SENATE—*Friday, December 11, 1981*

(Legislative day of Monday, November 30, 1981)

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

PRAYER

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

Heavenly Father, in seasons of joyous celebration, suffering and tragedy are always accentuated. We pray for those of our large family who in some unexpected way will experience hurt. We remember in love those who have lost loved ones, whose absence will be deeply felt at holiday meals and events. We pray for those who are ill in hospital or home, for those who may be hurt by accidents during the holidays. We remember Senator GOLDWATER whose absence we feel, and we commend to Thee each other and all of our loved ones. Grant to them special blessing.

And Father, we pray for the millions who live in constant deprivation, the homeless and the hungry, the refugees, the oppressed, the persecuted. We pray for those in prison and their families. We pray for the poor of our cities, the street people, the lonely and forgotten elderly. Help us, dear God to appreciate all our blessings and in gratitude to seek ways in which we may share our more than enough with those who never have enough. We pray this is the name of Him whom God gave as His priceless gift to the world at Christmas. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

THE JOURNAL

Mr. STEVENS. 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.

E—COM

Mr. STEVENS. Mr. President, on January 4, the U.S. Postal Service intends to embark on an important step in its efforts to become more efficient and improve its services to the American public. On that date, the Postal Service will institute an electronic mail service known as E–COM. This new service is in keeping with its statutory mandate to "promote modern and efficient operations" through the use of new equipment or devices which may reduce the costs or improve the quality of postal service. This E–COM service will allow volume mailers whose messages and addresses are on computers to transmit those messages using the transmission service of private sector communications companies. Initially, service will be available in 25 cities across the Nation.

When these transmissions are received, the messages will be printed out, enveloped, and inserted in the regular first-class mail stream for delivery.

This new service offers advantages for all concerned. The mailer has the prospect of lowering his costs of producing and sending letters and receiving improved service. For the private sector communications industry, E–COM will create new markets for their transmissions and processing services as mail from volume mailers that is now entered physically and transported and sorted by the Postal Service will be carried through their networks.

For the American consumer, this holds great potential to not only keep postal costs from continuing to rise but also improve service to all Americans.

For the Postal Service, E–COM will allow them to eliminate expensive transportation and sorting costs and provide at the same time an improved level of service. E–COM is another example of the Postal Service adapting to the times, by employing modern technology to their traditional business. This is exactly what the Congress told them to do when we passed the Postal Reorganization Act of 1970.

Mr. President, there has been some criticism of the Postal Service for offering this E–COM service; in my view by people who do not understand exactly what it is the Postal Service is doing.

The Postal Service has stated repeatedly that it has no desire to get into the telecommunications transmission business in competition with the private sector. E–COM does not involve resale of transmission services by the Postal Service. In addition, the Postal Service has stated from the outset that its business is delivering hard copy, and it has supported legislation that would prohibit the Postal Service from engaging in generation III, or point-to-point communications services.

Some critics respond by saying, "That may be their attitude now, but what about later?" They urge that the Postal Service should be prohibited from even offering E–COM.

I submit that if this kind of "camel's nose under the tent" philosophy had been applied to the march of progress made in this country over the past century, we would still be delivering mail by dogsled in Alaska and would have arrived for today's session by horse and buggy.

The U.S. Postal Service is a responsible agency of the U.S. Government. The Congress, in exercising its oversight responsibility, stands able to curb any feared misstep by the Postal Service.

I would hope, Mr. President, that concerning the issue of the proper use of modern technology by the Postal Service to carry out its traditional role more efficiently at less cost to the public, unwarranted fears and emotion can be laid aside and the focus can be on the facts.

The fact is that the E–COM service to be offered on January 4 is a good example of the opportunity for a mutually beneficial partnership between the Postal Service, carrying out its congressionally mandated traditional role to serve all citizens everywhere with our universal postal system, and the private sector telecommunications industry, gaining new markets for their services.

This type of partnership is particularly promising for large, sparsely populated States, such as mine, where the vast distances make both the cost of physical transportation and the timeliness of messages far exceed the average. Studies are underway now aimed toward providing an E–COM-type service to Alaska through a private sector communications firm working with the Postal Service and the State government.

The efficiencies gained by the application of modern telecommunications technology to a portion of the Postal Service's traditional volume holds great promise for the public.

We should not forget that it is the public that pays for the Postal Service. While it is true that the postage on 84 percent of the mail volume is paid by business mailers, this cost of doing business is inevitably passed on to the consumer, be he utility user, magazine subscriber, or mail-order patron.

Just as revenues for transporting mail helped build a strong airline industry for the Nation, so can revenues for transmitting messages into post offices help the development of today's dynamic telecommunications industry.

I understand that three communications carriers have contracted to transmit E–COM messages for their customers to the Postal Service and that several others have applications pending. Also, about 20 mailers, some of them large volume users, have filed applications to be certified as E–COM users.

Mr. President, these issues are important public policy issues and I would urge that all interested parties, including my friends in the telecommunications industry, would brave the heat and seek out the light. Once the focus is on the facts and in the real world, I am confident they will conclude, as I have, that the marriage between the transmission and processing strengths of our private sector communications industry and the

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hard copy universal delivery strength of the Postal Service will provide a new improved and efficient hard copy communications link for every American.

I am sure that all of us know how essential it is to increase productivity and efficiency in all segments of this Nation in order to combat inflation and improve the standard of living for all Americans. I am extremely pleased that the Postal Service is pursuing this effort on electronic mail, for if they did not I know of no other entity, private or public, who will serve all Americans everywhere, whether they are living in Houston, Alaska, or Houston, Tex. We need to continue to encourage the Postal Service to improve its services to the public and to increase its abilities to bind this Nation together.

Mr. President, I am sure my friends in the Congress join me in wishing all participants success for the E–COM startup.

AN ALL-AMERICAN FISHERY IN THE FISHERY CONSERVATION ZONE

Mr. STEVENS. Mr. President, vast stocks of pollack, cod, and other white fish are located in the Bering Sea off the coast of my home State of Alaska. These stocks comprise the largest unused food resource available to this Nation.

Five years ago, Congress passed a bill that I cosponsored which secured the 200-mile fishery zone off our shores. Today, despite the U.S. preference contained within the Magnuson Fishery Conservation and Management Act (MFCMA), the vast potential in the fishery conservation zone is still unrealized by U.S. fishermen. Foreign allocations in Alaska only exceed 1 million metric tons a year. This comprises more than the entire domestic harvest in my home State of Alaska. We have made great progress in conservation and management since 1976, but remain behind in our efforts to replace foreign domination of our fishery.

The 5-year anniversary of the Magnuson Act marks an appropriate juncture for reexamination of what additional incentives are required to get an American-run, American-controlled fishery moving.

I have recently written Secretary Haig to request his support for additional reductions in foreign fishing allocations that will be assigned exclusively to joint venture fishing efforts that involve American fishermen. This is an intermediate step in our long-term goal of an all-American fishery in the fishery conservation zone (FCZ).

In addition to U.S. preference and the allocation process, it is necessary to review other statutory authorities that may stand in the way of fishery development. In that regard, present shipping laws that prevent the use of foreign vessels by American fishermen serve as a formidable barrier to our development goals.

Included in my statement is an article by Mr. Ron Hames that appeared in the December 1981 National Fisherman. It details the economic disadvantage to American fishermen that compete in the world market with foreign vessels. Foreign nations that receive allocations in our waters and compete in the same market as U.S. fishermen can obtain capital equipment that is priced at approximately one-half of the cost of a U.S.-built vessel.

We should review during the next session questions raised in this article to see if it may be appropriate for us to provide a way to put American fishermen on equal ground with their foreign competitors who fish in U.S. waters.

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

[From the National Fisherman, December 1981]

SHIPPING LAWS HAVE PUT STRANGLEHOLD ON U.S. FISHERMEN

(By Ron Hames)

Let's say that a U.S. citizen decides to enter the North Pacific/Bering Sea pollock industry. He requires a factory trawler that will work U.S. waters within the 200-mile zone of U.S. fisheries jurisdiction.

Upon reviewing the economic activities in the area, the fisherman finds foreign citizens already exploiting the pollock resources, using foreign-built (non-U.S.-documented) factory trawlers within the 200-mile fisheries conservation zone (FCZ).

The vessels available to foreign citizens are ordinarily built in foreign shipyards at considerably less expense than comparable U.S.-constructed vessels. With lower labor and material costs, foreign yards can produce a tool that is unavailable to U.S. fishermen, who are restricted to using U.S.-documented and, except on rare occasions, U.S.-built vessels.

Within U.S. jurisdictional boundaries, discrimination on the basis of national origin is illegal. But U.S. fishermen are currently subject to such discrimination. They are denied access to a tool (foreign-built vessels) available only to aliens, even though both would work side by side in the same U.S. areas competing for the same resources. Indeed, both would probably target on the same world market for their catch.

When the catch is sold, however, the U.S. fisherman cannot say, "I deserve a higher price for my fish products because I was forced to use more costly equipment than my competition." There is no sympathy in the marketplace for such an appeal.

This is the position in which U.S. fishermen find themselves today, and that situation will continue tomorrow unless current relevant laws are overcome.

Title 16, "Shipping," of the "United States Code Annotated" contains the Coasting and Fishing Act. In Section 251 the act states: "Vessels of 20 tons and upwards, enrolled . . . and having a license in force (i.e., documented) . . . shall be deemed vessels of the United States entitled to the privileges of vessels employed in the coasting trade or fisheries." Consequently, unless they work in small boats, U.S. fishermen are restricted to the use of U.S.-documented vessels.

OUTDATED RESTRICTIONS

The catch is that today's shipping laws were formed long before the foreign distant-water fleets began exploiting what in 1976 became U.S. bottomfish resources. When the Coasting and Fishing Act was passed 31 years ago, the concerns were to ensure safety for sailors at sea (U.S.-built vessels were legislatively pronounced safe) while simultaneously preventing foreign-built vessels from working U.S. waters.

But while the law has stood immobile, situations surrounding it have changed dramatically. Whereas the law was originally a protection for U.S. fishermen, it has now become a major penalty.

No longer can it be argued that construction practices and techniques in U.S. shipyards are superior to those of their foreign competitors. The reality is that numerous countries are employing advanced construction methods to turn out well-crafted vessels for considerably less than the cost of building a vessel in the United States.

Furthermore, U.S. waters—in terms of fisheries jurisdiction—have moved outward 188 miles since the Coasting and Fishing Act was passed in 1950. Foreign vessels are now permitted to fish inside the U.S. FCZ, but only if they are owned and operated by someone other than a U.S. citizen. Consequently, U.S. fishermen are denied an opportunity equal to that extended to the foreign fishermen.

CHANGING THE LAW

The restrictive law of the Coasting and Fishing Act can be changed in two basic ways: through the legislature and through the judiciary.

To change a law through a legislative initiative requires more than a fair, well-reasoned argument. Influence and financing must take their seats at afternoon luncheons. Individuals or small groups of U.S. fishermen do not currently have the funds necessary to match the lobbying tactics of such industrial concerns as U.S. shipyards.

These shipyards and their unions would lose little actual business if the law were changed. The fact is that not one factory trawler in the 300'-l.o.a. class has been built and launched in this country since the Magnuson Act was passed five years ago. And while it is understandable that U.S. yards are concerned lest they lose potential business, the way matters stand now, their reluctance for change only impedes U.S. fishery development. The question becomes: Is the fishing industry ever going to be able to change its paper revitalization into hard steel frames?

More effective than challenging the present law through the labyrinth of Congress would be for fishermen to take their case to court.

Instead of a legislative appeal aimed at creating personal prejudices for or against a position, the story in a courtroom can consist of facts presented before an impartial adjudicator. A ruling can be expected on the merits of the issue as opposed to its political expediency. In the courtroom, testimonial effects of cocktails bought, hands shaken, and plane rides proferred would not be admissible.

In addition to the constitutional (equal rights) challenges that could be used to attack the shipping laws, other legal arguments can be formed. For policy direction, anti-trust laws can be examined. These laws hold in disfavor a situation in which one group has an economic advantage over another. Such positioning can result in characteristics of a monopoly becoming entrenched in the industry. In fact, this is already the case in the Bering Sea pollock fishery, where foreign citizens hold sway in the FCZ.

Initial cost:

Vessel A (United States—new)	$15,000,000.00
Vessel B (foreign—new)	12,000,000.00
Vessel C (foreign—used)	8,000,000.00
Expenses:	
Annual payment (principal and interest):	
Vessel A (United States—new)	2,812,500.00
Vessel B (foreign—new)	2,250,000.00
Vessel C (foreign—used)	1,813,900.00
Operating costs (vessel A, B on C):	
Fuel	1,893,424.30
Crew share (70×$47,269.90)	3,308,893.00
Provisions	408,800.00
Repair and maintenance	750,000.00
Insurance	600,000.00

Note: A U.S. fisherman operating a 300 ft American-built trawler pays from $500,000 to $1,000,000 more per year in vessel expenses than does the owner of a new or used foreign trawler of comparable size. With crews of 70, each boat's operating expenses are shown to be uniform in the table above, making the vessels' cost the basic variable.

This control exists because foreign citizens have a substantial economic advantage over their U.S. competitors: They can use non-U.S.-documented vessels in their pursuit of U.S. resources. By examining the income and expense variables associated with the factory-trawler groundfish industry (particularly pollock), the economic advantage held by the foreign fleet can be illustrated.

The table on the facing page shows the fixed yearly expenses for a 300'-l.o.a. U.S. factory trawler with a crew of 70, against those for a comparable new or used foreign trawler.

The U.S. vessel's cost, with its resulting depreciation schedule, is the basic expense variable distinguishing it from a foreign boat.

Construction costs of a factory trawler of sufficient size (approximately 300') to compete year-round for bottomfish resources in U.S. waters off Alaska will conservatively run 20 percent lower in certain foreign (e.g., South Korean) shipyards than will the costs of a comparable vessel built in U.S. yards. A $15-million U.S.-built factory trawler can be built for $12 million overseas.

The annual payments associated with such new vessels would, at 20 percent financing, run approximately $2.8 million for the U.S. vessel (Vessel A), as opopsed to $2.25 million for the foreign vessel (Vessel B).

Moreover, the virtual worldwide implementation of 200-mile limits has flooded the market with secondhand factoryships—particularly from such nations as Norway and Great Britain—that are ideal for use in the Bering Sea. These surplus trawlers are available in price ranges averaging from $4 million to $8 million. On the latter (Vessel C), yearly payments would be around $1.8 million.

