws within the North Fork Smith roadless area (RARE II, 5–707, Six Rivers National Forest, California) shall be subject to only such Federal laws and regulations as are generally applicable to national forest lands designated as nonwilderness.

WILDERNESS REVIEW CONCERNS

SEC. 12. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II);

(2) the Congress has made its own review and examination of national forest roadless areas in California and the environmental impacts associated with alternative allocations of such areas.

(b) on the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to national forest lands in States other than California, such statement shall not be subject to judicial review with respect to national forest system lands in the State of California;

(2) upon enactment of this Act, the injunction issued by the United States District Court for the Eastern District of California in State of California versus Bergland (483 F. Supp. 465 (1980) shall no longer be in force;

(3) with respect to the national forest lands in the State of California which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II), except those lands remaining in further planning upon enactment of this Act, that review and evaluation shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976 (Public Law 94–588) to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revision of the initial plans and in no case prior to the date established by law for completion of the initial planning cycle;

(4) areas in the State of California reviewed in such final environmental statement and not designated as wilderness by this Act or remaining in further planning upon enactment of this Act need not be managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial plans;

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of national forest system lands in the State of California for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

DILLON CREEK

SEC. 13. (a) Certain lands in the Klamath National Forest, California, which comprise approximately thirty thousand acres, as generally depicted on a map entitled "Dillon Creek Further Planning Area", dated July 1980, shall be considered for all uses, including wilderness, during the preparation of a forest plan for the Klamath National Forest pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended.

(b) Pending completion of the plan, development activities such as timber harvest, road construction, and other activities that may reduce wilderness potential of the land will be prohibited. Activities permitted by prior rights, existing law, and other established uses may continue pending final disposition of the area. Although no harvesting of timber will be allowed other than for emergency reasons, standing timber on commercial forest land in the area will be used to determine allowable sale quantity.

(c) Recommendations for the Dillon Creek Further Planning Area shall be submitted to the Congress and, unless the Congress enacts legislation to the contrary within one hundred and eighty calendar days while Congress is in session, the Dillon Creek Area shall be designated for the use recommended and managed accordingly, beginning January 1, 1986.

SEVERABILITY

SEC. 14. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby.●

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By Mr. HATFIELD:

S. 1586. A bill to establish a national policy of promoting and facilitating the operation, maintenance, and development of deep-draft seaports, inland river ports and waterways necessary to domestic and foreign waterborne commerce; and to require recovery of certain expenditures of the U.S. Army Corps of Engineers for the operation, maintenance and construction of inland shallow-draft and deep-draft navigational channels and other projects as appropriate; to the Committee on Finance.

WATERWAYS TRANSPORTATION DEVELOPMENT AND IMPROVEMENT ACT OF 1981

● Mr. HATFIELD. Mr. President, today I am introducing the Waterways Transportation Development and Improvement Act of 1981. This bill is designed to provide a funding mechanism for the operations and maintenance of our rivers and harbors and for the new construction of needed improvements on our Nation's waterways.

I introduce this bill as a response to the administration's initiatives, S. 809, and 810, which would shift the responsibility of maintaining U.S. waterborne transportation to the local entities through which the bulk of our Nation's commerce passes. I understand the philosophy upon which the administration's bills are based. It is the conservative marketplace theory. In many areas of commerce, and with some slight reservations, I have supported the marketplace theory. But I am happy to say that I have not yet been seduced so completely by theory that I am willing to abandon reality for the purity of a theoretical model.

When the Founding Fathers drafted the Constitution, they appreciated the importance of a national policy on ports and harbors and navigable waterways to such an extent that it appears in several places in the Constitution. The most startling example of the awareness of these fine gentlemen of need to avoid discrimination among our Nation's ports appears in Section 9 of the Constitution which states:

No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another:

In Section 8, the drafters said—

But all Duties, Imposts and Excises shall be uniform throughout the United States.

The spirit of these provisions is clear, The Congress was not to promote seagoing commerce into some ports at the expense of other ports. Moreover, Congress was clearly given the authority to enforce its supremacy in these matters through the commerce clause. Mr. Chief Justice Marshall thought he had that dispute settled in 1824 when he wrote the opinion in Gibbons against Ogden. He stated:

The power of Congress, then, comprehends navigation, within the limits of every state in the Union; so far as that navigation may be, in any manner, connected with "commerce with foreign nations, or among the several states, or with the Indian tribes."

Proponents of the administration proposals will correctly state that the port language of the Constitution was intended to deter the Federal Government from harming the ports through prohibitory legislation, whereas these bills merely remove an advantage which the United States has conferred on the ports of the States. I will not argue the letter of the law, but would like to point out that this advantage has been conferred on the developed ports of the east coast since 1824, when the Congress first began appropriating money for dredging and port improvements under the act of May 1824 (4 Stat. 32).

This 156 years of Federal largess resulted in such lasting improvements to navigation as the locks connecting the Great Lakes, the St. Lawrence Seaway, the Inland Waterway, and major ports up and down the east coast and in the Chesapeake Bay. These huge centers of commerce daily handle ships of tens of thousands of tons deadweight and drafts of up to 45 feet. Yet when the Corps began its dredging projects in the 18th and 19th centuries the average depth of ports on the east coast was about 18 feet.

So, Mr. President, I am arguing the spirit of the Constitution. In the West, and to a lesser extent on the gulf coast, development has been later than that in the East. But here we are during the 97th Congress, faced with the prospect of shutting the door on the progress of underdeveloped ports and waterways such as the Columbia/Snake system and places like Coos Bay, Oreg., and Eureka, Calif., in the name of theoretical purity.

Lest anyone think I am overstating my case a bit. I ask unanimous consent to print in the RECORD a letter I received recently from the Pacific Coast Congress of Harbormasters and Port Managers.

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

PACIFIC COAST CONGRESS OF HARBORMASTERS AND PORT MANAGERS, INC.

HON. MARK HATFIELD,
*Washington, D.C.*

DEAR SENATOR HATFIELD: This is in regard to Senate Bills 809 and 810 which would impose waterway user fees. We know that you are concerned about the effects these fees could have but we want to point out some specific problems that would be brought about at the shoal-draft coastal ports.

The original bills did not address the shoal-draft coastal ports particularly, but we have just learned that the Administration has proposed a revision to S. 810 that contains a new section, apparently aimed primarily at shallow-draft fishing and recreational ports and harbors of refuge, which account for an estimated $50 million per year in Corps of Engineers' O&M costs. This new section provides that, after October 1, 1981, the Corps will continue to provide construction, rehabilitation and O&M at such facilities only if "an appropriate non-Federal public body shall agree with the Secretary (of the Army) to reimburse the Federal government for Federal expenditures by the Corps for such work." The non-Federal entities, in turn, are authorized to collect fees from project users for the recovery of their obligations. Very little commercial traffic travels on the affected projects and, presumably, the user fees would be collected from commercial fishing and recreational interests.

If S. 810 were to become law with the foregoing section intact it would be an absolute disaster to the fishing industry. As you know, the fishing industry is in real trouble these days. The salmon fishermen are already working under severe quota limitations and now Indian lawsuits have been filed that would cut back the ocean quotas even further. The tuna and crab fisheries are sometimes things. The offshore trawl fishery is struggling to establish itself in the face of rising costs and competition from imported product.

While the fishing industry as a whole cannot stand any significant increase in costs from user fees, the segmented, port by port fees that are proposed would be unconscionable. If each port has to collect a toll, or fee, for the use of its channel the administrative costs of the ports will go way up, the highly mobile fishing vessels will move to ports with lower fees, putting an undue strain on their facilities and leaving other ports and private investors with underused facilities. This will result in bankruptcies and default on bonds, etc. as well as unemployment and greater demand for social services.

If there must be a waterway user fee for the shallow-draft coastal ports we feel that the only way that it can be done is on the basis of the following criteria. Any legislation should:

(1) Consider the national interest in the navigation system. Capital investments in the nation's waterway system are not local in their benefits. They are universal in promoting the prosperity of the nation. The federal cost recovery objectives should be discounted a minimum 30 percent as a national interest factor.

(2) Collect the remaining percentage on a uniform national basis so as to avoid unproductive administrative costs at each port and also avoid local economic dislocations. A surcharge on, or a re-allocation of, import duties on fish should be considered as a source of revenue. Any fee imposed on the direct users will result in an increase in the cost of domestically produced fish and make imports more competitive.

(3) If it is determined that a portion of the fees *must* be collected from the direct users they should be phased in gradually over several years so as to give public and private investors in waterway associated projects time to adjust, and

(4) Keep the present system of operations, maintenance and construction by the Corps of Engineers which is based on an equitable cost-benefit ratio.

We have been working closely with the Washington Public Ports Association and the Port of Portland on these matters. They will be contacting you with suggestions regarding the deep draft and inland waterways. At this time we simply want to alert you of the precarious position of the shallow-draft coastal ports and solicit your cooperation in seeing that they are treated fairly.

Your understanding and cooperation is very much appreciated.

Very truly yours,

ROBERT C. PETERSEN,
*President.*

Mr. HATFIELD. Mr. President, my concern for this issue goes deeper than how the administration proposal would affect Oregon. I am certain that any proposal which shifts the funding responsibilities for port and waterway development to the individual bodies would balkanize the Nation, economically. There is ample precedent for my fear in U.S. history. Indeed, one reason that the Continental Congress placed the responsibility for U.S. waterborne transportation and U.S. commerce in the hands of the Federal Government was the experience our young Nation had with hostile, debilitating economic warfare which the various States' ports engaged in under the Articles of Confederation.

If we are able to remain true to the concept of federalism, then the first principle we must accept is that the United States is a single economic entity. If we succeed, we do so as a nation and if we fail, we do so as one people. No nation which has radical economic disparity among regions can survive indefinitely as a single nation. Resentment builds, and people chaff at real or imagined favoritism which is displayed by the Central Government.

I am not suggesting that we are now or will ever come to this point in our history. But, by carrying this argument to its logical, albeit absurd, limits, I would like to highlight the strains that the administration's proposal put on the system. These strains are real, and can be enumerated. Recently, a number of members of the Oregon and Washington congressional delegations wrote to the President, and did explain what some of those strains are, from the perspective of the Pacific Northwest region. I ask unanimous consent that a copy of that letter be printed in the RECORD at this point.

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

HOUSE OF REPRESENTATIVES,
*Washington, D.C., June 18, 1981.*

Hon. RONALD REAGAN,
*President of the United States, The White House, Washington, D.C.*

DEAR PRESIDENT REAGAN: As Members of the Pacific Northwest Congressional delegation, we are writing to urge you and your Administration to reconsider proposals for full cost recovery waterway user taxes.

We recognize the objective you have of raising additional revenues in a time of renewed fiscal responsibility. But we submit legislation affecting major transportation systems also must take into account a broader range of objectives, including improving the overall transportation system and our position in world markets.

While these increased taxes will raise additional revenues, they will do so at a significant cost:

Development of mature, energy-efficient waterway systems will be retarded;

Cargo movements will be diverted to foreign ports, hurting regional economies that rely on water-borne commerce;

Inflation will be fueled as the price of domestic goods and imports transported by waterway will be pushed higher; and

Exports, especially bulk commodities such as grain and coal, will be reduced because higher transportation costs make them less competitive in world markets, thus adversely affecting U.S. balance of payments.

In light of these impacts, we urge you to defer your proposals until a thorough analysis of the full repercussions for increasing waterway user taxes has been completed. Congress, in enacting user fees for the inland waterways in 1978 with the passage of P.L. 95–502, was unsure of the effects such taxes would have on the nation's transportation system and therefore mandated a comprehensive study of their impact. The Departments of Commerce and Transportation and other agencies are in the final stages of three years of work on this study which is scheduled to be delivered to Congress by September 30. We hope you will delay any consideration of your proposals until the study has been submitted, reviewed and commented upon by affected parties.

The Members of the Pacific Northwest Congressional delegation feel strongly that the waterway user tax issue must be seen in a broader perspective than simply balancing the budget or philosophically requiring full cost recovery from users.

Increasing waterway user taxes also must be seen as having a definite and adverse impact on the development of an important mode of transportation, on regional economies, on the national economy, on export expansions, national defense, and, ultimately, on relations with our major international trading partners.

Moreover, federal assistance is afforded to all major transportation systems in the United States—and should be because it enhances the productive capacity of the nation. Water transportation, which through inherent efficiencies, serves as a counterbalance to hold down rates in other transportation modes. It should not be singled out for a policy of full cost recovery until national transportation objectives have been established.

Coming from the Pacific Northwest, our concern is chiefly with the Columbia/Snake River System, one of the nation's emerging waterway systems which in a very real sense is becoming the "Northwest Passage" we have sought for decades.

There are 19 port districts on the navigable shallow-draft portion of the Columbia/Snake System. The largest is the Port of Portland, the West Coast's largest export port in terms of tonnage. The reason is because it is one of the finest transportation hubs, served by major Interstate highways, three railroads and the Columbia/Snake waterway system.

Northwest ports are representative of the divergent navigation needs of ports throughout the country. These ports include small and large ports; river and coastal ports; deep-draft and shallow-draft ports; ports which accommodate foreign exports and imports, as well as coast-wide and inland domestic trade, including breakbulk, containers, wheat, automobiles, bulks, agricultural products and forest products.

The Port of Portland projects the combined effect of shallow-draft and deep-draft charges would reach as high as $23,750 for a 50,000-ton ship loaded with grain for export. Adding new construction costs of enlarging the Bonneville Lock and deepening the mouth of the Columbia would bring the total fees for that same grain ship up to $63,750.

Under S 809/HR 2959 and S 810/HR 2962, the Columbia/Snake system is subject to fees for both shallow and deep draft. The Port of Portland estimates a loss of 4 to 5 million tons of oceangoing cargo from Columbia/Snake River ports if these proposals are enacted. That loss would include containers, wood products, automobiles, dry bulks and grain. Products bound for export could easily be diverted by land transportation modes to Canadian ports which are free of taxes or fees.

The dropoff in cargoes would mean a $750 million loss to the Pacific Northwest economy, and potentially 15,000 fewer jobs. For a region already reeling with double-digit unemployment because of what high interest rates have done to the housing and timber industries, this additional blow would be staggering.

Possibilities for future investment also would be diminished. The Port of Portland alone is planning to invest an additional $300 million to expand facilities. Five port districts on the upper Columbia are working toward navigation capabilities to improve their local economies. The Pacific Northwest,

which is capital short because of restricted markets for goods and desperately needs to diversify, will be denied its best option for long-term growth.

Excessive waterway user fees will have a negative impact on the national economy and will result in inflation, reduced balance of payments and severe economic dislocations.

Waterway transportation is in competition with truck and rail transportation and serves to hold down costs. If waterway rates are raised to cover user taxes, rail and truck rates can be expected to increase as well.

Beyond that, exporters will be forced to absorb waterway user costs if they are to remain competitive in world markets. Since 43 per cent of American exports are farm products, the burden will fall on the already beleaguered U.S. farmer.

Other low-value, high-tonnage bulk commodities also will feel the pinch—including coal, sand and gravel, fuels and fertilizers.

The American consumer won't escape, either. About 85 per cent of the cargo moving in U.S. waterway systems is bulk raw materials or energy products used in the manufacture of consumer products.

Economic dislocations will occur because as cargo movements are diverted or discouraged, considerable public investment in existing waterway and port facilities will be used less and have less value in generating economic activity and jobs.

Mr. President, few issues are simple. We appreciate your efforts to find a more equitable way to finance the operation, maintenance and construction of waterway facilities. All we ask is that you not move ahead on these proposals until your Administration has examined the broad ramifications of increased waterway user taxes. Together let us seek our shared goal of revitalizing America's economy.

With warm regards,

Sincerely,

MARK HATFIELD,
*U.S. Senator.*
RON WYDEN,
LARRY CRAIG,
JIM WEAVER,
MIKE LOWRY,
LES AUCOIN,
DON BONKER,
TOM FOLEY,
*Members of Congress.*

Mr. HATFIELD. Mr. President, as the chairman of the Senate Appropriations Committee, I am acutely aware of the dismal state of the Nation's finances. We face an accumulated debt of nearly a trillion dollars, and nondiscretionary appropriations increases which are helping to keep our budget in deficit year after year. We are trying to find ways to reduce discretionary Federal spending, and this was a major force behind S. 809 and S. 810.

As a member of the Republican majority, I am willing to accept the administration concept that every user of services should pay for the cost of those services, where the costs are easily identifiable. So, I do not intend to keep the burden of building and maintaining the Nation's ports and waterways on the Treasury. Heretofore, all maintenance dredging and new construction has come from the general fund. Administration has identified the ports and barge operators, and others who operate on the waterways as the users of the waterways. I would like to carry this concept a bit further, and say that the ultimate user of the waterways and ports is the commerce which is moved through the system, and not those who provide the services along its route. In this bill, a tonnage charge would be imposed on all commerce which moves into or out of the United States.

I would prefer to make the connections among the weight of the cargo, the resultant draft of the cargo carrier, and the extent to which it uses the improvements on the natural environment very clear, by imposing a flat tonnage fee on all commerce. However, such a flat fee would be approximately 34 cents per ton, and I have been convinced that some low cost but essential cargoes could not absorb such a fee and remain competitive, so the bill provides that the Secretary of the Treasury prepare a sliding scale of charges based on value and weight. This rate schedule would be revised every 3 years, in order to keep pace with the changing economy.

At this point, I ask unanimous consent that a table demonstrating how I reached the 34-cent figure, based on estimates of incoming and outgoing U.S. commerce, and cost estimates of necessary navigation maintenance and improvements over the next 10 years be printed in the RECORD.

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

*10-yr plan*

| | |
|---|---|
| A. Total costs of all new deepdraft projects 40 ft and under projected through 1992 (10 yr) | 900,000,000 |
| B. Total costs of all new projects of more than 40 ft draft projected through 1992 times 50 percent | 2,000,000,000 |
| C. Projected O. & M. costs for existing channels—annualized and totaled through 1992 (over 4 ft) | 3,000,000,000 |
| D. Projected incremental increases in O. & M. costs resulting from New York work on channels 40 ft or less, total projected through 1992 | 200,000,000 |
| E. Projected incremental increases in O. & M. costs resulting from New York on channels more than 40 ft times 50 percent | 250,000,000 |
| F. Projected (tonnages) total waterborne commerce through 1992, domestic and foreign at ports more than 14 ft. | 15,000,000,000 |

*10-yr plan*

$$\frac{A+C+D+E}{F}\times\frac{\times 5.2}{F=15}$$

10-yr average user fee per ton uniformly applied equals 34 cents.

Mr. HATFIELD. Mr. President, the revenues from these tonnage charges would be combined with current waterway user charges and held in a waterways trust fund for use on a national scale. From this fund, the Corps of Engineers would be able to take operations and maintenance money without going through the authorization and appropriations process. Any new construction would also come from the trust fund, but would be subject to the authorization and appropriations processes.

Like others, I consider the deepwater ports, that is over 45 feet, to be a special case. These ports, nominally 55 feet, are a relatively special purpose installation. Useful for a few heavy, bulky commodities such as oil and coal, these ports represent a step into a new generation of equipment and demands. They will be expensive. Therefore, this bill meets the administration literally halfway, with a 50–50 funding proposal. Half the costs of construction would come from the fund, and the port would be required to come up with the other half.

Federal control is maintained over the ports which want to use Federal funding, but if a port decides to go it alone, it need only comply with the permit process before going to construction. A Federal authorization for a navigation project is unnecessary. Also, the bill provides for some liberalization in the methods the port uses to acquire its funds for construction.

Mr. President, this bill has been put together with the consultation of most of those involved. While it does not represent a consensus, it does indicate the concern that all who are knowledgeable in the field have regarding the administration concept and the direction they would like to see this issue take in the future. It is too late to turn back the clock to precolonial times and expect the system to work. I hope this bill represents a compromise between the President's philosophy and the reality of the situation.

At this point I would like to introduce S. 1586, the Waterways Transportation Development Act of 1981, and ask unanimous consent that it be printed in the RECORD.

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

S. 1586

*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 "Waterways Transportation Development and Improvement Act of 1981".

TITLE I—FINDINGS, DECLARATION OF PURPOSES AND DEFINITIONS

FINDINGS

SEC. 101. The Congress finds and declares that:

(a) It is in the national interest to maintain and develop a viable marine transportation system within the United States, including a network of commercial deep-draft seaports, inland shallow-draft ports and a multipurpose domestic waterway system adequate to accommodate the needs of the foreign and domestic commerce, promote economic stability and provide for the national security of the United States.

(b) Development and maintenance of the national system of transportation necessary to promote and accommodate foreign and domestic waterborne commerce has been accomplished through a productive partnership of the Federal Government, State and local public ports and municipalities, in which the Federal Government has developed and maintained the navigability of ports and waterways and facilitated maritime commerce, while inland river ports and deep-draft seaports have provided the necessary landside port facilities and other navigational improvements necessary to accommodate foreign and domestic waterborne commerce.

(c) Each of the deep-draft ports, inland river ports and waterways regions has its own concerns, problems and opportunities, which affect the flow of international and interstate commerce.

(d) Ports and waterways in the United States are significant generators of national and regional revenue, providing economic stability and growth. Domestic and foreign shippers, producers, consumers and receivers of international commerce have been well-

served by the nation's competitive seaport system.

(e) There has been a serious delay in the authorization of new deep-draft and inland shallow-draft navigation channel projects by the Congress, and that there is a backlog of economically justified navigation projects which, if implemnted, would enhance the overall efficiency of the nation's transportation system.

DECLARATION OF PURPOSES

SEC. 102. It is the purpose of this Act to:

(a) Provide a national policy that recognizes the significant role and importance of waterborne commerce to the economic well-being of the United States.

(b) Establish a procedure to facilitate the orderly authorization of necessary maintenance, operation and construction projects for deep-draft and inland shallow-draft navigational improvements.

(c) Provide the means to finance the maintenance, operation and construction of navigation projects to promote the efficient movement of domestic and foreign waterborne commerce.

(d) Provide for the recovery of certain costs and expenditures of the U.S. Army Corps of Engineers for the operation, maintenance and construction of deep-draft and inland shallow-draft navigation projects.

(e) Provide the authorization necessary for local and state port authorities to raise revenues as appropriate and necessary to invest in new construction for waterways development projects.

DEFINITIONS

SEC. 103. As used in this Act, the term

(a) "Commercial navigation" shall refer to those waterways and those navigational improvements that are used by common contract or other carriers for hire and owners or operators of private cargo vessels.

(b) "Inland shallow-draft" refers to any improved waterway operated and maintained by the United States, the improvement to which are primarily for the use of commercial navigation, other than ocean-going vessels, and does not include the Great Lakes, their interconnecting channels and the Saint Lawrence Seaway.

(c) "Deep-draft channels of ocean or Great Lakes ports of the United States" shall mean waterway channels or ocean or Great Lakes ports of the United States of a federally authorized depth of more than fourteen feet other than those administered by the Saint Lawrence Seaway Development Corporation.

(d) "Port use charge" refers to the charge that is assessed and collected by the Customs Service, as a charge upon international cargo at the time of entry into or exit from the United States. The customs surcharge may be assessed against the tonnage of the cargo.

(e) "New construction" refers to projects requiring congressional authorization. For the purpose of determining the nonfederal public body's share of the cost of new construction, the cost of new construction shall include those components of the project that are the responsibility of the local assurer (i.e., spoils disposal sites, berth-to-channel dredging, rights of way, etc.)

(f) "Directly allocated and attributable to commercial navigation" shall refer to the cost allocation of a project assigned to commercial navigation for cost recovery purposes. (1) For projects authorized only for navigation, 90 percent of all costs less any specifically assigned costs for other purposes are to be assigned to commercial waterway transportation; (2) For multiple-purpose projects for which costs have been assigned to navigation, costs assigned to commercial waterway transportation will be in accord with that assignment; (3) For all other multiple-purpose projects providing navigation benefits but for which there have been no cost assignments, costs assigned to commercial waterway transportation will consist of all specific navigation costs, plus 10 percent of joint costs. Expenditures on channel improvements for the Mississippi River and Tributaries Project will be considered maintenance.

TITLE II—COST RECOVERY

OPERATION AND MAINTENANCE

SEC. 201. (a) In order to recover all costs associated with operation and maintenance expenditures of the U.S. Army Corps of Engineers directly allocated and attributable to commercial navigation, for all deep-draft and inland shallow-draft projects authorized by Congress, there shall be imposed on all international commerce commodity specific tonnage charges of such values as are determined by the Secretary of the Treasury imposed upon the commerce at the time of entry into or exit from the United States.

(b) As soon as possible after the date of enactment of this Act, the Secretary of the Treasury shall promulgate a rate system sufficient to cover the costs enumerated in Sec. 201. (a). Every three years thereafter, the relative values of the tonnage charges and the structure of the system of charges shall be reviewed and revised if necessary.

(c) The charge collected under this section shall be collected by the Customs Service, at the same time and in a manner consistent with customs collections authorized by law.

(d) The charge collected under the provisions of this section shall be deposited in the Inland Waterways Trust Fund established by Section 203 of the "Inland Waterways Revenue Act of 1978" (Public Law 95-502). The revenues collected under the provisions of the "Inland Waterways Revenue Act of 1978" shall continue to be deposited in the Inland Waterways Trust Fund as provided by law.

(e) Effective upon passage of this Act and hereafter, the "Inland Waterways Trust Fund" established by Section 203 of the "Inland Waterways Revenue Act of 1978" shall be known as the "Waterways Trust Fund."

(f) The Secretary of the Army (hereinafter referred to as Secretary), acting through the Chief of Engineers, may utilize funds deposited in the Waterways Trust Fund, for all operation and maintenance costs incurred for deep-draft and inland shallow-draft waterways of the United States and no further authorization for these purposes is necessary in order to expand these funds.

(g) The Secretary, acting through the Chief of Engineers, shall also utilize funds deposited in the Inland Waterways Trust Fund for the Federal share of new construction subject to the congressional authorization and appropriations process.

NEW CONSTRUCTION

SEC. 202. (a) The Secretary, acting through the Chief of Engineers, shall biennially recommend to the Congress that new construction projects be authorized for deep-draft and inland shallow-draft waterways, upon completion of the necessary engineering and environmental studies and cost estimates. Projects with a depth greater than 13.5 meters shall be authorized only after agreement from a nonfederal public body to pay and reimburse the Federal Government 50 percent of the project construction costs and expenditures that are directly allocated and attributable to commercial navigation. Prior to the initiation of construction, such nonfederal public body shall provide to the Secretary evidence that it has established a mechanism that will assure payment. Public works owned by the United States for purposes of this Act and connected with ports and waterways shall not be considered new construction with a depth greater than 13.5 meters. Such projects shall not be subject to the 50 percent nonfederal share requirement, nor shall they require a local sponsor.

SEC. 203. Agreements with nonfederal public bodies to carry out obligations required by this Act may relate the timing and extent of such obligations to projects or to separable units, features, or segments of such projects as the Chief of Engineers determines to be reasonable and otherwise within the requirements of this Act and the authorizations for the improvements concerned. Such agreements may reflect that they do not obligate future State legislative appropriations for their performance or payment when obligating future appropriations or other funds would be inconsistent with State constitutional limitations.

SEC. 204. The Secretary, acting through the Chief of Engineers, shall determine project construction costs and expenditures that are directly allocated and attributable to commercial navigation after consultations with the local sponsor nonfederal public body and after conducting public hearings and permitting not less than forty-five days for public comment.

SEC. 205. (a) The requirement in this Act for nonfederal reimbursement to the Federal Government for new construction expenditures by the Corps for improvements for deep-draft channels or ocean or Great Lakes ports or inland shallow-draft waterways applies to any construction, rehabilitation, or alteration project for which initial construction funds are provided to the Corps on or after the beginning of the first fiscal year after the date of enactment of this bill.

(b) The entire amount of the new construction expenditures to be reimbursed pursuant to the requirements of this Act, including interest once construction is completed and the project becomes available for use, shall be reimbursed within the life of the project but in no event to exceed fifty years after the date the project becomes available for use, as determined by the Chief of Engineers. The interest rate used for purposes of computing interest shall be the discount rate.

TITLE III—LOCAL COST SHARING

SEC. 301. (1) Any nonfederal public body that signs an agreement under the terms of Section 202 of this Act is authorized to recover all or a portion of the public body's share of the cost of the work to be performed through its existing funding sources authorized by its own enabling authorization, and all or part through the collection of fees from commercial vessels utilizing such projects.

SEC. 302. (1) The consent of the Congress is hereby given to any port authority in the United States to impose and collect a seaport user fee in the form of a duty of tonnage or ad valorem dute for the purposes and in the manner provided in this section. Such seaport user fee may be imposed only upon vessels or cargo engaged in foreign commerce which utilizes the facilities or services of such port.

(2) For the purposes of this Act, to utilize the facilities or services of such port means to:

(a) cross the duly established harbor line of the port;

(b) otherwise employ or benefit from services available in or provided by the port;

(c) in the case of river ports or harbors located adjacent to a navigable waterway, the Secretary shall determine whether a port or ports shall have the authority to impose and collect a seaport user fee.

(3) The user fee will be imposed upon all such vessels in a nondiscriminatory fashion regardless of the type of vessel, public or private berth destination, the type of international cargo handles, the type of berthing, bunkering, or lightering operation contemplated, or the type of facilities of services to be used.

(4) All revenues generated by such a user fee will be placed in a separate, interest-

bearing escrow account for the benefit of the port and obligated or expended only in accordance with the provisions of this Act.

(5) The Secretary, in consultation with the Secretaries of State, Commerce, Transportation, Treasury, Energy, and Agriculture, the Attorney General of the United States, and the Director of the Office of Management and Budget, may promulgate, and may from time to time revise, regulations and guidelines to govern the programs of nonfederal fee collection that may be undertaken pursuant to the authority of this section.

SEC. 303. Whenever a nonfederal public body agrees in writing with the Secretary to pay for its share of the cost of a new construction and the project is subsequently authorized, the Secretary shall direct such study and estimates and reviews as are necessary, and will seek completion of such reports, and commencement of construction within three years of their initiation.

SEC. 305. Payments by a nonfederal public body under the terms of this title shall be made to the Secretary, who shall deposit such payments in the general fund of the Treasury.

SEC. 306. Once a new construction project is completed and becomes available for use, its annual operation and maintenance costs shall be recovered and paid for under the provisions of Section 201 of this Act.

TITLE IV—PROJECT AUTHORIZATIONS

SEC. 401. Nonfederal public bodies are authorized to develop new construction projects independently, without congressional authorization, if they agree to pay 100 percent of the costs of the new construction. Such projects must, however, meet all required statutory and regulatory provisions applicable to projects funded under the provisions of this Act.

TITLE V—REPORTS TO CONGRESS

SEC. 501. The Secretary shall prepare a report to be submitted annually to Congress, on or before March 1, listing all pending studies of navigation projects and all constructon projects in progress.

SEC. 502. The Secretary shall review and study the authorization process for navigation projects to identify and recommend procedures to improve response time and reviews necessary by the various federal agencies in all federally required permits for such projects. This study shall be submitted to Congress on or before September 30, 1981, and shall be prepared in consultation with the Secretaries of Commerce, Interior and Transportation.

SEC. 503. The Secretary shall report to Congress on or before September 30, 1982, and annually before the start of each fiscal year thereafter, on the actual and anticipated receipts of the United States pursuant to Section 201 of this Act and on the actual and anticipated operation and maintenance expenditures of the U.S. Army Corps of Engineers directly allocated and attributable to commercial navigation.●

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By Mr. THURMOND:

S. 1590. A bill to amend title 10, United States Code, to provide for legal assistance to members of the Armed Forces and their dependents, and for other purposes; to the Committee on Armed Services.

LEGAL ASSISTANCE TO MEMBERS OF THE ARMED FORCES

Mr. THURMOND. Mr. President, I am pleased to introduce legislation today which would provide a statutory basis for legal assistance for members of the Armed Forces and their dependents.

Mr. President, it is presently the policy of the Armed Forces to provide such assistance. To the extent that resources are available, this policy is provided for in the regulatory provisions of the respective services.

However, this authority needs to be strengthened by establishing it on a statutory basis. While even this step would not provide an unqualified entitlement to legal services, it would indicate the support of the Congress for this program in periods when various military benefits are being curtailed or eliminated.

Mr. President, at the center of this effort is the encouragement of the preventive legal services which can often result in an overall reduction in the need for military-supplied legal support. Whereas preventive legal service may be provided by one attorney, if the serviceperson is court-martialed, then a minimum of four attorneys are required. The success of these programs is attested by the fact they have been in existence for over 35 years.

Mr. President, in conclusion, I wish to state this legislation has enjoyed the past support of the Defense Department, and the budget impact has been determined to be zero, both by DOD and the Congressional Budget Office.

It is also widely supported by numerous military organizations, as well as the American Bar and the Federal Bar Associations.

Mr. President, I ask unanimous consent that a copy 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. 1590

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is the intent of the Congress that Armed Forces personnel have legal assistance made available to them in connection with their personal legal affairs.

SEC. 2. (a) Chapter 53 of title 10, United States Code, is amended by adding at the end of such chapter the following new section.

"§ 1041. Legal Assistance

"(a) Under such regulations as may be prescribed by the Secretary concerned, members of the armed forces on active duty shall be provided legal assistance in connection with their personal affairs and, subject to the availability of resources, legal assistance may be provided to dependents of active duty members and to members entitled to retired or retainer pay, or equivalent pay, and their dependents."

"(b) The Judge Advocates General, as defined in section 801(1) of this title, are responsible for the establishment and supervision of legal assistance programs under such regulations as may be prescribed by the Secretary concerned.

"(c) Nothing contained in this section shall be construed as authority for the representation in court of Armed Forces personnel or their dependents who can otherwise afford legal fees for such representation without undue hardship."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"1041. Legal assistance.".

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By Mr. HOLLINGS:

S. 1591. A bill to eliminate certain provisions of the Federal Food, Drug, and Cosmetic Act relating to colored oleomargarine; to the Committee on Labor and Human Resources.

LABELING AND NOTIFICATION OF MARGARINE

● Mr. HOLLINGS. Mr. President, today, I am introducing a bill to simplify the Food, Drug and Cosmetic Act by improving its requirements for the labeling and notification of margarine. My bill brings section 407 of the Food, Drug and Cosmetic Act into line with the regulatory policies developed by the Food and Drug Administration (FDA) in recent years, and makes enforcement and compliance with the notification requirement easier.

This legislation is not going to promote margarine, to mandate the use of margarine, or to cause any decrease in consumer protection. Instead, it will enhance consumer protection by modernizing the overly complicated and special requirements for margarine in section 407 of the act.

This bill amends section 407 in three respects. First, in recent years FDA has sought to remove the requirements for labeling the product name on the inner wrapper and make FDA's regular requirements for inner unit labeling also applicable to margarine. The FDA has permitted omission of the ingredients provided a disclaimer statement appears on the inner wrapper and on the outer carton. This legislation would repeal that requirement and leave it up to the FDA to regulate the labeling of margarine inner wrappers. The FDA will continue to have the authority to determine what, if anything, is necessary for consumer information and protection on margarine inner unit wrappers or on the subunits of any packaged food.

Second, the legislation would remove the requirement that the product name on the outer package be in type as large as any other on the package. Through its regulatory process, FDA can determine what should be labeled and how. All other foods are covered by the requirements in section 403 that packaged foods label the product name conspicuously and accurately. Thus, this legislation brings margarine in this respect into line with other foods.

Third, present law requires that an eating place do two things to notify patrons when it is serving margarine. It must post a sign on the wall or make a statement in the menu, and it must identify each serving by appropriate labeling or by a triangular shape. FDA has given a low priority to enforcement of this provision and FDA takes the position that menus, labeling, or other restaurant customer notification regarding margarine use can more effectively be enforced by State and local inspection agencies. Food service establishment inspections are conducted by these levels of government now, thus their handling of this responsibility is much more cost effective. Therefore, this legislation will remove the notification process to be followed in restaurants possessing colored margarine and leave enforcement up to State and local inspection agencies.

Mr. President, the status of margarine is vastly different now from what it was when section 407 of the Food, Drug, and Cosmetic Act was enacted some 31 years

ago. Margarine has become the leading table spread, used by most American families. This legislation will provide better consumer protection by making the law easier to comply with and it will simplify in one respect the burden of regulation on our expanding and important eating-out industry.

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. 1591

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 407(b) of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by inserting "and" after the comma at the end of clause (2);

(2) by striking out "(A) the world 'oleomargarine' or 'margarine' in type or lettering at least as large as any other type or lettering on such label, and (B)" in clause (3);

(3) by striking out the comma and "and" at the end of clause (3); and

(4) by striking out clause (4).

(b) Subsections (c) and (d) of section 407 of such Act are repealed.

(c) Subsection (e) of section 407 of such Act is redesignated as subsection (c).●

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By Mr. SYMMS:

S. 1592. A bill to provide protection from requirements and prohibitions imposed upon citizens of the United States by foreign nations concerning the disclosure of confidential business information, and for other purposes; to the Committee on the Judiciary.

PROTECTION OF CONFIDENTIAL BUSINESS INFORMATION ACT OF 1981

● Mr. SYMMS. Mr. President, I have today introduced the Protection of Confidential Business Information Act of 1981. The purpose of the bill is to reassert the right of the United States to regulate American business.

Over the past several years, some of our major trading partners have objected to assertions of jurisdiction by the United States over anticompetitive acts abroad which have direct effect in this country. In recent months, the United Kingdom and France have enacted legislation which exceeds this bill in forbidding companies subject to the laws of those countries to comply with orders of American courts. The specific purpose of that legislation is to frustrate the administration of American laws and policies.

Mr. President, while many Members of the Senate may disagree with this or that aspect of U.S. antitrust enforcement, I doubt that any of us would disagree with the proposition that a conspiracy in the United Kingdom or in France to restrain trade in the United States must be subject to our laws. The direct effects test applied by our courts is reasonable, and is fully consistent with international law and comity.

But my purpose here is not to defend the application and enforcement of U.S. antitrust laws. It is rather to protest another trend which is becoming dangerously prevalent among our trading partners. That is the tendency to enact openly extraterritorial legislation which is aimed at piercing the corporate veil of American business operating abroad.

Mr. President, no objectively verifiable evidence supports the claim that U.S. multinational enterprises are not, by and large, responsible participants in the countries in which they do business. When an American business incorporates a subsidiary overseas, that company is without question subject to the laws, regulations, and policies of the nation in which it operates. But the U.S. parent does not—nor should it—thereby subject itself to the foreign legal system.

Many American companies do business in the European Communities. Those companies make an important contribution both to the balance of payments of the United States and to the economic health of Europe. They provide jobs, generate capital, and increase output on both sides of the Atlantic.

Those companies benefit the economy of this country in numerous ways. They create and develop markets for American goods. They sponsor important technological innovation. And they further the integration of U.S. trading interests into the increasingly complex and interdependent system of international commerce.

Now, however, EC institutions are considering legislation which would regulate not the European subsidiaries of U.S. businesses, but would penalize the parent companies themselves. The EC is proposing to require that extensive confidential business information be disclosed publicly and prematurely by the parent in exchange for the subsidiary's right to continue to do business in the Communities.

There are four proposals currently under active consideration in the EC that would have direct and severe effects on U.S. business: The fifth, seventh, and ninth directives on company law, and the so-called Vredeling proposal. These initiatives have a single common denominator: Each one claims for European institutions the absolute right directly to regulate and to interfere with the behavior of foreign companies.

Mr. President, let me give the Senate just two examples of the extraterritorial reach contained in these legislative proposals. The draft ninth directive on company law would require that a parent corporation's business decision be taken in the best interests of its subsidiaries in Europe, regardless of the overall interests of the enterprise as a whole. If a decision is deemed harmful to a European subsidiary, irrespective of its benefit to the corporate parent, each and every member of the parent's board would be jointly and severally liable—with unlimited liability—to creditors and minority shareholders for any injury they might suffer.

The avowed purpose of this startling initiative is to force groups of companies away from the traditional forms of organization and into the so-called control contract. This is a notion known only to German law. There is no evidence to suggest that it is better in any measurable respect than forms of group organization practiced here or in any other country. And yet the communities' institutions want to force American companies to adopt this structure as part of the cost of doing business in Europe.

Of course this is inconsistent with every fundamental principle of corporate law and of commonsense. But it is more than this: It is also inconsistent with the basic rules of international law, economics, and comity. A company director in New York cannot be held personally liable under the laws of Italy or Denmark for a business decision taken in the United States which is lawful and proper here.

Here is another example. Under the so-called Vredeling proposal, an American company contemplating a decision which might affect the interests of workers in Europe would be required to negotiate in advance with European trade unions before taking the step. Imagine a company based in the United States but with a factory in France. Under the proposal, the decision to develop a new product in Bayonne, N.J., instead of Bayonne, France, would require prior negotiation with French trade unions, since it affects their interests. This is a suggestion so radical and unnecessary that it can scarcely avoid leading to acrimony and to the deterioration of friendly trade and investment relations.

In its January 12, 1981, issue, Business Week summed up the meaning of the Vredeling proposal. It described the proposal's purpose as "to strengthen the hand of Europe's trade unions, already strident, aggressive participants in the affairs of companies based in the EC."

The magazine correctly warned that—

The magazine correctly warned that "unions and the political leaders who back them should face the fact that investment does not flow freely into a country when it cannot flow freely out."

Mr. President, the European institutions are trying to compel U.S. companies to make public and ultimately to subject to European control their every move—worse, their every contemplated move. If American business is to be regulated in this way, it is this Congress which should say so. So extraordinary a change in the ways in which our companies operate worldwide should not be made at the order of foreign governments.

It is ironic, Mr. President, that the legal system which is proposing to legislate "transparency" for U.S. companies is itself one of the most opaque in the free world. American businessmen are continuously thwarted in their efforts to learn the status of these legislative proposals. Drafts and working papers are shrouded in secrecy. Critical decisions are being made without any public debate and without benefit of the views of those who will be most deeply affected.