AN ECONOMIC BIND

It can be seen that the monetary penalty involved in restricting U.S. fishermen to U.S.-built vessels can range from $500,000 to $1 million every year for the life of the vessel.

The U.S. fisherman must now make a business judgment. He knows that the pollock industry is based on world trade prices. He must decide whether or not he can operate and compete in this marketplace. All he has to do is crack that extra $500,000–$1 million-a-year nut put into his pocket by the U.S. government. To generate enough income to overcome this penalty, the U.S. fisherman must try to sell his product at 6 percent–12 percent more than the foreign processor gets for his catch. This increase in price, if the fisherman can get it, would go into one pocket and directly out the other to pay for the added overhead of his operation.

The U.S. fisherman would then find himself in a Catch-22 situation. Even if he can command an inflated price for his product, the foreign operator—marketing an identical product—will also be able to sell at the higher price. Thus the U.S. fisherman can never narrow the expense gap created by the shipping laws.

From this, it can be argued that future capital investments will be attracted to the more profitable foreign operations that are developed to extract American FCZ pollock resources. As such, a pollock industry with U.S. factory trawlers can never be developed based on free world trade.

This is a picture of the situation as it exists today. Legislators will continue to pay attention occasionally and will fire off paperwork-generating panaceas of regulations, duties, tariffs, import restrictions, export criterias, industry investigations and tits for tats. And U.S. fishermen will continue to watch foreigners harvest U.S. fish and wonder, while embracing some vague supposition of equality, "Why can't I do that?"

THOMAS GARDINER (TOMMY) CORCORAN

Mr. BAKER. Mr. President, I want to take this opportunity to extend my deepest sympathy to the family of Thomas Gardiner (Tommy) Corcoran who died Sunday.

During the New Deal era, Mr. Corcoran rose to prominence as the principal engineer for revolutionary measures which changed the course of American history. In concert with his colleague, Benjamin V. Cohen, he collaborated on the Federal Housing Administration Act of 1934, the Securities and Exchange Commission Act of 1935, the Public Utilities Holding Company Act of 1935, the establishment of the Tennessee Valley Authority, and Fair Labor Standards.

Mr. Corcoran's unique brand of wit and political genius served to earn him the enduring esteem of President Franklin D. Roosevelt and other leaders of the day. He will surely take a place in American history as one of the greatest political tacticians of our era, a singular contributor to the drastic alteration of public policy in the 20th century.

I join my colleagues in extending our heartfelt sympathy to Mr. Corcoran's family and friends.

Mr. President, I ask unanimous consent to have printed in the RECORD, an editorial from the Washington Post.

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

THOMAS GARDINER CORCORAN

If ever there was in "this gorgeous town" a disarmingly affable broker of political influence who enjoyed the mix of public service, ideas and friendships, it was Thomas G. (Tommy) Corcoran. Mr. Corcoran, who died here Sunday at the age of 80, was a principal strategist, insider and tireless point man for the New Deal revolution during some of its most perilous and interesting times. And "Tommy the Cork," as Franklin D. Roosevelt fondly referred to him, reveled in the role of lawyer-lobbyist (or entrepreneur," as Mr. Corcoran would put it) in the high circles of all three branches of government.

What Mr. Corcoran knew and marketed so well was "what the government likes and does not like," an insight he mastered firsthand and marketed with great skill. With New Deal architect, White House teammate and longtime friend Benjamin V. Cohen, Mr. Corcoran became an invaluable administration figure and presidential counselor. It was this expertise that he later employed as a lawyer to seek and deliver results on behalf of major corporations that were doing business with the government.

His success in the private sector was a direct sequel to his influential role as engineer-designer of truly revolutionary policies. After all, it was the Corcoran-Cohen duo—known as the "hot-dog boys," an allusion to their mentor, Felix Frankfurter—that collaborated on the big acts, the enduring measures of the New Deal: the Securities and Exchange Commission Act, the Public Utilities Holding Company Act, the Federal Housing Administration Act, the Tennessee Valley Authority and the Wage and Hour Law, In the process, Mr. Corcoran also succeeded in attracting scores of highly capable, dedicated people to government service and important positions from which they were to make substantial contributions to public policy.

If critics had problems with Mr. Corcoran's later transition to private practice in government circles, neither he nor his clients did. Many of the very people who had damned him as a policy-maker were to find him a useful colleague and attorney in those later years, and he found these marriages of mutual interests rewarding in the fullest senses. With his infectious Irish humor and quick repartee, Mr. Corcoran delighted friends, legal adversaries and himself while gliding through the halls and offices of government.

"When I walk down the corridors of the Federal Power Commission," he once explained with a grin to a House subcommittee that was looking into his activities, "it's right down the main aisle . . . in broad daylight, with a brass band behind me." And that is how those who knew Tommy the Cork suspect he has just left their company.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER (Mr. HATCH). The Senator from Rhode Island.

ORDER OF BUSINESS

Mr. PELL. Mr. President, I ask unanimous consent that the remainder of the time for the minority leader be reserved for the minority leader.

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

DANGER IN THE COALFIELDS

Mr. ROBERT C. BYRD. Mr. President, I know that Senators are aware of the recent series of accidents in underground coal mines in Kentucky, Tennessee, and my own State of West Virginia. Thousands of citizens in each of those States, and in many other States, daily descend into mines to earn their living. Those mines should be as safe as possible.

On Thursday, November 5, I offered along with Senator ARLEN SPECTER, an amendment to the Labor/HHS appropriations bill for fiscal year 1982, when that bill was before the full Appropriations Committee. The amendment restored $48 million to mine safety enforcement programs. The $48 million had been cut in subcommittee, and our amendment brought the program level back to the President's original budget request.

An article in the Washington Post of December 10 entitled, "Fund Cuts Impair Mine Safety, Union Says," tells of the growing concern of the people directly involved with mining that reductions in Federal mine safety programs will jeopardize the safety of miners. The sad record of recent days cannot be ignored as Congress moves toward final action on fiscal year 1982 funding levels.

I ask unanimous consent that the article be inserted in the RECORD at this point.

[From the Washington Post, Dec. 10, 1981]

FUND CUTS IMPAIR MINE SAFETY, UNION SAYS

(By Bill Prochnau)

A United Mine Workers spokesman charged yesterday that Reagan administration budget cuts are reducing the number of federal mine inspections and reducing safety levels in coal mines. The charges were made in the wake of three coal mine accidents that killed 24 miners in just the past week.

"We just feel that the present attitude in the Reagan administration toward mine safety is not strong enough," Danny Davidson, the UMW deputy director for safety, said.

In its September budget proposal the Labor Department recommended eliminating 150 of 1,629 federal coal inspectors. But Ford B. Ford, assistant secretary of labor for mine safety and health, strongly defended the cutbacks. Ford said 72 inspections had been conducted in the past three years at the Topmost, Ky., mine in which eight were killed Monday.

"Generally, there may have been fewer inspections in the past year," Ford said, "but I just don't find a diminution of safety."

Meanwhile, attorneys for the Council of Southern Mountains, Inc., a citizens' group that includes Appalachian miners and their widows, asked the House Education and Labor Committee for a congressional investigation of the effect of the budget cuts on mine safety.

The attorneys charged the mine owners with a "pattern of violations" of mine-safety regulations that "show a need for more rather than less [federal] enforcement."

The three accidents appeared to have different causes. Although investigations still were under way, only the latest tragedy appeared to have been caused by a methane gas explosion, one of the more common risks in coal mine disasters.

Federal safety officials said workers at the Tennessee Consolidated Coal Co.'s mine near Palmer, Tenn., had just punched through the wall of an old shaft when an explosion rocked the mine Tuesday, killing 13. Investigators were attempting to determine yesterday whether methane gas had accumulated in the unused shaft, which had been closed for seven years.

At Topmost, where eight men were killed Monday after an explosion so violent it sent a shower of mud and water 300 yards out of the mouth of the mine, federal investigators were looking into the possibility that the miners accidently set off dynamite. Doctors said the men died of smoke inhalation.

Dr. George Nichols, Kentucky state medical examiner, said cigarettes and lighters were found on the bodies of three of the miners. "That is a distinct no-no in an underground mine," Nichols said. The doctor said there was no indication the lighters had been used but their presence "indicates things were pretty loose there, both with the workers and with management."

Last Thursday three miners were killed when rock and slate fell from the roof of a mine in Bergoo, W. Va.

The Tennessee accident was the worst in that state's history in 70 years. One of 17 survivors, who rode small rail cars to safety, said the mine started "shaking a little bit" and he "knew they had hit gas and it exploded." The miner declined to be identified.

John Parish, Tennessee Gov. Lamar Alexander's press secretary, said there was "strong evidence" the explosion was caused by methane. "But I don't think anybody is saying that officially."

Tennessee Consolidated operates 14 mines in the area. Federal investigators and the company president, William Allison, said the other mines would remain open.

RECOGNITION OF SENATOR MATTINGLY

The PRESIDING OFFICER. Under the previous order, the Senator from Georgia (Mr. MATTINGLY) is recognized for not to exceed 15 minutes.

DEFERRING REPAYMENT AND FORECLOSURE PROCEEDINGS ON CERTAIN OUTSTANDING LOANS MADE BY THE FARMERS HOME ADMINISTRATION

Mr. MATTINGLY. Mr. President, I send a sense of the Senate resolution to the desk and ask for its immediate consideration

The PRESIDING OFFICER. Is the Senator asking for immediate consideration?

Mr. MATTINGLY. Yes, by unanimous consent.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 257) to express the sense of the Senate that the Secretary of Agriculture should continue Department pclicy in deferring the repayment of, and foreclosure proceedings on, certain outstanding loans made by the Farmers Home Administration.

The Senate proceeded to consider the resolution.

Mr. MATTINGLY. Mr. President, this is a sense of the Senate resolution which calls on the Secretary of Agriculture to work to the closest extent possible with the farmers to avoid foreclosure procedures on loans. FHA loans.

Mr. STEVENS. Mr. President, will the Senator yield for just a moment?

Mr. MATTINGLY. Yes.

Mr. STEVENS. I want to make sure that this has been cleared with the minority. Will the acting minority leader indicate whether it has approval or not?

Mr. PELL. This measure has the approval of the minority and has been cleared with the minority.

Mr. STEVENS. I thank the Senator.

Mr. MATTINGLY. It has been cleared on both sides.

I am introducing this resolution on behalf of myself, Mr. THURMOND, Mr. HELMS, Mr. HUDDLESTON, Mr. WARNER, Mr. BOSCHWITZ, Mr. ANDREWS, Mr. KASTEN, Mr. BENTSEN, Mr. DURENBERGER, Mr. SCHMITT, Mr. ZORINSKY, Mr. DENTON, Mr. STEVENS, Mr. BAKER, and Mr. NUNN.

I also ask unanimous consent to add Senator ROBERT C. BYRD as a cosponsor.

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

Mr. MATTINGLY. Mr. President, the resolution which we have submitted is simply an effort to help reassure many farmers across the country that the Secretary of Agriculture and Farmers Home Administration are going to use every possible effort to help avoid any foreclosures and resulting bankruptcies due to delinquent Farmers Home Administration farm operating loans and farm ownership loans.

There is no question that farm income has been significantly reduced this year due to a number of causes—adverse growing conditions; higher costs for equipment, supplies and labor; high interest rates, and low prices for farm products on the market. Many farmers who have dealt in good faith with Farmers Home Administration and who have employed sound farming practices have still found themselves in a real bind in trying to keep up the originally scheduled repayment of FHA loans.

The Department of Agriculture speaking through the Secretary and through Mr. Frank Naylor, the Under Secretary for Small Community and Rural Development, has repeatedly indicated that they would work to help farmers who have been caught in this pinch. They have clearly stated that they expect a very minimal increase in the rate of farm loan foreclosures in the coming year, and that they would use the fullest extent of the present legislation to defer, extend, or refinance farmers who are in need of assistance.

Thus, the resolution simply adds the voice of the U.S. Senate to the efforts of the Department of Agriculture, and I hope will help reassure many farm operators who have gotten the mistaken impression that Farmers Home Administration is going to greatly increase foreclosures in the future.

Mr. President, there are several cosponsors to this legislation currently. I think it shows the impact of this great crisis that we have in our country.

Mr. HUDDLESTON. Mr. President, I am pleased to cosponsor the resolution expressing the sense of the Senate that foreclosure proceedings on certain Farmers Home Administration loans be deferred.

In the past year, farmers have been confronted with severe economic conditions consisting of high-interest rates, low-commodity prices, and natural disasters. Because of the condition of the farm economy, many experienced farmers using sound management practices on normally productive land will be unable to meet their loan obligations to the Farmers Home Administration.

It is in the Nation's interest to stand by our farmers until conditions affecting the farm economy improve. Until the administration takes the steps necessary to improve farm income, every tool available should be used by the administration to help farmers continue their operations. These tools include the deferment and refinancing policies referred to in the resolution. In addition, the administration should use the economic emergency loan program which is extended by the 1981 farm bill.

The administration has the authority to assist our Nation's farmers and I urge the Secretary of Agriculture and the President to use that authority.

● Mr. BENTSEN. Mr. President, as a cosponsor of this resolution I urge the Secretary of Agriculture and the Administrator of the Farmers Home Administration to read it carefully, and to read carefully the statements of the Senators who are concerned about this issue, such as this one.

The message in this resolution and in these statements is a clear one. We are facing tremendous problems in our farm sector. Many of our farmers are on the brink of bankruptcy. Many farmers may no longer be farming next year.

We want the Secretary of Agriculture to know the true dimensions of the problems facing the American family farmer today. Real net farm income is the lowest since the Depression. Many farmers will not only not be able to pay off debts from last year's terrible drought, but they may even go deeper into debt this year.

Mr. President, this is happening in a year of good crops. If farmers had had poor crops this year the problems in west Texas would have been unimaginable. Even now farmers cannot make ends meet even with good cotton crops, because market prices have hit rock bottom—at and even occasionally below the loan rate on sales of cotton.