The bill that I have introduced today would provide a shield for American enterprise against intrusive foreign regulation. It would tell U.S. businesses that they need not make disclosures abroad that are not required by our laws at home.

Mr. President, allowing foreign governments to regulate U.S. business di-

rectly is a dangerous inroad into our national sovereignty. At the same time, my bill in no way derogates from the sovereignty of foreign nations. It does not affect their right or their ability to legislate for businesses—including United States-owned businesses—operating within their borders.

My bill allows the Attorney General to order that confidential information demanded to be disclosed by foreign governments not be disclosed. It allows the Attorney General to require that demands for disclosure of confidential information be reported to him, so that he can assess the claimed public need for the information.

Mr. President, my bill is not an invitation to trench warfare across the battleground of international investment policy, whose casualties would be the working men and women of Europe and of the United States. Rather, it should be understood as an invitation to our trading partners to make peace, to abjure the extraterritorial reach of their legislation, and to work together with our Government toward the creation of a reasonable, responsible investment policy in an atmosphere of international trust and respect.●

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By Mr. GORTON (for himself, Mr. STEVENS, Mr. KASTEN, and Mr. INOUYE):

S. 1593. A bill to revise regulation of international liner shipping operating in the U.S. foreign commerce; to the Committee on Commerce, Science, and Transportation.

SHIPPING ACT OF 1981

Mr. GORTON. Mr. President, the bill I am introducing will revise the Shipping Act of 1916 to clarify the purposes of United States regulation of international liner shipping in the U.S. foreign trade. This bill simplifies the process by which liner conference activities are sanctioned in the U.S. foreign trade and attempts to strengthen the conference system as a method of insuring stability in that trade.

Similar legislation was introduced last Congress in both the Senate and the House but was not enacted. I believe it is essential that we now proceed to enact legislation to revise the regulatory policies in the Shipping Act of 1916. It cannot be underestimated that this will be a necessary part of any new approach to revitalizing the maritime industry, as Secretary Lewis has noted in the letter I am submitting for the RECORD.

Perhaps not enough people are aware that the merchant marine of the United States faces serious problems and is now at one of its historic low points in the percentage of the cargoes that it carries. Past Government solutions have not been notably successful in arresting this downward trend. It is no longer sufficient to pass slogans about the importance of the merchant marine for national security to trigger a commitment of unlimited dollars. We must do better with changes and promotional activities that do not directly create expenditures from the Federal Government. In this vein, the administration is now undertaking a comprehensive review of maritime policy.

Nevertheless, it has seemed more and more apparent to me that maritime regulatory reform is needed now. The process of beginning to discuss regulatory changes should not await a thorough determination of maritime policy by the administration in promotional and other areas. Regulatory reforms can also go forward without concern for direct fiscal impact. The measures taken in this bill can bring immediate benefits to not only U.S.-flag carriers but also to foreign-flag carriers serving the U.S. foreign trade. U.S. exporters and importers, who rely on efficient and regular services and stable rates, will also benefit.

Before describing the bill, I would like to emphasize that it is intended as a serious vehicle for discussion. Hearings before the Merchant Marine Subcommittee will be scheduled for the week of September 14 through 18. I intend to be receptive to all comments from U.S. and foreign maritime interests and from our importers and exporters. I understand that a bill is being introduced in the House of Representatives tomorrow that, though more modest in scope, is similarly aimed. I am hopeful that a cooperative climate will lead to consensus between the House and the Senate, producing the best maritime regulatory bill possible.

The Shipping Act of 1916 was originally designed to recognize the validity of the conference system and to insulate it from the antitrust laws of the United States. But that policy has, for all practical purposes, been stood on its head by a series of decisions of the Supreme Court of the United States in the course of the last 15 years. The Court has expanded the exposure of the liner shipping industry to charges of violating the antitrust laws. This has limited the flexibility of the conference system and, not at all incidentally, has simply outraged our international trading partners, who do not in any respect agree with either the extraterritorial application of our antitrust laws or with the theory of our antitrust laws as they relate to international commerce.

The motivation for any legislation to revise the Shipping Act must focus on the need to restore the intent of Congress in this area. I believe, however, that the Congress should, in undertaking this task, go much further and recodify the entire Shipping Act. We need a simplified, more efficient, responsive, and effective regulatory scheme for international liner shipping in our foreign trade. We need to reduce Government regulation where it represents a wasteful interference in commercial maritime transactions. We need to inject commercial standards and market mechanisms into every facet of our liner shipping policy to the extent that they will work as well or better than direct regulation. And we need precisely to define this policy. In this manner, the revised law itself can outline in a clear, single voice this Nation's maritime regulatory policy.

This bill sets forth a declaration of policy to aid in its future interpretation. These policy objectives focus on facilitating U.S. foreign commerce by encouraging a competitive and efficient ocean transportation system through commercial means and with a minimum of government involvement. Many of the changes to be accomplished by this bill can be understood best by referring to this policy statement.

It is questionable that the FMC's activity to date has contributed significantly to an effective international transportation system. For this reason, and consistent with the President's goal to reduce unnecessary Federal regulation, this bill allows commercial standards and practices to govern in many areas where the FMC now has considerable discretion. Fundamental to the policies stated in the bill is the recognition that the conference system is an acceptable method of commercial operation in international shipping. It will be the policy of the United States to permit cooperation among carriers and the bill will permit them to rationalize their services. This policy would permit carriers to offer the highest quality of service to shippers and consignees at the lowest possible stable freight rates. At the same time the bill reaffirms the duty of the liner carrier to act as a common carrier responsive to the needs of exporters and importers in the waterborne commerce of the United States. It therefore reaffirms strong protection of shippers against discriminatory, prejudicial, unfair, or deceptive practices. The bill also seeks evenhanded regulation of U.S.- and foreign-flag carriers as well as evenhanded enforcement.

At the bill's core is a grant of complete antitrust immunity to conference activities. This is not only consistent with international shipping practice but would also remove a constant irritant between the United States and our foreign trading partners. It would restore the pre-Carnation case view that agreements for economic cooperation among carriers are considered to be subject exclusively to the Shipping Act, and not to other antitrust laws.

A full appreciation of this clarification requires an understanding of the chilling effect that antitrust laws have had on international liner shipping operations. Application of the antitrust laws has brought uncertainty to many operator decisions. Because they are subject to criminal penalties and treble damages they are often afraid of their own shadows. They are reluctant to cooperate in ways which would be protected even by the limited antitrust exemption offered by the FMC for fear that the margins of that exemption are unclear and that the Justice Department might still attack them.

In short, they are afraid to act in exactly the manner that the Shipping Act contemplates they should be able to act. For these reasons, the advantages of a conference in assuring stability and efficiency have not been fully achieved. This bill would permit the kind of rationalizing efficiencies that conferences are designed to accomplish.

Clear antitrust immunity is also a ma-

jor step in revitalizing our maritime industry because it removes a significant handicap created by uneven enforcement. U.S.-flag carriers domiciled in this country are disadvantaged in meeting foreign-flag competition by strong domestic enforcement of antitrust laws which seldom can be effectively enforced against carriers domiciled overseas. Foreign carriers can make arrangements or concessions to improve their competitive position, often by providing shippers outside of the United States with benefits on routes other than those to or from the United States.

Antitrust laws inhibiting rationalization of sailings or the formation of joint services by U.S.-flag carriers affect their ability to meet the service frequency of foreign consortia of liner operators which can form such alliances. Potential pricing and cost benefits through the economics of rationalized or joint services are not readily available to U.S.-flag carriers. Antitrust immunity may go far in permitting U.S. carriers to compete on equal terms with their foreign competitors.

The bill thus overrules the Carnation and Sabre decisions and insures that violators of the Shipping Act will be subject only to civil penalties provided in the new Shipping Act itself. My bill thus strips away the most rigorous layer of regulation—the antitrust laws—and the most severe penalty—treble damages.

The bill also provides for several new applications of the antitrust immunity. Conferences will be granted antitrust immunity to enter into intermodal transportation arrangements with air, motor, and rail carriers for the transportation of cargo under intermodal through-rates. Increasingly, in an an era of advancing intermodal technology, liners have published their own intermodal tariffs for point-to-point rather than merely port-to-port services.

Similarly, conferences have filed agreements and tariffs setting intermodal through-rates. The FMC has exercised its jurisdiction over oceanborne foreign commerce to approve such intermodal arrangements. Yet the Department of Justice is currently challenging the Commission's statutory authority to extend antitrust immunity to these arrangements. Because conference authority to set intermodal through-rates has been in doubt, there has been an increasing diversion of cargo from and to the United States through Canadian ports by foreign-flag carriers.

This cargo has been attracted by lower through freight rates covering the combined inland and ocean movements. These rates have not been subject to the tariff filing requirements imposed on both U.S.-flag and foreign-flag carriers on shipments loaded and discharged at U.S. ports. U.S. shippers strongly favor these single factor point-to-point rates covering combined inland and ocean movements. U.S. carriers are most competitive in high technology services that facilitate intermodal transportation. My bill clearly grants conferences antitrust immunity to fix uniform rates and conditions for intermodal transportation.

I believe this is consistent with the underlying conclusion that conferences are the best means of achieving trade stability in our foreign commerce. To deny the conference system this flexibility would be to freeze them into the transportation methods of yesterday and to deprive an increasingly large share of our cargoes from stable transportation service through U.S. ports.

I also propose to offer antitrust immunity for the formation of shippers' councils. This will allow U.S. exporters and importers to form councils for mutual consultation with carrier conferences on services and general rates. The intent is to permit shippers to cooperate in assuring a more responsive attitude by carriers and conferences. I do intend to listen closely to conflicting views on whether this proposal is in the public interest. Many point to the European model as an effective vehicle for constructive cooperation. Others question its value. Many shippers oppose the organizations or are ambivalent. It is difficult to tell what these councils will look like or how they will act, so I hope to hear more specific content.

The general direction of my bill on conference organization will be that so long as it does not discriminate against or act detrimentally to our foreign commerce, conferences can structure themselves as their members choose. Thus, for example, I believe closed conferences should be permitted. I expect to hear debate on this issue, and, partly because of that, my inclination is that Government should not dictate a single solution.

The same attitude applies to whether or not the law should mandate that every conference permit its carriers to exercise independent rate action. This highly controversial issue is complicated and divisive. If conferences are the best means of achieving long-term trade stability, independent action may weaken the conference and serve purposes inconsistent with the bill. I also wonder whether such action could be used to discriminate among shippers or to avoid loyalty contract restrictions and obligations. U.S.-flag carriers are strongly divided along east-west versus north-south trade route lines.

I therefore question the wisdom of legislating a uniform requirement that does not satisfy the interests of all trades and conferences. This issue seems to me to be one for negotiation within a conference among its members.

The approval process I propose departs from last year's Senate and House proposals in the choice of substantive standards for approval but is consistent with the 1916 act. Last year's Senate declaration of policy is too flexible, directionless, and amorphous to give sound guidance or to insure predictable results. The House proposal also lacked clarity. It called for disapproval of those agreements that violate any provision of the bill. This is too open-ended, especially since most of the proscriptions in the bill address conduct, leaving this a mere requirement that the agreement be procedurally correct. I would recommend retention of the two original criteria from section 15 before it was amended in 1961 to include the public interest test. That is, an agreement could be disapproved only if it is: First, unjustly discriminatory or unfair between carriers, shippers, exporters or ports or between exporters from the United States and their foreign competitors, or second, detrimental to the commerce of the United States. Without the vague public interest test, the Svenska standard would have no application, yet the criteria would be relatively clear. The process would be similar to that currently in operation but with time limits to insure that the Federal Maritime Commission consider all agreements expeditiously. The burden of proof would also clearly lie with the person opposing an agreement.

On most other issues, my bill follows last year's House bill because I believe it incorporated changes necessary to simplify the legislative language, to reduce Government participation in decisions which industry can fairly make, and by introducing requirements that make commercial sense. I will discuss some of these points briefly.

Tariff filing requirements are retained. Liner operators will still be prevented from charging less than the published rates in their tariffs, in order to insure they act as common carriers without discrimination among shippers. This fair competition mandate applies reciprocally both to carriers and to shippers and supports the theory of the conference system that a common tariff can neutralize, to a large extent, the prospect of predatory economic competition between serving a given trade and thus insure stable rates.

Loyalty contracts could include dual rates or a series of rate spreads providing lower rates in turn for shipper loyalty, limited to an aggregate 15 percent differential. This can be an important tool for achieving trade stability. The bill avoids the need to submit each loyalty contract for Commission approval.

Independent neutral-body policing would also be required since it can be an effective companion to FMC policing and thus would reduce the need to have a large force of Government personnel. Moreover, a neutral body is less likely to be stymied by foreign blocking statutes because it is created through commercial negotiation of carriers from the interested nations. I am open to the suggestion that independents also should be required to engage a neutral body and that there should be a common neutral body for all in a trade. I am not yet convinced that this is necessary, though, so my bill extends the requirement only to conference members.

With respect to regulations affecting freight forwarders, the bill eliminates licensing requirements, while retaining certain safeguards to see that freight forwarders are economically stable and will not act as conduits for illegal rebates.

The bill would include the controlled carrier provisions adopted by Congress in 1978, a clear list of prohibited activities, and a clearly defined set of guidelines and requirements for Commission proceedings leading to damage awards

or penalties. Further provisions authorize the Commission to identify certain types of agreement for exemption from the requirements of the act. This provision permits flexibility to reduce unnecessary burdens such as may now exist for ports or terminal operators.

Finally, a few comments on what my bill does not contain. It does not contain language calling for substantial carriage of cargo on U.S.-flag vessels. While I am sympathetic to this goal, it is patently inconsistent with the concept of regulatory policy in international commerce. It is worth noting again that the clear antitrust immunity in this bill will remove a handicap to U.S.-flag carriers and this should help revitalize the U.S.-flag fleet. The bill should not become a vehicle for affirmative promotion. Our trade relies on a fleet of vessels flying under many different flags. The bill also does include criteria for negotiating intergovernmental maritime agreements. These are not within the province of our regulatory policy or the FMC. A solution to this issue should await an administration position on bilaterals.

I am hopeful this bill, if enacted, will stimulate the liner shipping industry as well as our import-export trade. I believe it will harmonize our laws with those of our trading partners within the framework of our broader commercial policies. I also believe it would be a significant step in our broader effort to redefine our Nation's maritime policy.

Mr. President, I ask unanimous consent that the text of my bill, and the letter I referred to from Secretary of Transportation Drew Lewis, be printed in the RECORD.

There being no objection, the bill and the letter from Secretary of Transportation Drew Lewis, be printed in the RECORD, as follows:

S. 1593

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the Shipping Act of 1981.

SEC. 2. DECLARATION OF POLICY.

The objectives of United States regulation of international liner shipping are:

(1) to develop and maintain an efficient ocean transportation system through commercial means, with a minimum government involvement, in order to serve the needs of United States foreign commerce;

(2) to foster reliable and responsible service by ocean common carriers and conferences;

(3) to assure ocean transportation rates and practices for United States exporters and importers that are internationally competitive, and which are not unjustly discriminatory;

(4) to harmonize United States shipping practices with those of its major trading partners;

(5) to permit cooperation among carriers and rationalization of services; and

(6) to facilitate efficient and timely regulation by a single Federal agency of the various aspects of international liner shipping responsive to the growth of ocean commerce and international developments affecting that commerce.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) "agreement" means understandings, arrangements and associations, written or oral, and any modification or cancellation thereof;

(2) "antitrust laws" means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; the Antitrust Civil Process Act (76 Stat. 548), as amended; and amendments and Acts supplementary thereto;

(3) "bulk cargo" means—

(A) cargo that is loaded and carried in bulk without mark or count; and

(B) cargo commonly termed "neo-bulk", such as forest products in an unfinished or semifinished state, which requires specialized handling and is moved in lot sizes which range from being too large for containers up to, and including, shipload lot sizes;

(4) "Commission" means the Federal Maritime Commission;

(5) "common carrier" means a person, whether or not actually operating a vessel, who holds himself out to engage in transportation by water for hire as a public employment and undertakes to carry for shippers indifferently;

(6) "conference" means an association of ocean common carriers which provides ocean transportation on a particular route or routes and which operates within the framework of an agreement establishing rates and any other conditions of service;

(7) "controlled carrier" means any ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of such carrier operate. Ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier;

(8) "deferred rebate" means a return, by an ocean common carrier, of any portion of the freight money to any shipper as a consideration for that shipper giving all, or any portion, of his shipments to that or any other ocean common carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement;

(9) "fighting ship" means a vessel used in a particular trade by an ocean common carrier or group of such carriers for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of such trade;

(10) "loyalty contract" means a contract with an ocean common carrier or conference by which a contract shipper obtains lower rates by committing all or a fixed portion of its cargo to such carrier or conference;

(11) "non-vessel-operating common carrier means a common carrier by water that does not operate the vessels by which the ocean transportation service is provided. A non-vessel-operating common carrier is a shipper in his relationship with ocean common carriers;

(12) "ocean common carrier" means a vessel-operating common carrier, except ferry boats and ocean tramps, engaged in the transportation by water of passengers or cargo between the United States and a foreign country, whether in the import or export trade;

(13) "other person subject to this Act" means any person engaged in the business of consolidating, freight forwarding, or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with an ocean common carrier;

(14) "ocean freight forwarder" means a person in the United States who—

(A) dispatches shipments via ocean common carriers; and

(B) processes the documentation or performs related activities incident to such shipments;

(15) "person" includes individuals, corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or of any State, Territory, District, or possession thereof, or of any foreign country;

(16) "rates" means charges, classifications, rules, or regulations that have a direct impact on a shipper's ocean transportation costs;

(17) "shipper" means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made;

(18) "shippers' council" means an association of shippers or their agents, other than ocean freight forwarders and non-vessel-operating common carriers;

(19) "surcharge" means any temporary change in rates that is necessary to cover a sudden or extraordinary change incurred by an ocean common carrier or conference with respect to its costs or revenues;

(20) "tariff" means any schedule of rates pertaining to ocean transportation, including any supplement, amendment or reissue;

(21) "through intermodal rate" means the single amount charged by an ocean common carrier in connection with through transportation;

(22) "through transportation" means transportation by two or more carriers at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(23) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

SEC. 4. AUTHORIZED ACTIVITIES.

(a) CONFERENCE ACTIVITIES.—Ocean common carriers or other persons subject to this Act may agree to—

(1) discuss, fix, regulate, and agree upon rates, surcharges, accommodations and other conditions of services;

(2) pool or apportion earnings, losses, or traffic;

(3) allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in exclusive, preferential, or cooperative working arrangements;

(6) enter into other agreements to control, regulate, or prevent competition among themselves; and

(7) limit, in the case of conferences, membership.

(b) INTERMODAL ACTIVITIES.—Ocean common carriers or other persons subject to this Act may agree with each other or with any combination of air carriers, rail carriers, motor carriers, or other common carriers by water to—

(1) establish through transportation routes for the movement of cargo; and

(2) establish through intermodal rates, or concur in tariffs.

(c) SHIPPERS' COUNCIL ACTIVITIES.—Shippers who are members of a shippers' council organized or existing under the laws of the United States may—

(1) mutually consult and exchange infor-

mation or views regarding general rate levels, rules, practices, or services;

(2) agree upon common positions; and

(3) consult and negotiate with any ocean common carrier or conference regarding general rate levels, rules, practices, or services.

SEC. 5. AGREEMENTS.

(a) IN GENERAL.—No concerted activity authorized by section 4 shall be permitted under this Act except pursuant to an agreement that has become effective under section 6.

(b) FILING REQUIREMENTS.—A true copy of every agreement entered into with respect to any activity described in section 4 shall be filed with the Commission. In the case of oral agreements, complete memoranda specifying in detail the substance of such agreements shall be filed. Within ten working days of receipt, the Commission shall transmit a notice of filing to the Federal Register for publication.

(c) CONFERENCE AGREEMENTS.—Every conference must—

(1) provide that any limitation on membership is based on commercially reasonable criteria;

(2) permit any member to withdraw from membership upon reasonable notice without penalty;

(3) engage the services of an independent neutral body to police fully the obligations of the conference and its members;

(4) provide the right of independent action—

(A) in any agreement between carriers not members of the same conference, for each carrier, and, in any agreement between conferences serving different trades that would otherwise be naturally competitive, for each conference; or

(B) in any intermodal agreement, for air carriers, rail carriers, motor carriers, or common carriers by water not subject to this Act to establish their portion of through intermodal rates or to establish rules and regulations that apply exclusively to the services performed by such carriers.

(5) provide for a consultation process designed to insure—

(A) commercial resolution of disputes;

(B) cooperation in preventing malpractice;

(C) procedures for promptly and fairly considering shippers' requests and complaints; and

(D) regular and orderly communication and exchange of information with shippers and shippers' councils in their trade.

(d) SHIPPERS' COUNCIL AGREEMENTS.—Every shippers' council must—

(1) limit membership to those shippers that have a direct financial interest in the export or import of the commodities covered by the agreement;

(2) provide that membership is voluntary;

(3) provide that the members have the right to act independently with any carrier or conference;

(4) provide for a consultation process designed to insure—

(A) commercial resolution of disputes;

(B) cooperation in preventing malpractice;

(C) regular and orderly communication and exchange of information with conferences in their trade.

SEC. 6. ACTION ON AGREEMENTS.

(a) REJECTION BY THE COMMISSION.—Any agreement that does not conform to the requirements of section 5 shall be rejected by the Commission.

(b) STANDARDS.—The Commission shall by order, after notice and hearing, disapprove or modify any agreement that it finds—

(1) to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; or

(2) to operate to the detriment of the commerce of the United States.

The Commission shall approve all other agreements.

(c) BURDEN OF PROOF.—The burden of proof in any proceeding under this section shall be on the party opposing the agreement.

(d) DURATION OF EFFECTIVENESS.—Agreements that are approved shall remain in effect until withdrawn, cancelled, or modified. The Commission shall not on its own motion limit the duration of an agreement's effectiveness.

(e) FINAL DECISION—TIME.—The Commission shall issue a final decision on any agreement within 180 days after filing with the Commission. For good cause the Commission may extend the time period once for not more than 90 days.

(f) DELAY.—If a final decision is not issued within the 180 day period referred to in subsection (b), or by the end of any extension period, the agreement shall go into effect as filed. If the Commission determines that it is unable to issue a final order within such period or extension due to willful delays directly attributable to either a proponent or a complainant, the Commission may disapprove the agreement, or permit it to become effective, solely on the basis of such delay.

(g) COMPLIANCE WITH SUBPOENA OR DISCOVERY.—In any proceeding under this section, the Commission may disapprove any agreement for failure of a proponent of the agreement to comply with any subpoena or discovery order lawfully issued by the Commission.

SEC. 7. LOYALTY CONTRACTS.

(a) CONTRACT REQUIREMENTS.—Any conference or ocean common carrier engaged in foreign commerce may utilize loyalty contracts, if each such contract meets the following requirements:

(1) The contract is available to all shippers on equal terms and conditions.

(2) The contract shipper is permitted prompt release from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide space requested on reasonable notice by the shipper.

(3) The contract provides that whenever a rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference, the rate—

(A) may not be increased on less than 90 days' notice, except upon agreement of the applicable shipper; and

(B) may be increased on not less than 30 days' notice if the increase is to a level no higher than that from which the particular rate was reduced within 180 days immediately preceding the filing of the increase, or if the increase is a surcharge.

(4) The contract covers only those goods of the contract shipper as to the shipment of which it has the legal right at the time of shipment to select the carrier. It shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid its obligation under the contract, the contract shipper divests itself, or with the same intent permits itself to be divested, of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract. In any dispute under this paragraph the burden of proof shall be on the contract shipper.

(5) The contract shipper is not required to divert shipments of goods from natural routings not served by the carrier or conference where direct carriage is available.

(6) The damages recoverable for breach by either party are limited to actual damages to be determined after breach in accordance with the principles of contract law. The contract may specify, however, that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling.

(7) The contract shipper is permitted to terminate at some time without penalty upon 90 days' notice.

(8) The carrier or conference is permitted on 90 days' notice to terminate the contract rate system in whole or with respect to any commodity without penalty.

(9) The contract provides for a spread or series of spreads, to be commercially determined, between tariff rates and rates charged contract shippers that shall not exceed an aggregate of 15 per centum.

(10) The contract excludes bulk cargo.

(b) TREATMENT OF CONTRACT NOT IN CONFORMITY.—The utilization of a loyalty contract that is not in conformity with one or more of the requirements set forth in subsection (a) shall be treated as a violation of this Act.

SEC. 8. EXEMPTION FROM ANTITRUST LAWS.

(a) The antitrust laws shall not apply to:

(1) Any agreement or activity described in section 4;

(2) any loyalty contract that conforms with the requirements of section 7, or any activity pursuant to that loyalty contract;

(3) any agreement or activity that relates solely to transportation services between foreign countries;

(4) any agreement or activity that relates to shippers' councils operating exclusively outside the United States; and

(5) any agreement or activity to provide or furnish wharfage, dock, warehouse, or other terminal facilities exclusively outside the United States.

(b) This Act shall not be construed to extend antitrust immunity to air carriers, rail carriers, motor carriers, or common carriers by water not subject to this Act.

SEC. 9. TARIFFS.

(a) IN GENERAL.—(1) Except with regard to bulk cargo, every ocean common carrier shall file with the Commission, and keep open to public inspection, tariffs showing all its rates between all points on its own route and on any through transportation route which has been established. Such tariffs shall plainly indicate the places between which cargo will be carried, list each classification of cargo in use, state separately each additional charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part or the aggregate of such rates or charges, and include sample copies of any loyalty contract, bill of lading, contract of affreightment, or other document evidencing the transportation agreement.

(2) Copies of such tariffs shall be made available to any person and a reasonable charge may be assessed for them.

(b) INITIAL RATES AND RATE CHANGES.—No initial rates or increases in existing rates shall become effective earlier than 30 days after filing with the Commission. Any change in the rates that results in a described cost to the shipper may become effective upon publication and filing with the Commission. The Commission, for good cause, may allow rate increases or surcharges to become effective in less than 30 days.

(c) REFUND OF CHARGES.—The Commission may permit an ocean common carrier or conference to refund a portion of freight charges collected from a shipper or waive the collection of a portion of the charges from a shipper where it appears that there is an error in a tariff of a clerical or administrative nature due to inadvertence in failing to file a new tariff and that such refund will not result in discrimination among shippers, ports, or carriers. The application for refund must be filed with the Commission within 180 days from the date of shipment.

SEC. 10. CONTROLLED CARRIERS.

(a) CONTROLLED CARRIER RATES.—No controlled carrier subject to this section shall maintain rates in its tariffs filed with the Commission that are below a level that is just and reasonable. The Commission may, at any time after notice and hearing, disapprove any rate which the controlled carrier has failed to demonstrate to be just and reasonable. In any proceeding under this subsection, the burden of proof shall be on the controlled carrier to demonstrate that its rate is just and reasonable. Rates filed by a controlled carrier that have been rejected, suspended, or disapproved by the Commission are void, and their use is unlawful.

(b) RATE STANDARDS.—For the purpose of this section, in determining whether rates by a controlled carrier are just and reasonable, the Commission may take into account appropriate factors including, but not limited to, whether—

(1) the rates which have been filed are below a level which is fully compensatory to the controlled carrier based upon that Carrier's actual costs or upon its constructive costs, which are hereby defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade;

(2) the rates are the same as or similar to those filed or assessed by other carriers in the same trade;

(3) the rates are required to assure movement of particular cargo in the trade; or

(4) the rates are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

(c) EFFECTIVE DATE OF RATES.—The rates of controlled carriers shall not, without special permission of the Commission, become effective sooner than the thirtieth day after the date of filing with the Commission. After the date of the enactment of this section, each controlled carrier shall, upon the request of the Commission, file, within 20 days of request, with respect to its existing or proposed rates, a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, upon which the Commission may reasonably base its determination of the lawfulness thereof.

(a) DISAPPROVAL OF RATES.—Whenever the Commission is of the opinion that the rates, filed by a controlled carrier may be unjust and unreasonable, the Commission may issue an order to the controlled carrier to show cause why such rates should not be disapproved. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend such rates at any time before their effective date. In the case of rates that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend such rates on not less than 60 days' notice to the controlled carrier. No period of suspension under this subsection may be greater than 180 days. Whenever the Commission has suspended any rate under this subsection, the affected carrier may file new rates to take effect immediately during the suspension period in lieu of the suspended rates; except that the Commission may reject such new rates if it is of the opinion that they are unjust and unreasonable

(e) PRESIDENTIAL REVIEW.—Concurrently with the publication thereof, the Commission shall transmit to the President any order of suspension or final order of disapproval of rates of a controlled carrier subject to this section. Within ten days after the receipt or the effective date of such Commission order, whichever is later, the President may request the Commission in writing to stay the effect of the Commission's order if he finds that such stay is required for reasons of national defense or foreign policy which reasons shall be specified in the report. Notwithstanding any other provision of law, the Commission shall immediately grant such request by the issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

(f) EXCEPTIONS.—The provisions of this section shall not apply to—

(1) any controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

(2) any controlled carrier of a state which, on the effective date of this section, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(3) rates of any controlled carrier in any particular trade which are covered by an agreement effective under section 6, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection;

(4) rates governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein and the United States;

(5) a trade served exclusively by controlled carriers; or

(6) any controlled carrier registered in a state which, on the effective date of this Act, is among those designated a beneficiary developing country for purposes of the generalized system of preferences, provided for in title V of the Trade Act of 1974 (88 Stat. 2066, 19 U.S.C. 2461 et seq.), and set forth in general headnote 3(c) of the Tariff Schedules of the United States Annotated (1978), and which has vessels registered within its jurisdiction that are privately owned and not operated by a controlled carrier.

SEC. 11. OCEAN FREIGHT FORWARDERS AND NON-VESSEL-OPERATING COMMON CARRIERS.

(a) BONDING REQUIREMENT.—No person may act as an ocean freight forwarder or non-vessel-operating common carrier unless that person has furnished a bond approved by the Commission of no less than $150,000 that is issued by a surety company found acceptable by the United States Department of the Treasury.

(b) EXCEPTION.—A person whose primary business is the sale of merchandise may forward shipments of such merchandise for his own account without a bond.

(c) COMPENSATION OF FORWARDERS BY CARRIERS.—

(1) An ocean common carrier shall compensate an ocean freight forwarder in connection with any cargo shipment dispatched on behalf of others only when the ocean freight forwarder has certified in writing that it has performed the following services:

(A) engaged, reserved or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of such space; and

(B) prepared and processed the ocean bill of lading, the dock receipt, or other similar documents with respect to such cargo.

(2) An ocean common carrier shall not pay compensation for services described in paragraph (1) more than once on the same cargo shipment.

(3) An ocean common carrier shall not pay compensation as provided in this subsection to its agents or any other ocean common carrier or its agents.

(4) No compensation shall be paid to an ocean freight forwarder except in accordance with the tariff provisions contained in section 9(a); and no such forwarder is entitled to receive compensation from a common carrier with respect to any shipment in which the forwarder has a direct or indirect beneficial interest.

SEC. 12. PROHIBITED ACTS.

(a) BY OCEAN COMMON CARRIERS.—No ocean carrier may—

(1) rebate, refund, or remit in any manner, or by any device, any portion of its rates except in accordance with a tariff that is on file with the Commission;

(2) extend or deny to any person any privilege, concession, equipment or facility, except in accordance with such tariffs;

(3) allow any person to obtain transportation by water for cargo or any service in connection therewith at less than the applicable rates by any means;

(4) charge rates which are determined to be so unreasonably high or low as to be detrimental to the commerce of the United States;

(5) charge rates which are unduly prejudicial to United States exporters ar compared with their foreign competitors;

(6) continue to impose any surcharge after the increase in costs or loss of revenues that were the subject of the surcharge have been recovered.

(7) retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminatory or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason;

(8) make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of—

(A) rates,

(B) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage,

(C) the loading and landing of freight in proper condition, or

(D) the adjustment and settlement of claims;

(9) use any fighting ship or engage in any practices designed to reduce or eliminate the participation of non-conference carriers;

(10) offer or pay any deferred rebates; or

(11) demand, charge, or collect any rate or charge which is determined by the Commission to be unjustly discriminatory between shippers or ports.

(b) BY SHIPPERS, OCEAN FREIGHT FORWARDERS OR NON-VESSEL-OPERATING COMMON CARRIERS.—No shipper, ocean freight forwarder, or non-vessel-operating common carrier may obtain or attempt to obtain transportation from an ocean common carrier at rates that are less than those specified in such carriers' tariffs on file with the Commission.

(c) BY OTHER PERSONS.—It shall be unlawful for any ocean common carrier, shipper, or other person subject to this Act—

(1) to operate under any agreement described in section 4 that has not become effective under section 6, has been rejected, suspended, or disapproved, or to operate except in accordance with any modification made by the Commission to the agreement; or

(2) knowingly to disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to an ocean common carrier or other person subject to this Act without the consent by such shipper or consignee if that information—

(A) may be used to the detriment or prejudice of such shipper or consignee;

(B) may improperly disclose its business transactions to a competitor; or

(C) may be used to the detriment or prejudice of any carrier.

Nothing in paragraph (2) shall be construed to prevent providing such information, in response to any legal process, to the Government of the United States or any State, or to any independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement approved under this Act.

SEC. 13. COMPLAINTS, INVESTIGATIONS AND REPARATIONS.

(a) FILING OF COMPLAINTS.—Any ocean common carrier, shipper, or other person subject to this Act may file with the Commission a sworn complaint alleging a violation of this Act and may seek reparation for any injury caused to the complainant by that violation.

(b) SATISFACTION OR INVESTIGATION OF COMPLAINTS.—The Commission shall furnish a copy of a complaint filed pursuant to subsection (a) of this section to the person named therein, who shall, within a reasonable time specified by the Commission, satisfy the complaint or answer it in writing. If the complaint is not satisfied, the Commission shall investigate it in such manner and by such means, and make such order as it deems proper.

(c) COMMISSION INVESTIGATIONS.—The Commission, upon its own motion, may in like manner and, with the same powers, investigate any violation of this Act.

(d) REPORTS OF INVESTIGATION.—The Commission shall enter a written report of every investigation made under this Act in which a hearing was held, which states its conclusions, decisions, findings of fact, and order. A copy of such report shall be furnished to all parties. The Commission shall publish such reports for public information and such authorized publications shall be competent evidence of such reports in all courts of the United States, and of each of the States, territories, districts, and possessions thereof.

(e) REPARATIONS.—After notice and hearing of any complaint filed pursuant to subsection (a) of this section within one year, the Commission may when appropriate direct the payment of reparations to the complainant for actual injury caused by a violation of this Act.

SEC. 14. SUBPOENAS AND DISCOVERY.

(a) IN GENERAL.—In investigations and adjudicatory proceedings under this Act—

(1) depositions, written interrogatories, and discovery procedures may be utilized by any party under rules and regulations issued by the Commission which rules and regulations, to the extent practicable, shall be in conformity with the rules applicable in civil proceedings in the district courts of the United States; and

(2) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

(b) WITNESS FEES.—Witnesses shall, unless otherwise prohibited by law, be entitled to the same fees and mileage as in the courts of the United States.

(c) SUSPENSION OF TARIFFS.—After notice and opportunity for hearing, the Commission may suspend any or all tariffs of any ocean common carrier, or the right of a conference member to utilize conference tariffs, if the carrier or conference fails to supply information authorized to be obtained under subsection (a). Any suspension ordered pursuant to this subsection shall be immediately submitted to the President who may disapprove it if he finds such disapproval is required for national defense or foreign policy reasons.

(d) CIVIL PENALTY.—Any ocean common carrier who accepts or handles cargo for carriage under tariffs which have been suspended pursuant to this section shall be subject to a civil penalty of not more than $50,000 for each shipment.

(e) ASSISTANCE OF SECRETARY OF STATE IN OBTAINING INFORMATION.—If, in defense of its failure to comply with a subpoena or discovery order issued under this section, an ocean common carrier alleges that documents or information located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of such failure to comply and of the allegation relating to foreign laws. Upon receiving such notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

SEC. 15. PENALTIES.

(a) ASSESSMENT OF PENALTY.—If the Commission finds, after notice and opportunity for hearing, that any shipper, shippers' council, ocean common carrier, conference, ocean freight forwarder, or other person subject to this Act has violated any provision of this Act, or any regulation issued thereunder, such person is liable to the United States for a civil penalty. The amount of the civil penalty, unless otherwise provided in this Act, may not exceed $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of each civil penalty shall be assessed by the Commission, by written notice. In determining the amount of such penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) TARIFF SUSPENSION FOR REBATING.—(1) For any violation of section 12(a) (1), (2), and (3), the Commission may suspend any or all tariffs of any ocean common carriers, or the member's right to use conference tariffs, for a period not to exceed 12 months. Any suspension ordered pursuant to this subsection shall be immediately submitted to the President who may disapprove it if he finds such disapproval is required for national defense or foreign policy reasons.

(2) Any ocean common carrier who accepts or handles cargo for carriage under tariffs which have been suspended pursuant to this subsection shall be subject to a civil penalty of not more than $50,000 for each shipment.

(c) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof under chapter 158 of title 28, United States Code.

(d) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person fails to pay an assessment of a civil penalty after it has become final and an unappealable order, or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(e) COMPROMISE OR OTHER ACTION BY COMMISSION.—The Commission may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to assessment under this section.

(f) LIMITATIONS.—(1) No fine or other punishment shall be assessed on any person for criminal conspiracy after August 29, 1972, to violate any provision of this Act or to defraud the Commission by concealment of any such violation.

(2) Any formal proceeding to assess any penalty under this section shall be commenced within five years from the date when the violation occurred.

SEC. 16. COMMISSION ORDERS.—

(a) IN GENERAL.—Orders of the Commission relating to any violation of this Act or to any regulation issued thereunder shall be made only after opportunity for hearing and upon complaint or on its own motion. Each order of the Commission shall continue in force for the period of time specified in the order, or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

(b) REVERSAL OR SUSPENSION OF ORDERS.—The Commission may reverse, suspend, or modify any order made by it, and upon application of any party to a proceeding may grant a rehearing of the same or any matter determined therein. No rehearing shall, except by special order of the Commission, operate as a stay of such order.

(c) ENFORCEMENT OF NONREPARATION ORDERS.—In case of violation of any order of the Commission or for failure to comply with a Commission subpoena, the Commission, or any party injured by such violation, or the Attorney General may seek enforcement by any United States district court having jurisdiction over the parties. If after hearing, the court determines that the order was properly made and duly ordered, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(d) ENFORCEMENT OF REPARATION ORDERS.—(1) In case of violation of any order of the Commission for the payment of reparation, the person to whom such award was made may seek enforcement of such order in any United States district court having jurisdiction of the parties.

(2) In any United States district court the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor for the costs of any subsequent stage of the proceedings, unless they accrue upon his appeal. A petitioner in a United States district court who prevails shall be allowed a reasonable attorney's fee to be assessed and collected as part of the costs of the suit.

(3) All parties in whose favor the Commission has made an award of reparation by a single order may be joined as plaintiffs, and all other parties in such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against such defendant not found in that district may be made in any district in which is located any office of, or point to call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

(e) STATUTE OF LIMITATIONS.—Any action seeking enforcement of a Commission order shall be filed within one year from the date of the order.

(f) REPRESENTATION IN COURT.—Attorneys employed by the Commission shall, if the Commission so directs, appear for and represent the Commission in any case before a court of the United States or a State of the United States.

SEC. 17. EXEMPTIONS.

The Commission, upon application or on its own motion, may by order or rule exempt for the future any specified activity or class of agreements between ocean common carriers or other persons subject to this Act from any requirement of this Act, if it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. The Commission may attach conditions to any such exemption and may, by order, revoke any such exemption. No order or rule of exemption or revo-

cation of exemption shall be issued unless opportunity for hearing has been afforded interested persons.

SEC. 18. REGULATIONS.

The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 19. REPEALS AND CONFORMING AMENDMENTS.

(a) REPEALS.—The laws specified in the following table are repealed:

| | |
|---|---|
| Shipping Act, 1916: | |
| 14a | 46 U.S.C. 813 |
| 14b | 46 U.S.C. 813a |
| 18(b) | 46 U.S.C. 817(b) |
| 18(c) | 46 U.S.C. 817(c) |
| 26 | 46 U.S.C. 825 |
| 43 | 46 U.S.C. 841a |
| Merchant Marine Act, 1920: | |
| 20 | 46 U.S.C. 812 |
| Merchant Marine Act, 1936: | |
| 212(e) | 46 U.S.C. 1122(e) |
| 214 | 46 U.S.C. 1124 |

(b) CONFORMING AMENDMENTS.—

(a) The Shipping Act, 1916, is amended by redesignating section 3, and all references thereto, as section 4 and inserting the following new section after section 2:

"SEC. 3. Commencing with the date of enactment of this section, the provisions of sections 4, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 35, and 44 of this Act shall be deemed to apply only to commerce related to transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States or between places in the same Territory, District, or possession."

(c) EFFECT ON CERTAIN AGREEMENTS AND CONTRACTS.—All agreements, contracts, and modifications previously approved by the Commission will continue in force and effect as if approved under the provisions of this Act, and all new agreements, contracts, and all modifications to existing, pending, or new contracts or agreements shall be considered under the provisions of this Act.

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THE SECRETARY OF TRANSPORTATION,
*Washington, D.C., July 17, 1981.*

Hon. SLADE GORTON,
*Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.*

DEAR SLADE: Thank you for your letter of June 26 outlining your plans for legislative action in the maritime area. I, too, am anxious to begin work in the formulation of maritime policy from the transportation perspective, and I appreciate your expression of support and cooperation.

I agree with you that legislation to revise the regulatory policies in the Shipping Act, 1916, will be necessary as part of any new approach to revitalizing the maritime industry. My staff and I are prepared to work with you to develop regulatory reform legislation and I will be pleased to testify at your hearings.