We have just passed a farm bill which gives the Secretary broad discretion in managing our Nation's farm programs. I do not think it was a good farm bill. But never the less, the tools are there. The economic emergency loan program of FmHA is reauthorized. FmHA has broad discretion to adjust its policies to recognize and to deal with the problems of its farm borrowers rather than forcing mass foreclosures or liquidations. The price support levels in this bill are minimums, not maximums, and the Secretary of Agriculture has broad discretion in export promotion, supply management, reserves, and many other areas which he can use to implement a program that will deal with the needs of our farmers.

However, at the insistence of the Secretary of Agriculture, many mandatory provisions were stripped from the farm bill. They were instead made discretionary. The administration has gotten the farm bill that they wanted. The Secretary of Agriculture has gotten the discretion that he wanted to manage the Nation's agriculture.

To properly administer these programs there must be a recognition at the highest levels of Government of the scope of this Nation's farm problems. We had a meeting this morning in the office of Congressman JACK HIGHTOWER of Texas to discuss these problems with Mr. Charles Schumann, the Administrator of FmHA. I am very concerned about the lack of factual information on FmHA loan problems, as are many other members of the Texas delegation. Mr. Schuman is sympathetic, but he does not yet have the necessary information, either. Farmers in Texas are being sent a "Notice of Acceleration and Demand for Payment" notice by FmHA, and yet the Administrator of FmHA cannot yet tell us even how many of these have been sent out.

Mr. President, I ask unanimous consent that a copy of my letter to Mr. Schumann be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. BENTSEN. Mr. President, these are foreclosure threats that Texas farmers are receiving, and I want to be absolutely sure that the Secretary of Agriculture knows what is going on out in the country. I want to be sure that he knows that farmers who have cut expenses to the bone, who have worked all year and made a good crop, cannot pay off their debts because cotton prices have dropped 20 cents per pound during this Secretary's term in office.

Mr. President, I hope that the Department of Agriculture will hear this message. I hope that they will think about the impact that low farm prices and high interest rates have on the family farmer. I hope they will realize the connection between "cheap food" policies and the problems that we are now facing with Farmers Home.

The Secretary of Agriculture has the authority to deal with this problem. I hope that he has the understanding and the willingness to use his authority to see that we continue to enjoy the benefits of the familly farm system which has met the food and fibers needs of this country and this world for so long and so well.

I urge my colleagues to approve this resolution.

EXHIBIT 1

U.S. SENATE,
Washington, D.C., December 9, 1981.

Mr. CHARLES SCHUMAN,
Administrator, Farmers Home Administration, Washington, D.C.

DEAR MR. ADMINISTRATOR: We are deeply concerned about the deteriorating state of the farm economy. High interest rates, low prices, and skyrocketing production costs have doomed any hope of economic recovery in the farm sector this year, and current prospects for most major commodities appear bleak for next year as well.

Many Texas farmers have made good crops this year after a disastrous drought of 1980, only to find that prices are so low that it is difficult to make a profit even with good yields. Many of these farmers are deeply in debt as a result of last year's drought, and with real net farm income at the lowest levels since the Depression there is little prospect that these debts can be paid off this year. Indeed, for many it will be a struggle to keep these debts from increasing in spite of good yields this year.

The Farmers Home Administration plays a key role in providing financing to farmers who have suffered hard times, such as last year, and the current situation will place major demands on FMHA once again. We would appreciate a report from you at your earliest convenience on the situation in the State of Texas and in any areas of the State which are particularly hard-pressed. We would like to get specific information such as the number of farmers borrowing from FmHA, the number of delinquencies, and servicing policy on delinquent accounts. We would also appreciate your estimate of the percent of FmHA farm borrowers who will and will not be able to refinance through FmHA or other sources for next year.

We stand ready to assist you in any way possible to expeditiously meet the needs of the farmers of Texas, and we look forward to a written reply at your earliest convenience.

Sincerely,

LLOYD BENTSEN,
CHARLES STENHOLM,
JACK HIGHTOWER,
KENT HANCE.●

THE FARM SECTOR IS IN ECONOMIC STRAITS

Mr. ROBERT C. BYRD. Mr. President, I support and join in cosponsoring the resolution to express the sense of the Senate that the Farmers Home Administration continue its present loan policies. As we approach the Christmas holidays, I believe that it is imperative for this body to let our farmers and rural residents know that the Federal Government will not play Scrooge on January 1, when many FmHA loans come due.

Farmers work on a large margin of credit. They are required to borrow large amounts of money to obtain the fuel, fertilizer, seed, stock, or other materials needed to produce a crop, milk, or meat. They borrow far in advance of knowing what market conditions will be after the crop comes in or the milk is ready to be sold. The free market risks of this nature borne by farmers are made much greater in a period of high interest rates and loan economic growth.

The national economy is in precisely that state at this time. Higher unemployment across the country means some decrease in demand for agricultural products, as people literally tighten their belts.

The farmer or rural resident holding an FmHA loan is being squeezed by this situation. The loan has been made, the crop has been produced, but now rising production costs or lower market prices make it impossible for immediate repayment.

The policy of the Farmers' Home Administration under such circumstances in the past has been to seek to accommodate the holder of the loan so that foreclosure is avoided. The net benefit to our country that results from this policy is that farmers stay in business, those who have received disaster loans are given a chance to recover, and those who have bought farms with ownership loans do not instantly lose their farms.

These are at present 22,672 FmHA loans in West Virginia, worth $933,468,614. It should be obvious what the effect of a wave of FmHA foreclosures would be on my State. The long stretch of very high interest rates that are punishing our economy have made it tough on everyone. People are already in serious economic straits, and the Federal Government would exacerbate this condition by foreclosing on those in difficulty.

This resolution tells the Farmers Home Administration that the Senate does not want that to happen. The purpose of the credit programs of FmHA is to help our farmers and those who live and work in rural areas build a prosperous economic base. We cannot allow their efforts to help themselves be destroyed.

● Mr. DENTON. Mr. President, I rise in support of the resolution offered by my good friend and distinguished colleague from Georgia (Mr. MATTINGLY). I want to emphasize that my support is based on my belief that the resolution is merely our endorsement for present Farmers Home Administration collection policy and procedures.

It is disturbing that rumors are circulating that the FMHA is planning sig-

nificant changes this year in its procedure for farm loan foreclosures.

In recent weeks, there have been reports from Alabama that the Farmers Home Administration is planning to change its collection policy or is not implementing current policy. I was concerned about those reports so I contacted the Alabama Farmers Home Administration director, Mr. Dale Richey, to see if the Alabama Farmers Home Administration Office in fact is implementing present policy.

Mr. President, I ask that a statement Mr. Richey has prepared in that regard be entered into the RECORD at this point.

The statement follows:

STATEMENT BY FmHA STATE DIRECTOR DALE NEWTON RICHEY

We are well aware that there has been some misunderstanding and some confusion as to our servicing and foreclosure policy.

Agriculture Secretary John Block, Under Secretary Frank W. Naylor, Jr., and FmHA Administrator, Charles Shuman, have repeatedly stated in public that the agency will use all the tools at its command, to be as much help as possible to any farmer who stands a chance of success. This policy has been backed up by numerous written instructions to FmHA state offices.

Some misunderstanding may arise from the fact that Farmers Home is reemphasizing its original intent—that is to provide supervised credit to farmers who cannot obtain financing through private credit sources and to provide close supervision and servicing of our loans. We are also reemphasizing the "graduation" of borrowers from FmHA to private lending institutions whenever possible.

It may be that some groups and the media have jumped to the conclusion that more supervision and servicing means more foreclosures. That conclusion is both unfortunate and erroneous.

In a policy statement, sent to field offices on October 1, 1981, Administrator Shuman said--and I quote:

"The purpose of supervision and servicing of delinquent accounts is to help the borrower overcome his or her financial problems and make the loan current. Our collection tactics should be firm but reasonable. Supervision and servicing should not be confused with foreclosure. Foreclosures are admissions that we have failed. Everything in our power should be done to help the borrower to become current with foreclosure reserved as a last resort."

That clear, strong policy direction has been followed up with more detailed instructions. Each field office has been directed to handle delinquency problems on a case-by-case basis. Every borrower's financial situation is unique. Our efforts to help the borrower to succeed must take into account the individual situation.

In dealing with delinquent accounts, we are making every effort to stay with our borrowers—on a year-by-year basis—if they have met the following conditions:

Acted in good faith in trying to meet agreements with FmHA;

Have made an honest effort to keep their loan current but have been unable to because of conditions beyond their control;

Have applied recommended and recognized successful production and financial management practices;

Have a reasonable chance to accomplish the loan objective; and

Have maintained and accounted for security property.

I think it is important to point out, Mr. Chairman, that Farmers Home borrowers are considered delinquent if they are more than 10 dollars or 15 days behind in their scheduled payments. The reality of the situation, of course, is that many farmers have more serious problems. The general economic situation coupled with relatively low farm prices and natural disasters have caused some financial hardship. In Alabama, as in the rest of the country, we are doing everything we can to help our borrowers work through whatever problems they may have.

The problems, however, should be kept in perspective. The national FmHA foreclosure figures are running at about the same rate they have for the last several years. Out of the farm loan portfolio of 283,000 loans, voluntary conveyances and foreclosures total 201. That is about seven one-hundredths of one percent of outstanding loans.

The situation in Alabama is not much different than it is nationally. Out of 7695 outstanding loans this year, we know of 50 possible foreclosures. These foreclosures in most cases will be voluntary. The farmer himself will decide that it is impossible to continue.

It is difficult, and sometimes risky, to peer into the future. The outlook for the near future appears to lie in supporting President Reagan's policies and in implementing and maintaining the Administration's economic recovery program.●

Mr. MATTINGLY. I move the adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 257) was agreed to.

The preamble was agreed to.

The resolution, and preamble, as agreed to, are as follows:

S. RES. 257

Whereas many of the Nation's farmers with Farmers Home Administration loans will be unable to meet timely their loan obligations because of unusually adverse economic circumstances resulting from increased costs of production, high interest rates, and drastically reduced farm income;

Whereas many of the borrowers, if required to make scheduled repayments under their obligations, would be forced to liquidate their assets and receive only a fractional part of the true value thereof;

Whereas the Federal government risks not collecting the full amount owed under many outstanding loans made by the Farmers Home Administration if the borrowers are forced into bankruptcy; and

Whereas Congress has provided the Secretary of Agriculture with ample authority to help alleviate the adverse situation confronting many Farmers Home Administration borrowers: Now therefore, be it

Resolved, That it is the sense of the Senate that the Secretary of Agriculture should, to the maximum extent practicable, continue to pursue the policy of the Department to—

(1) extend the term of, defer the repayment of, or refinance the unpaid balance of operating loans, natural disaster emergency loans, and farm ownership loans made by the Farmers Home Administration.

(2) defer any foreclosure proceedings that would otherwise be taken on any such loan if—

(A) the Secretary of Agriculture determines that the obligor of the loan can reasonably be expected to repay the loan by reason of such extension, deferral or refinancing;

(B) the obligor of the loan has properly used for a farm purpose all loans previously made to the obligor by the Farmers Home Administration; and

(C) the obligor of the loan has not previously failed to satisfy a loan made to the obligor by the Farmers Home Administration by disposing of the security for the loan in a manner inconsistent with the obligor's loan agreement.

SEC. 2. The Secretary of the Senate shall transmit copies of this resolution to the Secretary of Agriculture and the Administrator of the Farmers Home Administration.

RECOGNITION OF SENATOR SPECTER

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Pennsylvania (Mr. SPECTER) for not to exceed 15 minutes.

S. 1938—FRANCHISE FEES FOR CABLE TELEVISION

Mr. SPECTER. Mr. President, I rise today to introduce a bill to eliminate the authority of the Federal Communications Commission to regulate the franchise fee which a State, political subdivision, or other governmental entity may impose in connection with any franchise for cable television.

The issue of the need for local funding was succinctly outlined in the October 26 issue of Business Week, commenting on the problem of the cities, as follows:

Falling revenues are now combining with an inability to borrow in a way that is making it extremely difficult for Washington's great partner in the federal system, state and local government, to fill its traditional role of producing the basic government infrastructure for growth—such elementary things as bridges, roads, sewage, water, and mass transit. So serious is the decay of the nation's infrastructure and so poor the prospects for its refurbishment that many sophisticated businessmen and economists believe the U.S. is entering a period of severe crisis for state and local government.

I believe, Mr. President, the Congress is dedicated to freeing local governments from excessive Federal regulation. Certainly we do not wish to limit local government's ability to secure funds at a time when the Federal Government is instituting massive cuts in aid, thereby placing stress on local budgets.

Despite Congress dedication to providing relief to local government from onerous Federal regulations, there is a regulation which denies local governments an income source which holds promise for large and growing revenues in the years ahead. I refer to the Federal Communications Commission's regulation for cable television, the practical effect of which is to place a limitation of from 3 to 5 percent of gross subscriber revenues on franchise fees.

The present rule, at least by inference, assumes that the FCC, an appointed Commission, has the wisdom to set limits for franchise rates for local governments and their communities, and elected mayors and councils do not have the widsom to make such decisions. Any argument that the industry needs this type of Federal control to aid its growth is refuted by the expansion forecast by nearly all observers of the industry. For example, on November 18 the Wall Street Journal reported that the chairman of Twentieth Century Fox predicts cable revenues of $6 billion by 1986. The Cable Television Information Center now forecasts $20 billion cable TV revenues for 1990.

Mr. President, I reject the argument

that local governments will take advantage of cable TV films if the present ceiling on franchise fees is removed. I believe local elected officials will operate responsibly and that the cable companies can appeal to the local voters in any case where fees are unreasonable.

Because I believe local governments need the fiscal flexibility to apply franchise rates they determine are appropriate and because of the financial difficulties in which so many communities now find themselves, I am introducing a bill today to explicitly prohibit the Federal Communications Commission from continuing to set limits to franchise fees for cable television.

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

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

S. 1938

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled, That on and after the date of the enactment of this Act, neither the Federal Communications Commission or any other department, agency, commission, or other entity of the United States shall have the power, authority, or jurisdiction to regulate, directly or indirectly, the franchise fee or tax which any State, or political subdivision thereof, may require owners or operators of cable service systems receiving franchises from such State or political subdivision to pay to such State or subdivision for such franchises.

MINING RECLAMATION RESERVE ACT OF 1981

Mr. SPECTER. Mr. President, on December 4, I introduced the Mining Reclamation Reserve Act of 1981. Through an apparent inadvertence, S. 1911 was not printed in the CONGRESSIONAL RECORD on that date. At this time, I 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. 1911

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mining Reclamation Reserve Act of 1981".