With regard to legislation dealing with the promotional aspects of maritime policy, I prefer to wait until the Maritime Administration has been transferred to the Department of Transportation and we have had a chance to carefully consider the complex issues involved in developing a promotional policy.

Again, let me say that I appreciate your statements of support. I have the highest hopes that our cooperative efforts will lead to success in developing a rational maritime policy.

Sincerely,

——— ———.

By Mr. SYMMS:

S. 1594. A bill to amend the Internal Revenue Code of 1954 to apply the civil fraud penalty only to that portion of an underpayment which is attributable to fraud; to the Committee on Finance.

CIVIL FRAUD IN TAX RETURNS

● Mr. SYMMS. Mr. President, today I am introducing a proposal for a change in our Internal Revenue laws in reference to the way the law deals with the subject of civil fraud. This bill would change the penalty for civil fraud from the present 50 percent of the taxpayer's total deficiency to 100 percent of his deficiency resulting from fraud.

Our Supreme Court has stated that the civil fraud penalty is an aid in the collection of the tax for the purpose of preventing fraud in the preparation of returns and the payment of the tax. A finding of civil fraud is not a criminal action but it is a procedure which results in the imposition of a civil penalty.

This proposal which I am introducing makes no change in the law in reference to criminal fraud, which is an action to punish for a criminal offense.

Our sense of justice requires that penalties which are imposed bear a relation to the magnitude of the violation. This is a good American principle which causes us to take a look at the present law relating to the civil fraud penalty.

At the present time the civil fraud penalty is measured by the total deficiency of the taxpayer. It is not measured by the extent of the civil fraud charged. Many illustrations can be cited which point up this inequity. Take the case of taxpayer A whose legal counsel and accountant advise him that he should claim a particular transaction as a capital gain and not ordinary income.

He makes a full disclosure and there is no fraud involved. He submits his claim to the IRS. Let us assume that the IRS decided that the transaction resulted in ordinary income, which resulted in a deficiency of $2,000. Let us further assume that this same taxpayer failed to report interest income which resulted in a $100 deficiency. Failure to report income is clearly a case of fraud. Under the present law this taxpayer A would have to pay a civil fraud penalty of 50 percent of $2,000 plus $100, or $1,050.

Let us take another case which we refer to as taxpayer B. Taxpayer B happens to have no nonfraudulent items which are challenged by the IRS, but taxpayer B does fail to report interest income which resulted in a $300 deficiency and this of course constitutes fraud. It is a violation three times the magnitude of taxpayer A yet taxpayer B's civil fraud penalty is 50 percent of $300, or only $150, as compared to taxpayer A who is guilty of a lesser fraud violation but must pay a civil fraud penalty of $1,050.

There are many cases that could be cited which illustrate how the present law for the imposition of the civil fraud penalty works. Take the case of a taxpayer whose return contained an unintentional accounting error which when audited resulted in a $1,200 deficiency, and that this same taxpayer had a deficiency of $400 resulting from a fraudulent omission of income. His neighbor's tax return contains no accounting errors but the neighbor is assessed a deficiency of $1,000 for fraudulently omitting to report certain income. We will assume that the two taxpayers are in the same tax bracket. The first taxpayer will have to pay a $800 civil fraud penalty while his neighbor's civil fraud penalty will only be $500 for failing to report 2½ times as much income as his neighbor failed to report.

It is important in the administraton of our tax laws, where we rely upon the voluntary reporting of income, that the Government strive to the utmost to be fair. This means that the civil fraud penalty should be determined on the amount of civil fraud involved and not as a result of other items which are not in the least tainted with fraud.

Mr. President, the tax section of the American Bar Association over a period of many years has urged that the fraud penalty be based only on the portion of the deficiency resulting from fraud rather than on the total deficiency for the return involved. Last May during the testimony of the American Bar Association I brought up the matter of the civil fraud penalty. The position of the Bar Association was clearly stated in a subsequent letter of Mr. Harvie Branscomb, Jr., chairman of the section of taxation, addressed to the distinguished chairman of the Committee on Finance, Mr. DOLE. Mr. President, I shall ask that Mr. Branscomb's letter be printed in full at the conclusion of my remarks.

Mr. President, this measure should be enacted because it is fair and just and in the interest of good tax administration. I urge an early hearing by the Committee on Finance and that early and favorable action be taken by the committee and by the Senate to the end that this matter may be corrected.

Mr. President, a detailed question and answer statement which fully illustrates the problem that we face in reference to the civil fraud penalty, has been prepared by one of our former members, Carl T. Curtis. He serves on the committee on implementing recommendations of the section of taxation of the American Bar Association. I ask unanimous consent that Mr. Branscomb's letter and the statement prepared by Carl T. Curtis be printed at this point in the RECORD.

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

AMERICAN BAR ASSOCIATION,
*Washington, D.C., May 19, 1981.*

Subject: Revision of Internal Revenue Code Pertaining to Fraud and Negligence Penalties.

Senator ROBERT J. DOLE,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR DOLE: During the course of testimony before the Senate Finance Committee on May 18, 1981, we were asked by Senator Symms whether an amendment to the provisions of the Internal Revenue Code relating to computation of fraud penalties was desirable.

The American Bar Association has determined that the provisions pertaining to the computation of the fraud and negligence

penalties should be revised. Enclosed are our recommendations 1971–7, 1976–5 and 1969–2 to this effect.

Under our recommendations, the penalty would be based upon the underpayment of tax which is due to fraud or negligence, in lieu of the entire tax deficiency, as at present. We are aware of instances in which the item involving negligence was very small in a corporate tax return involving a great deal of income, and in which the negligence penalty was not imposed because the penalty would have been so far out of line with the offense. Our recommendations would make the penalty more closely related to the offense.

You will observe that the American Bar Association does not make a recommendation with respect to the rate which should be used in computing fraud and negligence penalties, if the statute is rewritten as we suggest. The officers of the Section recognize that the revision of the rate used in computing the penalty would certainly be an appropriate item for consideration by your committee.

The Section of Taxation recognizes the importance of appropriate provisions to assure compliance with our tax laws and was gratified to hear of the interest of your committee in improving the effectiveness and fairness of the provisions for penalties for fraud and negligence.

Sincerely yours,

HARVIE BRANSCOMB, Jr.

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WHY THE CIVIL FRAUD PENALTY SHOULD BE CHANGED

This statement was prepared by Carl T. Curtis of the Nelson & Harding law firm, 1101 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036, in support of a request for hearings before the Committee on Finance and the Committee on Ways & Means and for presentation at the hearings of said committees.

1. Q. What is civil fraud?

A. A finding of civil fraud is not a criminal action but it is a procedure which results in the imposition of a civil penalty. The civil fraud penalty has been described by the Supreme Court of the United States as an aid in the collection of the tax for the purpose of preventing fraud in the preparation of returns and the payment of the tax. The civil fraud penalty for the most part is measured by the tax involved.

2. Q. How does civil fraud differ from criminal fraud?

A. An action in criminal fraud is an action to punish for a criminal offense. A criminal penalty may be imposed only after charges are brought and a guilty plea is entered or a trial is held and a conviction of a misdemeanor or a felony and is measured by the degree of the offense.

3. Q. What is the penalty for criminal fraud?

A. The penalty for criminal fraud is a fine or imprisonment.

4. Q. What is the penalty for civil fraud?

A. The penalty is 50 percent of the amount of the tax owing or, in other words, 50 percent of the deficiency.

5. Q. For purposes of figuring the civil fraud, what constitutes a deficiency?

A. When a taxpayer's return is audited, any additional amounts found due constitute a deficiency.

6. What kind of items could be included in the makeup of a deficiency that would have no connection with fraud and would not be tainted with fraud in any way?

A. A taxpayer may make a full disclosure of all his income. His legal counsel and his accountant may well advise him that a particular transaction ought to be claimed as a capital gain and not as ordinary income. The Internal Revenue Service may determine that the particular transaction constitutes ordinary income and thus there is a deficiency in the payment. There isn't the slightest taint of fraud and the facts were fully disclosed and the taxpayer exercised his right to ask for such a determination.

Another example of a deficiency item which may have no fraud implication at all: A taxpayer knows that he has paid out certain sizable sums for business travel, entertainment and expenses. He claims them in his return. Upon audit, he does not have sufficient records to justify these expenses and they are disallowed. This adds materially to his tax and it is a deficiency.

Another example of a deficiency item that need not be tainted with fraud could relate to stock options. In many instances there is no tax due when the stock option is exercised, but the tax is due when the stock is eventually sold. There are situations where a tax is due when the stock option is exercised. A taxpayer may disclose every detail of the transaction in his return and exercise his lawful right and ask for a determination of no tax due. The Internal Revenue Service may find that the tax is due upon the exercise of the option and the amount of the tax involved becomes a deficiency.

An example which relates to consolidated returns is discussed in the answer to Question 10.

7. Q. Is the penalty for civil fraud applied uniformly between taxpayers?

A. No. Two taxpayers may have the same amount of income and each be found to have been fraudulent in reference to items of equal amount and these two taxpayers received vastly different penalties.

8. Q. What are some examples that show that fraud penalty is not applied uniformly.

A. Taxpayer "A" could not substantiate from records certain items of expense claimed and because he claimed a particular transaction as a capital gain instead of ordinary income he was assessed a deficiency of $2,000. It is also found that taxpayer "A" failed to include in his return some interest that he received which resulted in a $300 deficiency and the failure to include it was held to be fraudulent. The total amount of his income subject to tax including the deficiency items is $10,000. Taxpayer "A" would have a penalty of 50% of $2,000+300 or $1,150.

Taxpayer "B" likewise has $10,000 in income. There are no non-fraudulent items questioned in his return but he, likewise, received some interest income which he did not report. The failure to report resulted in a $300 deficiency and is determined to be fraudulent. Taxpayer "B" would be subject to a civil fraud penalty of $150.

In the above two examples both taxpayers had the same income and were charged with fraudulently omitting the same amount from their returns, yet "A" has a penalty of $1,150 and "B" has a penalty of only $150.

9. Q. Can you give some other illustrations?

A. The accountant for taxpayer M made out M's tax return and made an accounting error which was audited resulting in a deficiency of $4,000. It was also found that taxpayer M had outside earnings which he failed to report and which resulted in a $400 deficiency and this failure was held to be fraudulent. M's civil fraud penalty would be 50 percent of $4,000 plus $400 or $2,200. Taxpayer O has the same amount of income as taxpayer M but there were no errors in his return, but he, too, had received outside earnings which, he did not report which resulted in a $400 deficiency and this was held to be fraudulent. Taxpayer O's civil fraud penalty was $200.

Taxpayer X has a $10,000 deficiency, $500 of which results from a fraudulent omission from income and $9,500 from an honestly held belief that a particular gift was a nontaxable gift, X will pay a $5,000 fraud penalty; if Y on the other hand, has a $3,000 deficiency, all of which results from a similar fraudulent omission, Y will pay a penalty of only $1,500 under existing law.

10. Q. Do the problems in reference to the civil fraud penalty involve corporations as well as individuals?

A. Yes. The same civil fraud penalty statute applies to all taxpayers. The problems illustrated by the foregoing examples could apply to a corporate taxpayer just as they are shown to apply to an individual taxpayer. There is an additional problem for corporations in reference to consolidated returns.

A consolidated return is a return where a parent corporation and its subsidiaries meet certain requirements and file a consolidated return for the entire corporate group. When this is done the problem relating to the civil fraud penalty may become much greater. The following two examples, which have been provided to this writer, will illustrate how the law works in reference to a consolidated return.

EXAMPLE I

Corporation A is engaged in international operations. It has no subsidiaries and files a separate corporation income tax return. Officers of Corporation A paid officials of Country X $100,000 in bribes in 1977. These illegal payments were deducted by Corporation A on its 1977 return. On audit, the Service disallowed the deduction in reliance upon section 162(c)(2) of the Code, resulting in a deficiency in tax of $50,000. In addition, the Service determined that, the civil fraud penalty was applicable (§ 6653(b)). Therefore, Corporation A's deficiency and penalty were as follows:

| | |
|---|---|
| Deficiency | $50,000 |
| 50% Civil Fraud Penalty | 25,000 |
| Total | $75,000 |

EXAMPLE II

An affiliated group consisting of Corporation P (common parent) and controlled subsidiary corporations C, D, E, and F has elected to file a consolidated return. Officers of Corporation C paid officials of Country X $100,000 in bribes in 1977. These illegal payments were reflected on the books of Corporation C as an expense and were deducted on the 1977 consolidated return filed by the affiliated group. On audit, the Service determined a total deficiency in tax on the part of the affiliated group in the amount of $15,000,000. Of this total deficiency, $50,000 was attributable to Corporation C resulting from the disallowance of the $100,000 in illegal payments. The balance of the deficiency ($14,500,000) resulted from adjustments to standard items attributable to Corporations D, E, F and P. In addition, the Service determined that the civil fraud penalty (§ 6653(b)) was applicable. Under current Service policy, the civil fraud penalty is applied to the entire consolidated deficiency as follows:

| | |
|---|---|
| Deficiency | $15,000,000 |
| 50% Civil Fraud Penalty | 7,500,000 |
| Total | $22,500,000 |

Thus, as a result of being a member of an affiliated group joining in an election to file a consolidated return, the illegal payments made by one corporation resulted in a geometric escalation of the civil fraud penalty (*i.e.*, by $7,475,000).

11. Q. Can illustrations be cited showing how an individual with very moderate income might be adversely affected by the present application of the civil fraud penalty?

A. Yes. The examples cited in answer to question No. 8 involving two taxpayers, each of whom has an income of $10,000, certainly are examples of taxpayers who are not in the high income bracket.

Many other examples could be cited. Take

the case of a farmer who suffered a bad year due to loss of crops from drought and storms. After deducting his items of expense, his tax return shows he owes no tax. However, one of the deductions that he claimed was for improvements that he made which he listed as an expense, but upon audit of his return, this particular deduction was denied and the transaction held to be a capital expenditure resulting in a deficiency of $1,000. Let us assume that he made a full disclosure of the transaction which the IRS held to be a capital expenditure instead of an ordinary expense. The taxpayer failed to report cash income from outside earnings and that this failure resulted in a deficiency of $100 and was held to be fraudulent. The amount of his civil penalty would be 50 percent of $1,000 plus $100 or $550. This is more than five times the amount of the item tainted with fraud.

12. Q. What is the answer to the taxpayer who says, "I pay my taxes and I fully report my income. I do not want the civil fraud penalty changed or lessened and have my taxes increased because somebody else is not paying his full share?

A. The civil fraud penalty should not repealed. We should not make a change in reference to the civil fraud penalty that would encourage wrong-doing, and certainly where the facts warrant it, the criminal penalty should be imposed. It must be recognized, however, that our laws should treat all taxpayers equally and that the amount of the civil fraud penalty should reflect the magnitude of the fraud. Taxpayers who may be held to have frauduently failed to report the same amount of income should not receive vastly different treatment in the imposition of the civil fraud penalty because of circumstances in connection with their tax returns which have no relation to fraud.

13. Q. Is the present law in the best interest of the United States government and is it good tax administration?

A. No. The following comments from reputable tax lawyers illustrate the need for a change in the civil fraud penalty.

An authority on tax law from up-state New York writes as follows:

". . . a penalty that operates in this manner impedes the settlement of tax cases. For instance, if a substantial deficiency has been proposed against a taxpayer, and only a small portion of it is attributable to fraud, and the balance of the deficiency is due to legal or technical adjustments that are susceptible to settlement, the taxpayer cannot settle the case without paying the fraud penalty on the total amount of the settlement deficiency. It has been my experience in this situation that the Agent or Appellate Conferee will not drop the fraud penalty, nor should he, since the taxpayer would not be penalized for a fraudulent transaction. Thus, both the Agent and the taxpayer's representative are faced with the dilemma of either compromising the nonfraudulent adjustment to take into account the amount of the fraud penalty on the entire deficiency, or going to trial."

A tax lawyer in Massachusetts with experience in handling the government's side of civil fraud cases, says:

"In my judgement, present law works against the government's own interest in tax fraud cases. When I prosecuted criminal tax fraud cases as an assistant United States Attorney, I recall several defendants who wanted to plead guilty, but upon learning that the 50 percent fraud penalty would subsequently be applied to the entire civil deficiency for the year to which they desired to plead guilty, put the government to the expense of a trial."

A Missouri lawyer with long experience has this observation:

"If the proposed provision (see the answer to question 14) was passed, I believe the Internal Revenue Service and the courts would be more inclined to assert and find fraud in such circumstances. The way it presently stands courts are reluctant to find fraud on a large deficiency while the fraud item was minor. It falls somewhat in the category of a statute which would provide for the death penalty in stealing $10.00. While such a penalty may inhibit some from stealing $10.00 it would also discourage juries from finding thieves guilty of the minor offense."

14. Q. What is proposed in the way of change in reference to the civil fraud penalty?

A. The civil fraud penalty should be computed on the basis of the amount of the items that are tainted with fraud and it should not be computed on the total deficiency because that is placing a penalty upon the taxpayer who by happenstance has had included in his deficiency regular standard items which are not in any way tainted with fraud.

15. Q. What has the Tax Section of the American Bar Association recommended in reference to the civil fraud penalty?

A. Since 1971 the Tax Section of the American Bar Association has continued to recommend that the Congress change the present statute so that the civil fraud penalty will be applied only to those items that are determined to be fraudulent. The Bar Association recommendation is as follows:

Section 6653. The fifty percent fraud penalty should be based on only the portion of a deficiency resulting from fraud rather than on the total tax deficiency for the year. The taxpayer should, however, have the burden of proving the absence of fraud with respect to other items or adjustment if the Service proves fraud with respect to any one item.

16. Q. Does this Bill S. , as the American Bar Association has recommended, apply the fraud penalty on only that portion of the deficiency resulting from fraud?

A. This measure does provide as the American Bar Association recommended that the 50% fraud penalty should be based on only the portion of the deficiency resulting from fraud rather than on the total tax deficiency for the year. However, this proposal goes further and increases the civil fraud penalty percentage from 50% to 100%.●

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By Mr. INOUYE (for himself and Mr. STEVENS):

S. 1595. A bill to provide for the designation of income tax payments to the U.S. Olympic Development Fund; to the Committee on Finance.

U.S. OLYMPIC DEVELOPMENT FUND CHECKOFF ACT OF 1981

● Mr. INOUYE. Mr. President, today Senator STEVENS and I are reintroducing legislation that, if enacted, provides for a $1 checkoff on future Federal income tax forms. The money collected would be used to enhance amateur sports for the citizens of this country by providing grants to existing programs and to create more innovative programs. The money would also be used to broaden and increase physical fitness opportunities for the handicapped, women, and minorities, as determined by a standing committee comprised of their representative from special interest organizations across the Nation.

There is a great need for the development of new athletic facilities in the United States. As of now, we have no speed skating or ice hockey rinks that meet international standards. We have no cyclist training facilities and only one bobsled course. Furthermore, only one official 400-meter track exists in the entire western Hemisphere.

Under our proposal, the money would be collected by means of a voluntary $1 checkoff on income tax forms, similar to the Presidential campaign fund checkoff. Money raised would be directly transferred to the U.S. Olympic Committee, which would be responsible for appropriating funds to various sports. Approximately half of the revenues would be used as grants to the 32 sports governing bodies in the United States that coordinate efforts in each amateur sport. In addition, about a quarter of the funds would be earmarked toward improving amateur athletic facilities, 20 percent for enhancing training programs, and 5 percent for furthering sports medicine. Any surplus of funds would be used to rent school athletic facilities for summertime use by area residents.

The U.S. Olympic Committee would submit an annual report to the President's Council on Physical Fitness and Sports, with a breakdown of the previous year's expenditures and recommendations. The Council would then submit its own report to Congress, discussing the committee's report, and evaluating the effectiveness and usefulness of the program.

We would like to stress that through this method, Government can provide a vehicle through which the public can mandate whatever funds and support it feels our amateur athletic system warrants.

We feel that the time has come for this Congress to embrace its commitment to amateur athletics by initiating this long overdue effort to rejuvenate our sports facilities and programs. Other countries have done this, including the Soviet Union and the lesser developed nations. Now it is our turn.

In a recent letter, F. Don. Miller, the executive director of the U.S. Olympic Committee wrote that—

As a result of our nonparticipation in the 1980 Olympic Games in Moscow, public contributions were severely curtailed, leaving us with a deficit of nearly $1.5 million. This, coupled with the increased budgetary requirements necessary to field what we know will be the best Olympic team in our history for the 1984 games in Los Angeles, requires that every effort must be made to seek new sources of income.

We urge our colleagues to give this important legislation their serious and favorable attention. Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1595

*Be it enacted by the Senate and House of Revresentatives of the United States of America in Congress assembled,* That this Act may be cited as the "United States Olympic Development Fund Checkoff Act of 1981".

SEC. 2. (a) With respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1 of the Internal Revenue Code of 1954, such taxpayer may designate that either—

(1) $1 of any overpayment of such tax for such taxable year, or

(2) $1 of any contribution which the taxpayer forwards in money with such return,

be available to the United States Olympic Development Fund established by section 3 of this Act.

(b) In the case of a joint return of husband and wife, each spouse may designate that $1 be available to the fund under subsection (a).

(c) Space shall be made available for the designations referred to in subsection (a) on the first page of the tax return forms for such tax.

(d) For purposes of the Internal Revenue Code of 1954, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the date prescribed for filing the return of such tax (disregarding any extension) or, if later, the date the return is filed.

(e) This section shall apply to taxable years ending after the date of enactment of this Act.

SEC. 3. (a) There is hereby established on the books of the Treasury of the United States a special fund to be known as the "United States Olympic Development Fund". There is appropriated to the fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount designated during such fiscal year to be available to the fund under section 2 of this Act. The amounts appropriated by this subsection shall be transferred monthly to the fund by the Secretary of the Treasury.

(b) The Secretary of the Treasury shall pay to the United States Olympic Committee each fiscal year an amount equal to the amounts transferred to the United States Olympic Development Fund under subsection (a) during that fiscal year.

(c) The United States Olympic Committee shall use such funds to carry out a program for the expansion and improvement of amateur athletics in the United States so that all Americans (including women, minorities, the aged and the handicapped) are able to participate in athletic endeavors. Such funds shall remain available to the United States Olympic Committee without fiscal year limitation.

(d) Within 120 days after the close of each fiscal year, the United States Olympic Committee shall submit a report to the President's Council on Physical Fitness and Sports with respect to the expenditure of funds made available under this section. Such report shall include, but not be limited to—

(1) a listing of the major programs with respect to which funds were expended during such fiscal year,

(2) the amount of money, and percentage of total money available, expended on each such program during such fiscal year, and

(3) any recommendations the United States Olympic Committee may have with respect to future expenditures of such funds.

(e) Within 120 days after receipt of the report submitted under subsection (d), the President's Council on Physical Fitness and Sports shall prepare and submit to the Congress an evaluation of the effectiveness of the expenditure of funds by the United States Olympic Committee for the fiscal year covered by such report. Such report shall include recommendations deemed necessary by the Council with respect to the expenditures of funds by the United States Olympic Committee, including its recommendations with respect to the continuance, modification or discontinuance of the providing of funds to the United States Olympic Committee under this section.●

By Mr. MATHIAS (by request):

S. 1596. A bill to amend the act relating to the Commission of Fine Arts to provide for private donations; to the Committee on Rules and Administration.

PRIVATE DONATIONS TO COMMISSION OF FINE ARTS

● Mr. MATHIAS. Mr. President, I am introducing today a bill to authorize the Commission of Fine Arts, located here in the District of Columbia, to accept private donations of money to finance its activities. I ask unanimous consent that a letter from the Chairman of the Commission requesting this legislation and the rationale for it be printed in the RECORD.

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

THE COMMISSION OF FINE ARTS,
*Washington, D.C., May 15, 1981.*

HON. GEORGE BUSH,
*President, U.S. Senate,*
*Washington, D.C.*

DEAR MR. PRESIDENT: The Commission of Fine Arts would like to submit the attached draft legislative proposal for consideration. The purpose of the legislation is to provide the Commission authority to accept private donations of money to finance the activities of the Commission.

As you know, other government entities have been given similar authority which allows them to accomplish their public goals in a more effective manner by utilizing resources from the private sector. While the Commission of Fine Arts does not administer any grant programs directly related to the private sector and in fact administers programs affecting design and development of private projects within the National Capital, the ability of the Commission to receive such gifts is consistent with the Administration's desire to lessen the financial burden of government on the general public without compromising the Commission's effectiveness.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this legislative proposal to the Congress, and that its enactment would be consistent with the Administration's objectives.

Sincerely,

J. CARTER BROWN,
*Chairman.*●

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By Mr. DOLE:

S. 1597. A bill to establish a Corporation for Prison Industries; to the Committee on the Judiciary.

CORPORATION FOR PRISON INDUSTRIES ACT OF 1981

● Mr. DOLE. Mr. President, there has been an alarming increase in the incidence of violent crime in recent years. The Attorney General has expressed the administration's commitment to reducing and preventing this serious problem. The Members of the 97th Congress have made a strong effort to implement this policy—a number of legislative measures are already under consideration. The Senator from Kansas has sponsored a number of bills which will define new Federal criminal offenses, provide more severe penalties for certain existing criminal offenses, and reform certain procedural statutes.

Any truly effective program must also contain long-range initiatives which will reduce the motivation of individuals to commit violent crime and reduce the cost to society of penalizing and rehabilitating criminals. One such initiative is S. 186, which would provide funds for new prison construction. However, our efforts to reform our correctional system should not stop there.

Section 827 of the Justice System Improvement Act, Public Law 96–157, established congressional recognition of first, the desired linkage between public and private sector industry; second, the need to broaden the available market for the distribution and sale of prison-made goods and services; third, the need to insure that inmate workers in prison industries are not exploited; and fourth, the desire for prison industries to produce operating revenues sufficient to reduce the burden of costs to the taxpayer, provide wages and benefits to prison workers, and provide job training which will assist inmates in finding employment after their release.

The Senator from Kansas is proud to introduce a bill today to establish a Corporation for Prison Industries. This Corporation will be chartered as a nongovernment, nonprofit corporation which will continue the work begun by the Law Enforcement Assistance Administration to certify State prison industry projects. The Corporation will be responsible for administering a program of technical and financial assistance to State prison industry and private industry programs by utilizing a revolving fund account obtained from the private sector and from congressional appropriations administered by the Secretary of the Treasury. These prison industry projects will be exempted from Federal laws which constrain the interstate sale of prison-made goods and constrain the sale of prison-made goods to the Federal Government.

LEAA developed the first such prison industry program in 1975 in Connecticut when it initiated the free venture program as a model. Free venture was based on the belief that prisons could operate profitmaking business ventures which would provide inmates with realistic work habits and job skills. By 1978, LEAA had funded programs in six additional States, that is, Minnesota, Illinois, South Carolina, Iowa, Colorado, and Washington.

LEAA conducted a study of the seven prison industry programs and has documented the following favorable results:

First. Payment of the prevailing wage rate to inmates enables them to become taxpayers, and to contribute to the support of their families, their victims, and the correctional institutions in which they are housed;

Second. The operating costs for participating prison industries have been reduced;

Third. Participating institutions have reported more tranquil behavior and fewer disciplinary problems;

A provisionally certified program has been established in the Kansas State Penitentiary. Last year, inmates paid the State of Kansas $60,000 to defray the costs of their room and board, saved an average of $2,500 per inmate for their own use, and provided sufficient financial assistance to their families so that some families were able to leave the public welfare rolls. There were no violence, work disruptions, or escape attempts at the prison industry plant which is located 40 miles from the penitentiary. One inmate said; "With the money I've got in my savings account, I can't afford to escape."

As a result of LEAA's certification, the Arizona Department of Corrections will now permit the Arizona corrections enterprises firm to operate a meat processing plant for the slaughter of pigs for pork. In Minnesota, the Control Data Corp. will operate a computer rotation memory disk driver assembly facility in the Stillwater prison.

The development of the Prison Industries Corporation will expand upon the fine effort made by the LEAA and will go far toward accomplishing the goals of our correctional institutions, insuring that criminals are rehabilitated so that they may one day reenter our society, and shifting the costs of crime away from the innocent taxpayers, victims, and families.

I recommend this legislation to my distinguished colleagues and urge their support of it.●

## ADDITIONAL COSPONSORS

S. 464

At the request of Mr. DURENBERGER, the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 464, a bill to amend the Internal Revenue Code of 1954 to adjust provisions governing private foundations.

S. 501

At the request of Mr. MOYNIHAN, the Senator from New Jersey (Mr. BRADLEY) was added as a cosponsor of S. 501, a bill to amend the Internal Revenue Code of 1954 with respect to the amount which certain private foundations are required to distribute.

S. 604

At the request of Mr. MATHIAS, the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 604, a bill to amend the Communications Act of 1934 to provide that telephone receivers may not be sold in interstate commerce unless they are manufactured in a manner which permits their use by persons with hearing impairments.

S. 895

At the request of Mr. MATHIAS, the Senator from Illinois (Mr. DIXON) 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. 1215

At the request of Mr. KASTEN, the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of S. 1215, a bill to clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws.

S. 1448

At the request of Mr. MATHIAS, the Senator from Connecticut (Mr. WEICKER), the Senator from Alabama (Mr. DENTON), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from North Carolina (Mr. EAST) 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. 1450

At the request of Mr. CANNON, the Senator from Virginia (Mr. WARNER), the Senator from Wisconsin (Mr. KASTEN), the Senator from Nebraska (Mr. EXON), the Senator from Tennessee (Mr. SASSER), the Senator from Arizona (Mr. DECONCINI), and the Senator from Michigan (Mr. RIEGLE) were added as cosponsors of S. 1450, a bill to provide for the continued deregulation of the Nation's airlines, and for other purposes.

S. 1515

At the request of Mr. HATFIELD, the Senator from Utah (Mr. GARN), and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of S. 1515, a bill to repeal Federal provisions of law establishing agricultural programs concerning the marketing of and price support for tobacco; to prohibit compacts among States for regulating tobacco production and commerce; to amend the Tobacco Inspection Act and the United States Warehouse Act to provide for the assessment of certain fees to cover the costs of inspecting, licensing, and other activities carried out under those acts; and to amend the Internal Revenue Code of 1954 to increase the tax on cigars and cigarettes.

SENATE JOINT RESOLUTION 76

At the request of Mr. RANDOLPH, the Senator from Colorado (Mr. HART) was added as a cosponsor of Senate Joint Resolution 76, a joint resolution providing for the commemoration of the 100th anniversary of the birth of Franklin Delano Roosevelt.

SENATE JOINT RESOLUTION 101

At the request of Mr. DOLE, the Senator from Texas (Mr. TOWER), and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of Senate Joint Resolution 101, a joint resolution designating "National High School Activities Week."

SENATE RESOLUTION 155

At the request of Mr. MOYNIHAN, the Senator from Idaho (Mr. SYMMS), the Senator from Oregon (Mr. HATFIELD), the Senator from Indiana (Mr. LUGAR), the Senator from New Mexico (Mr. SCHMITT), the Senator from Oregon (Mr. PACKWOOD), the Senator from Utah (Mr. GARN), the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. LOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Wisconsin (Mr. KASTEN), the Senator from New Jersey (Mr. BRADLEY), the Senator from Rhode Island (Mr. PELL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Massachusetts (Mr. TSONGAS), the Senator from Michigan (Mr. RIEGLE), the Senator from Nevada (Mr. CANNON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Michigan (Mr. LEVIN), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Ohio (Mr. METZENBAUM), the Senator from Montana (Mr. MELCHER), the Senator from California (Mr. HAYAKAWA), the Senator from Maryland (Mr. SARBANES), and the Senator from New York (Mr. D'AMATO) were added as cosponsors of Senate Resolution 155, a resolution saluting the 50th anniversary of Radio City Music Hall.

## AMENDMENTS SUBMITTED FOR PRINTING

### PRICE SUPPORT AND PRODUCTION INCENTIVES FOR FARMERS

AMENDMENT NOS. 528 AND 529

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

Mr. EAGLETON submitted two amendments intended to be proposed by him 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.

TOBACCO PROGRAM ADJUSTMENTS

Mr. EAGLETON. Mr. President, today I am submitting two amendments to S. 884, the 1981 farm bill. The first will stimulate the export of American tobacco by providing the Secretary of Agriculture the authority to adjust the price support for grades of tobacco that are noncompetitive in the world market and save the Government substantial outlays that are likely to occur in the future unless price support changes are made. The second amendment will cut the cost of production for many farmers by removing tobacco allotments from the control of nonfarming corporations and nonproducers and turning them over to the tobacco producers who have been leasing those allotments.

This legislation comes at an important time. Those of us who are interested in the future of American agriculture must examine ways to strengthen Federal farm programs in a manner that meets the fiscal stringencies of the day. It is with that spirit that I subject these amendments which I believe should be made a part of the omnibus farm legislation, S. 884, which the Congress will consider in the near future.

Mr. President, I would like to share my views on this legislation in considerable detail. My first amendment will provide

the Secretary of Agriculture with the authority to adjust price supports on grades of tobacco that are noncompetitive in the world market. The Secretary would not, though, have authority to reduce the support levels below the cost of production.

There are two ways to effectively measure the impact of our ability to compete. One is through changes in our share of the world market; the other is through growth in imports here at home.

Mr. President, I ask unanimous consent that a table showing exports and U.S. market share of unmanufactured flue-cured tobacco be entered in the RECORD at this point.

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

TABLE 1.—EXPORTS AND U.S. MARKET SHARE OF UNMANUFACTURED TOBACCO, FLUE CURED

[In millions of pounds]

| | World total | United States | United States as percent of total |
|---|---|---|---|
| Average: | | | |
| 1955–59 | 683 | 413 | 60 |
| 1960–64 | 772 | 397 | 52 |
| 1966 | 710 | 423 | 60 |
| 1967 | 750 | 427 | 57 |
| 1968 | 800 | 444 | 56 |
| 1969 | 845 | 430 | 51 |
| 1970 | 797 | 368 | 46 |
| 1971 | 831 | 342 | 41 |
| 1972 | 1,046 | 425 | 41 |
| 1973 | 1,088 | 418 | 38 |
| 1974 | 1,232 | 441 | 36 |
| 1975 | 1,199 | 391 | 33 |
| 1976 | 1,198 | 379 | 32 |
| 1977 | 1,229 | 412 | 34 |
| 1978 | 1,399 | 455 | 35 |
| 1979 | 1,306 | 371 | 28 |

Source: U.S. De, artment of Agriculture.

Mr. EAGLETON. Mr. President, as we can see from examining this table, the U.S. share of the world market has slipped from 60 percent in the late 1950's to 28 percent in 1979. Our slippage, by the way, came when the world market for tobacco was doubling from 683 million pounds to 1,306 million pounds.

Almost as dramatic as the slippage in our export market has been the increase in imports. In 1969, we imported 159.1 million pounds of tobacco. In 1979, 10 years later, imports almost doubled to 313.6 million pounds. Mr. President, I ask unanimous consent that a table depicting U.S. imports of unmanufactured tobacco be entered into the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD at this point:

TABLE 2.—U.S. IMPORTS OF UNMANUFACTURED TOBACCO FOR CONSUMPTION, AND GENERAL, PRINCIPAL CATEGORIES AND COUNTRIES OF ORIGIN

[In millions of pounds]

| | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Cigarette tobacco: | | | | | | | | | | | |
| Flue cured | | | | | | | | | 5.2 | 5.2 | 10.2 |
| Burley | | | | | | | | | 18.5 | 13.7 | 11.9 |
| Flue cured and Burley | 4.5 | 7.8 | 4.4 | 6.7 | 6.2 | 22.1 | 36.4 | 30.2 | | | |
| Other | | | | | | | | | | 4.9 | 2.2 |
| Subtotal | 4.5 | 7.8 | 4.4 | 6.7 | 6.2 | 22.1 | 36.4 | 30.2 | 23.7 | 23.8 | 24.3 |
| Subtotal (including Oriental) | 147.8 | 149.6 | 168.3 | 164.0 | 174.1 | 188.0 | 211.9 | 204.8 | 194.1 | 197.2 | 191.4 |
| Scrap | 11.4 | 14.9 | 18.2 | 12.9 | 24.2 | 34.9 | 23.8 | 25.1 | [1] 54.5 | 88.3 | 122.2 |
| Total | 159.1 | 164.4 | 185.6 | 177.0 | 198.3 | 222.9 | 235.7 | 229.9 | 248.6 | 285.5 | 313.6 |

[1] Revised; classification change in January 1977 shifted most imports from cigar tobacco to other tobacco category affecting scrap category.

Source: "Tobacco Situation," March 1970 through March 1980.

Mr. EAGLETON. Mr. President, we must acknowledge that our lack of competitiveness is caused by Government policy—the franchising of the right to grow tobacco through allotments and high price supports which discourages maximum exports while encouraging imports. To quote from a letter I received from Everett Rank, Administrator of the Agricultural Stabilization and Conservation Service:

U.S. prices to a large extent are determined by the legislated support formula. So long as U.S. tobacco remains out of line price wise with foreign tobacco of comparable quality, our share of world exports can be expected to continue to decline and pressure from imports to increase.

Our inability to meet the tests of the world market are contributing to a crisis that will lead to massive Federal costs for the tobacco program. As of December 31, 1980, over 595 million pounds of tobacco were in quasi-Government stocks at flue-cured tobacco stabilization corporation facilities in the flue-cured region. These stocks involved Federal Government outlays of $981 million, including $786 million in principal, the remainder being in interest and insurance costs. These outlays involve loans that previously we could anticipate would be repaid.

Unfortunately, the Department of Agriculture no longer is convinced that these loans will be repaid. In testimony before the U.S. International Trade Commission on June 23, an Associate Administrator of the Agricultural Stabilization and Conservation Service (ASCS) said that the Federal Government would lose $123 million on the 1975–80 crops of flue-cured tobacco because of imports. The administration further claimed that it could lose about $100–$150 million on the 1981–85 flue-cured crops. These losses assume an important displacement factor of 38 percent which indicates that eventual total losses to the Federal Government could run three times or over $750 million.

My second amendment is aimed specifically at cutting the cost of production for many farmers. As my colleagues know, the key to the tobacco program is the allotment system. These allotments, which are based on the historical production patterns of the 1930's, were established to stabilize production and consequently to stabilize prices for farmers producing tobacco.

Since the 1930's, ownership patterns of farmland have changed dramatically. Much land which has a tobacco allotment no longer is owned by tobacco producers or any type of farmer. Doctors, lawyers, other professionals with rural residences, and major corporations including Weyerhauser, International Paper, Carolina Power & Light, and Texas Gulf, for example, control thousands of acres of farmland with tobacco allotments on them. These individuals and corporations in turn lease their allotments to tobacco farmers at rates as high as $1,000 per acre.

So what had begun as a program to protect the income of tobacco producers has also led indirectly and, I believe, unintentionally to a program which is driving up the cost of producing tobacco for many farmers.

My second amendment addresses this issue directly. It returns the allotments now controlled by the nonfarmer to the tobacco producers who are currently leasing the land from nonfarmers. At the same time, the amendment reserves 10 percent of the allotments which would be reallocated under the amendment for new tobacco farms. The amendment will not affect family farm corporations nor family farmers who earn more than 50 percent of their income from farm sources and who have elected to lease their tobacco allotment. They will be able to maintain their allotment so if they should decide to return to tobacco production in the future, their allotment will still be in their control.

Simply put, this amendment returns the program and the program's benefits to the tobacco producers for whom it was established.

Mr. President, the tobacco farmer is the loser with continuation of the status quo. Unless program changes are made, the Secretary has no choice but to try to control program costs by limiting production. And as the number of allotments allowed to produce are decreased, the cost of leasing those allotments from nonproducers is likely to increase.

It is clear to me that changes are necessary. Our farmers will benefit from these changes as will our exports.

I thank the Chair and ask unanimous consent that the amendments be printed in the RECORD.

There being no objection, the amend-

ments were ordered to be printed in the RECORD, as follows:

AMENDMENT No. 528

On page 235, between lines 17 and 18, insert the following new section:

AUTHORITY OF SECRETARY OF AGRICULTURE TO ADJUST THE PRICE SUPPORT OF CERTAIN KINDS AND TYPES OF TOBACCO

SEC. 1112. The Agricultural Act of 1949 is amended by adding after section 106 the following new section:

"SEC. 106A. Notwithstanding any other provision of law, whenever the Secretary determines that a kind, type or grade of tobacco for which marketing quotas are in effect or have not been disapproved by producers will be in excess domestic supply or will be noncompetitive in the world market if the price support level for any crop of such kind, type or grade of tobacco is established in accordance with section 106 of this Act, the Secretary may establish the price support level for such crop of such kind, type or grade of tobacco for that crop year without regard to the provisions of section 106, except that the Secretary may not establish a price support level under this section for any crop of any kind, type or grade of tobacco below the level of the adjusted cost of production. The adjusted cost of production shall be determined on the basis of such information as the Secretary finds necessary or appropriate for the purpose and shall not include (1) costs of purchasing or leasing land, (2) costs of leasing marketing quotas or (3) management costs."

AMENDMENT No. 529

On page 235, between lines 17 and 18, insert the following new section:

PROHIBITION AGAINST CORPORATE OWNERSHIP OF TOBACCO ACREAGE ALLOTMENTS

Sec. . (a) The Agricultural Adjustment Act of 1938 is amended by adding after section 320 the following new section:

"PROHIBITION AGAINST CORPORATE CONTROL OF ACREAGE ALLOTMENTS; RESTRICTIONS ON SALE AND LEASE OF ALLOTMENTS

"SEC. 320A. (a)(1) The Congress finds that the legislative findings expressed in section 311 of this Act are still valid and reaffirms such findings.

"(2) The Congress further finds that there has been a proliferation of nonproducer ownership of tobacco acreage allotments and that the high cost to the lessees of such allotments has contributed to high production costs for producers and made certain kinds and types of tobacco produced in the United States noncompetitive in the world markets.