SEC. 2. ALLOWANCE OF DEDUCTION FOR ADDITIONS TO RECLAMATION RESERVES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 of the Internal Revenue Code of 1954 (relating to the taxable year for which deduction may be taken) is amended by adding at the end thereof the following new section:

"SEC. 467. RESERVES FOR ESTIMATED EXPENSES OF SURFACE MINING LAND RECLAMATION.

"(a) ALLOWANCE OF DEDUCTION.—In computing taxable income for the taxable year, there shall be taken into account a reasonable addition to any reserve established for the estimated expenses of surface mining land reclamation.

"(b) ADJUSTMENTS WHERE RESERVE BECOMES EXCESSIVE.—If it is determined that the amount of any reserve for the estimated expenses of surface mining land reclamation is (as of the close of the taxable year) excessive, then (under regulations prescribed by the Secretary) such excess shall be taken into account in computing taxable income for the taxable year.

"(c) ELECTION OF BENEFITS.—

"(1) IN GENERAL.—This section shall apply to the estimated expenses of surface mining land reclamation with respect to any property if and only if the taxpayer makes an election under this section with respect to such property. Such election shall be made in such manner as the Secretary may by regulations prescribe.

"(2) SCOPE OF ELECTION.—If an election under this section is made with respect to any property, such election shall apply to all estimated expenses of surface mining land reclamation of the taxpayer with respect to such property.

"(3) WHEN ELECTION MAY BE MADE.—

"(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, make an election under this section with respect to any property for his first taxable year (i) which ends after the date of the enactment of this section, and (ii) for which there are estimated expenses of surface mining land reclamation with respect to such property. Such an election shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

"(B) WITH CONSENT.—A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

"(4) REVOCABLE ONLY WITH CONSENT.—An election under this section, once made, may be revoked only with the consent of the Secretary.

"(5) PROPERTY DEFINED.—For purposes of this section, the term 'property' has the meaning given to such term by section 614.

"(d) ESTIMATED EXPENSES OF SURFACE MINING LAND RECLAMATION.—For purposes of this section—

"(1) IN GENERAL.—The term 'estimated expenses of surface mining land reclamation' means a deduction allowable to the taxpayer under this subtitle—

"(A) which is attributable to qualified reclamation activities to be conducted in subsequent taxable years,

"(B) which can be estimated with reasonable accuracy, and

"(C) which is allocable to minerals extracted by surface mining activities which occur before the close of the taxable year.

"(2) QUALIFIED RECLAMATION ACTIVITIES.—The term 'qualified reclamation activities' means any land reclamation activities which are conducted in accordance with a reclamation plan—

"(A) which is submitted pursuant to the provisions of section 508 or 511 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1981) and which is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

"(B) which is submitted pursuant to any other Federal or State law which imposes reclamation and permit requirements substantially similar to those imposed by title V of such Act (as so in effect).

"(3) EXCEPTION.—Except for purposes of subsection (e), the term 'estimated expenses of surface mining land reclamation' does not include any amount allocable to minerals extracted by surface mining activities occurring before the beginning of the first taxable year for which an election under this section is made.

"(e) SPECIAL RULE FOR COSTS ATTRIBUTABLE TO PERIOD BEFORE ELECTION.—Any estimated expenses of surface mining land reclamation which are allocable to minerals extracted by surface mining activities which occurred before the first taxable year for which an election with respect to the property under this section is made and which have not previously been taken into account by the taxpayer in computing taxable income, shall be treated as deferred expenses and shall be allowed as a deduction ratably over a period—

"(1) which begins with the first month of the first taxable year for which an election under this section is made with respect to the property, and

"(2) which ends with the month during which it is reasonably expected that surface mining land reclamation activities with respect to the property involved will be completed (or if earlier the last month of the 60-month period beginning with the month described in paragraph (1)).

"(f) SPECIAL RULES.—

"(1) TAXPAYERS WHO MAKE AN ELECTION UNDER SECTION.—In the case of any taxpayer who makes an election under this section with respect to any property, the determination of the taxable year for which nonqualified land reclamation expenses with respect to such property are allowable as a deduction shall be made under regulations prescribed by the Secretary. For purposes of the preceding sentence, the term 'nonqualified land reclamation expenses' means any expense of land reclamation activities (other than qualified reclamation activities) which are attributable to surface mining.

"(2) TAXPAYERS WHO DO NOT MAKE AN ELECTION.—In the case of any taxpayer who does not make an election under this section with respect to any property, any deduction for expenses of land reclamation activities with respect to such property attributable to surface mining shall be allowable in the same manner and to the same extent as if this section had not been enacted.".

(b) The table of sections for subpart C of part II of subchapter E of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 467. Reserves for estimated expenses of surface mining land reclamation.".

(c) (1) The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) If—

(A) the taxpayer makes an election under section 467 of the Internal Revenue Code of 1954 for his first taxable year ending after the date of the enactment of this Act, and

(B) for a continuous period of one or more taxable years each of which ends on or before such date of enactment, the taxpayer used an accrual method of accounting with respect to the expenses of surface mining reclamation activities attributable to surface mining which allowed a deduction for such expenses prior to the taxable year in which such expenses were paid,

then the taxpayer may make an election under this paragraph to have the method of accounting which he used for such continuous period treated as a valid method of accounting for purposes of the Internal Revenue Code of 1954. The taxpayer may make an election under this section with respect to only one such continuous period.

(3) An election under paragraph (2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold his request?

Mr. SPECTER. I will.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a pe-

riod for the transaction of routine morning business not to extend beyond the hour of 10 a.m., during which Senators may speak for not more than 2 minutes each.

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

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

ORDER OF BUSINESS

Mr. MOYNIHAN. Mr. President, in the absence of any evident desire by other Members to speak this morning, I ask unanimous consent that I be allowed to speak in morning business for a period not to exceed 12 minutes.

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

Mr. MOYNIHAN. I thank the Chair for his courtesy.

THE AMERICAN LABOR MOVEMENT

Mr. MOYNIHAN. Mr. President, I rise to speak to one of the great hidden events that seems to be underway in America at this moment, one which strikes me as having the most portentous, indeed ominous consequences. This is to say that the judgment is arising in influential circles at every level, from the rank and file to the leadership, of the American labor movement that two of the great understandings it had reached with the American society at large are being breached to the point where it is no longer clear that they are viable.

This is, as the distinguished Chair knows, the 100th anniversary of the founding of the American labor movement, an institution of extraordinary age and durability. Were we to measure the number of Presidents we have had in the last century, it would be instructive for us to consider that there have been only five heads of the AFL–CIO, one of whom served only a single year. Basically, we have had Samuel Gompers, William Green, George Meany, and now Lane Kirkland.

If you compare the instability of the institution of American labor—and ours is a remarkably stable one—with most labor institutions in the world, you recognize what a force for continuity and successful adaptation to changed circumstances the American labor movement has been. One of the secrets of its national impact has been this: When the American labor movement organized, it did so uniquely, compared with all the other democratic labor movements in the world. It entered into a compact with American society. It said, "We will not seek to change the economic system of this country and we will not seek to change the political institutions of this country. We will operate within the existing structures of both. But we will seek to advance the interests of our membership in that context. We will not change the free market society. We will not interfere with a two-party system," then as now. "But we will look for more for our members." Samuel Gompers said this 100 years ago and all have said the same since. And that compact has been kept.

In the last 40 years, Mr. President, this compact has been nowhere more conspicuous than in the attachment of the American labor movement to two principal concerns of the U.S. Government and society. The first is its attachment to a strong national defense. Whereas the world over, trade union movements have tended to oppose national defense measures as an issue of allocation of resources and as an issue of political beliefs, American labor has supported defense even when persons in both parties who ought to have known better have not done so.

Similarly, American labor has unwaveringly supported international economic policies which call for lower tariffs, fewer barriers to trade, and expanding trade.

Both these positions are now threatened, the latter most conspicuously by a wholly shortsighted judgment being made by the administration effectively to end the trade adjustment assistance program. I remind this body that commitments were made to the American labor movement at the time of the Tokyo Round of Multilateral Trade Agreements—commitments that if the U.S. Government, as a matter of policy, reduced domestic employment opportunities by allowing foreign imports into the country, workers who lost their jobs in those import-injured industries would be given training and would be given extended unemployment benefits, a program we know as trade adjustment assistance. This commitment was neither vague nor given in a casual manner. It was a promise made.

In return for that promise, the American labor movement once again supported a trade expansion measure, which was thought to be without any serious prospect whatever in this body. But it was adopted with overwhelming support, as I recall, with only eight or nine dissenting votes. It was adopted because promises had been made. In the past they have been kept. Now they are being broken.

This week, the Subcommittee on International Trade of the Committee on Finance held a hearing on trade adjustment assistance. A succession of trade union representatives—from the AFL–CIO, from the Steelworkers, from the Amalgamated Clothing & Textile Workers, from the International Ladies Garment Workers, and from the United Auto Workers—came to our witness table and said, "You have broken your understanding."

One gentleman from the UAW read to us from a report by the Congressional Budget Office, entitled "U.S. Trade Policy and the Tokyo Round of Multilateral Trade Negotiations," a report which makes explicitly clear that there would be losers as well as gainers in trade liberalization. The policy of the Government in this exchange would be to look after the losers.

It said:

> The brunt of the job layoffs in the United States, resulting from trade liberalization will be borne disproportionately by semiskilled workers . . . Geographically, most of the net job losses resulting from trade liberalization will take place in the urban areas of the North and East, particularly in Illinois, Massachusetts, Michigan, New York. . . .

It is the semiskilled workers in the North and East who suffer from this trade expansion policy, a Government policy, but commitments were made by this Congress that they would be given some assistance in the aftermath. Now they are not being given any. The administration is breaking this commitment.

We asked for a policymaker in the administration to appear before us. None came. A respected and honorable representative from the U.S. Employment Office, a career officer, came. But nobody from the administration came. They will not even make an excuse for breaking our promise.

Mr. President, I offer a thought to this body. For 40 years, we have lived in a world in which the American labor movement, incomparably the largest, single, economic-political organization in our country, has supported trade liberalizing. If it ceases to do so because the U.S. Government broke its word—and there is not a member of our subcommitee who would not say that it has broken its word—then you will find a different America, a profoundly different America.

People who think they are not in any way involved will find a different America. All they have to do is wait until the economic policies of this Government turn away from the direction they have had since Cordell Hull. Because the labor movement has been betrayed, we will soon find that we are living in a very different country.

Second, if the U.S. American labor movement should ever decide that national defense has become a zero-sum game, one in which whatever goes to defense must be taken from social programs they have also supported, then that commitment to national defense will weaken. It could very well disappear altogether, and then it will be a very different country indeed—a country vastly more in danger from the forces in the world.

We do not know, Mr. President, what a treasure we have had in the labor movement that has supported defense and argued for and successfully brought about expansion in trade. Take those two elements out of our national political structure, and very different results emerge.

Mr. President, I do not think there are enough people in this administration with enough experience in Government, one, and relations with the labor movement, two, to understand what I am saying. I cannot imagine that there would be five people at the other end of Pennsylvania Avenue who would say, "Do you mean to say the American labor movement has been for defense? When?" That comes from arriving in town very new to Government. "You say

that the American labor movement has supported free trade? Oh, hmm. When? That every major trade agreement of GATT, going back to 1947, has been adopted because the AFL-CIO has said, 'Yes, we are for it?' "

With that support disappearing, something large changes. When the conviction of the American labor movement is that you can have a strong defense, but not at the expense of social programs, the United States becomes weaker. That eventuality, that possibility, that portentous development, is upon us and should be listened to.

Mr. President, I recognize that my time has expired. I ask unanimous consent to have printed in the RECORD the relevant portions of the Congressional Budget Office background paper on U.S. trade policy.

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

PORTIONS OF THE CONGRESSIONAL BUDGET OFFICE BACKGROUND PAPER

GAINERS AND LOSERS AS A RESULT OF TRADE LIBERALIZATION

The problem with such figures for the net gains of liberalized trade policies is that they can hide the fact that these gains are not evenly distributed. While consumers and producers of some products may benefit greatly from freer trade, some businesses will be forced to close and some workers will lose their jobs because of increased foreign competition. It will, of course, be of small comfort to these businesses and workers to learn that the gains accruing to others are much greater than the losses they themselves are suffering.

There is no way to predict with any accuracy exactly how much particular sectors of the U.S. economy will gain or lose as a result of agreements reached in Geneva to liberalize trade policies. The distribution of such gains and losses will be highly dependent on the details of the tariff reduction formulas and on the nontariff barrier reductions that finally emerge from the negotiations, and as yet all of these details have not been worked out. The average tariff reductions of 30 percent to 40 percent that are expected will result from a wide range of reductions for specific products. A number of particular products will be accorded special treatment or excluded entirely from tariff reductions. Needless to say, each nation has its own set of products for which it seeks special treatment, and in the closing phases of the negotiations there could be important changes in the treatment of particular products.

Even if it is impossible to estimate accurately the impact of trade liberalization on particular industries, it is possible from such studies as the two cited above to get some indication of which types of industries will gain and which will lose as a result of trade liberalization. In general, the industries that will suffer as a result of trade liberalization are those that are relatively labor intensive or that make use of simple, well-known technologies. Among the industries that could potentially suffer the most as a result of tariff reductions are those producing footwear, leather products other than shoes, pottery food utensils, steel products, radios and television sets, and jewelry.[5]

In addition to those industries, the textile industry is often cited as the U.S. industry likely to suffer most severely as a result of trade liberalization.[6] According to one estimate, job losses in the textile industry could account for nearly 43 percent of all jobs lost in the United States as a result of tariff reductions if tariffs on textiles were reduced by the same proportion as tariffs on other commodities.[7] Estimates of the effect of tariff reductions on the textile industry are particularly unreliable, however. Most observers expect tariff reductions on textiles to be significantly smaller than reductions in other tariffs. Further, imports of textiles are limited by a series of bilateral agreements negotiated within the general framework of the international Multi-Fiber Agreement, and nothing that is being negotiated in Geneva will alter the terms of these agreements. To estimate how large an increase in U.S. textile imports might result from textile tariff reductions, it would be necessary to do a careful analysis of the many categories of textiles covered by each bilateral textile trade agreement, an undertaking that is beyond the scope of this paper.