"(3) The Congress further finds that in order to carry out the original purpose of the program provided for in this part it is necessary to make farms owned or controlled by corporations ineligible for tobacco farm acreage allotments under this Act and to provide for the making of tobacco acreage allotments to certain producers who have been leasing tobacco acreage allotments.

"(b)(1) Notwithstanding any other provision of law and subject to the provisions of paragraph (4), beginning with the 1982 crop of tobacco (A) no tobacco acreage allotment may be made for any land owned or controlled by a corporation, and (B) no tobacco marketing quota, tobacco acreage poundage, or tobacco poundage marketing quota may be allotted or assigned to any such land or any corporation.

"(2) Subject to the provisions of paragraph (4), effective beginning with the 1982 crop of tobacco, the Secretary shall allot to each producer who leased a tobacco acreage allotment for the 1981 crop of tobacco from a corporation a tobacco acreage allotment equal to 90 percent of the allotment so leased by such producer.

"(3) Subject to the provisions of paragraph (4), an acreage equal to 10 percent of total acreage allotments owned or controlled in 1981 by corporations shall be reserved by the Secretary for allocation to new farms. Any such acreage not needed under this paragraph for new farms may be used by the Secretary to make adjustments in allotments to correct inequities that may result in the making of allotments under paragraph (2).

"(4) In any case in which an acreage allotment referred to in paragraph (1) was leased before July 1, 1981, by a corporation and was leased for one or more crop years beyond the 1981 crop year, the provisions of paragraphs (1), (2), and (3) shall not operate with respect to such acreage allotment until the end of the crop year covered by the lease.

"(5) An acreage allotment made under paragraph (1) to any producer may not be leased or transferred by such producer and shall be lost if not planted for production by such producer for two consecutive crop years.

"(c) The tobacco farm acreage allotment of any farm owned or controlled by any person, other than a corporation, who derives more than one-half of such person's income from nonfarming sources, as determined by the Secretary, and who has not planted such allotment in two of any three consecutive crop years beginning with the 1980 crop year shall lost such allotment. Acreage lost by producers under this subsection shall be reallocated to the producers to whom it was most recently leased or, if not leased within the three previous crop years, be reallocated among producers in such manner as the Secretary determines equitable, except that 10 per centum of the acreage shall be reserved for allocation to new farms. The provisions of paragraph (5) shall apply in the case of tobacco acreage allotments reallocated under this subsection.

"(d) The Secretary shall prescribe such regulations as he considers necessary for carrying out the provisions of this section.

"(e) As used in this section, the term 'corporation' means a corporation, partnership, association, or other business entity, but such term does not mean a business entity composed of one or more individuals who are engaged in farming and who produce tobacco on the tobacco acreage allotments controlled by the business entity."

## SENATE CONCURRENT RESOLUTION 29—CONCURRENT RESOLUTION DISAPPROVING CERTAIN COASTAL ZONE MANAGEMENT REGULATIONS

Mr. HOLLINGS (for himself and Mr. WEICKER) submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. CON. RES. 29

*Resolved by the Senate (the House of Representatives concurring)*, That the Congress disapproves the final rule promulgated by the Secretary of Commerce dealing with the matter of the Federal consistency provisions of section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456), which final rule was submitted to the Congress on July 14, 1981.

● Mr. HOLLINGS. Mr. President. I am today submitting a concurrent resolution to disapprove the final regulations recently promulgated by the Secretary of Commerce pertaining to certain Federal consistency provisions of the Coastal Zone Management Act of 1972, as amended. The Federal consistency provisions are the very heart of the Coastal Zone Management Act, and the embodiment of the rights of the coastal States to have some control over Federal actions in their coastal jurisdictions. It is through the Federal consistency provisions, under section 307 of this act that we have returned authority to the States, and this is exactly the purpose for which these provisions were intended.

The new regulations, which were published in the Federal Register on July 14, 1981, fly in the face of the intent of the law and the legislative history governing the proper interpretation of the provisions. According to the new regulations, the administration will no longer consider activities routinely taken in preparation for an offshore oil lease sale to be activities which directly affect the coastal zone. This action, if permitted to stand, will make it unnecessary for the Federal Government to conform its prelease offshore oil drilling activities to the legitimate concerns of State governments as laid out in their respective coastal zone management programs. In fact, just the opposite was intended by section 307(c)(1), as is clear from the legislative history.

The process that brought about these regulations is a study in deep bias against the rights of coastal States. Some 71 comments were received by the administration as the regulations were considered.

Fully 51 of these were negative, and included the protests of 16 coastal States and 12 local governments, not to mention the negative comments from affected interest group. Almost all of the favorable responses emanated from members of the oil industry. The resulting regulations do not speak, then, of an objective, evenhanded public process being followed, and the regulations cannot be seen as good and reasonable public policy.

Extensive hearings were held last year on amendments to the Coastal Zone Management Act. We considered the complaint of the oil companies that compliance with Federal consistency requirements delayed leasing activities. We found no evidence to support this contention, and it is a matter of public record on the hearing transcript before the Committee on Commerce, Science, and Transportation. We found instead that Federal consistency provisions were working well throughout the country and fostering healthy Federal-State cooperation, which is what was intended. Potential problems were identified and worked out ahead of time, in a reasonable fashion. And we did not see the delays that are now being perpetrated as a result of the lawsuits being filed over this matter.

The State of California recently sued the Federal Government over the new regulations. On July 27, 1981, the U.S. district court upheld California's position under the Federal consistency provisions. The State of North Carolina has sued the Department of the Interior in a similar dispute regarding lease sale No. 56, and was joined last week by my own State of South Carolina.

This is indeed a ludicrous situation. Here we have the very provisions that are responsible for returning Federal authority to the coastal States—the very essence of States rights—being fought

and subverted by the very individual in the administration who is most closely identified with the Sage Brush Rebellion involving issues of State authority over the Federal Government, Secretary of the Interior James Watt.

Not only is Secretary Watt seeking to undermine and gut States' rights by his pressure to rewrite the Federal consistency regulations, and his refusal to cooperate with coastal States on lease sale activities, but he is actually causing a greater delay by trampling on the authority of the States and inviting these lawsuits. This position is philosophically contrary to the oft-repeated position of this administration to return authority to the States.

The concurrent resolution which I am submitting today is intended to maintain the integrity of the Coastal Zone Management Act and the rights of the coastal States thereunder. I urge my colleagues to join me in this effort to maintain a voice for coastal State and local governments in issues that vitally affect their interests and to provide for a balanced and necessary offshore oil leasing program that is not wracked by further unwarranted delay.●

## NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. COHEN. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public field hearing before the Select Committee on Indian Affairs, chaired by Senator JOHN MELCHER.

The hearing is scheduled for August 19, 1981, beginning at 2 p.m. in the Post Office Building, room 210, 215 First Avenue North, Great Falls, Mont. 59401. Testimony is invited regarding the irregularity in the movement of oil from the Blackfeet Indian Reservation.

For further information regarding the hearing, you may wish to contact Max Richtman of the committee staff on 224–2251. Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Select Committee on Indian Affairs, U.S. Senate, Washington, D.C. 20510.

## ADDITIONAL STATEMENTS

### TRIBUTE TO SENATOR ROTH

Mr. BIDEN. Mr. President, although I disagree with the basic premise underlying so-called supplyside economics, today's historic passage of the tax bill conference report does not diminish my admiration for the central role played in this victory by the senior Senator from my State of Delaware, BILL ROTH.

Senator ROTH has been the prime mover behind this tax bill, showing great determination in promoting his economic theory. The senior Senator from Delaware richly deserves congratulations for succeeding in his long fight.

Although I still do not agree with the economic premise on which this tax bill is based, it is my sincere hope that it succeeds as intended so that all Americans may benefit.

### MR. McNAMARA AND THE FOREIGN AID QUAGMIRE

● Mr. MOYNIHAN. Mr. President, on July 29, 1981, there appeared a piece by Roger Cochetti in the Washington Star entitled "Mr. McNamara and the Foreign Aid Quagmire." Its subject was the constituency of foreign aid, and how in the past decade public support for American aid abroad has fallen.

The constituency of foreign aid, as Mr. Cochetti notes, has always included disparate groups frequently working at cross purposes with one another. The result has been that support for American participation in multilateral lending institutions like the World Bank continues to decline.

The fall of public and congressional support for the World Bank is something that Robert McNamara can well attest. Indeed, in reviewing Bob McNamara's tenure as President of the World Bank, from which he retired on June 30, 1981, it sometimes seems as if he has been a constituency of one.

He has had to struggle against overwhelming odds. In the United States, he has faced opposition from a wide array of political and economic groups with little inclination to taking the long and broader view of things—little inclination to understanding, we might say, the objective requirements of enlightened self-interest.

Of the three constituencies for foreign aid identified by Mr. Cochetti, only one—the constituency of compassion—regularly identifies itself with and supports the activities of the multilateral lending agencies. The support of the other constituencies—of conflict and of commerce—has at best been episodic. It threatens now to vanish altogether.

The challenge that Bob McNamara faced in attempting to garner continued American support for the activities of the International Bank of Reconstruction and Development—the full name of the World Bank—was as nothing compared with the pressing problems of world poverty and underdevelopment that the Bank has daily had to address under his leadership.

The scope of the developing world's economic and political difficulties is staggering. There have been, it is true, some success stories. A host of "newly industrializing countries" or NIC's have shown the extraordinary results that a commitment to private enterprise can bring.

The combined GNP of the NIC's is now five times greater than what it was in 1950; and it is not a coincidence that they have been able to grow so quickly and so successfully because of their close ties to the industrial democracies.

But much of their growth would have been far more difficult had it not been for the constructive activities of the World Bank.

Elsewhere the situation of the poorest countries became worse during the 1970's—a fact due largely to the tremendous burdens they had to bear from multiple oil shocks. In much of the Fourth World growth rates slowed down to a mere trickle. Yet without the World Bank and its soft-loan arm—the International Development Association—the fate of the poorest of mankind would have been far worse.

Under Bob McNamara's guidance the World Bank increasingly came round to the view that the commitment to economic development requires the world reduction of poverty, and he devoted his efforts and the efforts of his organization to that end.

But it is a great mistake to see the driving passion behind this aspiration to have been basically redistributive. In the great age of optimism about the possibilities of economic development that existed in the 1950's and 1960's, it was thought that economic development was a matter of creating the economic infrastructure—the roads, the dams, the communications facilities—that would make possible the "take-off" into economic growth. Bob McNamara changed our view of this matter.

He saw, I think correctly, that investment in economic infrastructure was a necessary but not sufficient condition of economic development.

Equally important were the investments in human development, which contributed not only to the immediate relief of man's estate but which also turned out to be surprisingly productive.

The World Bank still contributes to both and still thinks both are necessary; yet as a financial institution the Bank, under Mr. McNamara's leadership, saw that it could serve the traditional goal of economic development by devoting many of its activities to human development.

The new direction Robert McNamara gave the Bank has proven to be surprisingly successful. The rates of return on primary education expenditure, the Bank's "World Development Report" for 1980 noted, have been as high as 27 percent for the low-income countries and those with low literacy rates.

In certain sectors, like farming, the Bank has found that education and productivity have a close relationship with one another.

Farmers with at least 4 years of primary education tend to produce about 13 percent more than farmers with no education at all. The appalling conditions of human ignorance and disease that exist in so many of the world's poorest countries do not make a fertile ground for economic growth.

While others before Mr. McNamara saw an unceasing conflict between equity and efficiency, he saw that securing the former was in many instances an indispensable way station to the achievement of the latter. This was a remarkable thought—one that our experience tends increasingly to bear out.

Bob McNamara and I came to Washington together in 1961; and I have consequently had the opportunity in the past two decades to observe his work. Perhaps what is most remarkable about his career of public service—from his arrival at the Department of Defense to his long years of service on the World Bank—was the penetrating honesty and intelligence that he brought to all his tasks.

He has that rarest of things in our town—an open mind, and he has not been afraid to change it. At the World Bank, his compassion for the world's poor was unlimited, yet he retained in an arena where rhetoric and exaggeration abound his intelligence, his sobriety, and his commonsense.

The departure of Mr. McNamara from the World Bank is not a time for celebration; we will miss him too dearly for that. And the problems of the world's poor are too pressing and too awesome for us to entertain much hope that the work of his successor, Mr. A. W. Clausen, will be anything but a fierce battle to hold back the relentless tide of human misery in the world, or that the result will be anything but a slight aggregate improvement to the human condition.

Yet success in political life is not measured—should not be, at least—by impossible yardsticks that are good for nothing but condemnation. Reckoned by a different yardstick—that of the possible—Bob McNamara's contribution was profound.

It will be felt by many who do not know his name and never will, and it will be felt when he and I have long gone from this Earth. Few men deserve such praise. But then of few men can it truly be said that the world would have been a far worse place without their presence. It can be said of Bob McNamara.

Mr. President, I ask that Mr. Cochetti's article be printed in the RECORD.

The article follows:

[From the Washington Star, July 29, 1981]

MR. MCNAMARA AND THE FOREIGN-AID QUAGMIRE

(By Roger Cochetti)

The recent retirement of World Bank President Robert McNamara raises numerous questions about the viability of U.S. participation in the bank in particular, and the future of America's foreign aid effort more generally.

As Mr. McNamara points out, the U.S. foreign aid effort has been declining by almost any measure, and the prospects are that it will continue to do so. To the extent that a diminished U.S. effort to promote economic growth in developing nations damages our foreign relations, our own economic prospects, and our nation's sense of moral direction, it is important to understand why the decline takes place at all.

President Reagan has proposed that the Congress provide about $1.7 billion in U.S. contributions to multilateral development efforts and $2 billion in bilateral development assistance for the coming fiscal year, as well as about $1.2 billion in food aid. (These gross figures, before receipts are factored in, compare with about $4.3 billion in security assistance and about $13 billion in military sales trust fund authorities).

While these amounts are modest compared with the needs or the relative efforts of other industrial countries, even they are likely to be substantially reduced by the time of final Congressional action. Thus, Mr. McNamara's frustration is understandable.

In fact, however, given the state of public support for foreign assistance, it is mildly surprising that even these amounts continue to be approved. For the fact is that foreign assistance, unlike any other federal program of its size, lacks a strong and coherent lobby.

Many politicians mistake the absence of a coherent foreign-aid lobby for the absence of a constituency for aid. Nothing could be further from the truth. The constituency is large, and it is growing.

But its growth has, in some respects, been one of its weaknesses. The aid constituency is, in fact, three separate—and quite different—constituencies, each at odds with the other over the purpose and direction of American foreign assistance, and each skeptical of the other's motives.

The constituency of conflict is perhaps the oldest and yet least organized of the three. It is made up of politicians, diplomats, commentators, academics, and citizens who view foreign aid as a means through which we can manage our conflict with the Soviets. This constituency is related to the larger constituency for military spending and it has quietly grown since the taking of the American hostages in Iran in 1979. It will support increases in military assistance and aid to countries that face a Soviet-inspired threat.

The constituency of compassion, similarly, has roots that go back to World War II. Made up largely of religious, civic, labor, and environmental groups, it is large and only partially organized. Such foreign aid supporters view the programs as a means through which America helps the poor, the starving, and the disadvantaged in other countries. They will support humanitarian assistance that is directed towards the genuinely needy.

The constituency of commerce grows out of America's rapidly increasing economic ties with the developing world. This group consists largely of agricultural, manufacturing, and financial concerns, and it sees foreign assistance as a means through which the government can stimulate exports markets and improve investment climates. It is well organized, and will back aid that complements the private sector and is targeted towards countries with a near-term potential for growth.

In addition to these three main constituencies, there are many organizations and individuals with a specific concern for an issue, a nation, or a program

WHY THEY FAIL

One might ask, as I am sure Mr. McNamara has, why with all this support, foreign aid programs are constantly on the verge of extinction? The answer is in two parts: First, no single constituency either has the clout, or is prepared to use it if they do, to sell the entire program to the public and the Congress. And second, not all foreign aid programs are in such deep trouble, only those that do not have a strong and coherent constituency behind them (military assistance, food aid, and refugee assistance do not face serious problems, for example).

Thus, Mr. McNamara's disappointment on leaving office is well founded. It will be a major challenge to his successor, to the Reagan administration, and to all concerned with the future of the developing nations to bring this nation out of the quagmire.●

## IMPACT OF FEDERAL WORKERS' COMPENSATION ACT ON AGRICULTURAL EXPORTS

● Mr. JEPSEN. Mr. President, the Federal Workers' Compensation Act has a big impact on our agricultural exports.

While the program worked reasonably well into the early seventies, it has now soared out of control. Increased cost in the program means increased costs in marketing and exporting agricultural commodities.

Mr. C. H. Fields recently wrote an article which appeared in the July 27, 1981, issue of the Farm Bureau News dealing with this problem. Mr. President, I ask that this article be reprinted in the RECORD in full so that my colleagues might have a chance to understand the implications of the Federal compensation law.

The article follows:

AGRICULTURE WAS A VITAL STAKE IN REFORM OF FEDERAL MARITIME WORKERS' COMP. LAW

(By C. H. Fields)

For many years Farm Bureau has resisted efforts by the union movement to federalize the state workers' compensation program. It prefers to leave this protection for workers injured on jobs to the individual states. In terms of political philosophy, we knew we were on solid ground. Now, we can point to the only workers' compensation program operated and controlled by the federal government and prove how right we were in actual practice.

Back in 1927, the Congress enacted the Longshoremen's and Harbor Workers' Compensation Act and assigned its administration to the Department of Labor. It was designed to provide equitable compensation for work-related injuries to certain employees in maritime activities who could not be covered by state compensation laws, because of employment involving navigable waters, which are not under the jurisdiction of any one state. Similarly, the employees of the District of Columbia, which is not a state, were brought under the same Act.

1972 AMENDMENTS

It worked reasonably well until 1972 when Congress adopted a series of amendments to the Act. This action was taken supposedly for the purpose of increasing benefits to adequate levels, extending coverage to over-the-water workers who also work on land, improving administration, eliminating "third party" suits based on the admiralty doctrine of "unseaworthiness," prohibiting indemnification agreements between the owners of vessels and employers and creating a model and uniform compensation act that states could emulate.

But, let's look at what really happened! The Act's jurisdiction has been extended steadily landward, through interpretations of the Labor Department and several court rulings, to include workers already covered under state laws and working at jobs remote from navigable waters and maritime activity. In addition, the 1972 amendments established a benefits structure that caused benefits to soar. The program moved into life insurance, pension and other supplemental income provisions, creating distortions and abuse of the law, plus incentives to stay off the job. Benefits are ordered to be paid even in cases where employees continue to work at full wages or more. Death benefits must be paid whether or not the death is job-related.

Employee utilization of the program increased 185 percent in the first five years after the 1972 amendments were added. The soaring costs of the program are borne entirely by employers of the ever-widening jurisdiction of the Act. In New York, the current cost per covered employee is $21,000, or about 75 percent of the wage cost. Compare that cost in New York to state coverage for a non-longshoremen freight handling worker at $3,370, $1,042 for a police officer, $1,254 for a fireman. Employer rates under the federal act for U.S. stevedores at Atlantic and Great Lakes ports vary from $25 to $87 per $100 of payroll, while the Canadian rates are only $2.50 to $13.

AGRICULTURE'S INTEREST

Are you asking yourself, "What does all this have to do with farmers and agriculture?" Well, this federal workers' compensation act has a direct impact on agricultural exports and on the operations of aquacultural producers.

Farm Bureau made it clear that agriculture has a vital stake in the reform of the Act in a July 20 statement presented to the Senate Labor Committee.

"This Act is being interpreted by the Department of Labor to cover workers engaged in the cultivation and harvesting of shellfish, particularly the operations on the West Coast, where the tideland areas are very wide and the breeding and cultivation of shellfish has become an important segment of the food industry . . . The exorbitant cost of double coverage under the Act as well as under a state act, and the difficulty of finding insurance carriers willing to oner coverage under the federal act are the basis for this concern."

IMPACT ON EXPORTS

The Longshoremen's Act also constitutes an important cost factor in the export marketing of agricultural commodities, such as grains. Costs are incurred when exporting companies or cooperatives employ the services of stevedoring companies to load the grain or other agricultural commodities onto ships in ocean ports or onto barges on the nation's navigable rivers. These costs usually are borne by producers in the form of lower prices for their commodities.

The Act cost is a proven culprit in the current weakened position U.S. producers have in foreign markets for agricultural products. The cost for workers compensation under the federal Act can run as high as 25 percent of the wholesale price of commodities, such as apples, that require careful handling. The exorbitant U.S. cost of coverage under the Act has created a bonanza for the neighboring ports of Canada, where compensation costs are only a small fraction of U.S. costs.

NICKLES-NUNN-ERLENBORN BILLS

Following several years of clamoring for reform by the maritime and insurance industries, Congress appears to be moving with legislation to reform the Act.

S. 1182, whose chief cosponsors are Sen. Nickles (R., Okla.) and Sen. Nunn (D., Ga.), and H.R. 25, introduced by Rep. Erlenborn (R., Ill.) are bills to clarify the Act's jurisdiction, exempt from coverage any workers that can be covered by a state act and bring benefits back in line with similar state laws.

Farm Bureau strongly supports enactment of this legislation. However, it has called for clarifying language in the exemption section to cover nonvessel structures used by the shellfish producers on the West Coast.

Markup on the Senate bill is expected soon after Congress returns from its August recess. A Senate Labor Subcommittee, chaired by Sen. Nickles, has concluded public hearings on the legislation.

Besides Farm Bureau, some 55 other groups and companies are committed to achieving major reform of the Longshore Act. They represent a broad range of employer interests in agriculture, shipbuilding and maritime industries, stevedoring companies, insurance carriers and others.

We can all say a prayer of thanks that we have been able to prevent Congress from federalizing all state workers' compensation laws. The Longshore Act is so bad that even the Washington, D.C., City Council has voted to pull out of the federal program and to enact its own workers' compensation law.●

## KENT ISLAND'S 350TH ANNIVERSARY

● Mr. SARBANES. Mr. President, in 2 weeks the Kent Island Heritage Society will commemorate an event of significant importance for the State of Maryland: The 350th anniversary of the first English settlement within the boundaries of the State of Maryland. In celebration of this occasion the Kent Island Heritage Society will sponsor a celebration on August 14, 15, and 16.

Not only is this event of historical importance to the State of Maryland, but the settlement of Kent Island is of nationwide importance. After the establishment of the Jamestown Colony in 1607 and the Plymouth Colony in 1620, the Kent Island settlement marks one of the earliest permanent settlements in the original 13 colonies.

The Kent Island Heritage Society has established, through historical research, many "firsts" for Kent Island in Maryland's history including among others, the First English settlement established by William Claiborne; the first boatyard and consequently the first boat, a pinnace "The Longtayle"; the first church and the first courthouse.

The citizens of Maryland take great pride in the fact that our State was one of the Original Thirteen Colonies and that the shores of the Chesapeake Bay served as the first settlement for some of the very early colonialists, including William Claiborne, who established a settlement on Kent Island in August 1631.

A very fine article appeared in the Bay Times of April 22, 1981, recounting the founding of Maryland's first Anglican congregation, the Christ Episcopal Church, on Kent Island in April 1631 and some of the history of this important community. I ask that it be reprinted at this point in the RECORD.

The article follows:

CELEBRATION TO COMMEMORATE 350 TOUGH YEARS ON KENT ISLAND

Maryland's first Christian congregation, Christ Episcopal Church on Kent Island, celebrates its 350th anniversary, Saturday, April 25.

An ecumenical Service of Thanksgiving, for which the 102nd Archbishop of Canterbury, the Most Rev. and Right Hon. Robert A. K. Runcie, will give the sermon, will be the chief attraction.

A trumpet fanfare at 11:30 a.m. will herald the processional as Archbishop Runcie is greeted at the entrance to a tent tabernacle by the Rt. Rev. John M. Allin, presiding bishop of the United States, and the Rt. Rev. W. Moultrie Moore, Jr., bishop of the Episcopal Diocese of Easton.

Participating in the service will be Bishop Frederick Wertz, the Washington area, the United Methodist Church; the Most Rev. Thomas J. Mardaga, bishop of the Roman Catholic Diocese of Wilmington; and the Rev. Dr. Paul M. Orso, president, Maryland Synod, Lutheran Church of America.

Traditional hymns such as "Praise to the Lord" and "O God Our Help in Ages Past" will be led by a 100-voice choir, accompanied by a ten-member brass ensemble and two organists. Choir members have been drawn from the Salisbury Choral Society, and churches of the Diocese of Easton. Dr. Ray Zeigler, professor of church music at Salisbury State College, will direct the choir.

All 2,200 seats for the service have been reserved, largely for parishes of the diocese on a pro rata member basis, according to the Rev. Robert A. Gourlay, rector of Christ Church.

The huge tent which will house the service is being set up in a rolling field at Love Point, overlooking Chesapeake Bay. The site is within view of Broad Creek, where the congregation's first church was built in 1652.

An official state historical marker designating "the first Christian congregation in Maryland" is located on Route 8, near a narrow oyster shell road that leads to the grove of huge oak trees that once surrounded the old church, which was rebuilt in 1712 and 1826.

The congregation had started at the south end of Kent Island. William Claiborne brought an Anglican priest from Jamestown, Va. to his settlement there in 1631–32.

Later, the Broad Creek site had become more central to the population of early colonists who came to services by boat. It was here, for the same reason, that the Anglican priest Claiborne brought with him in 1631, the Rev. Mr. Richard James, conducted the first religious service ever held in Maryland. The date was nearly three years before Maryland was officially settled in 1634 with the landing of Lord Baltimore's colonists at St. Clements, or St. Mary's.

The 350 years since the congregation was founded have been marked by fluctuations, according to parish history. There have been rapid alternations of vacancy, and short-time ministers. There also have been times of growth and prosperity as exists now.

From 1714 to the Revolutionary War, the population had concentrated around Broad Creek, the only harbor on the western side of the island and a key point on the line of traffic between North and South. Church attendance increased. By 1748, the congregation much exceeded the capacity of the church building. An ell was added.

The Revolutionary War reduced Christ Church to a handfull of the faithful. By 1810, the church building was unuseable to the extent that cattle were stabled in it.

In 1825, a young man named Mathias Harris, recently licensed as a lay reader, undertook the seemingly hopeless task of restoring life to the parish. He tutored students in a borrowed classroom to raise money, and aroused enough interest to support a subscription for restoration of the dilapidated old building. This was accomplished in 1826.

Mr. Gourlay said that "looking back on the history of the parish, we can give thanks that there was a continuity. Even during the times when the church was without a rector, and parishioners were few, there was always a vestry of the parish that continued to exist, people who could provide a basis for resurgence to develop and enlarge upon."

Christ Church's present communicant strength of 197 reflects the active growth of the Kent Island area in recent years. Watermen and farmers still live on the island, but the population now reflects the island's popularity as a bedroom community for persons working across the Chesapeake Bay and for retirees.

As the late Dr. Clarence P. Gould, once president of Washington College, concluded in a history of Christ Church Parish compiled in 1959:

"The spirit of Anthony Workman, the innkeeper at Broad Creek and benefactor of Christ Church, can see across the fields from his shady window many more, and incomparably finer rooms for night-bound travelers than he could ever offer; and he can go out to the road and in single day count more passersby than he ever saw at Broad Creek during his entire mortal life. What will be the effect of all this on the oldest settlement and the oldest church—in fact the oldest organization of any sort whatsoever—on the soil of Maryland? No one can dictate to fortune, neither can anyone predict it. But the future looks bright."●

## GREAT PLAINS CONSERVATION PROGRAM—25 YEARS OF PROTECTING AMERICA'S FARMLAND

● Mr. DOLE. Mr. President, August marks the 25th anniversary of the Great Plains conservation program designed to assist in maintaining the soil and water resource base in the 10 Great Plains States.

The Great Plains program is a shining example of cooperation between Federal, State, and local agencies in addressing a growing and continuing threat to our Nation's economy—the alarming rate of soil erosion and moisture depletion in our Nation's (and the world's) breadbasket.

Through the efforts of the USDA's Soil Conservation Service, State governments, and local conservation districts, the Great Plains program helps farmers, ranchers, and others, install conservation plans for their operating units through a program of scheduled technical assistance and long-term contractual cost sharing to bring improved economic and social stability to the Great Plains area.

The program works by: First, accelerating the conversion to less intensive use of cropland not suited for continuous cropping; second, preventing deterioration of crop and grazing land; third, promoting economic use of land; fourth, controlling or abating agricultural-related pollution by helping establish conservation systems to develop and maintain optimum agricultural stability and an improved environment for all the people.

ACCOMPLISHMENTS OF THE GREAT PLAINS PROGRAM

By 1980 farmers and ranchers in the Great Plains States had signed more than 58,000 program contracts covering more than 110 million acres. With SCS assistance, they had established more than 5 million acres of permanent vegetative cover, planted 64,000 acres of windbreaks, installed 98,000 miles of terraces, and installed 13,000 miles of livestock water pieplines. SCS work in the Great Plains has also included assisting landowners with increased irrigation efficiency, brush management, planned grazing systems, water disposal, and critical area treatment.

Mr. President, the successes of the Great Plains conservation program are so significant, that in drafting the 1981 farm bill the Senate Agriculture Committee included a program, the special areas conservation program, modeled after it. The special areas program extends to a national basis the Great Plains approach of targeting resources to the problem areas most in need of assistance.

THE CHALLENGE FACING CONSERVATION PROGRAMS

Mr. President, as we celebrate the anniversary of the Great Plains program, it is appropriate that we not only take a moment to reflect upon the program's many successes, but more importantly, that we look ahead to the behemoth task which lies before us.

Each year the American continent loses more than 6 billion tons of soil—enough to cover my entire home State of Kansas to a depth of three-quarters of an inch. Nationwide, America's farmlands are losing 5 to 9 tons of topsoil per acre per year. That is double the rate considered acceptable—and in some places, the erosion rate is 10 or 20 times as high.

Additionally, a council on environmental quality study reported this year that about 225 million acres of arid western land, an area about the size of the original 13 States, are undergoing severe desertification, that is, loss of underground water and high erosion that gradually makes the land unsuitable for cultivation.

MEETING THE CHALLENGE

Mr. President, clearly, the desertification and soil erosion rates confronting the farmland of our great Nation can no longer be tolerated. These losses pose a most serious threat to our Nation's economy and environmental well being. Although programs, such as Great Plains conservation, are making strides in protecting our most precious natural resource, our job is far from complete. If the United States is to remain the greatest agricultural producer in the world, we must place, protecting our great wealth of fertile, productive land at the forefront of our national attention.●

## A TRIBUTE TO ANDY

● Mr. EAGLETON. Mr. President, those of us who serve in the Senate tend to take the smooth operation of the institution for granted. When on rare occasions we do think about the daily operations of the Senate, we too often do so only to complain about the cost and the number of people involved. Too often, we overlook the extraordinary dedication and ability of our professional and clerical people who keep the Senate business moving in a timely way.

Harold Anderson, who recently retired as staff printer for the Governmental Affairs Committee, was such a person. Andy, as he was known to his friends and colleagues, came to Washington 25 years ago, after 4 years in the Army and 10 years as printer in Coral Gables, Fla. After brief stints working with the New York Times and Washington Post, Andy joined the Government Printing Office in 1956. While working at GPO for the next 19 years, he was detailed to the Supreme Court for 2 years and for the House Education and Labor Committee a year. Ten years ago, Andy was detailed to Senator Ribicoff's Subcommittee on Reorganization of the Government Operations Committee. When Senator Ribicoff became chairman of the full Government Operations Committee in 1975, Andy became the committee's printer.

Information is the lifeblood of the Senate, and Andy was a master at making it flow. No deadline or emergency was too unreasonable; he was available at any hour when committee staff people needed a committee print or a report prepared. His trademarks were impeccable work with extraordinary turnaround time, and unfailing good humor and cooperation.

Andy retired earlier this summer, and both committee members and staff who worked with him were grateful for the experience. He was always a consummate professional, and a constant reminder of the dedication and ability which many Senate staff people bring to their work.●

## THE NEW FEDERALISM WILL NEED INNOVATIVE PROBLEM-SOLVING TECHNIQUES

● Mr. DURENBERGER. Mr. President, for several months now political leaders from every level of government have been preoccupied with one concern: Redefining federalism. The goal is to shift power from Washington to governments closer to the people; the methods we have been discussing are threefold: Enacting block grants, lifting Federal regulations, and freeing resources from Federal taxation. The result will be a new order of federalism, with a different division of responsibilities between the States and the National Government, and more clearly articulated "spheres of influence" for each level.

Clearly, this reordering must be a top priority. Too much power is concentrated in Washington, but more importantly, that power has not been exercised effectively and many of the Nation's social and physical problems have not been resolved. But as we proceed to enact block grants, deregulate State and local governments, trim Federal budgets for grant-in-aid programs, and cut taxes, we must keep one important fact in mind: The new structure of federalism will not be effective automatically; along with the new order we must devise new approaches to resolving community problems.

Simply handing the problems over to "governments closer to people" will not rebuild decaying cities or relieve pressures of rapid population growth. Governors, State legislators, mayors and county officials will not be successful in overcoming the classic urban problems if they rely on "business-as-usual" approaches. And, after a period of time, when the public outcry becomes loud enough, local problems will be redefined as national in scope and legitimate for Federal assistance. If the changes we are designing now are to be lasting, they must be accompanied by innovative problem-solving techniques. As we go about our job of building a new federalism, let us keep in mind that the fundamental purpose is not to shift power from one level of government to another, according to an abstract principle of division of authority, but to offer a structure and some processes for dealing with problems effectively.

In this context, I direct the attention of my colleagues to an experiment in urban problem-solving that is being tested in the capital city of my own State of Minnesota, and in two other cities: Gary, Ind., and Columbus, Ohio.

The process is called negotiated investment strategy (NIS); it was developed by the Kettering Foundation and is being tested under the foundation's direction.

Basically, NIS is a way to establish coherent policies and allocate resources in local communities. It starts from a "bottoms up" approach: The focal point is the community with the problem. Federal and State officials, business and civic leaders are brought to the community where they negotiate agreements and commit resources to projects.

The NIS model, as developed and tested by Kettering, has some special characteristics. First, as I just indicated, it requires the participation of leaders who have the authority to commit resources. This ingredient seems self-evident, but lack of clout has been a barrier to problem-solving on too many occasions. All of us are familiar with the Federal regional official who attends local meetings and makes promises only to be overridden by a superior in the Washington office.

Second, NIS requires a new way of thinking about the resolution of community problems: As an investment, with long-term payoff, not a short-term, stop gap patching job. Kettering has found that when NIS participants think in terms of investments, their policy focus broadens and they consider a whole range of powers and management tools available to them: Regulation and deregulation, mandated standards and the relaxation of standards, self-help incentives, legal advocacy and taxation or tax expenditures.

Third, NIS, as the name implies, revolves around negotiations. These negotiations are formal, conducted, with the assistance of a professional mediator. Negotiating sessions result in consensus on priorities and commitments to follow through. Formal, written, binding agreements are drawn up and signed by the participants.

Finally, NIS involves the general public. The citizens have the opportunity to review the formal agreements and monitor subsequent performance.

NIS experiments have been underway for about 18 months. By the end of the first year, all three cities had reached agreement on priorities and commitments. and action on projects was beginning. In my own State, the city of St. Paul committed to three projects: Redevelopment of an older, underused warehouse district into a combination of residential neighborhoods, businesses, and entertainment facilities; development of a 250-acre energy park; and comprehensive development of the 17.5 miles of riverfront which winds through the city.

The negotiated investment strategy projects have not been completed, but the Kettering Foundation has already begun an evaluation. The experiments serve as a reminder that restructuring Federal-State-local relations will not necessarily resolve the housing, transportation, education, and other problems facing our communities. In addition to redesigning the framework for intergovernmental relations, we need to pay attention to new techniques for resolving issues within that framework. And, we must broaden the public decisionmaking system to include leaders from the private sector, not only the corporations with the money to invest but the nonprofits who, in so many cases, offer the social services we all rely on.

I ask that the attached documents be printed in the RECORD.

The material follows:

FEDERALISM: BACKGROUND PAPER NO. 1A

Federalism: Definition and Interpretations—". . . the history and concept of Federalism is a tangled mess of definitions, which mess is at once a function of founder, jurist, journalist, politician and political scientist."—Martin Landau

DEFINITION AND ROOTS

The term federal(ism) is derived from two Latin words, "foedue," meaning covenant, and "fides," meaning trust and faith.

Historically, the term "federal" and its derivatives have been used to express both a broad social concept as well as a particular mode of political and governmental organization.

In the broad social sense, these terms imply mutual recognition, obligation, commitment, cooperation, consistency, and reciprocity among individuals or entities.

In the more specific political and structural sense, the term federal has come to mean: ". . . a mode of organization uniting separate policies in an overarching political system to allow each to maintain its fundamental political integrity."—Daniel Elazar

The antecedents of modern "federal" relationships can be traced back to the 13th century B.C. attempts by the Israelites to unite tribes in an effort to maintain national unity. Subsequent developments stemmed from the defense-related alliances or "civil unions" established by Greek city-states (e.g., the Achaean League, 281–146 B.C.), the medieval leagues of Europe (e.g., the Helvetic League of Swiss Cantons, 1291–2) and the hierarchial corporate states and mercantile societies of the feudal German Empire which were based on contract relationships and related political mechanisms.

Where a single, strong sense of nationality existed, the central unit had greater powers and authority; where stronger, more diverse identities existed among constituent units, power, authority and independence were retained more fully in those units.

Although each of these eras and examples exhibited major differences in form and in the way in which power and authority were legitimized and established, each incorporated some expression of the dual theory of unity and separate identity of the constituent units.

MOTIVES FOR FEDERATION

The general historical motivation for establishing these relationships are still applicable today and include some combination of shared interest in:

(1) the expansion of social/political/economic influence;

(2) the control or protection against internal, domestic upheaval;

(3) the defense or protection against the threat of outside force or influence.

Prior to the American Revolution and formulation of the U.S. Constitution, most "federations" or "federal" systems exhibited several key limiting characteristics:

(1) central units were limited to acting only on the constituent units, not on individuals in society;

(2) central units dealt almost exclusively with issues external to the constituent units;

(3) constituent units were equally represented in the central unit.

These limitations generally reflected conceptual and practical difficulties in establishing a workable system of dual, institutional sovereignty, where historically sovereignty had been vested indivisably in the person of the monarchist head of state.

CLASSICAL DEFINITION OF THE "FEDERALISM" CONCEPT

Definitional terminology during the U.S. Constitutional Convention was somewhat confused, as it is today. In the Constitutional debates, the term "federal" represented a system in which the states maintained a more dominant, independent status. The competing concept was one of a "national" or "unitary" system in which states were subordinated to varying degrees to the national government.

The compromise arrived at in the Convention was described by Madison in Federalist 39: "The proposed Constitution . . . is, in its strictness, neither national nor a federal constitution; but a composition of both." (i.e. a compound system)

Following the development of the Constitution, the concept of "federalism" has become synonymous with the concept of American "dual federalism," denoting: ". . . a form of government in which two or more states constitute a political unity while they remain independent as to the control of their internal affairs. The similarity of this definition to 'dual federalism' is patent. Dual federalism specifies a fixed relationship between two domains of independent authority in the same territorial unit, each of which possesses an exclusive jurisdiction neither of which is subordinate to the other and neither of which can be stripped of its authority by the other. This is the classical concept, and it locks two states into a 'mutually exclusive, reciprocal limiting' relationship."—Martin Landau

The basic imperatives in this classical concept of "federalism" are a division of authority/power and the independence of participant units.

Despite the succinctness of this definition and its relative stability as an analytical tool and/or hypothesis in the academic community, it may be of limited value. This definition remains a theoretical concept that bears little relationship to the actual current practice of "federalism" in the U.S. and elsewhere and its Constitutional basis has been debated since 1787.

SOME CURRENT INTERPRETATIONS

Interpreters and historians are widely split in their view of the "federal" concept and its evolution and practice. Many attempts have been made to distinguish between and justify various interpretations of the "federal" principle(s) in theory and practice. In general terms, three basic outlooks are still prevalent among academics, politicians and administrators:

I. FEDERALISM AS A STEADY-STATE END IN ITSELF—CONSTITUTIONAL DUAL FEDERALISM

Some observers are adamant that the classical "dual federalism" was, in fact, practiced at least through the Civil War, if not up to the Depression. During this time it is felt that state and federal roles and responsibilities seldom conflicted or overlapped until the national government began to preemptively assume historically state and local functions. This view implies that basic Constitutional principles of limited government and limited federal power have been severely violated, and, since the problems which gave rise to centralized national powers (Depression, World Wars and gross social inequities) may no longer exist, that the centralizing process should be drastically reversed. Implied in this view is the need to return to a relatively highly structured system of exclusive state and national roles based on a strict interpretation of both Constitutional intent and historical practice.

Alternatives to this view share a common premise that the Constitution, if relevant and clear at all, is not and was never meant to be proscriptive, but is open-ended and permissive in character. These interpretations suggest that the primary concern of the Founding Fathers was with establishing a practical, representative governmental structure. In this context, "dual federalism" is viewed only as a mode to achieve this end, of secondary importance in the debates and of limited relevance now since the Constitution is admittedly vague and obscure on the assignment of specific responsibilities among levels of government.

II. FEDERALISM AS SHARING

One alternative view holds that pure "dual federalism" never in fact was practiced; that almost from the outset, relations between the U.S. national and state governments were characterized by cooperation, sharing and overlap to various degrees.

This view implies that a return to a strict 'dual' system is not warranted historically, either through Constitutional language or past practice. Rather, federalism is best characterized as a matrix of shared responsibilities and not a hierarchial system. This view does allow, however, for some sorting out of roles and responsibilities without the necessity of totally reversing the highly cooperative and collaborative nature of present intergovernmental relationships.