Trade liberalization will have the reverse effect on a number of industries whose exports have been restricted by high tariffs abroad. Lower duties on the products of these industries will bring about increased demand and eventually will result in higher employment. By and large, the beneficiaries of freer trade will be those industries that exploit highly sophisticated or recently developed technology or that process U.S. agricultural commodities. Among those likely to benefit most are industries producing tobacco products, semiconductors, computing machines, office machines, mechanized measuring devices, electronic components, aircraft, and aircraft equipment.[8] Also making important gains will be the U.S. agricultural sector, particularly if liberalization includes not only tariff reductions but also a lowering of agricultural nontariff barriers by the European Community and by Japan.

The brunt of job layoffs in the United States resulting from trade liberalization will be borne disproportionately by semiskilled workers—primarily machine operators, assembly line workers, and nonfarm laborers. Highly skilled workers will be more in demand as a result of general trade liberalization, with the need for research and development workers and production-related technical workers growing most rapidly. Demand will also increase for all types of agricultural workers.[9]

Geographically, most of the net job losses resulting from trade liberalization will take place in the urban areas of the North and East, particularly in Illinois, Massachusetts, Michigan, New York, Ohio, and Pennsylvania. Relative to their populations, the four New England states of Maine, New Hampshire, Vermont, and Massachusetts will suffer the largest displacement of workers. Newly created jobs would be concentrated in the southern, midwestern, and western areas of the United States, with especially large increases in the agricultural regions of Kansas, Minnesota, and the Dakotas.[10]

The distribution of jobs lost and gained throughout the United States could have some important social consequences. Because those losing jobs will be predominantly semiskilled production workers, the burden of adjusting to a regime of freer trade will fall more heavily on lower-income and minority workers than on the higher-income, mostly white male workers in highly technical jobs. Often it will be those workers hardest to place in new occupations who will be thrown out of work by trade liberalization. This is particularly the case in the textile industry, in which 23 percent of the workers are minorities and 65 percent are women.[11] Many jobs in the textile industry are located in rural and economically stagnant areas where opportunities for alternate employment are few, and many textile workers possess few work skills of use in other occupations.

Among the beneficiaries of lowered trade barriers would be consumers in the United States. In many cases, trade barriers have been erected specifically to protect particular domestic industries from lower-priced foreign competition. One would expect, therefore, that the removal or reduction of such trade barriers would result in increased availability of lower-priced goods in the U.S. market. Estimates of the effects of tariff reductions consistently show such price decreases. In general, the sectors in which these price reductions are estimated to be most significant are the same sectors in which job losses resulting from liberalization would be the largest. This is not surprising, since it is exactly those domestic industries in which prices are much higher than those of foreign producers that are most dependent on trade restrictions for their continued survival.[12] Further, it is widely believed—although difficult to prove—that increased foreign access to U.S. markets will aid U.S. consumers by bringing additional competitive pressure to bear on U.S. producers, thus restraining domestic price increases.

The nature and distribution of gains and losses due to liberalized trade are such that one might expect opposition to less restrictive policies to be better organized and more vocal than support will be. The negative effects of trade liberalization will fall heavily on a relatively small group of industries and workers. But because the losses suffered by this group would be severe—plant closings and the loss of jobs—and because the adversely affected groups would be concentrated in a few locations and would in general be relatively well organized, strong opposition to trade liberalization is likely to develop. The beneficiaries of trade liberalization, on the other hand, will be many and generally unorganized. The benefits accruing to each consumer will be only marginal—perhaps not even easily discernible—and the workers finding new jobs are likely to be widely scattered and often without organized unions. Support for liberalized trade policies by these groups will, therefore, be relatively muted. The relative organization of opposition to trade liberalization should not obscure the fact that trade liberalization could lead to significant net gains for the United States. Neither should it be forgotten, though, that some groups will pay heavily for these overall gains.

Some mechanisms exist in the United States to redistribute the gains of freer trade and to mitigate the injury suffered by displaced workers. These mechanisms—unemployment compensation and trade adjustment assistance are the most obvious examples—are far from adequate, however, to compensate fully those who suffer as a result of action that will bring a larger gain to the rest of the economy. Inevitably, a decision to approve any agreement calling for liberalized trade must hurt some workers and help others. The Congress cannot avoid this dilemma, and the best it can do is consider carefully which groups will be aided and which injured. If it chooses to approve a trade liberalization agreement, it may wish to consider expanded or restructured programs providing relief to the losers.

THE MACROECONOMIC EFFECTS OF TRADE LIBERALIZATION

Trade liberalization could bring important benefits to particular industries and groups of workers. It could also result in marginal gains for consumers and, as the figures noted earlier suggest, in net gains for the whole United States economy. It is important, however, to keep these gains in perspective. Many other influences both in the United States and abroad also affect employment, income, and economic growth in the United States.

* * * * *

FOOTNOTES

[5] Robert E. Baldwin and Wayne S. Lewis, "U.S. Tariff Effects on Trade and Employment in Detailed SIC Industries," U.S. Department of Labor (1978), p. 255. This list includes industries that would suffer if tariffs

were reduced. As a practical matter, producers of nonrubber footwear and television sets face no such potential injury, since these products have been excluded from any tariff reductions agreed to in Geneva.

[6] The textile industry includes producers both of woven cloth and of apparel. The United States is a net exporter of woven cloth and would presumably remain so after tariff reductions. The portion of the U.S. textile industry that is threatened by trade liberalization is, more accurately, the apparel industry.

[7] See Cline and others, *Trade Negotiations in the Tokyo Round*, p. 136.

[8] Baldwin and others, *Welfare Effects on the United States of a Significant Multilateral Tariff Reduction*, p. 24.

[9] Baldwin and Lewis, "U.S. Trade and Tariff Effects on Trade and Employment in Detailed SIC Industries," p. 253.

[10] Ibid., p. 254. These estimates of the geographical distribution of job losses and gains do not include the jobs lost by textile workers, located primarily in the southern United States.

[11] Joint Statement of Fifteen Fiber, Textile, and Apparel Industry Associations and Labor Unions to the Subcommittee on International Trade, Senate Committee on Finance (August 15, 1978; processed), p. 4.

[12] The areas in which the potential consumer gains from freer trade are estimated to be greatest—veneer and plywood, nonrubber footwear, leather products other than shoes, pottery food utensils, cutlery, radios and television sets, motorcycles and bicycles, and sports and athletic goods—are among those areas in which employment losses are likely to be greatest. Net welfare gains (the benefit to consumers minus the costs of adjustment for idled workers and capital) are summarized succinctly in Cline and others, *Trade Negotiations in the Tokyo Round*, p. 130, Table 3–15. Specific changes by industry are found in Baldwin and others, *Welfare Effects on the United States of a Significant Multilateral Tariff Reduction*, p. 26.

DEATH OF JERRY WURF, UNION LEADER

Mr. MOYNIHAN. Mr. President, I express the sorrow of all those who have known him in this body, and there can be few who have not, at the death of Jerry Wurf. He was the incomparably feisty, creative, cheerful, combative, and, in the end, cooperative and constructive leader of the American Federation of State, County and Municipal Employees, who died here in Washington yesterday at the age of 62.

As he was a citizen of my own State of New York, we suffer his loss all the more. He died before his time and will be missed a very long while.

The PRESIDING OFFICER (Mr. HATCH). The Chair joins in the remarks of the distinguished Senator from New York.

Mr. MOYNIHAN. It is very characteristic of the distinguished Presiding Officer.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in this morning's Washington Post.

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

[From the Washington Post, Dec. 11, 1981]

JERRY WURF DIES AT 62; STATE, COUNTY, MUNICIPAL WORKERS UNION LEADER

(By Martin Weil and Warren Brown)

Jerry Wurf, 62, a dynamic, deep-voiced and craggy-faced labor leader whose hard-driving and often abrasive style served in the 1960s and 1970s to organize and build the largest public employe union in the nation, died last night at George Washington University Hospital.

Mr. Wurf, leader of the million-member American Federation of State, County and Municipal Employees, entered the hospital about six weeks ago for ulcer surgery. His death, which came about three weeks after the operation, was attributed to cardiac arrest.

The explosive growth of vigorous public employe unionism has been in the past two decades one of the most significant developments in the history of both the American labor movement and of American local government. During those years, no union and no leader better symbolized that growth and those developments than AFSCME and Mr. Wurf.

Elected AFSCME's president in 1964, he saw the union grow under his militant leadership from 220,000 members when he took office to 700,000 members a decade later. Now claiming a membership of 1 million, AFSCME is described as the third largest union in the AFL–CIO.

Although public employe strikes were forbidden for much of Mr. Wurf's tenure and in most of the places where his union had members, it was Mr. Wurf as much as any man who made them a fact of national life.

It was not unknown for the outspoken union leader to go to jail himself, as he did in a Baltimore police and garbage workers strike in the early 1970s, to win higher pay and benefits for union members.

A member of the executive council of the AFL–CIO who was also active in Democratic Party politics, Mr. Wurf was known as a forceful spokeman for liberal social and political causes.

"We've lost one of the best friends we've ever had," said Geraldine P. Boykin, executive director of AFSCME District Council 20, which represents 16,000 workers in the Washington area, "and we've lost one of the strongest labor leaders we've ever had."

Mr. Wurf, whose given name was Jerome was born in New York City on May 18, 1919, and attended the public schools. Shy as a boy, he was challenged to speak better to pass an English course, and began to speak at public meetings, eventually becoming an assured and fiery orator.

After graduation from New York University in 1940, Mr. Wurf, who walked with a limp as a result of a childhood bout with polio, became cashier in a Brooklyn cafeteria.

Dissatisfied with working conditions, Mr. Wurf, organized fellow employes into a union and his work eventually led him in the late 1940s to a post as national representative in New York for AFSCME, then small and struggling.

Building the union was slow. Mr. Wurf recruited laborers and nonprofessional hospital workers.

As the 1950s went on, Mr. Wurf began scoring victories. The right of union membership was recognized. Park department employes won the right to their first union representation election. Other New York successes won national attention and in 1964, Mr. Wurf won the presidency of his national union.

Mr. Wurf took a tough stance at the bargaining table and his union began making rapid gains. In one famed episode, members of the union's Memphis local, many of them black, walked off their jobs Feb. 12, 1968, to protest alleged racial discrimination.

Mr. Wurf spent most of the spring in Memphis helping plan union strategy. The union won out only after the Rev. Martin Luther King Jr., who had gone to Memphis to support the strikers, was assassinated there April 4.

In the 1970s, often out of dissatisfaction with eroding buying power, public employes swelled AFSCME's ranks, making it for a time the AFL–CIO's largest union.

Although he was made a vice president of the AFL–CIO in 1969, Mr. Wurf's influence in the federation was never commensurate with his union's size, possibly because he seemed a sharp-tongued gadfly and maverick, who often stood alone against his fellow union chiefs.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

COST OF GOVERNMENT SHUTDOWN

Mr. PROXMIRE. Mr. President, on November 25, 1981, I wrote to the Comptroller General to ask him for an estimate of the cost of shutting down the Government on November 23. I asked for a reply by December 10 and received it this morning.

Unfortunately, the data are fragmentary. Many agency estimates—on which the General Accounting Office relied—are unverified. Most agencies said estimates were not available.

There is one interesting and typical example from the Department of Housing and Urban Affairs, which I have criticized severely in the past and suggested be called DHUD instead of HUD.

HUD was unable to close down on Monday, the 23d. They instructed their employees not to come to work on Tuesday if the funding gap continued. They said they were preparing plans for a more rapid phasedown in the event of a December 15 gap.

That says more about HUD—the fact that they were unable to phase down—than all the criticism of the housing and urban renewal programs in the past.

Mr. President, this report is inadequate, but I nevertheless ask unanimous consent that it be printed at this point in the RECORD, even with all its inadequacies.

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

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., December 10, 1981.

Subject: Cost to the Government of the recent partial shutdown of Government offices (PAD–82–24).

Hon. WILLIAM PROXMIRE,
Vice Chairman, Subcommittee on International Trade, Finance, and Security Economics, Joint Economic Committee.

DEAR MR. CHAIRMAN: This is in response to your letter dated November 25, 1981 (see appendix I), in which you requested that the General Accounting Office provide you by December 10, 1981, an estimate of the costs to the Government of the recent partial shutdown of Government offices ordered by the

President as a result of the impasse over the continuing resolution to fund Government operations for fiscal year 1982. Specifically you requested (1) that we provide the cost of releasing thousands of Government employees from work on November 23, 1981, and then subsequently paying them for the time they were not at work; and (2) that we include in our response such issues as the cost of planning and putting the shutdown into effect, the cost of activities not performed and decisions not made or postponed as well as any other costs directly or indirectly related to the shutdown.

In order to meet your needs for the data by December 10, it was not possible for GAO independently to develop estimates of the costs associated with the shutdown that affected many agencies on November 23. Therefore, to determine how agencies responded to the latest gap in funding, we contacted the 13 cabinet departments and 12 selected agencies and offices to obtain as much of the information requested as possible. The independent agencies contacted were selected either because they had large numbers of employees or it was reported that they had furloughed employees on November 23.

Data on the number of employees furloughed and the costs of implementing a shutdown are neither readily available nor easily obtainable. To obtain the cost data we developed a uniform set of questions and interviewed by telephone knowledgeable officials of the departments and agencies. As the attached table (see appendix II) shows the information we were able to obtain in the short time available varies considerably. Some agencies were able to give us the number of employees furloughed, but not the costs of paying administrative leave for the time furloughed; some provided both figures; others provided a single cost estimate that included all costs—personnel, lost productivity, and shutdown planning activities; and some were unable to provide any specific figures in time to be included in our response.

RELEVANT GAO WORK

The problems of funding gaps are not new. We recently completed a study of this issue in our report entitled, "Funding Gaps Jeopardize Federal Government Operations," (PAD-81-31, March 3, 1981). That report analyzed a similar funding hiatus for fiscal years 1980 and 1981, and provided a historical analysis of the problem. (We enclose a copy of the report.)

We found that in the last 20 years, 85 percent of appropriations bills for Federal agencies have passed after the beginning of the fiscal year. This has required 74 continuing resolutions. In fiscal years 1979, 1980, and 1981, the continuing resolutions were late as well. From fiscal years 1962 to 1981, there were 32 gaps in funding totaling 291 days. Prior to 1980, agencies had continued to operate and incur obligations for necessary operations pending approval of a continuing resolution or an appropriations act. While recognizing that this was a violation of the Antideficiency Act, agencies also believed that the Congress intended that they not close down. An opinion of the Comptroller General (March 3, 1980) supported this interpretation noting that the Congress had generally retroactively approved obligations incurred during a gap in funding.