III. FEDERALISM AS A DYNAMIC PROCESS

A second alternative view suggests that even if the Constitution and earlier governmental relationships were based on a clear model of "dual federalism," conditions which characterized that earlier political setting (a remote, agrarian society with little need for governmental intervention, generally), have changed so drastically and irreversibly that the relevance of the classical model today has been lost.

Consequently, a wholesale return to the "dual federalism" model is highly inappropriate to our present needs and circumstances and that while sorting roles and responsibilities may be possible, no static relationships or divisions of power are likely to survive or remain effective. The emphasis implied is one of improving policy-making and administrative processes.

". . . every realist should see that federalism is a wonderfully loose garment that allows the American system to seem properly dressed no matter what hodge-podge of arrangements the governmental apparatus is pushed into."—Frank Trippett

"Federalism . . . its future rests with those who can resist the urge to tidy the matter."—Rufus Davis

One of the factors that has given rise to these differing views is our somewhat contradictory adherence to an evolutionary mode of analysis while at the same time, as a society, we maintain a loyalty to an enduring but questionable mechanical mode.

AGREED ON NEED TO REVIEW FEDERAL AND CONSTITUTIONAL PRINCIPLES

Despite these divergent interpretations, the ineffectiveness, inefficiency and lack of accountability of our present federal system are acknowledged by virtually all observers. Academics, politicians and administrators at all levels are increasingly demanding a fundamental review of the basic principles underlying our federal system.

"The understanding of and commitment to federal principles in both their social and political aspects have undergone substantial erosion in the twentieth century."—Daniel Elazar

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PROSPECTUS: SYMPOSIUM ON U.S. FEDERALISM

INTRODUCTION AND PURPOSE

The current budget and tax debates in Congress and emerging shifts in the philosophy of government evidenced in the 1980 election have seriously called into question the principles and practices of our federal, state and local intergovernmental system.

Over the past twenty years, a largely unrestrained federal government has exploded into over 500 assistance programs and 1,200 regulatory mandates that have been directed at or imposed upon every unit of state and local government and much of the private sector. At each level we have badly blurred public and private roles and the division of authority and responsibility between levels of government. The result has been increased ineffectiveness, inefficiency and a loss of accountability which frustrates the ability of both the public and private sector in meeting critical local and national goals.

Although detailed analysis of the intergovernmental system has proceeded along a number of fronts in recent years, it has been handicapped by divergent and largely unresolved practical and philosophical perspectives tailored to narrow and diverse audiences.

It has now become critically important to undertake a broad-ranging review of our federal, state and local system, its basic principles, its evolution, current conditions and most importantly, the prospects for constructive change. Such a background is fundamental if we are to give proper consideration to the myriad proposals now being made to address these problems.

The three day symposium outlined below is intended to engage a wide audience in an attempt to promote a broader understanding of and commitment to the basic principles of American governance that have been so badly eroded in recent years.

The primary premise of the symposium is that no single philosophy or perspective, past or present, is likely to provide a fully acceptable frame of reference; historical principles, past experience and current visions all provide necessary insights which need to be articulated and discussed.

TIME AND LOCATION

The symposium is tentatively planned for mid-to-late August, to be held at the Spring Hill Conference Center or a similar facility.

FORMAT AND SCHEDULE

A three day retreat is proposed, structured around:

(1) Short formal panel presentations by a range of expert scholars and commentators, based on previously prepared and distributed background papers, etc.;

(2) Moderated discussions among panelists and a core group of intergovernmental professionals;

(3) Open discussion and question sessions involving the entire audience of symposium participants and observers.

PARTICIPANTS

Participants are expected to include:

(1) 10–15 panelists and speakers, including the foremost academic scholars, Congressmen, governors, state legislators, mayors, county officials, administrators and journalists;

(2) 20–30 participant professionals forming a core discussion group, including key Congressional staff members, federal agency officials, state and local government representatives, public interest group representatives, public policy organization spokesmen, etc.;

(3) 50–150 local and midwest participants from government, business, industry and the general public, forming a daily audience.

ORGANIZATION AND CONTENT

It is anticipated that the daily panel sessions will include discussions of:

(1) The Constitutional Basis of "Federalism," (i.e., Founders' motives and principles; governmental purpose; division of powers; interpretations and current relevance, etc.);

(2) Cross-national Experiences in Federalism, (i.e., History, principles and practice in selected countries: Canada, West Germany, Australia, India, etc.; relevance to the U.S.);

(3) American Federalism Over the Past Twenty Years, (i.e., motives, philosophies, successes and failures of federalism under the New Deal, "Creative Federalism" of Johnson/Kennedy, "New Federalism" of Nixon. "Cooperative Federalism" of Carter);

(4) Overview of Current Federalism: Issues and Problems, (i.e., intergovernmental overload and loss of restraint; fiscal, regulatory and judicial dimensions; current analyses and prescriptions, etc.);

A. Specific Issues: Fiscal Federalism and the Regulatory Environment, i.e., balancing revenues and needs; equalization and disparities; objectives and mechanisms of distribution; alternatives to public service delivery; regulation, enforcement and accountability; current budget and regulation);

B. Specific Issues: The Courts and Federalism, (i.e., judicial activism; grant law and national purposes; trends and major precedents, etc.);

C. Specific Issues: State, Regional and Local Relationships, i.e., State constitutions and statutory requirements; constraints and problems; capability and capacity; case studies in accommodation, including the Twin Cities, etc.);

(5) The Future of Federalism, (i.e., governmental purpose and sorting out roles; decision criteria; devolution vs. decongestion; private role; transition and support, etc.).

*Symposium cost estimates*

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| Travel (20–30 panelists and core group at $300 per) | $6,000–9,000 |
| Conference facility, food and lodging (20–30 people at $63/day | 3,800–5,700 |
| Lunch and coffee for audience participants (50–100 at $16/day; optional/personal | (2,900–5,800) |
| | 9,800–14,700 |
| Total | (12,700–20,500) |

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## THE SERIOUS PROBLEMS OF THE GOVERNMENT'S RENTAL BUSINESS

● Mr. MOYNIHAN. Mr. President, the week of July 12, the Scripps-Howard newspaper chain published a six-part series on waste in the Federal Government's rental of office space. The series, by Mr. Gene Goldenberg, fastidiously and cogently documents questionable practices in the General Services Administration's Public Buildings Service, and explains the inherent wastefulness of disproportionate reliance on renting to accommodate Federal employees.

Mr. Goldenberg reported instances of rented offices remaining unoccupied for years while full rent was paid on them, of extensive and expensive improvements to rented buildings paid for with Government moneys, and of lucrative Government leases being awarded with little or no—or artificially restricted—competitive bidding.

Mr. President, although much of the detail in Mr. Goldenberg's articles is original, the essential problems he points out will not surprise those in this body who have followed hearings and reports of the Committee on Environment and Public Works. For several years, other members of the committee and I have been railing about the scandalous waste of tax dollars consumed in rental of Federal office space.

It was in response to a most peculiar lease proposal of the GSA—one having to do with the offices of one of our most important intelligence agencies—that I proposed, and the committee agreed to, a moratorium on leasing and other authorizations under the public buildings program. In investigative hearings in 1979, our committee singled out the leasing program for criticism, for many of the same reasons highlighted by Mr. Goldenberg. We sent a number of proposed leases back to GSA for review by

the agency's Inspector General, who told us that leasing activities were one of his highest investigative priorities.

Finally, we proposed in the 96th Congress and again this year, legislation to reform the leasing practices of the GSA and gradually reduce the Government's disproportionate reliance on rented office quarters. In that legislation, we were twice joined by overwhelming majorities of the Senate.

As I have said before in this Chamber, the public buildings program is among the most mundane, albeit essential, affairs of government. Its oversight and reform are not the sort of endeavors one undertakes with the expectation of garnering votes or publicity. Yet it is the sort of business that the American people ought to know about, and we are in the debt of the Scripps-Howard chain and Mr. Goldenberg for bringing the serious problems of the Government's rental business to the attention of the public.

I ask that articles be printed in the RECORD.

The articles follow:

[From the Pittsburgh Press, July 12, 1981]

WHITE HOUSE GARAGE MODEL OF U.S. WASTE

(By Gene Goldenberg)

WASHINGTON.—Ronald Reagan could launch his war on government waste right in his own garage.

The General Services Administration, the federal government's giant housekeeping agency, is spending $239,000 a year to rent a run-down, 60-year-old garage for the presidential motor pool and State Department vehicles.

That's nearly $400 a month for each of the 50 vehicles kept in the four-story building a mile from the White House. A parking space in commercial garages a block from the White House goes for less than $100 a month.

The White House garage is just one example, and a small one at that, of waste and mismanagement which led to the investigation of the largest rental program in the world—the leasing of offices, computer centers, laboratories, garages and storage space by Uncle Sam.

The federal government this year will spend $680 million to rent 90 million square feet all over the country—equal to all the office buildings in midtown Manhattan—to shelter 420,000 employees, half the federal work force, who cannot squeeze into buildings the government owns.

There are two basic problems in all this renting. First, much of the money is wasted—GSA auditors estimate $100 million or more this year alone.

That's money "thrown down the drain," says Howard Davis, GSA's chief auditor.

Secondly, even the rent spent efficiently is partly wasted because the government could save much of it by building or buying its buildings.

Yet, the leasing of space has continued to grow over 15 years of Congress and presidents unwilling to put up money to build anything.

It looks better in a budget to show $1.5 million to rent a building each year rather than $15 million to build it, though the cost to lease that building over a typical 20-year period may top $30 million.

"All the government has left in the end is a drawer full of rent stubs," said Sen. Daniel Moynihan, D-N.Y., a key sponsor of legislation to curb the leasing spiral, which is accelerating with inflation, tight commercial rental markets and mushrooming utility and tax rates.

The government's annual rent will top $1 billion within the three years, even with expected decreases in the total amount of space leased. The rent is projected to exceed $3 billion 10 years from now.

A two-month Scripps-Howard probe dug up previously secret government reports using the Freedom of Information Act, examined GSA computer files and interviewed dozens of specialists in and out of government. It found that:

GSA officials don't know for sure how much leased space they control at any given time.

Millions are spent each year to rent empty offices.

Millions more taxpayer dollars go to improve, renovate and repair privately owned buildings, in some cases doubling a property's value, with no attempt to negotiate better rent rates or guarantees of lease renewals.

Not surprisingly, landlords presented with such government generosity often respond by raising the rent sharply at their first opportunity.

Despite competitive bid laws, hundreds of leases are signed each year after the government has negotiated on a "sole source" basis with only one potential landlord. And improvements to rented buildings almost always are done by the owner at government expense—often with no effort even to check cost figures or obtain comparable prices.

Taxpayers often pay for electricity and other utilities used by private tenants of buildings in which the government rents space.

GSA officials routinely agree to rent increases based on unaudited claims of rising expenses by private landlords.

Supposedly "firm" long-term leases signed by the government often contain clauses letting landlords cancel after a few months and then demand higher rents.

Investigators in the 2-year-old inspector general's office at GSA say they are certain at least some of the waste goes to criminal fraud. But they admit they are only starting to turn full attention to the rental program because their earlier efforts focused on other abuses at GSA.

A lawyer with the joint GSA-Justice Department task force that uncovered bribery and fraud in other GSA programs predicts it will be difficult to prove fraud in the leasing program.

"Proving that anyone did anything criminal may be impossible since GSA's leasing practices are so confusing and poorly drawn that someone who wants to fudge a leasing contract can justify just about anything he does," the lawyer explains.

GSA officials, faced with adverse publicity in earlier scandals and trying to avoid similar problems in the leasing area, have responded with constantly changing rules and regulations that only confused the rental situation more.

"The leasing program . . . has deteriorated to the point where it is one of the most serious problems facing the administrator of GSA," concluded a committee of top GSA officials last December in an internal report to former Administrator Rowland Freeman.

Despite a doubling of the amount of space leased by the government over 15 years, there has been little comparable increase in the manpower and resources of the rental program. Today, only 121 leasing specialists nationwide are asked to solicit offers of space, negotiate and administer more than 5,440 leases, leading in some instances to individual caseloads of 50 or more leases.

These $25,000-per-year leasing specialists are not given adequate training and they often find themselves across the table from high-powered teams of lawyers, real estate specialists and accountants negotiating leases worth tens of millions.

"We frequently feel outgunned," admits Kenneth Perrin, chief of the leasing unit in the Washington area.

Says former GSA Administrator Jay Solomon: "It is incredible that we have GS–12s (the leasing specialists) making major decisions on multimillion-dollar deals."

Morale is so poor that a third of the leasing specialists quit each year, further contributing to the lack of experienced government negotiators. In some situations, major leases are arranged by trainees. Clarence Lee, who heads one of GSA's 11 regional offices, says his corps of 14 leasing specialists has turned over completely in 18 months.

Clearly, not all the problems are in GSA. The agencies that GSA rents space for often make costly demands, changing office leasing plans in midstream or refusing to accept space GSA has rented.

GSA officials complain that Congress and the White House have added uncounted millions to the rental costs with "social programs" and by acting too slowly in approving specific lease acquisitions.

The "social programs" include renting more expensive downtown space to revitalize inner cities, requiring facilities for handicapped people in leased buildings, small-business subcontracting, special consideration for historic buildings and a certification by building owners that they are not polluting the air or water.

Specialists say such requirements often add $1 to $2 per square foot in rent costs.

Public Works committees of the House and Senate, to which GSA submits any leasing action above $500,000, have historically been slow to give a go-ahead. Time is money, especially in commercial real estate markets where rents are skyrocketing.

Just last month, the GSA leased a new building here for $14.60 a square foot plus electricity. That building, with 262,500 square feet, had been offered during construction for $11.50 a square foot plus electricity but GSA could not accept because it had to get congressional authorization. The delay will cost the taxpayers $8 million over the 10-year lease.

"The cost of delay is enormous. The economics of time are the most expensive thing we're involved in," agrees the new GSA administrator, Gerald Carmen.

Congressional experts, particularly in the Senate, counter that GSA has traditionally waited until the last minute to ask for rental authorization and too often has failed to document adequately the need for new space.

"Every time we examined one of their requests it fell apart in our hands," claims Steven Swain, a Senate Public Works Committee staffer.

Things got so bad the Senate panel at one point refused to approve anything but "emergency" requests from GSA. And then when several of these "emergencies" came up bogus, the committee last year washed its hands of the rental approvals altogether.

GSA sidestepped the Senate committee's boycott by arguing that the Senate's appropriating of funds for leasing constituted an effective authorization to enter rental agreements. The House committee still insists on approving each large rental action.

"It's pork barrel stuff, pure and simple," says one top GSA official who asked not to be identified. "Since there is no new money for federal building construction, the House members want to have a say in where the space is leased."

Congressional efforts to curb leasing costs with new buildings have been stymied by a dispute between the House and Senate over how the new projects should be approved. Neither is the Reagan administration overly warm at this point to a new public works program that might hinder the president's efforts to balance the budget.

Most GSA officials, however, are enthusiastic about such a program. Says A. R. Marschall, GSA's former commissioner of public buildings and the man in charge of

both owned and leased government space until his resignation this month:

"We're putting the money in the wrong place. We should be building more buildings and leasing less"

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[From the Memphis Press-Scimitar, July 14, 1981]

RENTING EMPTY OFFICES COSTS UNITED STATES MILLIONS

(By Gene Goldenberg)

WASHINGTON.—Each year, the federal government squanders several millions of taxpayers dollars renting offices that no one uses.

The offices are supposed to be used by some of the 420,000 federal workers for whom, allegedly, there is no room in buildings owned by the government.

But because of confusion, mismanagement and other bureaucratic bungling by the General Services Administration, which runs the federal government's massive rental program, the taxpayers end up paying rent on acres of vacant floor space every year.

No one knows precisely how much unoccupied space the government is renting at any one time, largely because GSA's record-keeping apparatus repeatedly has failed, for various reasons, to keep track of the problem. However, an internal investigation by GSA's Office of Inspector General identified at least 1.5 million square feet of unoccupied space in 77 private buildings across the country.

Some of these rented office buildings stood vacant for as long as two years. GSA investigators estimate the cost of renting those empty offices exceeds $10 million a year.

In some cases, GSA officials add, unused offices have been rented even while there was vacant space in nearby federal office buildings.

"GSA cannot effectively manage leased or government-owned buildings because it has no way of knowing how much space is under its control, how much is assigned or how much is available for occupancy," the inspector general's internal report concluded.

That report, which had never been made public, is just one of the many internal documents obtained during a two-month Scripps-Howard News Service investigation of GSA's troubled rental program—a program so permeated by mismanagement and potential fraud that GSA's own auditors estimate $100 million in rental payments will be wasted this year alone.

Perhaps nowhere is the waste so obvious as when GSA pays rent for unoccupied space. The reasons for this squander vary: incompetent GSA employees, convoluted procedures and faulty record-keeping, delays in renovations that are needed before space can be occupied, disputes with the federal agencies which are supposed to use the rented offices.

"There is nothing more ridiculous than the specter of the federal government paying rent for offices it does not or cannot use," says a top GSA official who spent several years trying to reform the rental program before quitting in disgust.

The situation has become so muddled that GSA last year asked Congress for permission to renew a lease on three floors of expensive New York City office space so that 350 federal workers would not be evicted. It turned out, however, that no one was in danger of being thrown into the street because no one but cockroaches had been occupying the three floors for almost two years while the taxpayers forked out more than $500,000 in rental payments.

GSA's explanation for that particular snafu: The GSA employee who prepared the request for congressional approval "believed" the space was occupied.

Even when a leased building is being used by federal workers, it often is so underutilized that much of the rent effectively is being paid for empty space. In one case, a building near Baltimore rented to house almost 1,000 National Aeronautics and Space Administration employees actually was used by fewer than 220 workers for over five years. GSA investigators estimate the cost to the taxpayers for leasing that unused space exceeded $1.1 million.

Quite often, GSA is not solely to blame for the rented space going empty.

Other federal agencies usually have their own strong ideas about where their offices should be and have been known to take protests all the way to the White House when told to move as part of GSA's plans for more efficient space management.

But critics charge that GSA, which has the authority to dictate space use within the framework of requests made by other agencies, too often is unwilling to tell other federal agencies what to do.

"GSA is an agency that does nothing but roll over to the rest of the federal bureaucracy," says Bob Peck, who has investigated the leasing program for the Senate Public Works officials confirm that assertion.

"If we don't take care of the needs of our clients (other federal agencies), then there is little reason for our existence," says Jack Galuardi, deputy commissioner of the GSA's Public Buildings Service, which runs the leasing program. "They're the ones we're trying to satisfy out there."

When GSA tried to relocate employees of several federal agencies as part of a plan to consolidate certain Labor Department functions at one rented building in downtown Washington, for example, all mayhem broke loose. Officials of four different agencies vehemently protested the move—some taking their appeals to the White House.

As a result, several floors of the building were vacant for more than two years at an ultimate cost to the taxpayers of $2.5 million.

And then there are times no one wants the space GSA arranges, such as when GSA contracted to lease a building that was to be built by a private developer in a run-down section of southwest Washington close to railroad tracks, ghetto neighborhoods and several industrial facilities.

The Securities and Exchange Commission, which had asked for a new headquarters building, refused to move in. GSA then tried to persuade the Agency for International Development and segments of the Treasury Department to take the building, but they also balked.

Even GSA's own employees refused to move into the building, inauspiciously located at a place called Buzzard's Point.

Finally, after GSA had paid $5.4 million in rent, elements of the FBI and the Defense Department (whose employees, one wag noted, are used to taking orders) occupied the facility.

Because of such problems, dozens of federal agencies have from time to time asked Congress for permission to do their own leasing. While Congress has gone along with those requests in selected instances, so far only the Defense Department, CIA and Agriculture Department have been granted broad authority to rent their own space.

Some agencies have taken matters into their own hands, however. In Amarillo, Texas, officials of the Bureau of Reclamation simply went out and leased their own space after years of trying to get GSA to correct alleged fire safety "and other building deficiencies" in a 60-year-old converted hotel known as Herrins Plaza. The space GSA had rented for bureau workers has been vacant for two years at a cost of over $200,000.

GSA officials have finally given up trying to get the old hotel's owner to make the necessary repairs and are moving out the remainder of the federal tenants. GSA estimates it will cost up to $10 million to cancel the remainder of the lease, which runs until 1989.

"For all practical purposes, there are no controls over what goes on in the leasing program," charges Bertrand Berube, GSA's director of acquisition policy and a man who has butted heads with his GSA superiors many times over his proposals to reform the rental program.

"The taxpayers would be better served if we decided not to clean a few toilets in federal buildings and (use the money to) put some good people in charge of arranging a $40 million lease."

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[From the Pittsburgh Press, July 14, 1981]

U.S. PAYS REMODELING BILL, LANDLORD PROFITS

(By Gene Goldenberg)

WASHINGTON.—Over the past 11 years, the federal government has spent more than $7 million remodeling and improving four office buildings near Baltimore's Friendship International Airport.

These expenditures, which have included installation of sophisticated electronic equipment and computers, were judged in the national interest because the buildings are used as offices for the Pentagon's super-sleuth National Security Agency.

The problem with this expensive and continuing alteration is that the buildings are not owned by the federal government. They are rented for $8 million a year from a group of private developers, three of whom were convicted along with former Maryland Gov. Marvin Mandel on mail fraud and racketeering charges.

The General Services Administration, manager of the federal government's massive rental program, certainly can't be held responsible for the developers—all law-abiding citizens when the leasing deals were first arranged—subsequently landing in jail.

But the fact that the government rents rather than owns facilities occupied by its super hush-hush intelligence agency is symptomatic of the problems besetting GSA's leasing program.

And when GSA pours millions of dollars into highly specialized improvements of privately owned buildings, the landlord has the government over a barrel when it comes time to renegotiate or renew the lease.

"The government is placed in a very poor negotiating position because the lessor knows that he can demand and receive an exorbitant rental as the government would incur higher cost by moving to another leased location and installing the special-purpose features again," states an internal report by GSA's Office of Inspector General.

A two-month Scripps-Howard News Service investigation of GSA's $680 million annual rental program found that such major taxpayer-financed improvements of privately owned office buildings is just one way the government wastes what GSA auditors estimate is $100 million a year renting space.

Not only does the government end up paying higher rents as a result of renovation projects, which in some cases have doubled the value of rented buildings, but the taxpayers are left with nothing but expenses when the offices finally are vacated by government workers.

GSA this year has budgeted $180 million for alteration and improvements of both leased and government-owned buildings. But even GSA officials cannot pinpoint the amount spent on rented properties since the agency pays for these improvements out of a variety of line-item budget accounts.

But the congressional General Accounting Office, in a survey of four of GSA's 11 regional offices, identified $18 million in alterations for only 21 rented buildings over a 30-month period. That money went for everything from computer facilities and pistol ranges to repair of sidewalks and fences.

Among the problems noted by GAO and GSA's own investigators:

Owners of the private buildings almost always are permitted to contract for the alteration work on a sole-source basis, with little effort ever made even to determine whether the cost of the work is reasonable.

The same GSA officials who contract with owners for the work also approve payments and inspect the final product. In many cases, final inspections are not even made and cost figures are approved after the work is done.

Major and costly alterations are performed at taxpayer expense with no effort to obtain lease-renewal guarantees or to negotiate for rent reductions as a result of improvements made to the owner's property.

The government frequently pays rent while renovations are under way and the buildings are not usable.

The Bureau of Alcohol, Tobacco and Firearms' laboratory is a good example. When that agency had to move its lab from a downtown Washington building because its activities posed a danger to other workers, GSA leased a building in suburban Rockville, Md., and then spent $2.55 million to convert it into a lab facility.

The total alterations—plus $407,000 in rent paid while the building was being renovated—almost doubled the appraised value of the building. GAO determined later it would have been cheaper in the long run to construct its own building, or else contract for the private construction of a building tailored to the government's needs.

When GSA put $600,000 into alterations of a building it rents in San Francisco, cost estimates were prepared after the work already had been performed by the owner. GSA officials later admitted that the contracting officer simply accepted all the owner's cost figures, including such specific items as "plants—$76,055."

And despite the fact that the government's lease on a building in suburban Virginia had only a few months to run, GSA officials approved a $161,000 installation of computer equipment for the Patent Office, which occupied the space. When the lease came up for renewal, the building owner demanded and got almost a 50 percent increase in rent.

"One of the largest problems we've found is that alterations are done without any effort to predetermine the prices," says Fred Wendehack, chief of inspections in the GSA Inspector General's Office.

He adds that the major alterations performed on buildings with short-term leases "raise serious questions about whether the government should be renting that space to begin with."

The GAO repeatedly has criticized GSA for failing to consider the alternative of government construction of a building before embarking on major alteration of private properties. GSA officials, many of whom would prefer to be constructing federal buildings, counter that since Congress and the White House have been increasingly reluctant to appropriate funds for construction, there is no alternative but to lease and renovate.

But GSA's inability to use government construction as an alternative to renting puts the giant federal housekeeping agency in an untenable position when bargaining with landlords over rent, particularly in places like Washington and Los Angeles where rental markets are very tight.

"They know we will have to rent from them, so they can demand and get much higher rents than if we had some other way of obtaining the space," complains one GSA leasing specialist.

Shortly after he took office, the new GSA administrator, Gerald Carmen, learned of a lease his agency had just signed for an eight-story building here. Carmen recalls that his first question was how much it would have cost for the government to build or purchase a similar structure.

The answer, according to GSA officials: about $25 million for a building with an expected life span of 30 years compared with the $40 million to rent it for 10 years.

One of the ways GSA has tried to cut the price tag of alterations to rented properties is to amortize the costs of improvements over the term of the lease. For example, the $239,000 a year GSA pays to rent a 60-year-old garage for the White House motor pool includes $200,000 in amortized costs the landlord will incur to fix longstanding fire safety problems and to install a new car elevator.

Critics charge, however, that such tactics are nothing but bookkeeping flimflammery. Just like the rental costs themselves, which look far more favorable on a annualized basis in the budget figures than up-front construction funding, the amortized lease payments are seen as a way of hiding the costs of improvements to rental properties.

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[From the Pittsburgh Press, July 15, 1981]

U.S. MAKES OFFER LANDLORDS CAN'T REFUSE

(By Gene Goldenberg)

WASHINGTON.—When federal officials in Dallas were forced to vacate a federal building there because of bacterial contamination of the air conditioning system, they thought they had found a perfect solution.

Across the street, a private developer was just completing a new building known as Main Tower. It contained the needed space. So the General Services Administration, which manages the federal government's massive rental program, arranged in early 1975 to lease most of the building for 10 years at a total cost of over $20 million.

Everyone was happy. The government had new offices for some 1,500 federal workers. And the building's owner, B. W. Morris, a Cincinnati-based developer, was temporarily able to stave off financial problems caused by the until-then lack of tenants for his new building.

The catch was that no other landlord got to bid on the largest rental GSA had ever arranged in Dallas, and there was space available in other private buildings at comparable or lower rates. And nobody can explain why GSA agreed to pay Morris a rent 25 percent higher than he had been asking only months earlier.

The Main Tower case is typical of the noncompetitive bidding that permeates GSA's rental program—a program so fraught with mismanagement and potential fraud that GSA's own auditors estimate $100 million of the $680 million spent this year on leasing will be wasted.

A two-month Scripps-Howard News Service investigation of the rental program also found that even when there is competitive bidding for the government's leasing dollars, GSA routinely rejects seemingly attractive bids for arbitrary reasons and signs leasing contracts not necessarily in the government's best interest.

The situation is so bad that the congressional General Accounting Office found there was only one bid considered in 55 percent of the new leasing agreements it studied. In one-third of those "sole-source" negotiations, the government ended up paying a rent that exceeded the appraised fair market rental, GAO said.

Being the only landlord to bid on a government rental has hidden benefits, since government tenants rarely move once they put hundreds of thousands of dollars—and sometimes millions of dollars—into altering leased space. More than 75 percent of the lease contracts GSA signs today are actually renewals or extensions of existing rental agreements—and 95 percent of those renewals are negotiated with the present landlord after little or no effort to seek competing offers.

All of this is possible because, unlike other government procurement activities, there are no regulations covering the leasing process.

Instead, GSA officials operate under often vague and constantly changing "policies" and "recommended procedures" that permit broad discretion in individual cases.

Private landlords who want to rent space to the government don't submit sealed bids. Instead, they make offers that are then evaluated based on the government's needs. If GSA leasing officials think an offer fits the bill, this leads to negotiations for a final price.

"For all practical purposes, there are no real controls over the leasing process," says Bertrand Berube, GSA's director of acquisition policy. "The leasing specialists can just about do whatever they want free of any fear that they will be punished."

Documentation of leasing deals costing the taxpayers tens of millions of dollars is often so poor that it is impossible to determine why decisions were made. In the Main Tower case, for example, Dallas GSA officials could not explain why they never obeyed an order to seek additional competition for this lease.

"It was an emergency situation and we had to get people out of the federal building because of the air conditioning contamination," explains the assistant regional GSA administrator, Donald Weingarten, who was not in Dallas when the Main Tower lease was signed.

"Unfortunately, we have a history of not documenting why decisions were made in such panic situations."

For his part, the building's owners says, "I wish I'd known I was the only one bidding for that lease." Morris claims that GSA's refusal to pay for rising utility rates forced him to declare the building bankrupt in 1979. He sold it to two California couples last year and, in concert with the new owners, is asking the U.S. Court of Claims to order GSA to make good his alleged losses.

GSA officials frequently find themselves in a bind when federal agencies requesting rented offices attach stipulations regarding location, size or specialized needs that only one building or one developer can fulfill.

The landlord for an Austin, Texas, building rented by GSA to house an Internal Revenue Service data processing center, for example, was the only one to get a shot at a subsequent $11 million lease for space rented to the Veterans Administration because the VA insisted on being next door to the IRS. Ironically, in a series of unexplained transactions that raised eyebrows at GSA, the Austin IRS–VA complex later was sold to the Teamsters' Central States Pension Fund, the subject of a long-standing IRS investigation.

In another case, GSA officials rejected 14 offers because the tenant agency had insisted that each floor of the rented building contain 14,000 square feet, although no reason was ever given for this request. The eventual landlord charged a rent far higher than many of the unsuccessful bidders.

When the office rental market is tight, as it is here in Washington where 30 percent of GSA's rented space is located, even the best efforts to seek competition fall short. Despite advertising and solicitation for bids on two recent leases here, including one that will cost the taxpayers more than $40 million over the next 10 years, only one bid was received in each case.

GSA officials complain that some private building owners don't want to rent to the government because of the red tape and delays involved. Many developers agree.

"Our members usually will rent to GSA only as a last resort," says Lisa Boyd of the Building Owners and Managers Association,

the lobby for commercial real estate interests here.

But when GSA officials tried to eliminate some of that red tape through a "fast track" program for smaller leases, the effort met with disaster. Not only did it take just as long to arrange the leases, but competition was even more sparse because GSA leasing officials ignored some of the usual requirements for bid solicitations.

In Albuquerque, N.M., for example, GSA investigators found that eight of the smaller "fast track" leases were arranged with no effort to seek competition. Similar instances were found in several other cities.

GSA officials also say they must seek long-term, fixed-price leases, and that discourages competition because landlords are leery of being caught short in rapidly escalating rental markets.

This situation, according to investigators, has led to leases that unnecessarily favor the landlord and limits efforts to audit claims of higher operating costs when they are submitted to GSA for payment.

Frequently, supposedly "firm" 10-year leases contain a clause permitting landlords to cancel after only a few months. In Dallas, one building owner exercised that right and then raised the government's rent 134 percent at an additional cost to the taxpayers of $1.8 million.

At the same time many landlords try to make up for below-market governments rentals by socking it to GSA for claims of higher quality, tax and janitorial costs. GSA auditors, who only recently have systematically begun examining such "escalation" claims, have found numerous cases of government overpayments totaling millions of dollars that were approved without question.

In one claim, a Kansas City landlord asked that the rent be hiked $8.3 million over five years to cover higher operating costs. But when auditors checked his figures, they rejected over $4 million of that amount and found that the government already had paid the landlord almost $2 million more than he was entitled to under the lease.

Most of that overpayment can't be recovered, say the auditors.

"We've been pushing to audit more of these escalation claims, but we've met with great resistance within GSA," says William Fleming, who heads the team of auditors responsible for the leasing program.

Despite the complaints of some private developers, many others have found it highly profitable to deal with the government.

"Why shouldn't they?" asks one top GSA official. "We give them everything they want."

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[From the Pittsburgh Press, July 16, 1981]

SHREWED HANDFULL RAKES IN U.S. RENTALS

(By Gene Goldenberg)

WASHINGTON.—Most taxpayers never heard of Dr. Laszlo Tauber.

But at the General Services Administration, the federal government's huge housekeeping agency, mentioning his name causes folks to sit up and pay attention.

Tauber, an Arlington, Va., surgeon and self-made real estate millionaire, is king of the hill in renting office space to the federal government.

He owns or controls almost 3.5 million square feet of office leased to the GSA—the equivalent of the commercial office space in downtown Miami, and just under 4 percent of the 90 million square feet of offices the government rents.

He is among a handful of private developers who repeatedly have underbid the competition—or obtained leases without competition—to become major landlords for the 420,000 federal workers housed in rental offices around the country.

The landlords include Washington-area developers such as Tauber, the Charles E. Smith Companies and the Donohoe Construction Co., as well as individuals and companies such as Franklin Haney of Chattanooga, Tenn., and Atlanta; and the Trammell Crow Co. of Dallas.

They also include foreign governments and labor unions.

The government of Kuwait owns one of the largest buildings leased by the GSA here, and the Teamsters Union Central States Pension Fund owns a large complex of offices in Austin, Texas, rented for the Internal Revenue Service and the Veterans' Administration.

How these rental kings have been so successful was part of a two-month Scripps-Howard News Service investigation of GSA's massive rental program, which is so fraught with mismanagement and potential fraud that GSA's own auditors estimate that $100 million of the $680 million the government will spend on renting offices this year will be wasted.

The picture that emerges is one of shrewd businessmen intimately familiar with the inner workings of the GSA, usually because they have hired former top GSA officials to arrange their deals.

More often than not, these successful landlords have put together competition-beating development deals by obtaining land or existing buildings at bargain-basement prices and then using government leases as collateral to finance their projects at below-market interest rates.

Despite charges from their competition that political connections are the key to success, intensive investigations of several large landlords by the GSA's inspector general have revealed no illegalities.

"Knowing the right people hasn't hurt some of these guys, but neither has it been the reason they got the contracts," explains one federal investigator.

Still, controversy surrounds some of these rental kings. Haney's deals with the government have been questioned because he is a former candidate for governor of Tennessee and a major Democratic fund-raiser.

Haney almost always gained control of rented by the government in the Southeast, including buildings in Atlanta; Memphis, Tenn.; Chattanooga; Birmingham, Ala.; and Tampa and Fort Lauderdale, Fla.

But an inspector general's investigation of Haney's government leases found that:

His low bid for the rental of an IRS service center in Memphis came only after GSA officials leaked the original low bid, which was submitted by Tauber, to the news media. But everyone, including Tauber, had a chance to resubmit bids.

Haney almost always gained control of properties after the GSA had advertised its space needs, and he usually did it by buying inexpensive options on undeveloped land or on buildings in financial trouble that could later be purchased at below-market prices.

In one case, he took an option to purchase a building he intended to rent to GSA 25 days after he submitted his leasing bid to the government.

Haney made excellent and legal use of a former top GSA official, Theodore Sachs, whom Haney hired to help arrange the government rental deals.

There is no evidence that Haney had any "inside" information. In short, Haney—who declined to be interviewed about his GSA leases—made offers too good for the government to refuse.

"He is simply an extremely sharp businessman," says Loretta Brooks, a GSA leasing official who negotiated two of Haney's leases. "Once, when the competing developers complained about favoritism, I invited them all into my office and laid out the bids on the table, and they just walked away shaking their heads."

Tauber, who still feels he got "cheated" out of the Memphis IRS project by Haney's "friends" at GSA, has used many of the same sharp practices.

"Money talks," he said in an interview, "and I get my money to talk by buying the least expensive land for my buildings."

That's how Tauber became the low bidder for one of the most controversial rental deals ever arranged by the GSA. A new office building Tauber built at a place named Buzzard's Point remained empty for almost two years, at a cost to the taxpayers of $5.4 million, because no one wanted to work in that rundown section of southwest Washington. The GSA finally convinced two agencies to move in.

Tauber had bought the land for a fraction of the price that a plot in downtown Washington would have cost. And, as he has done with most of his government leasing projects, he constructed a no-frills building at a low price.

As a result, Tauber was able to beat out competitors who offered space in more desirable but far more expensive downtown locations.

The surgeon turned real estate developer also lacks little when it comes to driving a hard bargain with pliant GSA officials.

When the GSA became unhappy with janitorial services at a huge building Tauber owns in Rockville, Md., he offered to reduce the rent if the government would pay for cleaning and utility costs. The GSA, which rents the building for a major contingent of Health and Human Services Department workers, quickly agreed.

The catch, according to the congressional General Acounting Office, was that Tauber knocked only $993,000 off the annual rent, when GSA officials knew the cleaning and utility bills were more than $1.7 million a year.

The GAO estimates that the deal will cost taxpayers more than $9 million over the remainder of the 20-year lease.

Despite such successes, Tauber echoes the complaints of many private developers who contend that it is difficult to deal with GSA red tape and bureaucratic delays. He says he no longer is interested in renting to the government.

"If you make money off of them, you're accused of improper practices," he says. "And if you lose money or get into a dispute with them, then you can't get them out of your building."

Still, the Building Owners and Managers Association, the lobbying group for commercial real estate developers, has adamantly opposed congressional proposals to mandate less government leasing of space and more construction of federal buildings.

"The developers don't want to rent to the government when office space is tight and private tenants are willing to pay more, but they certainly want us around when there are plenty of 'Offices for Rent' signs in town," says a top GSA official.

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[From the Pittsburgh Press, July 17, 1981]

U.S. RENTAL REFORM PUT OVER PORK BARREL

(By Gene Goldenberg)

WASHINGTON.—On Capitol Hill, an often angry dispute over a popular species of "pork barrel" has caused an impasse in the 2-year-old effort to reform the federal government's wasteful and mismanaged rental program.

Every congressman knows that "pork barrel" is the time-honored system of rewarding selected legislators with federal buildings in their home district.

And every congressman who knows anything about the General Service Administration's soon-to-be $1 billion-a-year program of leasing space for federal workers agrees

that GSA should be building more offices and renting less.

The only hitch to this patronage-larded scheme is that key members of the Senate and House can't agree on the process by which Congress should approve the new federal buildings.

So bitter is the dispute that efforts last December to iron out differences between Senate and House versions of a leasing reform bill disintegrated into public name-calling between angry legislators and brought the death of the proposed legislation.

Now, the battle lines have been redrawn with the passage in May of a new, somewhat watered-down Senate bill. This time, however, there is a new combatant—the Reagan administration with its own prescription for curing the leasing disease.

Whatever happens in Congress, President Reagan's new GSA administrator, Gerald Carmen, has pledged to clean up the waste and abuse that permeates the massive leasing program. And as a result of questions raised during a two-month Scripps-Howard News Service investigation of GSA renting practices Carmen has started his own inquiry.

He has asked GSA's chief auditor, Howard Davia, to come up with a plan for proper management of the rental program. Davia estimates that $100 million of the $680 million GSA will spend on leasing this year will be wasted.

There is a broad consensus on the need to reshape the leasing program. Key members of the Senate and House public works committees, which oversee GSA, agree that:

Dozens of new federal buildings are needed to reverse the trend that in the last 20 years has seen the proportion of federal workers in leased office space rise from less than 18 percent to more than 50 percent.

Congress and successive administrations have spent less than $100 million on new federal buildings in the past five years and there is no money for new construction in the fiscal 1982 budget.

GSA must develop a long-range "master plan" and annual programs to implement it so that within 10 years at least 60 percent of all federal workers are housed in government-owned buildings.

Rented space should not be used—as it now is—for major government computer operations, sensitive national security functions, federal courts or whenever a private building requires costly structural or mechanical alterations to meet government needs.

And no funds should be spent for major renovation of rented offices without specific approval from Congress.

Leased space should be acquired through competitive, sealed bids rather than the present system of negotiating with selected landlords that has led to an absence of competition in the awarding of multimillion-dollar rental contracts.

GSA must begin to maintain detailed records on the space it manages, both in leased and government-owned buildings, and report regularly to Congress on operating costs, the amount of vacant space and plans to fill those empty offices.

"It's probably stupid for us to legislate that GSA report to us on the vacant space they are renting, but it's also stupid for them not to have had this information when we asked for it in the past," explains Robert Peck, an aide to Sen. Daniel Moynihan, D–N.Y.

The stumbling block is that Senate forces, led by Moynihan and Alan Simpson, R-Wyo., want to change the way Congress approves new federal buildings and major leasing actions—a change that is adamantly opposed by House leaders.

Under a 1959 law, GSA must submit proposals for new buildings or major leasing activities to the House and Senate public works committees for approval. These projects need not be submitted to the full House and Senate, but once authorized by the two committees they may be included in the annual public works appropriations bill.

The 1959 law also allows the two committees to request GSA to study the need for a federal building in a specific city and report back. Those requests have inevitably formed the basis for most of the new federal buildings approved by Congress in recent years.

That's where the "pork barrel" comes in. "The House committee has ordered up projects that are near and dear to it, usually by members high in seniority," Simpson said. "It's a ghastly way to do business."

So the Senate wants all of GSA's building and leasing plans to be included in an annual authorization bill that would have to be passed by the full House and Senate. The projects in such a bill would be based solely on the priorities set by GSA in its carefully justified "master plan." This would reduce the ability of individual members to include unneeded "pork barrel" projects, claim Senate proponents.

"Nonsense," counters Rep. Elliott Levitas, D-Ga., a leader of the House committee forces. "If there were an annual bill on the floor, members would load it up with costly pet building and leasing projects in their home districts. The work would be coming out between your toes and your ears."

As if the "pork" dispute was not enough the Reagan administration has opposed a plan, which is backed by both the House and Senate, to permit GSA to borrow from the treasury the funds needed for the planned new program of building construction. This so-called time financing plan would require GSA to repay the treasury with interest over 30 years.

Under pressure from the White House Office of Management and Budget, which opposes any new borrowing authority, the Senate struck the "time financing" plan from its bill this year. But House and Senate leaders, as well as GSA officials, fear that Congress and the White House will be reluctant to come up with the new construction money without this provision.

"I don't believe in the tooth fairy," says a former GSA public building commissioner, A. R. Marschall.

GSA estimates it will take a five-year, $5.7 billion construction program to eventually bring the proportion of federal workers in leased space below 40 percent. The Congressional Budget Office believes it would cost more in the vicinity of $2.5 billion. Either figure is high in the present era of budget constraints.

Everyone agrees, however, that the long-term savings in reduced rental costs would more than pay for that construction.

As an example, the GSA "master plan" calls for a new $160 million federal building in San Francisco. At projected rental rates, it would cost $26.8 million a year—or $804 million over 30 years—to rent the same amount of space.

That's a savings of at least $644 million by constructing just one building instead of leasing, an official noted.

To put that argument across, both the House and Senate reform bills would bring "truth in budgeting" by requiring GSA to include the total projected cost of leasing rather than the annual rent tab it submits in its yearly budget.

"We want everyone to know what they're approving," said one House staffer. "The fiscal 1982 budget request for GSA rentals is about $750 million, but that really translates into long-term government obligations of more than $4 billion over the full term of all those leases."

But even if Congress approves a major new federal building construction program, Carmen cautions that "this may not be the time for a new building program in the midst of an inflationary spiral."

Whatever happens in Congress, Carmen has pledged to clean up the abuses and waste that permeate the leasing program.

"I'm dealing with the future, not the past," he says. "It took GSA 21 years to get where we are today and I don't expect to solve our problems in the next month or even the next year."●

## ARRESTS OF HUMAN RIGHTS ACTIVISTS IN CZECHOSLOVAKIA

● Mr. KENNEDY. Mr. President, during the past 3 months, Czechoslovak police have arrested 26 Czech and Slovak human rights activists on charges of large-scale subversion. According to Amnesty International, the Helsinki Commission, and others, however, these activists were arrested simply for trying to peacefully exercise their human rights and civil liberties.

Although 18 of these activists have now been released, 10 remain under investigation and may still be tried by the authorities. Eight activists are still under arrest, and their trials can be expected very soon; if convicted they face prison sentences of up to 10 years.

This new wave of arrests can only recall the repression of the 1968 Prague spring. It represents a Government effort to completely suppress the charter 77 human rights movement in Czechoslovakia.

Mr. President, these arrests clearly violate Czechoslovakia's obligation to respect human rights under the Helsinki accords. On the eve of the trials of these human rights advocates, I call upon the Czechoslovak Government to immediately release those still under arrest, and to halt the persecution of the other activists still under investigation. I ask that the names of those Czechoslovak activists still in detention, as well as those who have been released but are still under investigation, be printed at this point in the RECORD, along with the section on Czechoslovakia in the "Amnesty International Report 1980" which cites those human rights activists currently in prison.

The material is as follows:

Those still under arrest:
Jaromir Horec—poet.
Eva Kanturkova—novelist.
Karel Kyncl—former journalist.
Dr. Jan Mlynarik—Slovak historian.
Jan Ruml—worker.
Jiri Ruml—former journalist.
Dr. Jirina Siklova—sociologist.
Dr. Milan Simecka—historian.

Those who have been released but are still under investigation:
Dr. Jiri Hajek—former foreign minister.
Ivan Havel—engineer.
Olga Havlova.
Karel Holomek—engineer.
Dr. Josef Jablonicky—historian.
Dr. Zdenek Jicinsky—professor.
Mojmire Klansky.
Miroslav Kusy—Charter 77 Spokesman (Slovakia).
Dr. Jaroslav Meznik.
Jiri Muller—former student leader.

CZECHOSLOVAKIA

The main concerns of Amnesty International were: imprisonment of people for expressing opinions disapproved of by the authorities: poor prison conditions for those

convicted of political offenses: harassment and ill-treatment of dissenters by the police: the death penalty.

International interest in human rights in Czechoslovakia centered on the persecution and imprisonment of members of the Committee for the Defense of Unjustly Persecuted. Vybor na obranu nespravedlive stihanyeh (VONS), which was established in April 1978 to monitor violations of human rights in Czechoslovakia. VONS is the most active section of the Czechoslovak unofficial human rights movement. Chapter 77.

On 29 May 1979 the State Security Police arrested 10 VONS members suspected of actions hostile to the interest of the state. On 30 July Amnesty International informed the Czechoslovak President that it had adopted the 10 in pre-trial detention as prisoners of conscience and asked him to order that judicial proceedings against them be discontinued. On 11 September the Office of the Federal Procurator ruled that the cases of four of the accused. Jarmila Belikova, Dr. Ladislav Lis, Vaclav Maly and Dr. Jiri Nemec be removed from the indictment of the other six. The four were released on 22 December, but criminal proceedings against them were still continuing in April 1980.

The trial of the other six VONS members was held on 22 and 23 October 1979 before the Prague Municipal Court. The prosecution charged that the accused had prepared statements about people whom they considered to be "unjustly persecuted" and had circulated this information in Czechoslovakia as well as abroad with the intention that it be used against the Republic. On 23 October the court found all six defendants guilty of subversion "in collusion with foreign powers" and "on a large scale" (Article 98, part 1 and 2, sub-section (a) and (b) of the penal code) and sentenced Petr Uhl, an engineer, to five years' imprisonment: Vaclav Havel, a playwright, to four and a half years; Dr. Vaclav Benda, a philosopher and mathematician, to four years and Otta Bednarova and Jiri Dienstbier, both journalists, to three years. Dana Nemcova, a psychologist, was given a two-year sentence suspended for five years.

Amnesty International delegated an Austrian lawyer, Henry Goldmann, to observe the trial and the appeal hearing. He was excluded from both proceedings. On 20 December, he was detained for four and a half hours and expelled from the country for "interfering in Czechoslovakia's internal affairs". On 7 January 1980 Amnesty International protested to the Minister of Justice against the exclusion, detention and expulsion of its representative.

In a letter to the judicial authorities on 2 November 1979 and in an internationally distributed document about the trial, Amnesty International detailed the inadequacies of the proceedings: the trial was not public; it was hasty (each of the two days' proceedings lasted from 10 to 11 hours); no one was allowed to take notes of the proceedings; no defence witnesses were called and the defendants were frequently interrupted and were thus unable to present a proper defense.

Another VONS member, Albert Cerny, a former actor who had been arrested on 26 March 1979 on charges of subversion (Article 98, part 1 of the penal code) was sentenced by the Regional Court in Brno on 27 November 1979 to three and a half years' imprisonment for participation in VONS and for possessing and disseminating "anti-state" texts.

Other cases of people sentenced to terms of imprisonment for exercising their right to freedom of expression and adopted as prisoners of conscience by Amnesty International during the year include Professor Jaroslav Sabata, a psychologist and Charter 77 spokesman, serving a nine months' prison sentence who had 18 months added to his sentence. He was first sentenced in 1972 to six and a half years' imprisonment for subversion and was released in December 1976 on three years' probation. In May 1979 the District Court of Prague 6 ordered that the 18 months remaining from his first sentence be added to the second nine months' sentence. An Amnesty International observer was refused a visa. Jan Zmatlik, a sociologist and Charter 77 signatory, who had been in pre-trial detention since August 1978, was convicted in July 1979 by the Prague Municipal Court of producing and attempting to disseminate "anti-state" materials and sentenced to three and a half years' imprisonment for "making preparations for the subversion of the Republic" (Article 7, part 1, and Article 98, part 1 of the penal code). In October 1979 his sentence was reduced to two and a half years' on appeal. Dr. Jaromir Savrda, a writer, was found guilty in August 1979 by the District Court in Ostrava of duplicating and circulating copies of the *samizdat* (unofficial) literary journal *Petlice* (Padlock) and sentenced to two and a half years' imprisonment for incitement (Article 100), after 11 months in pre-trial detention. Dr. Josef Danisz, a lawyer who defended many Charter 77 signatories, was convicted in January 1980 by the District Court in Hradec-Kralove of "insulting a public official" (Article 156, part 2) and "insulting a state organ" (Article 154, part 2) and sentenced to 10 months' imprisonment. The court also disbarred him for two years. In September 1979, acting as defense lawyer for Professor Jaroslav Sabata, he criticized the Chairman of the Court for his conduct of a trial in 1978 and complained about the brutal treatment of another Charter 77 signatory by the police. The persecution of Dr. Danisz goes back to the autumn of 1975 when he complained to the authorities that a public official had threatened him with assault. In March 1979, the Association of Prague Lawyers expelled him for unprofessional conduct. Petr Cibulka, a worker and Charter 77 signatory serving a two-year sentence, went on hunger strike because of unacceptable working conditions in prison and repeated physical attacks on him by nonpolitical prisoners. For this he was tried in January 1980 by the Plazen Municipal Court and sentenced to a further six months' for "frustrating the purpose of custody". The Procurator appealed against the verdict and called for a five-year sentence. In March 1980 the appeal court quashed the six-month sentence and imposed a one-year sentence.

Widespread harassment of Roman Catholic priests and laity was reported in the second part of 1979. According to incomplete reports, by the end of December 1979 at least 20 people had had their homes searched, at least 40 had been questioned by the police and in Moravia and Slovakia alone at least 10 were detained for up to 48 hours. During house searches police seized large quantities of religious literature, pictures and photographs and printing and copying equipment. Eleven people were charged and six of them remanded in custody: Josef Adamek, a retired printer, Jiri Kaplan, an engineer, Jan Krumpholc and Josef Vicek, both workers and two Jesuit priests, Frantisek Lizna and Rudolf Smahel. The remaining five, Josef Brtnik, Svatopluk, Krumpholc, Tomas Kvapil, Dr. Mecislav Razik and the well-known theologian, Dr. Josef Zverina, were released from detention but the authorities continue to investigate their cases.

Jiri Kaplan and Dr. Josef Zverina were charged with "obstructing the state supervision of churches and religious societies" (Article 176) and the remaining nine with "illicit trading" (Article 118). The six who were remanded in custody have been adopted by Amnesty International as prisoners of conscience. Jiri Kaplan was released from custody at the end of December 1979 and the remaining five early in January 1980. At the time of writing Amnesty International had not learned that criminal proceedings against any of the 11 have been dropped.

On 16 November 1979 the police searched the homes of five Slovak Roman Catholic priests and a number of Roman Catholic laity in Presov in Slovakia. Criminal proceedings were initiated against the 65-year-old Jesuit priest, Oskar Formanek, accused of saying mass in private houses, of condemning communist atheism, of having loaned religious books and of having been in contact with religious bodies in the West. It is alleged that he was interrogated on 12 occasions and that he had to be taken to hospital. His condition has been described as serious. His trial was to be held on 12 January 1980 in Presov but it has been postponed twice.

During the year prison conditions continued to fall below internationally accepted standards.

Petr Cibulka has been continually beaten up by fellow prisoners and forced to carry out work for which he is not physically fit. In May 1979 he was punished by being transferred to an underground cell and put on half rations. Amnesty International appealed to the authorities on his behalf in May and July 1979, and in September 1979 when reports about his ill-treatment persisted, urged the Minister of Justice to see that he was treated humanely. In February 1980 it learned that he had again been placed in an underground cell, that his food ration had been cut and that the beatings by non-political prisoners were still happening.

During the year under review many people holding views disapproved of by the authorities were persecuted in ways which did not involve imprisonment. Many dissenters were repeatedly detained, mostly for up to 48 hours, and summoned for questioning by the police; their homes were searched, in some cases without a police warrant, and they were brutally treated by the police.

On 30 October 1979 State Security Police took Jiri Legerski, a former miner and a Roman Catholic, who is suffering from a malignant cancer, from the hospital in Opava. They searched his home twice and took him twice to the police station for interrogation in connection with criminal proceedings instituted against a group of Roman Catholics accused of disseminating religious literature. When he refused to answer any further questions, he was taken back to the hospital, completely exhausted, in the middle of the night.

On 4 November Ivan Kyncl was beaten up by the police for refusing to be photographed and fingerprinted during a 48-hour detention. He was one of nine people who had been arrested on 2 November on suspicion that they were preparing an act of terrorism. All nine were released without charge after 48 hours.

On 25 January 1980, after police had broken up a private performance in the flat of their friend, Rudolph Battek and Ivan Kyncl were handcuffed and taken separately to a remote village some 60 kilometres from Prague and abandoned there after questioning.

Two people known to the authorities for their dissenting views were forcibly confined in psychiatric institutions. Tomas Liska, a student was confined to the psychiatric hospital in Prague-Bohnice on 23 August. On 31 August he was transferred to another psychiatric clinic in Prague from which he was released on 3 September. Tomas Liska and two friends had been arrested on 20 August in Poland when they tried to join Polish human rights activists in a hunger-strike to protest against the detention of 11 VONS members in Czechoslovakia. They were escorted to Prague and Tomas Liska's two associates were released on 23 August. Professor Julius Tomin, one of the dissenters subjected to continuous harassment, was arrested on 5 October 1979 in northern Bohemia and taken to the psychiatric clinic in Horni Berkovice, where he was given in-

jections against his will. He was released on 8 October.

During the year Amnesty International learned of the execution of two Czechoslovak citizens convicted of murder. One of them was Robert Bares, whose death sentence in September 1978 provoked strong protests in Czechoslovakia as well as abroad.

In April 1980 Amnesty International had 38 cases under adoption and investigation.●

## LEGAL SERVICES CORPORATION

● Mr. MATHIAS. Mr. President, last week the House and Senate conferees on the budget reconciliation measure decided to take the question of funding for the Legal Services Corporation out of the budget bill and leave it to the normal authorization and appropriation process. I urge all my colleagues to join me in supporting this important task now before us.

During the first 6 months of this Congress, we have devoted most of our energies to executing the mandate the people voted in 1980 for substantial cutbacks in the Federal budget and the public sector of the economy. Everyone realizes that these new policies, whatever their long-range beneficial consequences for the economy, are going to make many aspects of life more difficult in the short run for the poor in our country.

For this reason, it is critical that the Legal Services Corporation be preserved intact and be given the strong vote of confidence it deserves from this body. As the impact of budget cuts begins to be felt, at the local level, the need for insuring continued access to our country's system of justice for low-income individuals and families will become more and more pressing.

On June 18, the House passed a Legal Services reauthorization measure for fiscal years 1982 and 1983, agreeing to a $241 million funding level. Last week, the House also agreed to the same funding level in the appropriations bill for the Corporation. On July 29, the Senate Labor and Human Resources Committee filed its report on the reauthorization bill it approved earlier this summer, S. 1533, authorizing a spending ceiling of $100 million for the Corporation.

I was a cosponsor of the original Legal Services reauthorization bill in the Senate, S. 939, which would maintain the Corporation's current $321.3 million funding level through next year. I regret that the Labor and Human Services Committee has reduced this figure by over two-thirds in its authorization bill. However, I am also cosponsoring the committee bill, in anticipation of an effort on the floor to raise the funding level in S. 1533 to at least the House-approved figure, which I will vigorously support. The majority leader has indicated that this measure will be scheduled for action in the Senate this year.

Although the prospects for reauthorizing the Legal Services Corporation are looking bright, we should not fool ourselves that this will be more than a partial answer to the need for legal services for the poor. Especially in view of the probable reduction in the current funding level of the Corporation ($321.3 million), it is imperative that the voluntary efforts of the private bar in this area be redoubled to compensate for the budget cuts and resulting reduced resources for local legal assistance offices.

Both the House and Senate Legal Services authorization bills this year contain a provision instructing the Corporation to devote greater attention to ways of involving private attorneys in legal assistance programs on this basis.

In this connection, I was pleased to note the recent creation of the Maryland Volunteer Lawyers Service, a statewide coordinating office for organizing voluntary legal services to the poor by the private bar. The primary purpose of the service will be to establish a referral procedure that will insure that law firms and individual attorneys, who wish to volunteer some of their time and expertise to providing legal assistance to the poor, will be able to spend their time in the most productive way with the most needy clients. In addition, the service will offer educational programs and distribute literature as well as develop a library in the areas of law that volunteer attorneys are most likely to become involved in.

The Maryland Volunteer Lawyers Service was established on July 1, with the support of the American Bar Association, the Legal Aid Bureau, the Legal Services Corporation, the Maryland Bar Association, the Maryland Bar Foundation, and the Maryland Judicial Conference. I have been proud of what Maryland's Legal Aid Bureau has been able to accomplish with the help of the Legal Services Corporation, and I am confident that the Volunteer Lawyers Service will also become an exemplar for similar initiatives in other States. The time has come for shoring up our legal services and reaffirming our commitment to equal justice under law.●

## ANNIVERSARY OF BOLIVIAN INDEPENDENCE

● Mr. KENNEDY. Mr. President, last July 17 marked 1 full year of military rule in Bolivia under Gen. Garcia Meza. The military coup of last summer brought to an abrupt halt the promising progress of the Bolivian people toward democracy in their nation and toward breaking the past cycles of authoritarian rule and repeated military interventions into their political life.

One year ago Bolivia was at a crucial juncture: 80 percent of the eligible voters had just participated in national elections, and a new coalition government was preparing to take office, when the three-man military junta staged a coup against the interim government. Leading public figures were immediately removed through murders, arrests, or exile. All political and union activity was prohibited. Journalists were exiled, and press freedom was dramatically curtailed.

In the year since the coup, independent international observers have documented a sharp decline in the Bolivian economy, widespread corruption reaching to the highest levels of government, and chronic, repeated abuses of human rights. According to the Washington Office on Latin America,

At least 2,500 people have been arrested since the coup. There are numerous testimonies of torture from union leaders, journalists and priests, themselves victims of persecution, beatings and torture.

Bolivia's military leaders have not only suppressed basic human rights and political and economic freedoms; they have engaged in extensive corruption including the reported trafficking of drugs within this hemisphere. There is, therefore, no justification whatsoever for the United States to improve relations with the Bolivian military regime. I call upon the administration to press for an end of the drug traffic and an end to the violations of basic rights in Bolivia.

Mr. President, on August 6 Bolivia will observe the 156th anniversary of its independence from Spain—an anniversary of which all Bolivians are rightly proud. But as long as human rights abuses continue, and the popular will is thwarted by the Bolivian military, this anniversary can only reinforce the determination of the Bolivian people to achieve true independence—independence from repression and authoritarian rule. I request that a summary of events in Bolivia since the 1980 coup, prepared by the Washington Office on Latin America, be printed at this point in the RECORD.

The summary is as follows:

BOLIVIA: ONE YEAR AFTER THE COUP

On July 17, 1980, the military forces of Bolivia staged a coup which prevented president-elect Hernan Siles Zuazo from taking office and brought the government of Luis Garcia Meza to power. The first year of rule under the Garcia Meza regime has been characterized by human rights violations, severe economic difficulties, corruption, disunity, and lack of support. The consequences for Bolivia have been the following:

VIOLATION OF HUMAN RIGHTS

A. The Right to Life.—Military occupation of the mines and the continuing repression by security and paramilitary forces led to the deaths of scores of citizens subsequent to the July 17 coup. Prominent political leader Marcelo Quiroga Santa Cruz was killed the day of the coup. The invasion of the mining district of Caracoles in August of last year resulted in an Amnesty International report of a total of 900 miners who were arrested, killed, or had to flee the area. Eight top political leaders of the UDP coalition (winner of the last three elections in Boliva, and all belonging to the MIR party) were assassinated on January 15 of this year.

B. Freedom and Security of the Person.—At least 25,000 people have been arrested since the coup. There are numerous testimonies of torture from union leaders, journalists and priests, themselves victims of persecution, beatings, and torture.

C. Freedom of the Press.—Forty Bolivian journalists have been arrested and sent into exile since the coup. Ten foreign correspondents were either arrested, expelled, or had to flee the country. The Catholic newspaper, Presencia, was closed for a week, and 27 radio stations were shut down, several of them destroyed.

D. Freedom of Association.—Union and political activity has been declared illegal. Union leaders have been killed, wounded, and expelled, as have been political leaders of all ideological positions, from leftist to centrist to rightist.

ECONOMIC CHAOS

The enormous foreign debt of 3.5 billion dollars inherited by Garcia Meza has been complicated by rising inflation rates which have reached 60% and by an inability to formulate a responsible and coherent economic policy. The National Confederation of Private Businessmen, usually a supporter of military governments, especially criticized the regime for "the lack of clear objectives and strategies" to confront the serious economic crisis affecting the country. Compounding the economic difficulties has been the failure of the government to receive help from the multilateral development banks and the International Monetary Fund, which refused the final installment of a 5 part stand-by loan last December and since then has not granted any new stand-by facilities.

OFFICIAL CORRUPTION

Official government involvement in the cocaine traffic is notorious and amply documented, such as in the "60 Minutes" report, "Minister of Cocaine", which displayed documents from the files of the Bolivian Interior Ministry linking key members of the government with the cocaine traffic. Despite the change of several of these ministers, military involvement in the international drug traffic continues. Recently, the three members of the ruling junta were implicated in the illicit export of precious stones mined on state owned land for the personal economic benefit of the junta.

The United States has held firm in denying recognition and economic and military aid to the present regime. All indications are that it will continue to do so until the present military rulers demonstrate that they can come to grip with the fundamental problems besetting the country and the regime.●

## MARYLAND STATE FAIR'S CENTENNIAL CELEBRATION

● Mr. SARBANES. Mr. President, when the Senate reconvenes after Labor Day, the 100th Maryland State Fair will be history. This centennial celebration of fun, education, entertainment, and competition has 10 full days of agricultural events, home arts exhibits, and spectator events, including a week-long horse show, farm queen contest, 4–H Animal World, horse pulling contest, and a truly fabulous flower show. There will be special ceremonies and events celebrating the Maryland State Fair's 100th anniversary of promoting Maryland Agriculture.

One hundred years ago the Maryland Journal of Towson, near Timonium, where the fair is held in Baltimore County, recorded the excitement and expectations preceding the first fair.

They were all-agog concerning the approaching opening of an Agricultural Fair at Timonium—the girls are reserving their brightest ribbons and their sweetest smiles to be admired at Timonium; matrons are patting their choices butter and reserving their most toothsome preserves for exhibition at the Fair; the gray beards are fattenup their best herds of cattle for similar purpose; while the lads are grooming their Rosinantes and preparing to bet their bottom dollar on their "bobtail nags" while somebody will bet on the gray.

This agricultural fair did open on September 9 on a crisp and perfect autumn day—1879 as fair president Samuel Brady ran up an American flag that dated back to 1856, one that had flown over the quarters of the Jacksonian Democratic Association in Washington, D.C.

Mr. President, Paul E. Carre, editor of the Maryland State Fair and Agricultural Society, has prepared a centennial survey of the development of the Maryland State Fair and its growth over the past 100 years. I ask that Mr. Carre's article, "The New Timonium," be printed in the RECORD at this point.

The article follows:

THE "NEW TIMONIUM"

General Manager, Howard M. Mosner of the Fair, buoyed by the financial resources provided by the State for expansion, said in 1976 "this is the beginning of a 'new Timonium' ".

Fairgoers who come to the Fair in 1981, its centennial year, will see proof of Mr. Mosner's prediction.

A new livestock pavilion provides 1,200 stalls, a 200 by 60 ft. show ring, a "milking parlor", extensive cattle washing areas, and lounges for exhibitors.

The horse show program also has a new home, which includes a 500 seat amphitheater, a 250' x 125' show ring, a fenced warm-up area and three barns with stalls for 160 horses.

A new Exhibition Hall containing 38,400 square feet for commercial exhibits was completed in time for the 1979 fair. This building has been a tremendous asset for the fair as well as during the "off season" when many and varied events are scheduled.

The need for a better facility for the 4–H-FFA and the Home Arts departments has long been recognized. In 1981 a new building will be ready for these exhibitors and will greatly enhance the many interesting exhibits and displays developed by these participants.

Completing the capital improvements program is the refurbishing of the Swine, Sheep and Goat barn. Additional pens will be provided for the exhibitors and this building's appearance will be modernized to conform with the other new structures.

In addition to the exhibits of livestock, farm and garden products, household manufactures, 4–H projects, and commercial exhibits, there are the offerings of the family-oriented midway and the entertainments provided by shows in the grandstand in the evenings.

WHAT IS THE FAIR LIKE IN ITS CENTENNIAL YEAR OF 1981?

The fair today presents a mixture of the "old" and the "new".

There have been many changes over the years.

The size of the Fairgrounds has grown to 100 acres; the old cowbarn has become the Cow Palace with mechanical ventilation; the carriages and hitching posts have given way to parking lots with attendants; and, the train, the wagon and the carriage have been replaced by the truck and automobile. The tents, the farm wagon and the Inn—where people stayed during the fair are gone. Timonium Mansions and the Inn have been replaced by auto dealerships and a bank. Gingham, calico and overalls have yielded to polyester and jeans; wells replaced by drinking fountains and "W.C.s" by indoor plumbing.

But much remains of the "old": the features of the racing, the agricultural exhibits, the projects of the 4–H, the articles of the household arts and many activities of the midway.

This mixture of the "old" and the new is the charm of the modern agricultural fair.

In 1980, the Fair offered $150,000 in premiums and awards. Some 6,000 exhibitors entered 17,000 exhibits—nearly a half-million Fairgoers had the opportunity during the eleven day show to view these exhibits.

The fairground at Timonium has become an important community center, serving and promoting the interests of many groups, especially those of agriculture and animal husbandry, throughout the State of Maryland and beyond its borders.

Fairgoers, approximately a half-million, now come to the annual event.

Many of these fairgoers set aside on their calendars, a family day at the Fair—a kind of holiday—a "last fling" as it were, which separates the more relaxed pursuits of summertime from the more demanding ones of autumn.

On this day, the fairgoers may choose to watch the races—even risk a bet; sample the food and play the games on the Midway; and view the thousands of exhibits which come from the farms, gardens, pastures, orchards and households that have been prepared and brought to the Fair by individuals, families and groups devoted to agriculture.

In providing an annual opportunity for the showing of these agricultural exhibits, the Fair is demonstrating its main purpose—its goal—the continuing improvement of agriculture in the State of Maryland.

These annual shows are the Commencement Exercises of loosely federated units—be they farm families, or such groups as the Farm Bureau, the Grange, the 4–H, the Central Beekeepers Association, the Extension Services, the Maryland Department of Agriculture. Instead of diplomas, the rewards are premiums and ribbons—but more important than these tangible signs is the admiration of the quality of the exhibits, and a recognition of their importance in efforts to improve agriculture.

As further evidence of the Fairground as an important community center, Management is the host for the meetings and activities of many groups—some agricultural, others representative of various group interests.

In addition to the Annual Show, devoted to promoting the efforts of those engaged in Agriculture and Animal Husbandry, the Management of the Fair tries to serve the interest of many other groups by allowing them to use the facilities of the Fairgrounds for their meetings, shows and contests. During 1980, from March through December, 72 Organizations held affairs on the Timonium grounds, representing the varied economic and social interest of the Community.

Mr. Grove Miller, President of the Board and Mr. Max Mosner, General Manager—on behalf of the Board of Directors of the Maryland State Fair invite you to respond to its call—the same call coming down from our colonial ancestors at fair time—"Heigh-Ho, Come to the Fair" especially this year its Centennial Anniversary.●

## BUILDING CONSENSUS ON NATIONAL FOREST MANAGEMENT

● Mr. HATFIELD. Mr. President, many of my colleagues are aware of the critical impact Federal land management has on life in the so-called public land States of the West. Decisions on the use of Federal land resources affect nearly every aspect of life in Western communities, including the economy, recreation, esthetics, wildlife, water quality, supply of lumber, essential minerals, and energy. Too often in the past, management decisions have been left to the managers alone. With the growing public interest in land management, however, there has been a notable effort on the part of those interested in and affected by land use decisions to get involved in the process. Congress has recognized this in recent

legislation, including the Forest and Rangeland Renewable Resources Planning Act, the National Forest Management Act, the Federal Land Policy and Management Act, and other laws which mandate public involvement in Federal land planning.

The essential question remains: How do the management agencies carry out the laws? We all know that formal public meetings can be conducted in which the public has the opportunity to participate, and that these often result in frustration on the part of all those involved, even with a good faith effort on the part of the agency. This is often due to a complex decisionmaking process, a failure to understand the terms involved, and a feeling of polarization on the part of many interested groups and citizens. I know from my own efforts to resolve roadless area and wilderness issues of the wide gulf which separates many groups advocating additional wilderness areas and those which represent the forest products industry.

Clearly, innovative approaches are needed. I am pleased to note that region 6 of the Forest Service, which includes Oregon and Washington, is trying some new, unconventional approaches to resolving land management issues and to deal with the present polarization. The method being utilized is consensus-building workshops.

The Forest Service is bringing together groups of their own employees with representatives of wilderness and timber industry groups, encouraging these individuals to look beyond their own particular positions, to learn more about those people they have recognized only as adversaries, to understand the other point of view, and to propose positive, creative solutions to land management conflicts.

Obviously, this is a major undertaking which requires true commitment and patience on the part of all those involved if it is to produce any meaningful results. I am aware of two recent all-weekend sessions conducted on the Willamette National Forest which appear to hold some real promise. This is particularly significant since the Willamette is the Nation's top timber producing forest of the 155 national forests. It also contains areas of magnificent beauty which offer excellent recreational opportunities and wilderness experiences. The conflicts on this forest have been great, both in number and in intensity. The fact that those involved in these conflicts have been willing to spend their own time in group sessions to open up lines of communication with the "other side" is testimony to their commitment to wise national forest management.

Mr. President, I believe that this effort warrants special recognition and I wish to offer my thanks to those who have participated. As one who has been deeply involved in national forest management issues. I also wish to state that any concensus achieved by such groups should get very serious consideration by the top levels of the Forest Service and the Congress. I want to encourage those who have been involved thus far on the Willamette National Forest to continue their involvement, and to urge other national forest managers and those of the Bureau of Land Management to look at this creative approach.

Special recognition is due Mr. Dick Worthington, the Regional Forester for region six; Mr. Mike Kerrick, the Supervisor of the Willamette National Forest, and Mr. Bob Chadwick, who has organized and led the sessions. Mr. Chadwick is a former Forest Supervisor who currently serves on Mr. Worthington's staff. It is often difficult to set aside the traditional methods of problem solving which one has practiced all of one's life, but I believe these times demand that we utilize new techniques which offer true opportunities for public involvement in critical issues. My own staff has participated in some of the meetings and I have received very positive reports. I wish to lend my strong support to the efforts I have outlined.●

## MAYOR YOUNG RECEIVES SPINGARN AWARD

(By request of Mr. ROBERT C. BYRD the following statement was ordered to be printed in the RECORD:)

● Mr. RIEGLE. Mr. President, recently, the mayor of Detroit, Coleman A. Young, received the NAACP's coveted Spingarn Award—the highest honor the association can bestow.

Mayor Young joins such great Americans as Dr. Martin Luther King, Jr., Rosa Parks, Supreme Court Justice Thurgood Marshall, and George Washington Carver in receiving the award.

Mayor Coleman Young is many things: An outstanding civil leader, a fighter, a compassionate man—a man who has always been willing to lead the battle for civil rights and equality for all.

And in some of those battles, he has paid the price for speaking out against the tide. Regardless of this price, Coleman Young fights for what he believes in, with the best interests of the people foremost in his mind. He has been and will continue to be the most able spokesman and leader for the citizens of Detroit.

Coleman Young has been at the forefront of the effort to lead the great renaissance of the city of Detroit and its people.

Mr. President, on June 30, 1981, at the NAACP National Convention in Denver, Colo., the Honorable Damon Keith, U.S. circuit court judge, presented the Spingarn Award to Mayor Coleman Young. Judge Keith's introduction of the mayor was as inspiring as the life and example of Coleman Young, and I ask that the introduction be printed in the RECORD at this time.

The introduction follows:

PRESENTATION OF THE 66TH NAACP SPINGARN MEDAL TO MAYOR COLEMAN A. YOUNG OF THE CITY OF DETROIT

LADIES AND GENTLEMEN: This is a great day for the NAACP and black people in America. We are, this evening, honoring Coleman Alexander Young with the highest and most prestigious award that black people can bestow upon a fellow black American. It is the Nobel Peace Prize or the Pulitzer Award. It is the highest award that we, as a struggling people, can bestow upon one who has done so much to lift aspirations and hopes of 25 million black Americans.

Three of the past recipients of this award provide ample evidence of the significance and the esteem in which the Spingarn Medal is held.

Dr. Martin Luther King, Jr.—a prophet who with "we shall overcome someday" moved an entire Nation, and with his eloquent words "I've been to the Mountain Top" is one of the previous Spingarn medalists.

Justice Thurgood Marshall.—The lone black voice on the Nation's highest court has kept the commitment of the Constitution and those four words inscribed on the U.S. Supreme Court "Equal Justice Under Law."

Justice Marshall has truly been a foot soldier for the Constitution and a drum major for justice. Thurgood is a prior recipient of the Spingarn Award.

Rosa Parks.—Who by her refusal to get up out of a seat on a bus on a cold December day in 1955 in Montgomery, Ala., turned the entire Nation around to the injustice that was being inflicted upon black people in the South. She is now known, and properly so, as the mother of the civil rights amendment. Rosa Parks is also a recipient of the Spingarn Award.

Other Spingarn Medalists have been no less luminary:

Paul Robeson, W. E. B. DuBois, George Washington Carver, A. Phillip Randolph, Charles Hamilton Houston, John H. Johnson, Mary McLeod Bethune, and Roy Wilkins.

I submit to you that the 66th Spingarn Medalist, Coleman A. Young, is in keeping with this high measure of excellence, selflessness and commitment that the NAACP measures before it bestows this great and magnificent award. Coleman Young, in my judgment, has a Ph. D. with high honors from the university hard knocks and good common sense. Coleman Young is a political genius and has one of the most disciplined and brilliant minds to be found in America today.

He will not permit anything or anybody to interfere with what he thinks is best for his beloved Detroit and what is best for black people in America. As indicated just a minute ago, he is by all accounts a brilliant politician who has put together in Detroit a coalition of black and white, corporate and labor business people who are working together for the benefit of the people, white and black, rich and poor, of the city of Detroit.

His long career, and his tribulations in many ways are a microcosm of the black experience. His life mirrors the indomitable spirit of black people in America as they have struggled and continue to struggle for complete equality of opportunity. Because Coleman A. Young would not compromise his principles, he has in his long career been unemployed, blacklisted, maligned, discriminated against and persecuted. Coleman A. Young, the first black mayor of the city of Detroit, once summed up his life in a single sentence:

"Let's just say I've had some peaks and valleys, baby."

But no matter what adversity he has encountered, he has never once wavered in his commitment to the principles that we who are assembled here hold so dear.

Coleman Young is a man who has always "sailed against the wind." He has never listened when he has been told that there are things that he could not accomplish or things that he could not do.

As a political activist in the 1950's, Coleman Young did not listen when he was told that if he did not buckle under to the House Un-American Activities Committee he would be destroyed, that his career would be

ruined and that he would go to jail. In spite of the very real risks that he faced during his interrogation by the committee, he refused to be intimidated. When asked at one point by Congressman Charles Potter of Michigan what he knew about the Communist Party, Young answered, "You have me mixed up with a stool pidgeon, sir."

Coleman Young did not listen when in 1973 he was told that he could not be elected the first black Mayor of Detroit. It so happened that the law in the State of Michigan prohibited a state senator from running for Mayor at the time that Coleman launched his campaign.

But those who didn't know before soon found out that Coleman A. Young is a fighter. He initiated a lawsuit that eventually struck down the statute which would have kept him off the ballot.

Mayor Young assumed his office at a time when Detroit was at what then appeared to be its lowest point in history. Financially and spiritually the people of Detroit were exhausted. Crime was rampant; the financial base of the city was deteriorating; racial polarization was widespread. There seemed to be little hope for progress in this city which, with its majority black population, in many ways symbolizes the hopes and frustrations of all black Americans. But those pessimists who said that Detroit had no future had not counted on the charisma, the ingenuity, the resourcefulness and the leadership of Coleman A. Young. There is now hope and progress in Detroit because Coleman Young, largely through the strength of his personality and example, has forged a coalition between the black and white communities, and between working people and the business community, to rebuild that city.

He has challenged the people of his city and the people of America, in Coleman's own words, to "step up and pay the price of the ticket to ride the freedom train of progress and equality."

It is a tribute to the Mayor's influence and powers of persuasion that just a week ago today the people of the city of Detroit, with one of the highest unemployment rates in the country, voted themselves an income tax increase at the Mayor's behest.

City revenues were desperately low, but when Mayor Young began his campaign for the tax increase, the popular perception was that such a thing could never pass. Yet, once again, the mayor would not listen when he was told that something could not be done.

So great is the confidence of the citizens of Detroit in their Mayor that he alone was able to convince them to impose upon themselves the sacrifice of a substantial tax increase.

We in the Judiciary are, of course, removed from the political arena, but even I can tell you that the Detroit man in the street won't hesitate to let you know that Coleman Young is: Strong enough, successful enough, smart enough, effective enough, and when he has to be, mean enough to be the great leader that he is and the great man that we honor this evening.

So I submit to you that no one who received this award has brought more unselfishness, more commitment to the cause of black people in every way.

Coleman, our honoree this evening, can hold his head high knowing full well that his entire life has been lived in such a manner as to reflect credit to his people and to the NAACP and to all that this organization stands for. In doing so, this great man has used his life to do something which outlives life itself. Many people in Detroit believe that they can sleep easier knowing that Coleman A. Young is working to address the concerns of black people in America. They believe that intuitively and instinctively he will come up with the right answer.

They may be correct about Coleman's politics, but more importantly for me as a judge, I believe that he is the type of human being that every black American can be proud of because he is totally committed to the cause of freedom, equality, fair play and yes, he is determined to make America live up to its commitment to all Americans.

In many ways, he challenges America to be true to its cause. In the Declaration of Independence it says:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."

Ladies and gentlemen, freedom fighters all, lovers of liberty, justice and equality, please stand up and let us salute and join together in presenting Coleman Alexander Young, a great man and a great leader, with the NAACP's highest honor, the Spingarn Medal.●

## FREE ENTERPRISE WITHOUT POVERTY

● Mr. MOYNIHAN. Mr. President, nearly every day in committee and on the floor, my colleagues in the Senate discuss problems of the economy. In the course of this ongoing, important debate, we have come to realize that we need to revitalize all segments of our Nation's economic life. And, we can all agree that a primary goal of this revitalization is full employment.

But how can we have a renewed economy which provides economic security for all our citizens?

Dr. Leonard Greene, an economist and mathematician, has considered this question and proposed an answer in his new book, "Free Enterprise Without Poverty," Dr. Greene says that millions of people who are dependent on Government and private sector benefit programs are weighing down the productive potential of our economy. In his research, he has concluded that the welfare system acts as a disincentive to work.

Moreover, Government bureaucracy created to administer Federal benefit programs and industries established to profit from private social benefit programs work together to expand the system.

Dr. Greene has proposed a comprehensive plan for welfare reform that includes a work incentive, promotes the integrity of the family, offers uniform benefits, is integrated into our tax system, and is easy to administer. His proposal is called the graduated income supplement.

Outlined simply, every person in the Nation will receive a taxable income supplement of equal size. The supplement will be applied to the individual's income tax bill, reducing taxes owed by the amount of the supplement. If the amount of taxes owed is less than the supplement, the taxpayer will receive the difference as a cash refund.

A family with no income will receive the full amount of the supplement in cash payments. Because the supplement is taxable income, the net value is greater for those with lower incomes.

Dr. Greene's book outlines a step-by-step plan to reform the existing government "dependency system." The reforms adhere to the following principles:

First. Scattered, duplicatory, and contradictory programs should be consolidated.

Second. Benefits should be paid in cash instead of services.

Third. Cash benefits should be subject to taxes in order to recoup part of the payments as recipients move up the economic ladder.

Fourth. The reforms should not increase the Federal Government's welfare budget. (This goal realistically can be achieved by substituting the income supplement for existing programs, by taxing cash benefits, and by saving money through increased efficiency.)

Mr. President and my colleagues, I have found Dr. Leonard Greene's book, "Free Enterprise Without Poverty," to be a thoughtful and thought-provoking analysis of the problems of our welfare system. I urge each and every one of you to study Dr. Greene's proposals carefully. The American nation and its people at all economic levels will be the beneficiaries.●

## THE TRUTH RESPECTING THE HIGHLY PRAISED AND CONSTITUTIONALLY DEVIOUS VOTING RIGHTS ACT

● Mr. EAST. Mr. President, I would like to share with my colleagues an important article on the Voting Rights Act recently written by Senator Sam Ervin of North Carolina. During his long and distinguished career in the Senate, Senator Ervin was widely recognized as one of this Nation's foremost constitutional authorities, and I daresay his contributions to the principles of limited Government have been exceeded only by his reverence for our Constitution.

When the Voting Rights Act was first considered by this body, it was Senator Ervin, swimming almost alone against the tide of public opinion, who led the opposition.

What the opponents lacked in numbers they more than made up in weighty disputation, thanks primarily to the brilliance of Senator Ervin and the shimmering power of his reasoning.

Now, some 15 years later, Senator Ervin is once again imploring Members to examine the provisions of this act closely and objectively against the constitutional standards of federalism and fairness.

Mr. President, I urge my fellow Senators to study Senator Ervin's analysis of this act and to weight his arguments carefully, not with a view toward the next election but the next generation, not toward the immediate political needs of the hour but the long-range goals of constitutional Government.