However, the Attorney General's opinions of April 25, 1980, and January 16, 1981, stated that the Antideficiency Act precluded agencies from continuing to incur obligations in the absence of appropriations. Except for those functions necessary to protect life and property, an agency whose appropriations had expired had to begin to shut down operations. Five days after the issuance of the April 25, 1980 opinion, the Federal Trade Commission was required to shut down when appropriations expired.

As we noted in our March 1981 report, late appropriations are becoming more frequent and the requirement that agencies shut down operations when appropriations are late has significantly disrupted Government operations and has had an adverse effect on employee morale. We continue to support our report's recommendation that the Congress enact permanent legislation that authorizes agencies to incur obligations, but not expend funds, when agency appropriations expire. Such legislation would both avoid the disruptions of the last 3 years and preserve the funding authority and discretion of the Congress.

The above recommendation would resolve the immediate crisis of agency shutdowns when appropriations expire. A more long-range answer to the problem would be making adjustments to the congressional budget process that allow the Congress to pass appropriations measures before existing funding expires. These adjustments could include shifting authorization and appropriations cycles to 2 years or more and/or staggering cycles to reduce the number of annual funding decisions the Congress must make.

We hope that these data will be useful to you as a rough indicator of the cost of closing down the Government on November 23, 1981. I would caution that these cost data should be used only as a preliminary guide. We will be happy to discuss this information with you at any time.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General of the United States.

JOINT ECONOMIC COMMITTEE,
Washington, D.C., November 25, 1981.

Hon. CHARLES BOWSHER,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR MR. BOWSHER: This is to request an estimate of the costs to the government of the recent partial shutdown of government offices ordered by the President as a result of the impasse over the Continuing Resolution. I understand several hundred thousand government employees were furloughed during the shutdown but that, under a recent decision, all those furloughed will be paid for the time not at work. Your estimate should include, but not be limited to, the costs of paying employees for time not at work, the cost of managing or putting the temporary shutdown into effect, the costs of activities not performed and decisions not made or postponed, and any other costs related directly or indirectly to the shutdown.

I would like your response to be in the form of a letter report delivered to me no later than December 10, 1981.

Sincerely,

WILLIAM PROXMIRE,
Vice Chairman.

AGENCY ESTIMATES OF COSTS AND SPECIAL EFFECTS OF THE NOVEMBER 23, 1981, FUNDING GAP

AVAILABILITY OF COST DATA

The specific data request was not readily available primarily because most departments and agencies we contacted neither centrally tracked the number of employees furloughed to calculate the costs of shutting down, nor computed any lost productivity costs. The fragmented agency responses to our questions totaled $8.1 million for closing down the Government on November 23, 1981. Because agencies computed this cost in a variety of ways, and did not always break out costs of furloughs, etc., it is not possible to break out this total by category. It is very important that these cost figures not be considered definitive because:

Agencies were often only able to provide incomplete data. For example, the Department of the Treasury indicated that 51,604 employees were furloughed at some point on November 23. However, since the time that employees were sent home varied throughout the Department, there was no uniform basis for computing furlough costs, and the Department did not provide any.

Data provided by agencies are not necessarily comparable. Agencies used a variety of assumptions in computing costs. Therefore, two agencies with similar experience may come up with different answers. The Department of Labor, for example, furloughed no employees, but considered the entire day lost, and computed as its costs its entire payroll for one day. The Department of Health and Human Services did not furlough employees either, but did not wish to place a dollar figure on the productive time lost, though it was believed to be great.

Data was not obtained from all agencies because of time constraints;

Time did not permit the independent verification of data received; and

The data obtained were known to be rough estimates subject to error and future adjustments.

Nevertheless, we do believe that the cost figures are an indicator of the range and type of costs that were incurred.

More complete figures on the cost of paying administrative leave to those employees furloughed should be available later from the payroll records of the various departments and agencies. However, no central system exists that provides quick and easy access to payroll data from all agencies. Instead, data is only available at individual automated data processing centers. Because each system is different, coding categories vary, biweekly payrolls are processed at different times, and agency cooperation is necessary to access the computers, it was not possible to obtain this information in time to meet the deadline in your request. Moreover, agency payroll records may not yet contain complete information. For several days following the events of November 23, some confusion existed concerning the appropriate way to handle the furloughs on payroll records, and corrections may still be underway. Thus, even if we could immediately access payroll records, we could not, independently estimate the full furlough costs that agencies assigned to administrative leave for November 23.

During our analysis we became aware of a more detailed request to the departments and agencies to obtain a variety of data concerning the closing down of the Government on November 23, 1981. That data will be provided shortly to the House Subcommittee on Civil Service of the House Committee on Post Office and Civil Service.

Much of the information agencies provided to us was prepared in response to this request. However, since the study will not be completed until after your need for the data, many agencies were able to provide us only partial data.

As we noted before, their were many individual problems that affect the quality and comparability of the cost data found in the accompanying table. The notes on individual agencies in the table indicate some of the factors unique to each agency. Among the more important issues are difficulties Flex-Time posed in calculating payroll costs, and possible inconsistent agency categorization of costs.

Under FlexTime, employees are allowed to establish their own working schedules as long as they meet certain requirements.

Where this system is in use, it is difficult to quickly and easily determine furlough costs.

Take the example of two employees, one scheduled to work 10 hours beginning at 7 a.m. November 23rd, and the second 4 hours beginning at 8 a.m. Assuming both employees were furloughed at noon, the first would be due 5 hours of paid administrative leave and the second none, since that employee was scheduled to leave at noon in any event. Thus, the FlexTime schedule of every employee would need to be examined and a hand calculation made to determine the actual furlough costs in such an agency. Such information may be available from payroll records at a later date, assuming that furlough costs are recorded as administrative leave.

Agencies are not accounting for furlough and productivity costs in the same way. For example, the EPA had already completed its payroll records for the pay period including November 23 before it was determined that employees were to be paid for the time furloughed. A normal payroll was processed with adjustments to be made in the following pay period if employees were not to be paid for time on furlough. But since employees are to be paid, no special code will be entered to show furlough costs. On the other hand, while no one was normally furloughed at the Department of State, some employees were sent home at the option of local supervisors and were granted administrative leave.

Some agencies, such as the General Services Administration (GSA) consider providing assistance for a shutdown as part of their normal statutory duties, 50 did not count shutdown activities as lost productive time. The Department of Labor, on the other hand, considered the entire day lost, and includes as both furlough and lost productivity its entire payroll for November 23. While some agencies, such as OMB, attached precise costs to furloughs, others just estimated the hours employees were furloughed, since the costs varied within each agency.

All of these factors strongly caution against comparing costs across agencies or suggesting that the cost for one agency was necessarily greater than another. One can only say, based on the data we obtained, that the cost of the shutdown is great. We would not suggest that the figures are any more than indicative of the types of costs incurred.

AGENCY ESTIMATES OF THE COSTS AND SPECIAL EFFECTS OF THE NOV. 23, 1981, FUNDING GAP[1]

Department/agency	Number of employees furloughed	Cost of furlough payroll	Other costs[2]	Special effects
Office of Management and Budget	256	$17,163	(3)	2 budget reviews cancelled. All managerial and general counsel personnel sent home. Budget analysts remained only to answer questions about the shutdown.
State	0	0	(3)	No employees were formally placed on furlough, but some people were sent home early at local option. Passport offices and the Public Affairs Bureau were not open to the public.
Treasury	51,604	(3)	(3)	Almost 50 percent of employees were furloughed. 3,210 people left at 1 p.m. and 48,395 left during the afternoon, making it difficult to compute payroll costs.
Defense	0	0	0	Defense was not affected by the funding gap.
Justice	0	0	(3)	All employees were engaged in closedown activities. Nonessential personnel would have been furloughed on second day.
Interior	(4)	(3)	(3)	All nonessential people furloughed at 2 p.m., but numbers and cost not available. The Washington Monument and Statue of Liberty were closed to the public.
Agriculture	[5] 45,000	1,600,000	(3)	Almost 40 percent of USDA personnel were furloughed (90 percent at headquarters) disrupting research and education activities. Officials did not estimate closedown costs, but felt the whole day was lost.
Commerce	18,133	544,819	$3,820	48 percent of all employees furloughed. Other than payroll, estimates included the cost of monitoring the shutdown and long distance telephone calls. 10,518 nonessential personnel were not furloughed because of available no-year funds.
Labor	0	0	2,452,000	75 percent of employees classified as nonessential, but no one was furloughed. A full day's pay was used to perform the 1-day phasedown and suspension of department operations.
Health and Human Services	0	0	(3)	HHS experienced lost productivity, but did not quantify costs.
Education	5,457	260,000	(3)	All employees except the Secretary of Education and one aide were furloughed for ½ day.
House and Urban Development	0	0	(3)	About 75 percent of employees were instructed not to come to work on Tuesday, if the funding gap continued. HUD is preparing plans for a more rapid phasedown in the event of a Dec. 15 gap.
Transportation	(4)	(6)	1,920,000	Estimated that Nov. 23 was a nonproductive day departmentwide.
Energy	0	0	15,000	Effects were minor because of no-year funds. Costs are for preplanning and preparation for OMB and President's Cabinet meetings.
Veterans' Administration	20,714	(3)	(3)	84 percent of headquarters personnel, but only 7½ percent of field personnel, were furloughed from 1 to 4 hours. Employees were recalled from travel.
Federal Trade Commission	1,442	(6)	371,500	More than 90 percent of employees were furloughed at 2 p.m. Several agency attorney's returned to Chicago when a hearing was canceled and regular business activities were canceled.
National Transportation Safety Board	0	0	0	All NTSB activities met OMB requirements of essential functions.
National Science Foundation	0	0	0	Continued all operations with multiyear funds.
Federal Election Commission	0	0	27,000	Closedown activities cost 1 full payroll day. Employees were to be furloughed at noon on Nov. 24, 1981.
Environmental Protection Agency	3,779	(3)	(3)	Almost 90 percent of personnel furloughed 1–4 hours, but the day was largely lost, EPA did not estimate furlough costs or other closedown costs.
Merit System Protection Board	[5] 325	(3)	(3)	A complete shutdown except 11 regional manager and 6 headquarters employees.
General Services Administration	24,500	900,000	0	Preparation for closedown began on the weekend prior to Nov. 23; almost 75 percent of GSA employees and all activities affected. Closedown costs estimated at 0. They were considered a normal part of GSA duties.
National Labor Relations Board	0	0	(3)	
Office of Personnel Management	(3)	(3)	(3)	Nonessential employees were furloughed at 3 p.m.
Office of Special Council	(3)	(3)	(3)	Performed only shutdown activities. All but 13 employees furloughed at 2 p.m. Employees instructed that they could appeal this action to the Merit Systems Protection Board (that also shutdown completely).

[1] The figures in this table do not represent the total cost to the Government of the Nov. 23, 1981, funding gap. Instead, the data represents unverified agency estimates. In many cases, information was fragmentary or not available.
[2] We did not verify the items that agencies included in their estimates of other costs.
[3] Agency estimates were not available.
[4] All nonessential personnel.
[5] Approximately.
[6] Payroll costs are included in other costs.

WALTER J. (JOE) STEWART'S PUBLIC SERVICE TO U.S. SENATE

Mr. PROXMIRE. Mr. President, I join a large number of my colleagues in paying tribute to Walter (Joe) Stewart who was a staff man in the Senate from 1951 until the fall of this year—30 years in all.

Only two Senators are here today—JOHN STENNIS and RUSSELL LONG—who were in the Senate when Joe Stewart first came to work here as a Senate page in 1951. Yet Joe is still a young and vigorous man with many, many years of active life ahead of him.

The Senate too often forgets what a tremendous asset our longtime and best employees are. They know how to get things done. They keep the Senate moving without friction. They are invaluable in making the Senate work and getting the legislation of this country passed. I think Joe Stewart knew every nook and cranny of the Senate and his institutional memory based on vast experience was second to none among those who work and labor for the Senate and love the Senate as an institution.

Joe came to work as a page. He then worked as head of the staff in the Democratic Cloakroom. Later he became administrative assistant to the secretary of the majority.

Along the way he went to law school and took a degree and became a member of the District of Columbia bar, no mean achievement.

He then went to the professional staff of the Appropriations Committee and in 1971 became legislative assistant to Senator ROBERT C. BYRD. He moved on as assistant to the majority leader for floor operations and then became secretary to the majority and in 1981 secretary to the minority.

Joe was a master of his profession and a man who knew the workings of the Senate as few others knew them.

We will miss him greatly but we all wish him well in his new work and endeavor.

I am happy to add my congratulations to that of others and to thank Joe for

his sterling service to the Senate and the country.

AMBASSADOR GARDNER: GENOCIDE CONVENTION IS AN ESSENTIAL DIPLOMATIC TOOL IN OUR WAR OF IDEAS WITH THE SOVIET UNION

Mr. PROXMIRE. Mr. President, on December 3, Richard Gardner, former Ambassador to Italy, testified before the Senate Foreign Relations Committee in support of immediate Senate ratification of the Genocide Convention.

His testimony before the committee is particularly important for three reasons. First, he was testifying on behalf of the Ad Hoc Committee on the Human Rights and Genocide Treaties, a coalition of 55 civic, religious, labor and nationality groups, representing millions of Americans across this country who support the Genocide Convention. Second, he is a distinguished international law expert, who holds the chair in international law and organization at the Columbia University School of Law, and has carefully studied every line, every phrase, every word of the Genocide Convention thoroughly. Third, he is a seasoned diplomat, having represented the United States at the United Nations as well as in Italy, and participated in the formulation of American foreign policy as Deputy Assistant Secretary of State for International Organization at the State Department.

Ambassador Gardner's testimony focuses on two key points—is this treaty in America's national interest and do the legal arguments raised in opposition to the convention make any sense—and his statement is devastating on both counts.

He makes it extremely clear that the Genocide Convention is not a "pie in the sky" conception of fuzzy-headed idealists but a real, solid diplomatic tool that we need in our war of ideas with the Soviet Union. As he stated so effectively:

> The Soviet Union seeks the political isolation of the United States and the political isolation of the United States would be just as great a threat to our national security as the SS–20 or any intercontinental ballistic missile possessed by the Soviet Union.
>
> Our inability, our incapacity, our refusal to ratify this and other human rights treaties contributes to this political isolation of our country.

Mr. President, why should we play into the hands of the Soviets by contributing to our own political isolation? I say we should not and Ambassador Gardner's testimony makes it clear why we should not.

Second, his analysis of the legal objections is incisive that poignant. He is very right that all of these objections of what might happen if the Genocide Convention were ratified evaporate when you come back to the language of article II of this convention. Only by misreading, or absolutely ignoring, that language can anyone come up with such a preposterous set of hypothetical circumstances.

Article II is absolutely clear: only when there is clear intent to destroy a group—an ethnic, racial, national or religious group—and to destroy that group "as such" is the crime of genocide occurring. Article II also makes it clear that genocide occurs whether the group was destroyed in whole or only in part, as long as the intent to destroy the entire group was present.

Mr. President, Ambassador Gardner's statement is an unusually clear and straightforward discussion of this most important human rights treaty and how it will aid our foreign policy and I commend it to colleagues.

Mr. President, I ask unanimous consent that Ambassador Gardner's testimony be printed in the Record.

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

STATEMENT OF PROF. RICHARD N. GARDNER

Ambassador GARDNER. Mr. Chairman, it is a rare and special privilege to be testifying after the most eloquent and powerful statement of Senator Javits, one of our greatest Americans.

It is also a very special privilege to be here representing the Ad Hoc Committee on the Human Rights and Genocide Treaties which, as you well know, represents now 55 national organizations: our major Catholic, Protestant and Jewish religious groups, major veterans groups, civic groups, women's groups, black organizations and labor organizations. Together, they comprise millions of our fellow Americans.

I would like, with your permission, to have printed at the close of my testimony the list of these organizations so that it may be on the record who has stood up for the Genocide Convention.

With your permission, Mr. Chairman, I would also like to have printed at the end of my testimony—and this will enable me to be shorter in my verbal statement—the article, "Time to Act on the Genocide Convention," which Arthur J. Goldberg and I wrote some years ago in the "American Bar Association Journal," and which I believe deals with the various legal objections that have been presented to us today.

The CHAIRMAN. Those insertions will be incorporated in the record of this hearing, without objection.

You are referring to the February, 1972, statement that you and Arthur Goldberg made, are you not?

Ambassador GARDNER. That is correct.

(The information referred to follows:)

Ambassador GARDNER. Mr. Chairman, it seems to me that there are two, and really only two, major issues before this Committee with respect to this Convention: first, is the national interest of the United States served by taking an international commitment against mass murder? The second question: is there any valid legal objection to our doing so?

With your permission, I want to address these two questions as briefly as I can.

On the national interest of our country, may I make this personal statement.

As you know, I recently have come back after four years as United States Ambassador to Italy. I have come back deeply troubled. My experience in Europe these last four years has confirmed my deep concern that our national security is threatened as never before. It is threatened by the growth of Soviet military power and the willingness, demonstrated in Afghanistan and elsewhere, of the Soviet Union to use that power outside its borders and outside its sphere of influence.

I favor and strongly support measures to defend our security through a greater and stronger military defense. But, Mr. Chairman, our national security cannot be assured by arms alone, as you have so many times stated so eloquently.

The Soviet Union seeks the political isolation of the United States and the political isolation of the United States would be just as great a threat to our national security as the SS–20 or any intercontinental ballistic missile possessed by the Soviet Union.

Our inability, our incapacity, our refusal to ratify this and other human rights treaties contributes to this political isolation of our country.

One way we can defend our national security in the nonmilitary field is by waging the diplomacy of ideas, because what is going on in Italy, in Europe, and around the world is a struggle, an ideological struggle between ourselves and the Soviet Union and those who believe in their philosophy.

In Italy, one of our closest allies, the strength of the Communist Party grew between World War II and 1976 from 18 percent to 34.4 percent of the vote. When I arrived, they were on the threshold of taking power in the government.

During my four years, I toured the length and breadth of Italy, a country on which you and Senator Pell are great experts, trying to convey to the people of Italy what the issue was in the world between freedom and totalitarianism.

I went into the universities and talked about what we believe in the West that unites us and distinguishes us from the Soviet Union. I talked more than anything else about human rights. In many of my lectures, members of the Communist Party sat in the first row glumly and with increasing embarrassment. The reason they were embarrassed is obvious: there is no way that they can reconcile the philosophy of Marxism-Leninism with the philosophy of freedom, a philosophy which is embodied in these human rights instruments.

What I am trying to say is that I deeply believe, based on this experience in Italy and on my prior experience in the United Nations that our failure to ratify this instrument is a diplomatic embarrassment which gets in the way of our pursuing that diplomacy of ideas which is essential to the defense of our national security in the 1980s.

Now I come to the second question: is there any legal objection to our taking an international commitment against mass murder?

The British have done it. I don't believe they value their liberty any less than we do. The French have done it. The Italians have done it. All the great industrialized democracies have done it. Can it be that we uniquely among the free nations of the world are incapable of taking such a commitment?

Well, we hear various arguments and some have been put before you today. It is said, for example, that this treaty embodies a novel theory of international law, that in effect it internationalizes matters that should be subject exclusively to domestic jurisdiction.

This charge is totally without foundation. Our country has for decades entered into international commitments, regulating the actions of American citizens within our own country.

We do this where it serves our national interest and our foreign policy objectives. We take commitments regulating actions of Americans with respect to narcotic drugs, killing of wildlife, protection of nature, conducting forced labor or slavery. We have made these commitments in treaties which have been approved by the Senate. It cannot be seriously maintained in the Year of our Lord 1981 that this is beyond the constitution of the United States.

I am particularly struck by the fact that some of the commitments we have taken have to do with the protection of birds and trees, and I know of nothing in the Constitution of the United States that says that birds and trees are more important than people.

The second argument that is made is that

entering into this treaty is going to destroy the constitutional rights of our people. There is no constitutional right to conduct mass murder. A treaty that outlaws mass murder does not take away any rights of the American people.

A lot of the "possible horribles" conjured up by the people objecting to this Convention ignore the plain language of this treaty. This treaty is not about hurting someone's feelings, as some people have suggested, or depriving someone of welfare benefits, or an individual act of murder. This treaty is about certain specified acts committed, and I quote, "with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such."

It is only by ignoring that plain language that those objecting to this treaty can carry forward their parade of "possible horribles." But if they are brought back to that sentence, it becomes clear that their objections are without foundation.

A third point that is continually raised is that this treaty is going to destroy the rights of the states, that it will destroy states rights and will federalize things that are now within the domain of the states.

That is clearly wrong. As has been pointed out by the American Bar Association and other experts, mass murder is not something that is within the exclusive domain of the states. The carrying out of mass murder is a federal matter. It has been made a federal matter by the Civil Rights Act. This point is developed at length in the article which Justice Goldberg and I wrote some years ago.

So, it would not change in any manner the balance of power between the Federal Government and the states.

Well, then, Mr. Chairman, there is another argument which we have heard again this morning. I am sure it will be stated later on, too. The argument is that this Convention somehow increases the risk that Americans will be prosecuted overseas for alleged acts of genocide on trumped up charges.

That is totally wrong. It is wrong because it does not add in any respect to this risk and, as Senator Dodd suggested, it may even diminish the risk.

There is nothing to prevent a hostile nation from getting hold of some American and trying him on a trumped up charge now. The advantage of the Genocide Convention is that it defines "genocide" with precision. Of course, anybody can charge the United States or an individual with genocide. But this Convention, in the language that I have quoted, makes it clear that you can't try anybody unless he is trying to destroy a group. Therefore, an American soldier on the battlefield, cannot, under the terms of this Convention, be said to have been carrying on genocide.

The precise legal definition provided here is a help to us in resisting unauthorized actions by foreign countries in this field.

Moreover, the extradition commitment in this treaty, Article VII, has been the source of argument. Some have questioned whether this obliges us to extradite Americans to be tried abroad for acts of genocide. It should be emphasized that this extradition commitment is to grant extradition, and I quote, "In accordance with their laws and treaties in force." So the only commitment we have is to extradite someone in accordance with our laws and with extradition treaties in force. If we don't have an extradition treaty in force with somebody, then there is no commitment. And, even if there is an extradition treaty in force with another country, our only commitment is to comply with its terms and with our own laws.

Where it is a trumped up genocide charge, our laws would not permit extradition. Moreover, there is discretion for the Secretary of State to refuse extradition where it would not serve the national interest. This is a matter of discretion.

As the hearings have made clear in the past, as well as the legal research, the United States also has concurrent jurisdiction, to try its citizens for genocide for alleged acts of genocide committed overseas.

So, we would have jurisdiction to try them for acts overseas and to deny extradition on the ground that they were already subject to our jurisdiction for that offense.

There is no international criminal court and there will be none. You and I know it. The best guarantee that there will be no such court to which our country will be subject is the Senate of the United States, which must give its approval to the setting up of such an international tribunal before it would have jurisdiction over us and our citizenry. I think we can have confidence that the Senate would not do such a thing.

Finally, and I will close with this, Mr. Chairman, it is said that the language in this treaty is vague and ambiguous. But words are not self-interpreting. When we look at a statute or a treaty, we interpret it not only in the light of the language, but in the light of the legislative history and the drafting history.

I commend to the critics of this Convention who are worried about phrases such as "incitement to genocide," "in whole or in part," and "mental harm" that they read the clear legislative and drafting history which has been well put together in the book by Nehemiah Robinson, which demonstrates that their fears are groundless.

Mr. Chairman, I will conclude with this observation.

It is well over 30 years since this treaty was sent to the Senate. It is ten years since this Committee has been actively considering it. This is my third personal appearance on behalf of the Ad Hoc Committee to discuss this matter.

I sincerely pray that we will not be here ten years from now litigating this same matter. I think the American people are entitled to a decision on this matter. It is time to stand up and be counted on the Genocide Convention. We owe this to our people and we owe it no less to the memory of six million Jews who died in the Holocaust and to other ethnic, racial, and religious groups who have suffered from genocide in our tragic history of the last century.

Thank you, Mr. Chairman.

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

Mr. PROXMIRE. I yield the floor.

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

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

ROBERT V. DENNEY, FEDERAL BUILDING AND COURTHOUSE

Mr. STEVENS. Mr. President, I ask the Chair to lay before the Senate a message from the House on H.R. 4845, to designate the building known as the Lincoln Federal Building and Courthouse in Lincoln, Nebr., as the "Robert V. Denney Federal Building and Courthouse."

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

The assistant legislative clerk read as follows:

A bill (H.R. 4845) to designate the building known as the Lincoln Federal Building and Courthouse in Lincoln, Nebraska, as the "Robert V. Denney Federal Building and Courthouse".

The PRESIDING OFFICER. The bill will be deemed to have been read the first and second times by title and, without objection, the Senate will proceed to its immediate consideration.

Mr. STEVENS. Mr. President, I yield to the distinguished Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. Mr. President, earlier this year, the distinguished senior Senator from Nebraska (Mr. ZORINSKY) introduced the bill, S. 1837, to name the Federal building and courthouse in Lincoln, Nebr., in honor of the late Robert V. Denney of Nebraska.

The bill was referred to the Committee on Environment and Public Works which unanimously ordered the bill reported. I am glad to have the opportunity to report the bill. I refer my colleagues to the Senate Report No. 97–289 which accompanies the bill now on the calendar (Calendar No. 401).

Congressman Denney was one of those rare individuals who served with distinction in all three of the major branches of our Federal Government—executive, legislative, and judicial. His career included service with the Federal Bureau of Investigation, the U.S. Marine Corps during World War II, the U.S. House of Representatives, and the Federal bench.

During his congressional career, which spanned the 90th and 91st Congresses, he served on the Public Works and Transportation Committee, where he was respected as one of its most knowledgeable, diligent, and tireless members. While serving as Congressman for Nebraska's First Congressional District, Bob Denney was also vice chairman of the National Republican Task Force on Crime and Delinquency.

The dedication to hard work which had characterized Bob Denney's service in Congress continued to be the hallmark of his service on the Federal bench. He was appointed to a judgeship on the Federal district court in 1971, and served as a Federal judge for more than 10 years.

His death this past June ended a truly outstanding career of public service.

The building, currently known as the Lincoln Federal Building, stands today in part because of the skillful legislative efforts of our late colleague, the Honorable Robert V. Denney, and he presided as a Federal district judge in the building. I believe it is, therefore, most appropriate that it be named in his honor.

Mr. President, the House has passed a companion bill, H.R. 4845, which is pending at the desk. I commend it to my colleagues in the Senate and urge them to join me in passing this bill.

Mr. ZORINSKY. It is with great pleasure that I rise in support of H.R. 4845, a bill to designate the Lincoln Federal Building and Courthouse located in Lincoln, Nebr., as the "Robert V. Denney Federal Building and Courthouse." I had the privilege of knowing the late Judge Denney personally and found him to be

an honest man and a qualified and fair Federal judge. I believe that designating the Lincoln Federal Building and Courthouse in honor of the late Judge Denney is fitting and reflective of his sincere devotion and lifelong commitment to the State of Nebraska.

Some men hope to conquer one dream in their lifetime; Judge Denney conquered many dreams in his short lifetime. Graduating from Creighton University Law School in 1939, Denney was a third generation attorney who carried on the tradition in his family practice in Fairbury. His list of public service accomplishments include 2 years of service to the U.S. Marine Corps, and 4 years of service to First District Nebraskans in the U.S. House of Representatives. His dedication to Nebraskans did not end at the close of his second term in the House. He served Nebraska as a U.S. Federal district court judge before his retirement and death only this year.

At this time I respectfully encourage my colleagues in the Senate to approve this legislation designating the Lincoln Federal Building and Courthouse in Judge Denney's honor as it is a proper memorial to a man who gave so generously of his time and energy on behalf of his fellow Nebraskans and Americans.

Mr. STEVENS. Mr. President, I ask for the third reading and final passage of H.R. 4845.

The PRESIDING OFFICER. If there are no amendments, the question is on the third reading of the bill.

The bill was ordered to be read a third time, was read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that Calendar No. 401, S. 1837, the companion bill, be indefinitely postponed.

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

CONCLUSION OF MORNING BUSINESS

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

FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 1982

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of House Joint Resolution 370, which the clerk will state by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 370) making further continuing appropriations for the fiscal year 1982, and for other purposes.