Since its adoption in 1965, the Voting Rights Act has undergone a major metamorphosis, in part because of the 1970 and 1975 amendments, but mainly because of Supreme Court interpretations of its key provisions. Thus the many constitutional objections to the act raised by Senator Ervin in 1965 take on an added significance today, as his article makes clear.

Mr. President, I ask that Senator Ervin's article on the Voting Rights Act be printed in the RECORD.

The article follows:

THE TRUTH RESPECTING THE HIGHLY PRAISED AND CONSTITUTIONALLY DEVIOUS VOTING RIGHTS ACT

(Statement of Sam J. Ervin, Jr. of Morganton, N.C., a former Justice of the North Carolina Supreme Court and a former United States Senator from North Carolina, July 1981.)

THE VOTING RIGHTS ACT

Mark Twain is reputed to have expressed this admonition: Truth is precious, use it sparingly. I will ignore the admonition, and tell the truth concerning the highly praised and constitutionally devious Voting Rights Act.

The Voting Rights Act was enacted by Congress in 1965 as legislation it deemed appropriate to enforce the Fifteenth Amendment. Subsequent to 1965, Congress amended the Act in comparatively minor respects and continued it in force. It is scheduled to expire soon, however, unless Congress extends it again. Hence, the current clamor in some quarters for its extension.

I will endeavor to explain in simple language why the Voting Rights Act, which applies primarily to six Southern states in their entirety, and to 40 counties in a seventh Southern state, is repugnant to the system of government the Constitution was ordained to establish. The major provisions of the Act were originally embodied in Public Law 89–110 and are now codified in sections 1973b, 1973c, 1973e and 19731 of Title 42 of the United States Code.

In explaining the Act, I will hold to a minimum the multitude of judicial decisions which corroborate what I say in respect to the constitutional provisions and principles I cite.

THE CONSTITUTION

As William Ewart Gladstone, the British statesman, affirmed, the Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man. It delegates to the federal government enumerated powers to enable it to act as the national government for all the states and all the people. It confers upon the states or reserves to them or the people all other powers. It undertakes to ensure liberty by forbidding governmental tyranny.

The Constitution consists of words inscribed on paper. If it is to be an effective instrument of government instead of a worthless scrap of paper, two things are indispensable. The provisions of the Constitution must be permanent in meaning until they are changed by a duly adopted amendment, and the words of the Constitution must be interpreted and applied to mean what they say. (*Marbury* v. *Madison*, 1 Cranch 137, 2 L.Ed. 60; *Gibbons* v. *Ogden*, 9 Wheat 1, 6 L.Ed. 23.)

The great and wise men who framed and ratified the Constitution knew this to be true. In consequence, they inserted in Article VI, clause 3 of the Constitution this specific provision: "The Senators and Representatives * * * and the members of the several state legislatures, and all executive and judicial officers both of the United States and of the several states, shall be bound by oath or affirmation to support this Constitution."

Chief Justice John Marshall, America's greatest jurist of all time, rightly ruled in *Marbury* v. *Madison*, 1 Cranch 137, 2 L.Ed. 60, that a Supreme Court Justice who does not conform his official action to the Constitution makes his oath to support it worse than a solemn mockery.

Before discussing the repugnancy of the Voting Rights Act to the Constitution, I deem it appropriate to make observations respecting other relevant matters.

THE THIRTEENTH, FOURTEENTH, AND FIFTEENTH AMENDMENTS

After it ratified the Thirteenth Amendment, which prohibits slavery, i.e., the forced labor of one man for another against his will, the nation undertook to confer upon the recently emancipated blacks equality of legal rights with white people. To this end, Congress enacted the Civil Rights Act of 1866, which specifies, in essence, that they are entitled to enjoy virtually the same rights as those enjoyed by white people under state laws.

Knowledgeable constitutional scholars doubted whether the Thirteenth Amendment sufficed to vest in Congress power to enact the Civil Rights Act. To remove this doubt and the possibility that a subsequent Congress might repeal it, the nation added to the Constitution the Fourteenth Amendment, which includes the equal protection clause. This clause undoubtedly gave the blacks legal equality with white people under state law by decreeing, in substance, that state laws must treat in like manner all persons in like circumstances. Subsequent decisions of the Supreme Court adjudged that the due process clause of the Fifth Amendment imposes a similar requirement on acts of Congress.

The Fourteenth Amendment also made the recently emancipated blacks citizens by providing that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

To make secure to blacks possessing the qualifications prescribed by law the right to vote, the nation added to the Constitution the Fifteenth Amendment which specifies that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color, or previous condition of servitude," and which confers on Congress the power to enforce that declaration by appropriate legislation.

The Supreme Court had these constitutional and legislative actions in mind when it made this comment in the Civil Rights Cases of 1883, 109 U.S. 3, 27 L.Ed. 835: "When a man has emerged from slavery, and by the aid of beneficient legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of mere citizen, and ceases to be a special favorite of the laws, and when his rights, as a citizen or a man, are to be protected in the ordinary modes by which other men's rights are protected."

OBJECTIVE OF ADVOCATES OF VOTING RIGHTS ACT

The Voting Rights Act was the brainchild of impatient and zealous men who spurned this comment. They were bent on abolishing literacy tests in Southern States employing them as qualifications for voting, and thus securing to blacks residing in those states the power to vote irrespective of their ability to read and write, anything in the Constitution to the contrary notwithstanding.

To be sure, these impatient and zealous men professed that they merely desired to prevent these Southern States denying of abridging the rights of blacks residing in them to vote on account of their race or color.

If this had been their objective, there would have been no reason for them to persuade Congress to enact the Voting Rights Act.

OTHER FEDERAL LAWS

This is true because at the time of its enactment the United States Code was replete with federal statutes sufficient to prevent and punish any denial or abridgement by any of these Southern States of the right of any literate black to vote on account of his race or color.

Some of these statutes provided for the imposition of criminal penalties upon offending state or local officers. Others subjected them to liability for civil damages to the aggrieved persons. And others authorized the Department of Justice and aggrieved individuals or groups to prosecute equitable proceedings triable by federal judges sitting without juries, and to obtain in such proceedings judicial decrees compelling recalcitrant states and their officers under threat of punishment for contempt to register literate blacks and permit them to vote.

By means of these equitable proceedings, the Department of Justice or the aggrieved individuals or groups could have obtained States or subdivisions of Southern States the residing in recalcitrant areas in Southern States or subdivisons of Southern States the right to vote. They could have accomplished this purpose with dispatch because federal district judges sitting without juries or special masters appointed by them could have administered literacy tests to multitudes of blacks speedily either singly or en masse, and thereby established in short order the facts necessary to support decrees enforcing the rights of literate blacks to vote.

To be sure, the criminal prosecutions, civil actions, and equitable proceedings authorized by the federal statutes were triable in federal district courts in accordance with procedures and rules of evidence conforming to constitutional principles governing the administration of civil and criminal justice. Hence, it was incumbent upon the Department of Justice or the aggrieved individuals or groups to establish in them by credible evidence the literacy of blacks allegedly denied the right to vote in violation of the Fifteenth amendment.

RELUCTANCE OF ADVOCATES OF VOTING RIGHTS ACT TO INVOKE OTHER FEDERAL LAWS

For these reasons, politically-minded Attorneys General and advocates of the Voting Rights Act were reluctant to invoke these federal laws. They found it more profitable politically to agitate for the enactment of the Voting Rights Act before the nationwide news media and in Congress than to assume the burden of establishing the truth of their allegations against the South by constitutional procedures and rules in the judicial calm of courts of justice. Besides, advocates of the Voting Rights Act also found it financially profitable to agitate in this manner because the agitation induced benevolently-minded citizens to make contributions to the causes they espoused.

I interrogated all of the occupants of the office of Attorney General during my 20 years in the Senate in various hearings concerning the reluctance of the Department of Justice to invoke existing federal statutes to enforce the Fifteenth Amendment. They invariably gave excuses rather than justifications for the Department's reluctance. They confessed that the Department had not sought criminal prosecutions of any Southern State or local officer for allegedly denying literate blacks the right to vote during their tenures. They explained the Department's inaction in this respect by asserting that Southern juries would not convict state or local officers in such prosecutions.

Since the Department of Justice had not instituted any criminal prosecutions of this nature against Southern State or local officers during their tenures their assertion was simply an unsupported attack upon the integrity of Southern people.

I suggested that they harbored prejudices against Southerners akin to those they professed to be desirous of eradicating from

Southern minds, and reminded them that the equitable proceedings authorized by existing federal laws were triable by federal district judges without Southern juries. They then asserted that the statutes authorizing civil actions and equitable proceedings were substantially ineffective—an assertion which my long experience as a trial lawyer and trial and appellate judge disabled me to accept. I was convinced that a competent lawyer could have obtained a decree in an authorized equitable proceeding securing the right to vote to any literate black.

The assertion of the Attorneys General to the contrary was disproved in a number of equitable proceedings which the Department of Justice prosecuted to successful conclusion in recalcitrant areas in Alabama, Louisiana, and Mississippi.

ILLITERACY

I digress to observe that although it is undoubtedly more prevalent in the South than it is in other regions, illiteracy is not exclusively a Southern problem, or exclusively the product of Southern discrimination against blacks in education.

The validity of this observation was revealed in a Senate hearing. Attorney General Robert F. Kennedy twitted me with the fact that the census of 1960 disclosed that my home State, North Carolina, numbered about 30 thousand illiterate blacks among the people inhabiting it. He charged that this fact, standing alone, conclusively proved that North Carolina discriminated against blacks in education.

I thereupon scrutinized the census of 1960 for myself, and discovered to my surprise and to Attorney General Kennedy's consternation that it revealed that his home state, Massachusetts, was the domicile of about 60 thousand illiterate whites. I hastened to assure Kennedy that I did not accept this fact as proof that Massachusetts discriminated against whites in education.

I also digress to express my abiding conviction that it is reprehensible for any state, or any public officer, willfully to deny or abridge the right of any qualified person of any race to vote for any reason.

THE VOTING RIGHTS ACT IS A BILL OF ATTAINDER

Article I, Section IX, Clause 3 of the Constitution expressly forbids Congress to practice what may well be described as the most contemptible of all tyrannies. It forbids Congress to pass any bill of attainder.

A bill of attainder is a legislative act which declares a person guilty of a past offense and inflicts punishment upon him for it without a judicial trial.

To constitute a bill of attainder under Article I, Section IX, clause 3 of the Constitution, an act of Congress must have these characteristics: (1) It must apply either to named persons or to a class or group of ascertainable persons; (2) it must declare by legislative fiat that the named persons or the class or group of ascertainable persons are guilty of a past offense; and (3) it must inflict punishment on the persons named or the class or group of ascertainable persons for the offense without a judicial trial.

The Supreme Court has adjudged that various classes or groups, such as persons who supported the Confederacy during the Civil War, or members of the Communist Party, constitute ascertainable persons within the purview of bills of attainder. These adjudications compel the conclusion that legislators, executive officers, or citizens of a particular state are ascertainable persons within the purview of bills of attainder.

The punishment inflicted by a bill of attainder need not be a fine, or imprisonment, or a death sentence. It may consist of the denial of the right to engage in a profession, trade, or business, or the deprivation or suspension of constitutional, political, or legal powers and rights.

The Voting Rights Act is clearly a bill of attainder. It applies to the states and subdivisions of states it covers, and to ascertainable classes or groups of their officers and citizens; it declares them guilty of past offenses, i.e., denying or abridging the rights of black citizens to vote in violation of the Fifteenth Amendment; and it punishes them for the alleged past offenses by the deprivation or suspension of various constitutional and political powers vested in them by the Constitution.

LITERACY TESTS AS QUALIFICATIONS FOR VOTING

The Constitution provides that electors of the United States House of Representatives "in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature" (Article I, Section II); that the presidential and vice presidential electors of each State shall be appointed "in such manner as the legislature thereof may direct" (Article II, Section II, Clause 3); and that the electors of United States Senators "in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature" (Seventeenth Amendment).

The Tenth Amendment reserves to the States the power to prescribe the qualifications for voting in state and local elections.

As the Supreme Court and State and inferior federal courts have rightly adjudged in cases past numbering, these four constitutional provisions empower a State to establish and employ literacy tests as qualifications for voting in all Federal, State and local elections within its borders.

The power of a State to prescribe qualifications for voting in all elections is subject to five narrow limitations specified by the Constitution itself. A State cannot make race (Fifteenth Amendment), sex (Nineteenth Amendment), the age of persons eighteen years or over (Twenty Sixth Amendment), or the payment of a poll or other tax (Twenty Fourth Amendment) a qualification for voting. Moreover, qualifications for voting established and employed by a State must apply in like manner to all persons of all races similarly situated (Equal Protection Clause of the Fourteenth Amendment).

INDISPENSABLE CONSTITUTIONAL PRINCIPLES

The Constitution establishes certain fundamental principles which must control the official actions of Congress, the President and the Supreme Court if the United States is to endure as a federal system of government, and the United States, the States, and the people are to be ruled by the Constitution and equal, impartial, and uniform laws conforming to that instrument. Insofar as they are presently germane, these principles are as follows:

1. As the Supreme Court so well declares in *Texas* v. *White*, 67 Wall. 700, 19 L.Ed. 227, "the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

2. To this end, our system of government is based on dual sovereignties, state and federal, each of which is supreme within its own sphere. Under it, the States possess all the attributes of sovereignty, except as to the powers granted to the federal government by the Constitution, or denied to the States by that instrument. (72 Am. Jur. 2d, States, Territories, and Dependencies, Section 16)

3. The Constitution consists of harmonious provisions of equal dignity. None of them may be so interpreted, applied, or enforced as to nullify or suspend any others.

4. Neither the Congress nor the President nor the Supreme Court has power to nullify or suspend any provision of the Constitution. As the Supreme Court rightly ruled in its most courageous and intelligent decision of all time, Ex Parte Milligan, 4 Wall. 2, 18 L.Ed. 281, "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority."

5. Under the Constitution, the United States is a union of political equals, and all the States stand on an equal footing in respect to the constitutional powers they possess. As the Supreme Court rightly adjudged in *Coyle* v. *Smith*, 221 U.S. 559, 55 L.Ed. 853, 'The constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we may remain a free people, but the Union will not be the Union of the Constitution."

6. The Fifth and Sixth Amendments as well as Articles I and III of the Constitution plainly forbid the federal government to punish any person for any offense unless his guilt is established in a fair trial in a court of justice.

7. The Constitution and federal statutes conforming to it establish appropriate sanctions to remedy or punish state or local legislative or administrative action which denies or abridges the right of United States citizens to vote on acount of race or color. If the action is based on state law, the law is void, and the judiciary is empowered by Article III and the Supremacy Clause of the Constitution to so adjudge and restrain its execution. If the action is based on misconduct of state or local officials, the judiciary is empowered by federal statutes to punish or restrain the misconduct, and to enforce the right to vote by suitable rulings. The Constitution clearly forbids the Congress, the President, or the federal judiciary to undertake to remedy or punish it by nullifying or suspending the power vested by it in state or local officials to establish and employ literacy tests as qualifications for voting.

The Voting Rights Act treats with contempt all of these fundamental and indispensable constitutional principles.

THE ARTIFICIAL FORMULA OF THE VOTING RIGHTS ACT

The advocates of the Voting Rights Act were pragmatic politicians. As such, they knew that they could not induce Congress to approve its drastic provisions unless the legislation embodying them plainly exempted from its coverage virtually all sections of the nation outside the areas of the South targeted by them.

Hence, they cleverly contrived an artificial legal formula to trigger the Voting Rights Act into automatic operation without a judicial trial in the areas of the South targeted by them, and to exclude from its coverage virtually all areas of the nation outside the targeted areas.

They were able to do this by differences in voting patterns in the South and other sections. At the time of the passage of the Voting Rights Act, the Democratic Party dominated the South, while the Democratic and Republican parties had substantially equal strength in virtually all other sections. Hence, there was low registering and voting in presi-

dential elections in the South because all federal officers except the President and all state and local officers were chosen for all practical purposes in primaries and the ultimate choice of the presidential candidate was a foregone conclusion; whereas there was high registering and voting in presidential elections in other sections of the nation because the choice of their voters for President as well as for other federal and state and local officers were determined in them.

For this reason, the advocates of the Voting Rights Act devised the artificial formula embodied in Section 1973b(b) of Title 42 of the United States Code which automatically applies the major provisions of the Act to the areas in the South targeted by them and excludes virtually all other sections of the land from them.

The provisions creating the artificial formula specify that the Voting Rights Act automatically applies in any State or in any subdivision of a State (1) which the Attorney General determines employed a literacy test as a qualification for voting on November 1, 1964, and with respect to which (2) the Director of the Census determines that less than 50 percent of the persons of voting age residing in it were registered on November 1, 1964, or less than 50 percent of such persons voted in the presidential election of 1964.

These determinations are made by the Attorney General and the Director of the Census without a hearing, and are not subject to review in any court of justice. Moreover, they totally ignore the race of the persons of voting age who were registered on November 1, 1964, and the race of the persons of voting age who voted in the presidential election of 1964. As a consequence, the formula applies to any State or subdivision of any State embraced within the determination if less than 50 percent of the persons of voting age of all races residing in it were registered on November 1, 1964, or voted in the presidential election of November 1964, even though all its black residents of voting age were registered at the specified time and all of them voted in the specified presidential election.

Nevertheless, the formula creates, in substance, a conclusive presumption that States or subdivisions of States embraced within the determinations denied or abridged the right of black citizens to vote on account of race or color in violation of the Fifteenth Amendment; and on that basis alone punishes such States and subdivision of States and their officers and citizens by the deprivation or suspension of the constitutional powers and rights previously enumerated in the manner hereafter stated.

UNCONSTITUTIONALITY OF FORMULA

The formula created by the Voting Rights Act is unconstitutional as well as artificial. It violates the due process clause of the Fifth Amendment in two ways. First, the Act creates a conclusive presumption; and second, the factual determinations of the Attorney General and the Director of the Census have no rational connection with the ultimate fact presumed, i.e., that the States or subdivisions of States embraced within the determinations denied the rights of black citizens to vote on account of race or color in violation of the Fifteenth Amendment.

CONSTITUTIONAL INFIRMITIES OF THE VOTING RIGHTS ACT

As originally enacted in 1965, the Voting Rights Act condemns the areas in the South targeted by it, namely, the entire States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, and 40 of North Carolina's 100 counties. At the same time the Act repudiates the doctrine of the constitutional equality of the States by exempting from its crucial provisions the 21 other States employing literacy tests as qualifications for voting in their entirety with the exception of the State of Alaska and about five counties in three other States. Alaska and these five counties were impaled by the formula, notwithstanding few blacks, if any, resided in them, and they had never violated the Fifteenth Amendment as to any of them.

When it subsequently amended the Act by extending its coverage on the basis of registration and voting in the presidential election of 1968, Congress continued in force the Act's original condemnation and punishment of the six Southern States and the 40 North Carolina counties. This amendment may have ensnared a few isolated counties in Northern or Western States, which, like Alaska and the five counties previously condemned, had few black residents, if any, and had never violated the Fifteenth Amendment as to any of them.

For reasons already detailed, the Voting Rights Act treats with contempt the constitutional prohibition of congressional bills of attainder, the due process clause of the Fifth Amendment, and the doctrine of the constitutional equality of the States. In addition, the Act is repugnant to the other fundamental and indispensable constitutional principles which have been previously enumerated.

The provisions of the Act, now codified as Section 1973b(a) is based on the unconstitutional assumption that the Fifteenth Amendment takes precedence over the four provisions of the Constitution plainly vesting in the States the power to employ literacy tests as qualifications for voting, and empowers Congress, a creature of the Constitution, to nullify or suspend these four provisions by an irrefutable bill of attainder. On the basis of this unconstitutional assumption, the Voting Rights Act punishes any State or subdivision condemned by its formula by the deprivation or suspension of its constitutional power to employ literacy tests as qualifications for voting, and decrees that such deprivation or suspension remains in effect until a specific federal court, i.e., the District Court of the District of Columbia, "in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that" no literacy test "has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color."

The Supreme Court ruled in *Gaston County* v. *United States*, 395 U.S. 285, 23 L.Ed.2d 309, that a state or subdivision condemned by the formula of the Voting Rights Act has the burden of proving in an action for a declaratory judgment under Section 1973b(a) that it has not violated that section during the prescribed period. The same decision makes it virtually impossible for a condemned Southern State or subdivision to carry this burden of proof successfully by concluding that such State or subdivision produced the illiteracy of its black citizens by prior discrimination against them in education.

The provision of the Voting Rights Act now codified as Section 1973c suspends the power of any State or political subdivision condemned by the formula to exercise its power under the Constitution of the United States or its own Constitution to make any change in its voting laws in effect on November 1, 1968, without securing in advance either (1) a ruling of the United States District Court of the District of Columbia in an action brought by it against the United States for a declaratory judgment, or (2) a ruling of the Attorney General, that the change "will not have the effect of denying or abridging the right to vote on account of race or color." This provision of the Voting Rights Act robs a condemned State or subdivision of the power to legislate in an area vital to its practical operation without the prior approval of the United States District Court of the District of Columbia or that of the Attorney General.

Even apart from the constitutional evil it does, the Voting Rights Act is grossly unfair to many of the areas of the South it condemns. While the officers in some of these areas discriminated against blacks in voting, the officers in many others administered literacy tests with impartiality as required by the Fifteenth Amendment. The Voting Rights Act condemns the recalcitrant and law-abiding States and officers in like manner, and inflicts identical punishment upon them and the areas for which they act.

The Voting Rights Act, I submit, is subject to a constitutional informity additional to those already discussed.

The Act denies each condemned State or subdivision access to any court to contest the constitutionality of its original condemnation and punishment. It vests exclusive jurisdiction of subsequent actions for declaratory decrees under Sections 1973b(a) and 1973c of Title 42 of the United States Code in the United States District Court for the District of Columbia, a court sitting in Washington, D.C., 200 miles from the capital of the nearest condemned Southern State and 1000 miles or more from some of the others. (42 U.S.C. 1973b(b)) As a consequence, a State or subdivision condemned by the Act has the herculean, if not the impossible task and expense, of presenting its case to this court by securing the appearance of witnesses essential to its exoneration at hearings conducted hundreds of miles from their places of abode. The task is aggravated by the provision of 42 U.S.C. Sec. 1973(1)(d) which denies the condemned State or subdivision subpoenas to compel the attendance of any witnesses residing more than 100 miles from Washington without the consent of the court.

I submit that the venue and rules established by the Voting Rights Act in actions for declaratory judgments under Sections 1973b(a) and 1973c deny the condemned State or subdivision a fair trial, and for that reason offend the due process clause of the Fifth Amendment, which mandates that all trials in federal district courts must be fair.

They undoubtedly disgrace the Congress of a nation whose Declaration of Independence assigned as one of the reasons for the severance of its political bonds to England that King George transported Americans "beyond seas" to try to them "for pretended offences."

THE VOTING RIGHTS ACT AND THE SUPREME COURT

Chief Justice Harlan F. Stone declared that "where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action, and fearless comment upon it."

Despite its manifold arbitrary provisions and constitutional infirmities, the Supreme Court ruled in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 15 L.Ed.2d 769, that the Voting Rights Act constitutes appropriate legislation to enforce the Fifteenth Amendment within the purview of its second section.

I have carefully scrutinized that ruling on many occasions, and will make some fearless and truthful comments upon it. The decision in *South Carolina* v. *Katzenbach* is as bizarre as the Voting Rights Act itself.

In the opinion underlying the decision, the Supreme Court rejects all the constitutional complaints against the Voting Rights Act by assertions which are neither constitu-

tionally permissible nor intellectually satisfying. The assertions are quite intriguing.

The Supreme Court conceded, in essence, that the Voting Rights Act is a bill of attainder and violates the due process clause. It asserts, however, that this fact is wholly immaterial. The immateriality, the Supreme Court says, arises out of the circumstances that States of the Union are not persons in the context of the prohibition of congressional bills of attainder under Article I, Section IX, Clause 3 of the Constitution, or the due process clause of the Fifth Amendment. (383 U.S. 301, 323–324, 15 L.Ed.2d 769, 784)

Diligent research reveals no authoritative precedent supporting this assertion. To be sure, there are some cases in which courts have made careless statements that states are not persons. These are cases in which the courts were construing laws imposing liabilities and conferring legal rights on individuals and organizations under the designation of "persons" and they were merely adjudging in them that the laws did not apply to States.

The Supreme Court's assertion of the inapplicability of the constitutional prohibition of congressional bills of attainder and the due process clause to the Voting Rights Act is something which Alice In Wonderland would have described as an impossible and unbelievable thing. This is so because if it were sound law instead of a judicial aberration, it would mean that Congress, a creature of the Constitution, has the arbitrary and autocratic power under the Constitution to destroy the federal system of government ordained by the Constitution by nullifying or suspending governmental powers conferred upon, or reserved to, the States as indestructible members of an indestructible union by the Constitution without notice, hearing, or proof by passing irrefutable bills of attainder alleging that the States had been guilty of wrong-doing in exercising their governmental powers. Every syllable in the Constitution refutes this fantasy.

The assertion is incompatible with sound Supreme Court decisions defining and explaining what States are in a constitutional sense, and the plain language in which constitutional prohibition of congressional bills of attainder and the due process clause are expressed.

Since it handed down its decision in *Chisholm* v. *Georgia*, 2 Dall. 419, 1 L.Ed. 440, in 1792, the Supreme Court has consistently and rightly held that a State is an artificial or corporate person which has the capacity to sue to vindicate its constitutional powers or protect its proprietary interests.

Other Supreme Court decisions consistently and rightly hold that a State is far more than a mere geographical spot on the nation's map. They adjudge that a State is a political community of free citizens; that it is composed of the people residing within its borders; that in the nature of things it necessarily acts through legislative, executive, and judicial officers, who are natural persons; and that it acts through such officers to exercise the governmental powers which it and its citizens, who are natural persons, possess in their sovereign, corporate, and collective capacities.

Article I, Section IX, Clause 3 of the Constitution declares in plain words that "no bill of attainder * * * shall be passed", and the Fifth Amendment decrees in plain words that "no person * * * shall be deprived of life, liberty, or property without due process of law."

These provisions are absolute, and subject to no exceptions. Since they have no power to amend or distort them while professing to construe them. Supreme Court Justices cannot adjudge that they do not extend their protections to States, or subdivisions of States, or their officers or citizens without converting their oaths to support the Constitution in Chief Justice Marshall's unhappy phrase into worse than solemn mockeries. And that is exactly what they did in *South Carolina* v. *Katzenbach*.

The Supreme Court declares in *South Carolina* v. *Katzenbach* that a State has no standing as a parent of its citizens to invoke the constitutional prohibition of congressional bills of attainder or the due process clause. What relevancy this declaration had I cannot imagine. South Carolina was not suing as the parent of its citizens. It was suing in its own right to protect its own constitutional powers against congressional nullifications or suspension, and to protect its own right to exercise those powers in the only way it could, i.e., through its officers.

To circumvent the invalidation of the Voting Rights Act by the doctrine of the constitutional equality of the States, the Supreme Court assigns to this doctrine in *South Carolina* v. *Katzenbach* a new meaning, which is alien to the objective of the doctrine and makes it virtually impotent as a protection to States. In so doing, the Supreme Court declares that the doctrine protects a State only at the precise moment of its admission to statehood, and that thereafter Congress can reduce it to the status of a second class State with constitutional powers inferior to those of other States by passing a bill of attainder. (383 U.S. 301, 328–329. 15 L.Ed. 2d 769, 787).

The assertions which the Supreme Court makes to avoid invalidating the Voting Rights Act under the due process clause of the Fifth Amendment are also intriguing, but constitutionally impermissible and intellectually unsatisfying. They are, in substance, that the due process clause permits Congress to create conclusive and irrational presumptions in all its enactments except those relating directly to criminal prosecutions (383 U.S. 301, 328–329, 330–331, 15 L. Ed.2d 769, 788), and that the constitutional objections to the jurisdiction the Act vests in the United States District Court for the District of Columbia is without substance because Article III, Section 1 of the Constitution empowers Congress to establish inferior federal courts and to define or limit their jurisdiction (383 U.S. 301, 331, 15 L. Ed.2d 769, 788–789). This constitutional provision does confer upon Congress power to create inferior federal courts and to define or limit their jurisdiction, but it does not authorize Congress to limit the jurisdiction of such courts or to prescribe precedures or rules of evidence which limit their exercise of such jurisdiction in ways which deny litigants a fair trial as guaranteed by the due process clause.

As interpreted and applied in *Gaston County* v. *United States*, the Voting Rights Act condemns a State of wrongdoing by a conclusive, irrational and unconstitutional presumption, and on that basis robs the State of its constitutional power, and simultaneously establishes a rule of evidence which precludes it from afterwards resuming its constitutional powers unless it rebuts the conclusive, irrational, and unconstitutional presumption.

SUMMATION

The Voting Rights Act and *South Carolina* v. *Katzenbach* treat with contempt the undeniable truth that apart from the faithful observation of the Constitution by Congress, the President, and the Supreme Court, America has no protection against anarchy, and Americans have no protection against tyranny.

What has been said proves that the Voting Rights Act commits these linguistic mayhems on the Constitution:

1. It robs the States its irrational formula condemns of constitutional powers it permits their sister States to retain and exercise.

2. It robs the States its irrational formula condemns, and their citizens of essential protections which the Constitution makes inviolate when they are invoked by others, including those who commit treason against the United States, and those who seek to destroy the United States by violence or other unlawful means.

3. It robs the States condemned by its irrational formula of sovereignty essential to their proper functioning under the Constitution.

What has been said also reveals that the decision in *South Carolina* v. *Katzenbach* is repugnant to multitudes of sound Supreme Court decisions. Notable among them are the cases I have cited and the additional unanswerable ruling in *Ashton* v. *Cameron County* Water Improvement District, 298 U.S. 513, 531, 80 L.Ed. 1309, 1314.

The Voting Rights Act was not necessary to punish violators of the Fifteenth Amendment, or to secure to any qualified black the right to vote in any area of the nation. Other federal laws conforming to the Constitution were adequate to accomplish these beneficient purposes.

As the Supreme Court has rightly adjudged, a literacy test meeting constitutional limitations affords a State constitutional means for securing an informed electorate. (*Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45, 3 L.Ed.2d 1072)

Americans who cherish the belief that illiterate persons ought to be allowed to vote have a constitutional and intellectually honest way to seek the consummation of their belief. They may advocate a constitutional amendment to outlaw literacy tests.

Instead of doing this, advocates of the Voting Rights Act sought to nullify the use of literacy tests in the States targeted by them by suspending powers plainly secured to those States by the Constitution, and by converting them from indestructible members of an indestructible Union and their officers and citizens from free persons to constitutional and legal pariahs.

I do not condemn advocates of the Voting Rights Act who are justifiably ignorant of the Constitution. But I can find nothing to say in extenuation of the action of supporters of the Act who are either contemptuous of its impact upon constitutional principles and protections, or are too lazy to ascertain what its impact on such principles and protections is.

I cannot accept as a justification for the Act the claim of its advocates that it has secured the power to vote to untold thousands of blacks in the Southern States impaneled by its irrational formula. Constitutional evil cannot be condoned because those responsible for it are actuated by motives they deem righteous.

The Act has undoubtedly secured the power to vote to many illiterate blacks. The claim of its advocates that it has also secured the power to vote to all the literate blacks registered in the condemned States after its enactment is certainly overbroad and insupportable. Most of them would have been registered in the absence of the Act because discrimination against literate blacks in voting has been virtually abandoned in Georgia, North Carolina, South Carolina, and Virginia, and has substantially decreased in Alabama, Louisiana, and Mississippi.

When one seeks an explanation for the enactment of the Voting Rights Act and the adjudication that it is a constitutionally appropriate means for the enforcement of the Fifteenth Amendment, he is compelled by intellectual integrity to reach this sad conclusion: Congress enacted the Voting Rights Act and the Supreme Court approved its action because they were determined to arrogate to themselves the arbitrary and autocratic power to secure to blacks residing in the States condemned by the irrational formula the power to vote irrespective of their ability to read or write, all the provisions

and principles of the Constitution to the contrary notwithstanding.

The Voting Rights Act evokes the recollection of a relevant comment Pope Julius III made to a Portuguese Monk centuries ago. The Pope said: "Learn, my son, with how little wisdom the world is governed."

Congress will allow the Act to expire unless a majority of its members wish to demonstrate that their oaths to support the Constitution are worse than solemn mockeries.●

## CONGRESS MUST DEFEND THE SOCIAL SECURITY SYSTEM

● Mr. SARBANES. Mr. President, the Congress must reject the unwarranted cuts in our social security system proposed by the administration. It must reassure current beneficiaries, those about to retire, and younger members of our society contributing to the system that commitments made by our Government to them with regard to their benefits will be upheld. The social security system, established in 1935, is our country's basic program in assisting retirees and families to retain economic independence after retirement, disability, or death. Over 35 million beneficiaries receive and rely on monthly social security payments; for many it is their sole source of income.

The administration's announcement of $88 billion in cuts in social security benefits over the next 5 years has caused deep concern, fear, and anxiety among all Americans. Millions, young and old, would be adversely affected and would find what they thought they could count on in social security benefits for their families in case of disability, retirement, or death greatly reduced or taken away.

The first step in social security benefit reductions was taken in February 1981, when the administration's budget recommended the termination of the social security minimum benefit for those currently receiving the benefit and those who would be eligible in the future. This recommendation, which unfortunately has been passed by both the House and the Senate, strikes many of those least able to afford any reduction in their already low income. Fifty percent of the 3 million elderly who receive the benefit are already below the poverty line. Several efforts were made in the Congress to maintain the minimum benefit for those currently receiving it and relying on it. An amendment to accomplish this objective, which I cosponsored, failed on July 21, 1981, by a 45-to-52 vote.

The second step to reduce social security benefits came when the administration announced on May 12, 1981 deep and wide-ranging social security benefits cuts totaling $88 billion which would affect those currently receiving benefits and those who will be receiving benefits in the future. The administration claimed that the social security benefit reduction of $68 billion is needed because we will have the greatest bankruptcy in history on November 3, 1982, when the old age and survivors trust fund will experience a slight shortfall of funds. This statement was clearly an example of rhetorical overkill unrelated to the realities of the situation. It was irresponsible and needlessly alarmed millions of people. In fact many experts believe that transfer of funds among the three social security trust funds (two of which project surpluses) would solve the short-term cash flow problem.

One of the most unwarranted and patently unfair proposals by the administration is to immediately and drastically reduce the social security benefit for people who retire at age 62 from 80 percent of full benefits to 55 percent of full benefits. What this would mean is that a worker retiring under the current social security law who is entitled to $240 a month, would receive only $165 a month under the administration's plan. Currently, 70 percent of people retiring take their benefits before age 65, many for reasons of ill health, unemployment, or obsolete skills. Workers currently deciding to take their social security benefits before age 65 are already accepting reduced benefits which remain at the lower level the entire time they are receiving them. The administration's recommendation to abruptly and unjustly penalize those retiring before age 65 by reducing their benefits an even greater amount, from 80 to 55 percent of full benefits, will result in no retiree at age 62, no matter how much paid into social security, receiving a benefit even as high as the poverty level.

Many well-respected economists and experts in social security matters have written articles regarding the administration's recent proposals and the current financial health of the social security system indicating that the actual financial outlook does not warrant the drastic and frightening recommendations being put forth by the administration. I recommend the following thoughtful articles on social security to my colleagues and ask that they be printed in full: "The Current Status of our Social Security Program" by Sylvia Porter, Evening Sun, July 24, 1981; "The Social Security Scare" by Clayton Fritchey, Washington Post, July 27, 1981.

The material follows:

### The Current Status of Our Social Security Program

(By Sylvia Porter)

Are we, the American public, being brainwashed into accepting a dismantling of our Social Security program? Or has justified concern over improving the bottom-line figures of the national budget driven the politicians into forgetting that "politics is people"?

Why else would we seriously listen to proposed cutbacks in promised Social Security benefits amounting to twice as much as needed to assure the financial stability of the entire Social Security system on into the long-range future?

Why else would almost all of the 3,400 employees of the Memorial Hospital Medical Center in Long Beach, Calif., endorse a plan to leave Social Security and join a private program providing benefits that lets workers pocket 6.65 percent of their wages previously earmarked for Social Security—but that could not possibly give them equal protection?

Under the Reagan administration's own economic assumptions, Social Security expenditures from 1982 to 1986 will run $11 billion over income. But the cuts originally proposed by the administration came to an estimated total of about $82 billion in that span.

"Cold and outrageous," were the words used by Rep. Claude Pepper (D-Fla.), chairman of the House Select Committee on Aging, to describe proposals he denounced as beyond any rational or reasonable limits.

There is no reason to panic over the short-term financing problem the system faces between now and the time the tax hike scheduled in the law for 1986 begins to produce more revenue. I'll repeat this and repeat this, because your panic makes no sense at all. The shortfall is temporary, caused entirely by economic conditions that won't last, and can easily be met by borrowing from the other two Social Security trust funds, both of which are in good shape.

There are many ways, too, to meet the temporary shortfall other than by cutting benefits (although I agree some benefits should be and almost surely will be reduced). You may be hearing more of one idea, strongly endorsed by Rep. Millicent Fenwick (R-N.J.), a member of the Select Committee on Aging. This program would increase SS taxes and would simultaneously reduce income taxes paid by workers by permitting them to deduct Social Security taxes from gross income, just as they now deduct state and local taxes. Employers have that option now; they can deduct the employer's share of Social Security taxes from income taxes as a business expense. Employees not only pay Social Security taxes, but also pay the income taxes on the Social Security deductions.

It wasn't until hit by an uproar of protest over the impact of the SS cuts the administration had proposed that President Reagan backed down and indicated a great willingness to negotiate any or all of them. Under some of the proposed SS cuts:

All 37.5 million people currently receiving Social Security benefits would lose about $100 next year as the result of a proposed three-month delay in the annual cost-of-living adjustment.

More than 7 million workers and their spouses retiring before age 65 during the next five years would have their benefits cut by one-third.

More than 1.26 million workers, the majority age 50 or over, who otherwise would have been able to collect disability benefits over the next five years, would not be able to qualify for those benefits.

The cuts would hit particularly hard at those who take their SS benefits before age 65—and that would include men and women in ill health or out of work because they couldn't find jobs.

No age 62 retiree, single or married, no matter how much he or she had contributed to SS, could receive a benefit even as high as the official poverty line.

### The Social Security Scare

(By Clayton Fritchey)

It is time for those who know better to stop frightening millions of Social Security beneficiaries with scare talk about the system's going broke.

Social Security does warrant attention. There are a number of changes and refinements that could bolster it, but it is irresponsible to yell "fire" in order to win support for hacking at the system's problems, all of which can be constructively resolved with little or no harm to the retirees.

Despite all the dire warnings that retirement funds may run out in the next year or so, there is no real danger that payments will be cut off. Congress would not dare let that happen. Nevertheless , many retirees and near-retirees have been needlessly upset.

Sen. Daniel P. Moynihan (D-N.Y.) accuses the Republicans of conducting "a campaign of terrorism" by exaggerating the situation to frighten Congress into taking extreme action.

President Reagan, in turn, accused House Democrats, who have been fighting to preserve the minimum benefit, of "opportu-

nistic political maneuvering, especially designed to play on the fears of many Americans."

Speaker Thomas P. O'Neill's prompt rejoinder was that Reagan was "distorting the issue." It is unconscionable, he said, to "exploit fears," about the condition of the system "so as to make deep cuts in benefit levels."

That there is widespread uneasiness has just been confirmed by a national CBS-New York Times poll that shows 54 percent of the American people today doubt the Social Security system will have the money to pay the full benefits they are entitled to. Moreover, even among those already receiving benefits, 37 percent fear the system will not be able to cover its obligations and 26 percent believe their own benefits will not continue because of a fund shortage.

At the same time, however, the polls again demonstrated how strongly the people support Social Security. Even if a tax increase becomes necessary, 66 percent said, they would favor it. Only 27 percent were opposed. Congress showed it is well aware of this sentiment when the Senate voted unanimously to reject a package of benefit slashes sought by the administration and the House later voted 405 to 13 against the administration's proposed cuts in minimum benefits.

The continuing popularity of Social Security is remarkable, considering all the attacks that have been made on it over the years, especially charges that it is a "ripoff" and doesn't deliver as well as European retirement systems.

Actually, the U.S. worker, compared with workers in other leading industrial countries, has a much lighter Social Security tax burden. The employee payroll tax is now 6.65 percent in the United States, compared with 12.04 percent in France, 16.4 in Germany and 23.42 in the Netherlands.

As for benefits, figures for 1979 show a typical U.S. $15,000-a-year worker, with a dependent wife, gets $8,780 annually. In France, it was $6,629 for a couple, and in Germany a retiree got $7,352, but nothing more for a dependent wife. In most of these countries, retirees got some additional benefits, but even so, the U.S. system is a comparative bargin.

Stanford Ross, former commissioner of Social Security, says he found in Europe a greater sense of "solidarity" between the elderly and young workers than he perceives in the United States. In West Germany and Sweden especially, he says, young workers "identify with the need to support the elderly and the handicapped," and the elderly are "concerned about the burdens placed on the young."

Doubts about the future of Social Security have been largely inspired by emphasis on the supposed threat of a shrinking work force and an expanding army of retirees. Today, for every person over 65, there are three between 18 and 64. In the next century, it is projected to be 1 for every 2. Thus, it is argued, we will end up with too few workers supporting too many retirees. Actually, the current ratio is considerably less than 3 to 1, for it treats all those between 18 and 65 as "wage earners," whereas millions of youngsters are now unemployed or still in school. It also doesn't allow for the fact that many elect to retire before they are 65.

The upshot is that the future change in the ratio will not be as dramatic as pictured. Also, a dwindling work force can easily be augmented by immigration, plus the addition to the work force of millions of currently underemployed women, plus the availability of many retirees who would welcome the opportunity to work under well-paid, full-employment conditions. So, in the decades ahead, there should be enough workers to support the retirees comfortably.●

## ARMS CONTROL POLICY

● Mr. DURENBERGER. Mr. President, ever since President Carter requested that the SALT II treaty be withheld from consideration, and particularly since the election of President Reagan, there has been considerable curiosity about the future of arms control. Unfortunately, many pundits took President Reagan's criticisms of the SALT II treaty—criticisms which were echoed in the Senate—as a sign that this administration is somehow opposed to arms control or that it somehow lacks the imagination and courage to venture into new and pressing issues of security policy. This is particularly ironic, since it was President Carter and not President Reagan who ultimately recognized that any arms control agreement entered into by the United States must enjoy the essential confidence of the American people if it is to be successful, and it was President Carter and not President Reagan who therefore overturned several years of rhetoric and withdrew the SALT II treaty.

Nonetheless, there has been extensive interest in the position which the Reagan administration holds about the arms control process in general and strategic nuclear arms limitations in particular. I am therefore extremely encouraged that Secretary of State Haig has outlined a comprehensive, articulate, and bold statement of this country's policy under President Reagan.

Three points stand out in an analysis of this statement. First, Secretary Haig clearly points out that this administration, like its predecessors, remains fundamentally and inalterably committed to strategic nuclear arms control as an essential element of our overall security policy. Like every American President since Harry Truman, President Reagan recognizes that nuclear weaponry represents a threat to our very survival as a species, and that our supreme national interest therefore lies in preventing the use of nuclear weapons by any nation. In other words, Secretary Haig has underscored the fundamental continuity of long-standing American policy.

Second, however, Secretary Haig has clearly and concisely articulated the basic premises and principles which must underly our approach to arms control. In this regard, Secretary Haig has made a signal contribution to our understanding of arms control and national security policy. He has cut a Gordion knot which has plagued analysts for many years by defining the leading priority of arms control under the Reagan administration. I refer, of course, to his statement that "the paramount aim of arms control must be to reduce the risk of war." It is this aim—"crisis stability" in the jargon—which must override such other worthy aims as "arms race stability"—economic savings—or "damage limitations." For without a world which is safe from the threat of nuclear war, all other security goals pale into insignificance.

Just as important as a clear statement of the fundamental goal of this administration is the recognition that we must avoid simplistic or one-sided assessments of the overall military balance between the United States and the Soviet Union. A partial examination of this area can lead to the conclusion that the United States is either decisively stronger or decisively weaker than the Soviet Union. Such conclusions, while comforting to those who offer them, can undermine our conduct of arms control negotiations. Simple "bean counting" will not suffice when considering strategic nuclear weapons. Instead, as Secretary Haig points out, "balance is more than a matter of numbers."

Third, having laid the conceptual groundwork for an approach to arms control talks, Secretary Haig has proposed some innovative and important ideas. Chief among these are his explicit recognition that arms control must deal with allied security policy, and that negotiations on theater nuclear forces and other weaponry in Europe are inextricably linked with our approach to SALT. This is a point which has been tacitly recognized by many people, but which bears repetition, particularly when our allies are undertaking an improvement in their military capability. I am particularly encouraged, therefore, Secretary Haig has announced that he will soon undertake negotiations on theater nuclear forces, that he has proposed the adoption of the French proposal at Madrid, and that he suggests that we consider some new solutions to new and complex problems.

Mr. President, I ask that the full text of Secretary Haig's speech be introduced into the RECORD.

The speech follows:

ARMS CONTROL FOR THE 1980S: AN AMERICAN POLICY

(Address by Secretary Haig before the Foreign Policy Association in New York on July 14, 1981)

I do want to say I'm very, very pleased to have an opportunity to talk again before the Foreign Policy Association. I've always believed that an effective policy abroad must be the product of support for that policy here at home. And this Association and its activities have clearly made a major contribution to that requirement here in America. It has always sharpened the issues for the American people and enabled them to decide for themselves on these fundamental issues. And it is just such an issue that I would like to discuss today, and that is the vitally important issue of the future of arms control in this decade of the 1980s facing Americans. There is hardly a subject which enjoys or is a focus of greater international attention, especially recently, among our allies in Western Europe, and with good cause.

This is true because we are living in an age when man has conceived the means of his own destruction. The supreme interest of the United States has been to avoid the extremes of either nuclear catastrophe or nuclear blackmail. Beginning with the Baruch Plan, every President has sought international agreement to control nuclear weapons and to prevent their proliferation. But each chief executive has also recognized that our national security and the security of our allies depend on American nuclear forces as well.

President Reagan stands in this tradition. He understands the dangers of unchecked nuclear arms. He shares the universal aspiration for a more secure and peaceful world. But he also shares the universal disappoint-

ment that the arms control process has delivered less than it has promised.

One of the President's first acts was to order an intense review of arms control policy, the better to learn the lessons of the past in the hope of achieving more lasting progress for the future. Two fundamental conclusions have emerged from this review.

First, the search for sound arms control agreements should be an essential element of our program for achieving and maintaining peace.

Second, such agreements can be reached if negotiations among adversaries about their national security interests are not dominated by pious hopes and simplistic solutions.

The task of arms control is enormously complex. It must be related to the nation's security needs and perspectives. Above all, arms control policy must be seen in the light of international realities. As Churchill put it, "You must look at the facts because they look at you." An American arms control policy for this decade must take into account the facts about our security and the lessons that we have learned about what works—and what does not work—in arms control.

Despite the extraordinary efforts at arms control during the 1970s, the world is a less secure place than it was 10 years ago. We began the process with the expectation that it would help to secure the deterrent forces of both the United States and the Soviet Union. But Moscow's strategic buildup has put at risk both our crucial land-based missiles and our bombers. Simultaneously, the Soviets have continued a massive buildup of conventional forces and have used them with increasing boldness. Their armies and those of their surrogates have seized positions that threaten resources and routes critical to Western security.

We cannot blame our approach to arms control alone for our failure to restrain the growth and use of Soviet power. The Soviet Union did not feel compelled to agree to major limitations and adequate verification in part because the United States did not take steps needed to maintain its own strategic and conventional capabilities. Nor did we respond vigorously to the use of Soviet force. The turmoil of the 1960s, Vietnam, and Watergate all contributed to this passivity. As a result, the basis for arms control was undermined. We overestimated the extent to which the Strategic Arms Limitation Talks would help to ease other tensions. We also underestimated the impact that such tensions would have on the arms control process itself.

This experience teaches us that arms control can only be one element in a comprehensive structure of defense and foreign policy designed to reduce the risks of war. It cannot be the political centerpiece or the crucial barometer of U.S.-Soviet relationships, burdening arms control with a crushing political weight. It can hardly address such issues as the Soviet invasion of Afghanistan, the Iran-Iraq war, the Vietnamese invasion of Cambodia—which is the subject of our U.N. conference here this week—the Libyan invasion of Chad, or Cuban intervention in Africa and Latin America. Instead, arms control should be an element—a single element—in a full range of political, economic, and military efforts to promote peace and security.

PRINCIPLES

The lessons of history and the facts of international life provide the basis for a realistic set of principles to guide a more effective approach to arms control. All of our principles are derived from a recognition that the paramount aim of arms control must be to reduce the risks of war. We owe it to ourselves and to our posterity to follow principles wedded exclusively to that aim.

Our first principle is that our arms control efforts will be an instrument of, not a replacement for, a coherent allied security policy. Arms control proposals should be designed in the context of the security situation we face, our military needs, and our defense strategy. Arms control should complement military programs in meeting these needs. Close consultation with our allies is an essential part of this process, both to protect their interests and to strengthen the Western position in negotiations with the Soviet Union.

If conversely, we make our defense programs dependent on progress in arms control, then we will give the Soviets a veto over our defenses and remove their incentive to negotiate fair arrangements. Should we expect Moscow to respect parity if we demonstrate that we are not prepared to sacrifice to sustain it? Can we expect the Soviets to agree to limitations if they realize that, in the absence of agreement, we shall not match their efforts? In the crucial relationship between arms and arms control, we must not put the cart before the horse. There is little prospect of agreements with the Soviet Union that will help solve such a basic security problem as the vulnerability of our land-based missiles until we demonstrate that we have the will and the capacity to solve them without arms control, should that be necessary.

Our second principle is that we will seek arms control agreements that truly enhance security. We will work for agreements that make world peace more secure by reinforcing deterrence. On occasion it has been urged that we accept defective agreements in order "to keep the arms control process alive." But we are seeking much more than agreements for their own sake. We will design our proposals not simply in the interest of a speedy negotiation but so that they will result in agreements which genuinely enhance the security of both sides.

That is the greatest measure of the worth of arms control, not the money saved nor the arms eliminated. Indeed, valuable agreements can be envisioned that do not save money and that do not eliminate arms. The vital task is to limit and to reduce arms in a way that renders the use of the remaining arms less likely.

Just as arms control could not aim simply at reducing numbers, so it should not try simply to restrict the advance of technology. Some technological advances make everyone safer. Reconnaissance satellites, for instance, discourage surprise attacks by increasing warning and make verification of agreements possible. Submarines and other means of giving mobility to strategic systems enhance their survivability, reduce the advantage of preemptive strikes, and thus help to preserve the peace. Our proposals will take account of both the positive and the negative effects of advancing technology.

Whether a particular weapons system, and therefore a particular agreement, undermines or supports deterrence may change with the development of other weapons systems. At one time, fixed intercontinental ballistic missiles (ICBMs) were a highly stable form of strategic weapons deployments, but technological change has altered that. We need to design arms control treaties so that they can adapt flexibly to long-term changes. A treaty that, for example, had the effect of locking us into fixed ICBM deployments would actually detract from the objectives of arms control.

Our third principle is that we will seek arms control bearing in mind the whole context of Soviet conduct worldwide. Escalation of a crisis produced by Soviet aggression could lead to a nuclear war, particularly if we allowed an imbalance of forces to provide an incentive for a Soviet first strike. American foreign policy and defense policy, of which arms control is one element, must deter aggression, contain crisis, reduce sources of conflict, and achieve a more stable military balance—all for the purpose of securing the peace. These tasks cannot be undertaken successfully in isolation one from the other.

Soviet international conduct directly affects the prospects for success in arms control. Recognition of this reality is essential for a healthy arms control process in the long run. Such "linkage" is not the creation of U.S. policy: It is a fact of life. A policy of pretending that there is no linkage promotes reverse linkage. It ends up by saying that in order to preserve arms control, we have to tolerate Soviet aggression. This Administration will never accept such an appalling conclusion.

Our fourth principle is that we will seek balanced arms control agreements. Balanced agreements are necessary for a relationship based on reciprocity and essential to maintaining the security of both sides. The Soviet Union must be more willing in the future to accept genuine parity for arms control to move ahead. Each agreement must be balanced in itself and contribute to an overall balance.

Quantitative parity is important, but balance is more than a matter of numbers. One cannot always count different weapons systems as if they were equivalent. What matters is the capacity of either side to make decisive gains through military operations or threat of military operations. Agreements that do not effectively reduce the incentives to use force, especially in crisis situations, do nothing at all to enhance security.

Our fifth principle is that we will seek arms controls that include effective means of verification and mechanisms for securing compliance. Unverifiable agreements only increase uncertainty, tensions, and risks. The critical obstacle in virtually every area of arms control in the 1970s was Soviet unwillingness to accept the verification measures needed for more ambitious limitations. As much as any other single factor, whether the Soviets are forthcoming on this question will determine the degree of progress in arms control in the 1980s.

Failure of the entire arms control process in the long run can be avoided only if compliance issues are clearly resolved. For example, there have been extremely disturbing reports of the use of chemical weapons by the Soviets or their proxies in Afghanistan and in Southeast Asia. With full Western support the United Nations is now investigating the issue of chemical weapons. Similarly, in the spring of 1979, there was an extraordinary outbreak of anthrax in the Soviet city of Sverdlovsk. Despite continued probing, we still await a serious Soviet explanation as to whether it was linked to activities prohibited under the biological weapons convention.

Our sixth principle is that our strategy must consider the totality of the various arms control processes and various weapons systems, not only those that are being specifically negotiated. Each U.S. weapons system must be understood not merely in connection with a corresponding Soviet system, but in relation to our whole strategy for deterring the Soviets from exploiting military force in general. In developing our theater nuclear arms control proposals, for example, we should consider the relationship of theater nuclear forces to NATO's overall strategy for deterring war in Europe. We cannot overlook the fact that our European strategy has always compensated for shortfalls in conventional capability through a greater reliance on theater and strategic nuclear forces. If we are to rely less on the nuclear elements in the future, the conventional elements will have to be strengthened.

PROSPECTS

What then are the prospects for arms control in the 1980s? We could achieve quick agreements and an appearance of progress if we pursued negotiation for its own sake or for the political symbolism of continuing the

process. But we are committed to serious arms control that truly strengthens international security. That is why our approach must be prudent, paced, and measured.

With a clear sense of direction and a dedication to the serious objectives of arms control, this Administration will strive to make arms control succeed. We will put our principals into action. We will conduct negotiations based on close consultation with our allies, guided by the understanding that our objective is enhanced security for all of our allies, not just for the United States. We will work with the Congress to insure that our arms control proposals reflect the desires of our people, and that, once agreements are negotiated, they will be ratified and their implementation fully supported. We will comply with agreements we make, and we will demand that others do likewise.

By the end of the year, the United States will be embarked upon a new arms control endeavor of fundamental importance, one designed to reduce the Soviet nuclear threat to our European allies. The impetus for these negotiations dates back to the mid-1970s when the Soviets began producing and deploying a whole new generation of nuclear systems designed not to threaten the United States—for their range was too short—but to threaten our European allies. These new weapons, and in particular the nearly 3,000-mile range SS-20 missile, were not just modernized replacements for older systems. Because of their much greater range, their mobility, and above all their multiplication of warheads on each missile, these new systems presented the alliance with a threat of a new order of magnitude.

The pace of the Soviet buildup is increasing. Since the beginning of last year, the Soviets have more than doubled their SS-20 force. Already 750 warheads have been deployed on SS-20 launchers. The Soviet Union has continued to deploy the long-range Backfire bomber and a whole array of new medium- and short-range nuclear missiles and nuclear-capable aircraft. This comprehensive Soviet arms buildup is in no sense a reaction to NATO's defense program. Indeed, NATO did very little as this alarming buildup progressed.

In December 1979 the alliance finally responded in two ways. First, it agreed to deploy 464 new U.S. ground-launched cruise missiles in Europe and to replace 108 medium-range Pershing ballistic missiles already located there with modernized versions of greater range. Second, the alliance agreed that the United States should pursue negotiated limits on U.S. and Soviet systems in this category.

This two-track decision represents explicit recognition that arms control cannot succeed unless it is matched by a clear determination to take the defense measures necessary to restore a secure balance. On taking office, as one of its first foreign policy initiatives, this Administration announced its commitment to both tracks of the alliance decision—deployments and arms control. Last May, in Rome, we secured unanimous alliance endorsement of our decision to move ahead on both tracks and of our plan for doing so.

Since than I have begun discussions in Washington with the Soviet Ambassador on this issue. When I meet with Soviet Foreign Minister Gromyko at the United Nations this September, I will seek agreement to start the U.S.-Soviet negotiations on these weapons systems by the end of this year. We would like to see the U.S. and Soviet negotiators meet to begin formal talks between mid-November and mid-December of this year. We intend to appoint a senior U.S. official with the rank of Ambassador as our representative at these talks.

Extensive preliminary preparations for this entirely new area of arms control are already underway in Washington and in consultation with our NATO allies in Brussels. Senior U.S. and European officials will continue to consult after the beginning of U.S.-Soviet exchanges. We and our allies recognize that progress can only come through complex, extensive and intensive negotiations.

We approach these negotiations with a clear sense of purpose. We want equal, verifiable limits on the lowest possible level on U.S. and Soviet theater nuclear forces. Such limits would reduce the threat to our allies and bring to Europe the security undermined today by the Soviet buildup. We regard the threat to our allies as a threat to ourselves, and we will, therefore, spare no effort to succeed.

We are proceeding with these negotiations to limit the theater threat within the framework of SALT—the Strategic Arms Limitation Talks designed to limit the nuclear threat to the United States and to the Soviet Union. In this area, too, we have initiated intense preparations. These preparations must take into account the decisions we will take shortly on modernizing our intercontinental ballistic missiles and our strategic bombers.

In the course of 10 years of SALT negotiations, conceptual questions have arisen which must be addressed. For instance, how have improvements in monitoring capabilities, on the one hand, and new possibilities for deception and concealment, on the other, affected our ability to verify agreements and to improve verification? Which systems are to be included in a SALT negotiation, and which should be discussed in other forums? How can we compare and limit the diverse U.S. and Soviet military arsenals in the light of new systems and new technologies emerging on both sides?

In each of these areas there are serious and pressing questions which must be answered to insure the progress of SALT in the 1980s and beyond. Only in this way can SALT become again a dynamic process that will promote greater security in the U.S.-Soviet relationship. We are determined to solve these problems and to do everything necessary to arrive at balanced reductions in strategic arsenals on both sides.

We should be prepared to pursue innovative arms control ideas. For example, negotiated confidence—building measures in Europe could provide a valuable means to reduce uncertainty about the character and purpose of the other side's military activities. While measures of this sort will not lessen the imperative of maintaining a military balance in Europe, they can reduce the dangers of miscalculation and surprise.

We are eager to pursue such steps in the framework of a European disarmament conference based on an important French proposal now being considered at the Madrid meeting of the Conference on Security and Cooperation in Europe. We call upon the Soviets to accept this proposal, which could cover Soviet territory to the Urals. As we proceed in Madrid, we will do so on the basis of a firm alliance solidarity, which is the key to bringing the Soviets to accept serious and effective arms control measures.

Our efforts to control existing nuclear arsenals will be accompanied by new attempts to prevent the spread of nuclear weapons. The Reagan Administration is developing more vigorous policies for inhibiting nuclear proliferation. We expect the help of others in this undertaking, and we intend to be a more forthcoming partner to those who share responsibility for nonproliferation practices. Proliferation complicates the task of arms control: It increases the risk of preemptive and accidental war, it detracts from the maintenance of a stable balance of conventional forces, and it brings weapons of unparalleled destructiveness to volatile and developing regions. No short-term gain in export revenue or regional prestige can be worth such risks.

It may be argued that the "genie is out of the bottle," that technology is already out of control. But technology can also be tapped for the answers. Our policies can diminish the insecurities that motivate proliferation. Responsible export practices can reduce dangers. And international norms can increase the cost of nuclear violations. With effort we can help to assure that nuclear plowshares are not transformed into nuclear swords.

In sum, the United States has a broad agenda of specific arms control efforts and negotiations already underway or soon to be launched. The charge that we are not interested in arms control or that we have cut off communications with the Soviets on these issues is simply not true.

The approach I have discussed today stands in a long and distinguished American tradition. We are confident that it is a serious and realistic approach to the enduring problems of arms control. The United States wants a more secure and a more peaceful world. And we know that balanced, verifiable arms control can contribute to that objective.

We are also confident that the Soviet leaders will realize the seriousness of our intent. They should soon tire of the proposals that seek to freeze NATO's modernization of theater nuclear weapons before it has even begun, while reserving for themselves the advantages of hundreds of SS-20s already deployed. They should see that the propaganda campaign intended to intimidate our allies and frustrate NATO's modernization program cannot and must not succeed. Arms control requires confidence, but it also requires patience.

Americans dream of a peaceful world, and we are willing to work long and hard to create it. This Administration is confident that its stance of patient optimism on arms control expresses the deepest hopes and the clearest thoughts of the American people.

It is one of the paradoxes of our time that the prospects for arms control depend upon the achievement of a balance of arms. We seek to negotiate a balance at less dangerous levels but meanwhile we must maintain our strength. Let us take to heart John F. Kennedy's reminder that negotiations "are not a substitute for strength—they are an instrument for the translation of strength into survival and peace."●

## UNITED STATES, IN CHANGE, IS BACKING LOANS TO FOUR LATIN LANDS

● Mr. MOYNIHAN. Mr. President, the New York Times recently carried a report that the Reagan administration has reversed a standing U.S. human rights policy by instructing American delegates to international development banks to vote in favor of loans to Argentina, Chile, Paraguay, and Uruguay. Since 1977 the United States has opposed all such loans to Chile, and has abstained on international loan proposals for Uruguay, Paraguay and Argentina, because of persistent human rights violations by the governments of those countries. The recent change in policy follows a State Department determination that, in the words of the Department spokesman, "there have been significant improvements in the human rights situation in those countries." Would that this were true.

Consider the case of Argentina. In the center of Buenos Aires, across the way from the offices of the president of the country, there is an open square called the "Plaza de Mayo." Every Thursday

afternoon a group of women assembles there and stands silently facing the president's quarters.

They are seeking information about sons and daughters and other relations who have disappeared since the military took power in Argentina in 1975. Amnesty International estimates that there are between 15,000 and 20,000 of what are known in Spanish as los desaparecidos—people who have simply disappeared after being arrested by the military or the police. The majority of los desaparecidos are presumed to be dead. Some are probably alive, but their whereabouts are unknown by their families.

Officials in the Government of Argentina, including Roberto Eduardo Viola, the new President, have on various occasions promised to provide the mothers of the Plaza de Mayo with the accounting they seek. This accounting has not yet been provided. Worse, meetings of the mothers have been disrupted by security forces and individual members have been subjected to a wide range of harassment and abuse—arrests, detentions, housebreaking, thefts of records and papers, accusations of subversive intent.

On June 25, along with 13 other Americans long concerned about the human rights situation in Argentina, I became a charter member of an informal group known as the U.S. Friends of the Mothers of the Plaza de Mayo. The group was formed to serve three purposes:

First. To attempt to protect the mothers against harassment and reprisal by publicizing attacks against them and by pursuing such legal remedies as may be available in national and international bodies.

Second. To support their demands for an accounting of what has happened to their children and to persist in this demand until a full accounting is provided.

Third. To demonstrate support by U.S. citizens for the restoration of the rule of law and human rights in Argentina.

The names of the Friends follow:

Senator Daniel Patrick Moynihan.
Senator Edward M. Kennedy.
Representative Millicent Fenwick.
Representative Don Bonker.
Vincent McGhee, President of Amnesty International USA.
John J. O'Callaghan, President of the Jesuit Conference of America.
Patricia Derian, former Assistant Secretary of State for Human Rights and Humanitarian Affairs.
Chauncey Alexander, Executive Director of National Association of Social Workers.
Orville Schell, attorney (former President of the Association of the Bar of the City of New York).
Robert L. Bernstein, Chairman and President of the Random House (and Chairman of U.S. Helsinki Watch Committee).
Adrian DeWind, attorney (former President of the Association of the Bar of the City of New York).
Marvin Frankel, attorney (former Federal District Judge and Chairman of the Committee on International Human Rights of the Association of the Bar of the City of New York).
M. William Howard, President of the National Council of Churches of Christ in the USA.
Rose Styron, a writer.

We are committed to the goal of the Mothers of the Plaza de Mayo: We too insist that the Government of Argentina explain what has happened to los desaparecidos.

Mr. President, there is a postscript to the founding of the Friends organization that is significant in light of the news about the administration's finding of an improvement in the human rights situation in Argentina.

Two women who have been prominent in the Mothers of the Plaza de Mayo attended the meeting in New York City on June 25 at which the founding of the U.S. Friends group was announced. Mrs. Hebe de Bonasini and Mrs. Adela de Antokoletz were there and they expressed appreciation for our support. They then embarked upon a 2-week tour of the United States, during which time they spoke to a good many Americans and generally solicited support for their cause. Mrs. de Bonasini and Mrs. de Antokoletz also gathered written information about human rights standards and American views on Argentina.

The two women returned home to Buenos Aires 2 weeks ago, on the day before the New York Times reported the Reagan administration decision that the human rights situation had improved "significantly." They were met at the airport and immediately taken into custody by Air Force policemen. Mrs. de Bonasini and Mrs. de Antokoletz were kept in detention for 2 hours, subjected to verbal and psychological abuse, and then released. The booklets and papers they had accumulated during their stay in the United States were confiscated.

Mr. President, I remain unconvinced that the human rights situation in Argentina has improved significantly, the Reagan administration's recent determination notwithstanding. Fifteen thousand desaparecidos remain unaccounted for. The Mothers of the Plaza de Mayo, peaceful protestors with a legitimate complaint, continue to be harassed in callous and lawless fashion. We should not act as if we are unaware. We dare not leave the impression that we do not care. While I, too, desire better relations between Argentina and the United States, I do not believe that this is possible until the government of Argentina explains what has happened to los desaparecidos.

I ask that the New York Times article on the administration's decision be printed in the RECORD.

The article follows:

U.S., IN CHANGE, IS BACKING LOANS TO 4 LATIN LANDS

(By Judith Miller)

WASHINGTON.—The Reagan Administration has ordered American delegates to international development banks to support loans to Chile, Argentina, Paraguay and Uruguay.

The order, which reverses the Carter Administration's policy of not voting for such loans on human rights grounds, was based on a State Department determination that "there have been significant improvements in the human rights situation in those countries," according to a department spokesman.

The decision has drawn criticism on Capitol Hill from human rights activists, including Representative Tom Harkin, Democrat of Iowa.

CONGRESS WAS TOLD ON JULY 1

"That is simply not true," asserted Mr. Harkin, the primary author of a 1977 law that instructs the Government to oppose loans by international banks to countries that engage in "a consistent pattern of gross violations of human rights." He said, "This decision quite clearly violates the spirit and letter of the law."

Negative votes by the United States did not block development bank loans. A State Department official today described them as symbolic.

Congress was informed of the Reagan Administration's action in a private letter dated July 1 from W. Dennis Thomas, Assistant Secretary of the Treasury for Legislative Affairs, to Representative Jerry M. Patterson, chairman of a banking subcommittee that oversees the international development banks.

"The Department of State has reviewed the current human rights situation in Argentina, Chile, Paraguay and Uruguay," it said, "and has determined that the human rights legislation enacted in 1977 does not require U.S. opposition to loans to those countries."

Since 1977, the United States has opposed all loans to Chile and has abstained on international loan proposals for Uruguay, Paraguay and Argentina. The State Department said the Carter Administration voted no or abstained on 122 loans to 16 countries.

Judith Jamison, public affairs adviser to the State Department's Bureau of Human Rights, noted, however, that "the previous Administration never formally designated any countries as falling within the definition" of the 1977 law.

According to the Treasury Department letter, delegates to the International Bank for Reconstruction and Development, the International Finance Corporation and the Inter-American Development Bank have been instructed to support $183.8 million in loans to the four countries this month. The Inter-American Development Bank today approved a $126 million loan to finance highway construction in Chile.

In denouncing the decision, Mr. Harkin said that the human rights records of all four countries had repeatedly been criticized. In May, Amnesty International, a London-based group that monitors human rights violations, issued a statement concluding that there had been a "marked deterioration" in the human rights situation in Chile last year. Mr. Harkin said that this year there had been a "wave of new arrests in Chile, more than 200," and that Chile had refused to prosecute people indicted by an American court in connection with the assassinations of Orlando Letelier in 1976 in Washington.

The State Department spokesman replied that "there have been no disappearances in Chile since 1977" and "almost all political prisoners had been released by early 1978." The official statement said that although the Administration regretted Chile's failure to prosecute in the Letelier case, "We believe our voting policy should reflect the actual human rights situation in the country."

Mr. Harkin said that Argentina had not explained the disappearance of 10,000 to 15,000 people and that it continued to hold about 1,000 people, 900 of them under decrees that require neither formal charges nor a fixed term of imprisonment. Torture continues, Mr. Harkin charged.

The State Department asserted that "the level of violence in Argentina to which terrorist activity was a major contributing factor peaked in the years 1976–78." The statement added that there were "44 credibly documented disappearances" in 1979, 12 last year and "no confirmed disappearances since last August." While the number of prisoners being held under special decrees is about 900, the statement says, this is a decline from 8,000 and "releases continue." ●

## INTELLIGENCE MERITS AS MUCH PROTECTION AS SOYBEANS

● Mr. HOLLINGS. Mr. President, a former Soviet intelligence official is on record as saying: "We were always taught that our highest priority was to put out the eyes of the enemy by disrupting his intelligence service."

Sad to report, certain American actions condoned over the past several years have given the Soviets inestimable help in disrupting our intelligence operations. Chief among these has been the public disclosure of intelligence officers' identities. As Jack Maury pointed out on July 31 in the Washington Star:

Nothing is more disruptive or demoralizing to a clandestine organization than the constant exposure, or threat of exposure, of its undercover operatives.

The results have been, literally, lethal. Agents such as Dick Welsh in Athens and others have been murdered. Many others have found their ability to continue working made impossible by disclosure. The credibility of our intelligence organization has suffered, and its ability to elicit the cooperation of other nations' intelligence services has been seriously compromised. So has CIA morale.

As the leading country in the free world, the United States must always have an effective intelligence organization. We live in the real world, where life is hard and choices are sometimes difficult. The challenges to freedom are everywhere, and in this era of terrorism and revolution, national security requires a strong and confident Central Intelligence Agency.

Happily our court system is moving against the excesses of recent years, and hopefully this belated action will finally put an end to this wholesale crime—and I use the term advisedly.

Mr. President, Jack Maury's column merits wide reader attention, and I hope my colleagues will take a couple of minutes to look it over. For that reason, I ask that the piece be printed in today's edition of the RECORD.

The column follows:

INTELLIGENCE MERITS AS MUCH PROTECTION AS SOY BEANS

(By Jack Maury)

In the recent Supreme Court case involving the State Department's revocation of the passport of Philip Agee, the Chief Justice, speaking for the majority, held that Agee's disclosure of details of our foreign intelligence operations was "clearly not protected by the Constitution." Despite several high court decisions that First Amendment rights are not absolute where national security is involved, a noisy claque of civil libertarians persists in the contention that legal restraint on the deliberate exposure of our undercover intelligence personnel would, in the words of one leading national daily, "leave constitutional freedoms in shreds."

During a stopover in Athens in late 1975, I paid a visit to my old friend and successor as CIA station chief there, Dick Welch. Dick's position had been just publicized in the Athens Daily News, based on revelations in Counterspy, a journal published in the United States by a group including CIA's first publicly identified defector, the same Philip Agee. Less than a month later, Welch was assassinated on the steps of his Athens home as he and his wife were returning from an American Embassy Christmas party.

In the five years since then, Congress has still not passed any legislation dealing with this problem of "naming names" of undercover personnel. Louis Wolf, a current leader in this endeavor, claims to have exposed the identities of over 2,000 covert American intelligence personnel around the world. Last year the home of one of these, in Jamaica, was sprayed by machine fire within 48 hours after his name was revealed, and early this year two American labor officials involved in a project that Agee had some time before claimed was a CIA operation were murdered in El Salvador. Other victims of such allegations—whether true or false—have been harassed and their professional effectiveness has been irreparably damaged. Which brings to mind the words of a former senior Soviet intelligence officer: "We were always taught that our highest priority was to put out the eyes of the enemy by disrupting his intelligence service."

Whatever the motives of those engaged in this "naming names" activity, any old intelligence hand knows that nothing is more disruptive or demoralizing to a clandestine organization than the constant exposure, or threat of exposure, of its undercover operatives.

These people have special problems and pressures. They work very much alone, usually far from home in alien cultures and often hostile environments where a single misstep could damage the national interest or have fatal consequences for themselves, their families, or their collaborators. Clearly, we cannot offer them public acclaim for a job well done, nor can we adequately reward them materially lest unexplained affluence attract suspicion. But we can show appreciation for their services by giving them the protection they need to do their job. And how can we expect to get the often invaluable collaboration of friendly foreign intelligence services, or private institutions, businessman and others who might be willing secretly to help us if we are unable or unwilling to protect the identities of our covert personnel?

It is ironic that we have laws providing clear-cut criminal penalties for the unauthorized disclosure of such government information as future crop estimates from the Department of Agriculture, identities of recipients of federal welfare, income tax information, selective service records, applicants for Land Bank loans, formulas for insecticides, etc., but no effective protection for some of our most sensitive intelligence sources, methods, and identities.

Legislation has recently been introduced to deal with this problem. It is being opposed on two grounds. First, it is said that such legislation would violate First Amendment rights of free speech and press. The answer is that there is no case law to support this contention. In such cases as those of former CIA employees Marchetti and Snepp, the courts have held that First Amendment rights are not absolute, and that the Government can take appropriate action to protect its sensitive secrets. The second objection is that such laws would have a "chilling effect" on public disclosure and discussion of intelligence matters. In fact, the legislation in question would in no way hamper legitimate discussion and criticism of intelligence activities. Its application is strictly limited to those who expose the identities of covert personnel with intent to "impair or impede intelligence operations.

A wise veteran of White House councils once said that the greatest danger to peace in our time might be an ill-informed American President. Cerainly in today's world we are, without good intelligence, a blind man stumbling through an uncharted minefield. Our great technical systems can tell us much of hostile capabilities but little of intentions, and here human sources are more important than ever. But we will not have the human sources we need so long as our laws give better protection to statistics on soy bean crops than to the lives of people like Dick Welch.●

## THE ECONOMIC RECOVERY TAX ACT

Mr. BAKER. Mr. President, I wish to take this moment once again to commend the distinguished chairman of the Finance Committee, Senator DOLE, for his leadership and effective management of the Economic Recovery Tax Act of 1981.

His resolve and determination provided for efficient Senate action on the largest comprehensive tax measure in history, a measure which will be one of the cornerstones to restoring our Nation's economic strength.

Chairman DOLE played a crucial role during the budget reconciliation process, and I am sure that I join with all of my colleagues in extending to him our deepest thanks and gratitude.

Mr. President, by the same token, may I extend my congratulations to the distinguished ranking minority member of the Finance Committee, Senator LONG, who was for so long the chairman of the Finance Committee, and who has once again brought to this measure the full flavor of bipartisan cooperation. I am especially grateful to Senator LONG for his guidance and counsel based on his long experience in this field in bringing this matter to a successful and prompt conclusion.

Mr. President, I should be remiss if I did not once again express my gratitude, and I believe I speak for every Senator, to the distinguished professional staff of the Finance Committee, the bipartisan staff. They are truly extraordinary in their ability, especially the majority staff director, Robert Lighthizer, and his counterpart, Mike Stern, who has also contributed significantly in this respect.

Mr. President, I wish to congratulate all Senators for their participation, all of those who favored and those who opposed this measure. I believe it is a mark of accomplishment for the Senate that this difficult piece of legislation was transacted and brought to final passage as we have now done in what I believe to be virtually record time.

## SENATOR HARRISON WILLIAMS

Mr. BAKER. Mr. President, it is with a note of frustration that I rise to speak of an article which appeared in today's New York Post. The article alleges that I, along with the Senate Ethics Committee chairman, Senator WALLOP, have quote "decide to begin proceedings to expel" Senator HARRISON WILLIAMS of New Jersey.

Mr. President, I want to clearly state that this story is totally inaccurate in every respect. Aside from several reports that I have received from the committee for scheduling considerations, I have neither discussed privately nor publicly the allegations against Senator WILLIAMS.

It is imperative, Mr. President, that the public record on this important matter be absolutely clear. I have not had such conversations nor has the chairman of the committee, Senator WALLOP.

## ADJOURNMENT OF THE SENATE AND HOUSE UNTIL SEPTEMBER 9, 1981

Mr. BAKER. Mr. President, I am happy that we have reached the place where I can offer the following resolution:

Mr. President, I send to the desk a concurrent resolution and ask its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 27) providing for an adjournment of the Senate from August 3, 1981 to September 9, 1981, and an adjournment of the House from August 4, 1981, to September 9, 1981.

The Senate proceeded to consider the concurrent resolution.

Mr. BAKER. Mr. President, before the Chair puts the question, I would point out that I will shortly send a second concurrent resolution to the desk, Senate Concurrent Resolution 28, which will provide for the adjournment of the Senate from August 3 until September 9 and of the adjournment of the House from Wednesday, August 5 until September 9.

The reason for agreeing to both of these resolutions is to give the House maximum flexibility in accommodating to their requirements at the same time.

The PRESIDING OFFICER. The question is on agreeing to Senate Concurrent Resolution 27.

The resolution (S. Con. Res. 27) was agreed to as follows:

*Resolved by the Senate (the House of Representatives concurring)*, That when the Senate adjourns on Monday, August 3, 1981, it stand adjourned until 12:00 o'clock noon on Wednesday, September 9, 1981, and that when the House adjourns on Tuesday, August 4, 1981, it stand adjourned until 12:00 o'clock noon on Wednesday, September 9, 1981.

## ADJOURNMENT OF THE SENATE AND HOUSE UNTIL SEPTEMBER 9, 1981

Mr. BAKER. Mr. President, I send to the desk another resolution, Senate Concurrent Resolution 28.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 28) providing for an adjournment of the Senate from August 3, 1981 to September 9, 1981, and an adjournment of the House from August 5, 1981 to September 9, 1981.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 28) was agreed to as follows:

*Resolved by the Senate (the House of Representatives concurring)*, That when the Senate adjourns on Monday, August 3, 1981, it stand adjourned until 12:00 o'clock noon on Wednesday, September 9, 1981, and that when the House adjourns on Wednesday, August 5, 1981, it stand adjourned until 12:00 o'clock noon on Wednesday, September 9, 1981.

## DIRECTING THE CLERK OF THE HOUSE OF REPRESENTATIVES TO MAKE CORRECTIONS IN THE ENROLLMENT OF H.R. 4242.

Mr. BAKER. Mr. President, I now send to the desk on behalf of the distinguished chairman of the Committee on Finance (Mr. DOLE) a concurrent resolution (S. Con. Res. 30) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 30) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 4242.

The Senate proceeded to consider the concurrent resolution.

Mr. BAKER. Mr. President, before the Chair puts the question on this, I might say it is the usual resolution for the correction of technical errors in the just-passed conference report. It has been cleared with the minority, and has attached to it the substance of the changes that are to be made.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 30) was agreed to as follows:

*Resolved by the Senate (the House of Representatives concurring)*, That in the enrollment of 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, the Clerk of the House of Representatives shall make the following corrections:

(1) In the table of contents, in the item relating to section 102, strike out ", decrease in holding period".

(2) In the table of contents, in the item relating to section 601, strike out "$22,500" and insert in lieu thereof "$2,500".

(3) In the table of contents, after the item relating to section 823, insert the following:

SUBTITLE D—OTHER PROVISIONS

Sec. 831. Technical amendments relating to dispositions of investment in United States real property.

Sec. 832. Modification of foreign investment company provisions.

(4) In the section heading to section 102 of the bill, strike out ", DECREASE IN HOLDING PERIOD".

(5) In section 209(c)(1)(B) of the bill, strike out "subparagraph (B)" and insert in lieu thereof "subparagraph (B)(1)".

(6) In paragraph (2) of section 313(b) of the bill, strike out "Sections 219(c)(2)" and insert in lieu thereof "Sections 219(d)(2) (as amended by section 311(a) of this Act)".

(7) In section 305(e)(3)(A) of the Internal Revenue Code of 1954, as added by section 321(a) of the bill, strike out "tangible personal depreciable property" and insert in lieu thereof "tangible property described in section 1245(a)(3) (other than subparagraphs (C) and (D) thereof)".

(8) In subparagraph (B) of section 2032A (e)(7) of the Internal Revenue Code of 1954, as added by section 421(f)(1) of the bill—

(A) strike out "average net share rental" each place it appears and insert in lieu thereof "average annual net share rental", and

(B) strike out "average gross cash rental" and insert in lieu thereof "average annual gross cash rental".

(9) In paragraph (5) of section 509(a), strike out "section 6601(b)" and insert in lieu thereof "section 6601".

(10) Amend the title so as to read: "A bill to amend the Internal Revenue Code of 1954 to encourage economic growth through reduction of the tax rates for individual taxpayers, acceleration of capital cost recovery of investment in plant, equipment, and real property, and incentives for savings, and for other purposes."

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

## ORDER OF BUSINESS

Mr. BAKER. Mr. President, while I ascertain whether the Senate has any further business to come before it, I will shortly suggest the absence of a quorum, but before I do so may I inquire is there a convening hour for Thursday of this week, for the recess over of the Senate until Thursday of this week?

The PRESIDING OFFICER. The Senator is correct. It is 12 noon.

Mr. BAKER. I thank the Chair.

Mr. President, the concurrent resolution provides for the convening of the Senate at noon on the 9th of September; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Is there an order for the convening of the Senate on the 10th day of September?

The PRESIDING OFFICER. There is not an order.

Mr. BAKER. I will not make that request at this time, Mr. President.

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.

## ORDER FOR THE RECOGNITION OF SENATOR BAKER AND SENATOR ROBERT C. BYRD ON WEDNESDAY, SEPTEMBER 9, 1981

Mr. BAKER. Mr. President, I ask unanimous consent that on Wednesday, September 9, when the Senate reconvenes, that after the two leaders are recognized under the standing order, the Senator from West Virginia (Mr. ROBERT C. BYRD) and the Senator from Tennessee (Mr. BAKER) be recognized on special orders for not to exceed 15 minutes.

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

## ADJOURNMENT UNTIL WEDNESDAY, SEPTEMBER 9, 1981

Mr. BAKER, Mr. President, I know of no further business to come before the Senate, and I now ask unanimous consent that the Senate stand in recess until Thursday next unless and until the House of Representatives agrees to either Senate Concurrent Resolution No. 27 or No. 28, as adopted by the Senate.

There being no objection, the Senate, at 3:16 p.m., recessed until August 6, 1981, at 12 noon, provided, that if the House of Representatives agrees to either Senate Concurrent Resolution No. 27 or No. 28, the Senate will stand in adjournment until Wednesday, September 9, 1981, at 12 noon.

## CONFIRMATION

Executive nomination confirmed by the Senate August 3, 1981:

DEPARTMENT OF DEFENSE

Richard N. Perle, of Maryland, to be an Assistant Secretary of Defense, vice Gerald Paul Dineen, resigned.