The Senate resumed consideration of the joint resolution.

UP AMENDMENT NO. 784

Mr. ROBERT C. BYRD. Mr. President, I send to the desk an amendment and ask it be stated by the clerk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) for himself, Mr. RANDOLPH, Mr. KENNEDY, Mr. SARBANES and Mr. GLENN proposes an unprinted amendment numbered 784.

Strike the period at the end of Section 142 (g) and insert the following: ", the activities of the Mine Safety and Health Administration."

Mr. ROBERT C. BYRD. Mr. President, in the last 8 days, 27 coal miners have died in mine accidents. Last Thursday a week ago, three miners were killed in my home State of West Virginia at Bergoo. These miners died when a tunnel roof collapsed. This past Monday 8 miners were killed in a methane gas explosion at Topmost, Ky. And then, the following day, another 13 miners were killed apparently by another methane gas explosion near Chattanooga, Tenn. In addition, three miners were killed during the past week at separate surface coal mine sites.

Mr. President, this total of 27 mine deaths is unusual in such a short period. But, it is even more tragic that these miners have died in accidents which are generally considered to be preventable by increased inspection efforts. And I believe it is also tragic, indeed shameful, that at a time when we are relying more and more on our coal miners to provide increased energy supplies for this Nation, and we are asking those miners to go into deeper mines and expose themselves to even greater hazards, the administration has proposed to reduce the very inspection program which is designed to protect the safety and health of these miners. The President, in his September budget request would have reduced the 1982 funding level for the Mine Safety and Health Administration by 12 percent to $138 million. I opposed the President's proposal, and other proposals to reduce this program, in committee and managed, with the help of Senator SPECTER and other Senators on the committee, to preserve $155 million for the Mine Safety and Health Administration in 1982.

I understand that because of the construction of the continuing resolution this amount will be reduced by $2 million when the lower of the House or Senate funding is included for each activity, and that another $6 million would be cut by the across-the-board reduction contained in this joint resolution.

Total funding for the Mine Safety and Health Administration, then, would be $147 million. This is at least $6 million less than the 1981 level and the effect of this reduction is aggravated by the present high rate of inflation.

This is not the time to turn our back on the Nation's miners—to ask them to risk their lives and then not be willing ourselves to fund an adequate safety and health inspection program.

Mr. President, a total of 143 miners have died so far this year. We can do nothing to help them. But for the more than one-half million individuals who labor in this Nation's mines, we can, and I believe we must, provide better and more frequent safety and health inspections to reduce the risks which they face daily, than the funding in this resolution will allow.

Taking into consideration, as I say, the fact that it will be at least $6 million less than the 1981 level, and since the effect of that reduction is compounded by the factor of inflation, Mr. President, I am seeking at this time simply to exempt the Mine Safety and Health Administration from the 4-percent reduction which would otherwise be applied. My amendment would restore $6 million for mine safety and health programs—a small price of less than 3 cents from each American to help protect the lives of our miners.

Mr. President, I ask unanimous consent that an article which appeared in the New York Times on December 10, 1981, related to these mine disasters, be reprinted in the RECORD.

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

MINE DEATHS RAISE DEBATE ON U.S. RULES

(By Ben A. Franklin)

WASHINGTON, December 9.—The deaths of 24 coal miners in five days, including 13 killed Tuesday in south-central Tennessee in what the authorities called an "apparent" explosion, has raised new questions about the Government's commitment to enforcing mine safety.

The United Mine Workers union, other mine-safety partisans and Congressional overseers of the Federal Mine Safety and Health Administration charge that the Reagan Administration's budget cuts are related to the nearly 8 percent increase in mine deaths so far this year over the 1980 total, with two working weeks still to go in 1981.

The fatal explosion yesterday afternoon at the Grundy mine 21 of the Tennessee Consolidated Coal Company, 20 miles west of Chattanooga, was the second Appalachian mine accident in two days that apparently involved emissions of methane, an odorless explosive gas found naturally in coal beds.

EIGHT DIED IN KENTUCKY BLAST

On Monday, eight miners died in an explosion at the Adkins Coal Company's mine 18 at Topmost, Ky., in the mountainous terrain of Knott County.

And last Thursday, three miners were crushed to death when a roof fell in a tunnel under Leatherwood Mountain at Bergoo, in north-central West Virginia.

Roof falls, the sudden plunging of tons of slate on workers, are the most common cause of death in the mines. But the five-day toll of 21 since Monday was attributed, at least in early and sometimes conflicting official reports, to explosions of mine gas, a hazard regarded as more controllable by strict inspection. This focused attention on methane and on the last two fatal accidents.

Explosive mixtures of methane with air are normally prevented by rigidly regulated forced ventilation. The gas throughout a mine must be evacuated so that it does not reach the legal maximum level of 1 percent, which is the point where it would explode.

The two explosions were almost certain to bring a Congressional investigation of the Federal mine safety enforcement program under the Reagan Administration, probably next month.

A letter demanding such hearings was sent today to Representative Carl D. Perkins, an eastern Kentucky Democrat whose constituents died in the Adkins mine, by the Council of the Southern Mountains, a citizens' group. The letter said that "documents" of the Federal Mine Safety and Health Administration depicting how the agency intended to comply with budget cuts showed a pro-

posed reduction of 150 jobs in coal mine safety enforcement, a 10 percent rollback.

Under the Government hiring freeze imposed by President Reagan in January, a mine safety agency spokesman, Kathy Snyder, said today, there has already been a reduction of 73 mine inspectors by retirement or resignation. The inspection force in District 7, which covers most of the South, has fallen from 133 to 122 in the last year.

"To reduce the inspectorate by 10 percent when fatal accidents are up 8 percent represents the kind of cold-blooded illogic that only David Stockman could endorse," the letter to Mr. Perkins said, referring to the Director of the Office of Management and Budget . . . It was signed by J. Davitt McAteer, the group's Washington lawyer.

Representative Perkins, who was a major sponsor of the Federal Coal Mine Health and Safety Act of 1969, is chairman of the House Committee on Education and Labor. He has held coalfield hearings on mine accidents before. He said he would not comment publicly on plans for such an investigation until after the Adkins miners' funerals this weekend.

But Representative Joseph M. Gaydos, Democrat of Pennsylvania, who is chairman of the Perkins committee's Subcommittee on Health and Safety, said on the House floor today that Reagan Administration budget cuts already approved by Congress "may very well have hampered an agency that has shown itself, when fully funded, to be highly effective in the cause of mine safety".

The safety office of the United Mine Workers said that, including single fatalities at three surface mines since the Bergoo accident, the death toll since Dec. 3 was 27, of which 21 were in sites. The coal industry death toll for the year stood at 143 today, against 133 in all of 1980.

"They at least have got to be embarrassed over there, but maybe that's all," said Danny Davidson, the union's assistant safety director, referring to the mine safety agency.

BREAKTHROUGH A POSSIBILITY

Spokesmen for the agency said tonight that "there were reports" that the Tennessee miners had been tunneling near abandoned works of Grundy mine 21 and had "broken through" a block of coal into a gas-filled passage, causing an explosion of methane.

A "breakthrough" can bring a sudden burst of methane or an asphyxiating "blackdamp." This risk is so high that Federal mine safety regulations require small holes to be drilled at least 10 feet ahead of advancing mining machinery. A spokesman here said that it had not been determined whether this safety procedure had been followed.

Mr. ROBERT C. BYRD. I might add, Mr. President, that if the Senate adopts the amendment, the continuing resolution, as thus amended, could be sent back to the House within a short while, be quickly voted on by the House, and on its way to the President today. So I do not believe that the adoption of this amendment would in any way cause the enactment of the continuing resolution to be significantly delayed. I urge my colleagues to support the amendment.

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

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

The yeas and nays were ordered.

Mr. HATFIELD. Mr. President, I reluctantly rise to oppose the Byrd amendment. Let me indicate that this resolution provides $147.8 million for mine safety activities, and that includes the 4-percent reduction which is a reduction of about $6.1 million.

Mr. President, the President's budget request was only for $138.6 million; in other words, we are almost $10 million, with the 4-percent cut, above the President's request. And this is one of the few agencies in the Labor, HHS, Education Subcommittee jurisdiction above the President's budget. I want to emphasize that the mine safety program is above the President's request.

In addition to that—and I would like to reiterate this for the Senator from West Virginia—I would like to reiterate that in this resolution we have the flexibility factor that was discussed extensively last night, which provides for a zero to 6-percent cut out of any program within any account, which means that the Labor Department could protect this figure to an even greater degree. There would not have to be a 4-percent cut, because they could take other subaccount programs and take a greater cut so long as the total figure would be 4 percent. Now that was put in the resolution and there was a very extended colloquy yesterday, to protect situations of this kind.

I want to say to the Senator from West Virginia that that provision was not put in to reduce but to protect programs. And, so, in effect, we could see this $147.8 million, which is, as I say, above the President's request, reduced further; that is, we could see it have less impact than the 4 percent if the Department of Labor chose to do so.

I think the Senator's wishes and the Senator's views would be greatly respected in the Department of Labor if he urges them to take a deeper cut elsewhere in order to apply less than the 4 percent to the mine safety program. But, again, I want to emphasize that the mine safety program is one of the very few, if not the only one in this whole bill, that has been kept higher than at the President's request level.

So as worthy purpose and cause that motivate the Senator to offer this amendment—and I join him in the concern, coming from a noncoal mining producing State, that where there is this kind of danger and there is this kind of need, that we ought to utilize every resource possible to minimize in the future these terrible tragedies.

I join him in that purpose, but I want to just remind the Senate that we have recognized this even before this recent tragedy and have funded this at higher than the President's budget request. And, possibly, it could even be funded higher than what the $147 million represents if the Labor Department would wish to apply the flexibility that we have built into the resolution.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. ROBERT C. BYRD. I am advised that this is a separate account and that moneys cannot be shifted from other accounts to this account. They can be shifted from within the mine safety and health administration account but indeed they cannot be shifted from other accounts to this account.

Mr. HATFIELD. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. HATFIELD. Let me clarify this. I have the document here. There are within this account other activities besides enforcement. And I am talking about taking deeper cuts, perhaps, in some of these other areas than in enforcement. I am talking about the one account; not between the accounts, but within the account.

Mr. ROBERT C. BYRD. But the overall account would be reduced by $6 million.

Mr. HATFIELD. If the Senator would yield, the overall account would be reduced by 4 percent, but the specific concern of enforcement, to which this amendment addresses itself, could be less than 4 percent by taking within the account the other such items that we have in salaries, expenses, assessments, and so on. We have a number of things listed within this account besides enforcement.

Mr. ROBERT C. BYRD. Mr. President, I am concerned that without this amendment the amount for this item will be $6 million below the 1981 level. Even though there can be a shifting within the account, the overall amount for mine safety and health enforcement would be reduced. Moneys cannot be shifted from other accounts into this account to prevent that from happening.

So I see this amendment as the only way to preserve that amount for mine safety and health. And I believe, in light of the three very recent happenings that have been highly publicized, that the amendment is not only justified but that it is necessary.

Mr. SCHMITT addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. SCHMITT. Mr. President, the Subcommittee on Labor, Health and Human Services, and Education has spent a great part of its time this year in hearings, as well as in formal and informal discussions dealing with the issue of mine health and safety in not only how efficiencies and savings can be realized within the programs under that general account level, but also how can the activities of the Mine Safety and Health Administration focus more on the real problems.

The distinguished Senator from West Virginia, the distinguished minority leader, is obviously genuinely concerned about the problems of health and safety in the mines, as is, I think, every Member of this body.

In our examination of the issues, however, we found that there are many problems in the administration of that agency, one of the principal ones being that in spite of large numbers of inspections in total, that those inspections are either not having much effect on the safety of the mines or they are being focused on the safest mines, or both.

There is language that is referenced by the continuing resolution, which is in the Senate report of the Appropriations Committee relative to these accounts, which directs the Mine Safety and Health Administration to focus their inspection activities, enforcement activi-

ties, and other operations on the most hazardous mines, the most hazardous situations.

I would call my colleagues' attention to the statements of Mr. Ford, the Assistant Secretary of Labor for Mine Safety and Health, who indicated that in the mine with the most recent accident, at Topmost, Ky., there were some 72 inspections over the last 3 years.

It is my understanding that there were numerous citings of inadequate safety activities on the part of management and, from what I understand, also on the part of the workers.

So clearly, in this case, inspections have not been the answer, because in spite of that unbelievably high number of inspections, the accidents still occur.

Unfortunately, Mr. President, we are seeing this in many circumstances, whether it is in Colorado, Tennessee, or Kentucky, that somehow or another, in spite of the great interest of the Congress in mine safety and health, we are still not getting to the basic, fundamental problems. We still have mines, and particularly the smaller mines, which are operating under unsafe conditions, where most of our fatal accidents, most of our injuries, and most of our health problems occur.

I would say to my distinguished colleague from West Virginia that in our examination of this problem there is absolutely no evidence that the problem relates to funding, number of inspections, number of inspectors, or anything of the like. It probably relates to where the effort is being expended, how it is being expended, what kind of followup we are getting to citations, and what kind of educational programs are being emphasized for the workers. In short, it relates to the overall use of the funds provided and not to their absolute level.

I believe the administration recognizes this. Certainly, the subcommittee and the full committee recognize it. It is important that those of us in the Congress who are knowledgeable and interested in this matter continue to put pressure on the Mine Safety and Health Administration, on the companies that run the mines, and particularly the smaller mines, and on the laboring personnel, organized or unorganized, who work in these mines, to work together to find solutions to the problems that right now, Mr. President, money is not going to solve.

That is the factual and, to some degree, philosophical base of the decision made by the Senate subcommittee.

I think it supports the conclusion that this agency, like all the others affected by the 4-percent cut, can, in fact, deal with that cut through increased efficiency, through concentration on the real problems of mine health and safety, and those of the small or most medium sized but hazardous situations, and, if necessary, I think can look to both the Appropriations Committees of the Congress to allow reprograming within the areas dealt with by this account.

It is certainly the intention of this Senator to work very closely with the Senator from West Virginia and to work very closely with the Senator from Pennsylvania (Mr. SPECTER), who is also concerned with this problem, to see that we not only stay on top of the situation but that the agency does, in fact, carry out the intent of Congress, which I think is clearly the most important aspect of this problem. That is that we should concentrate on where the hazards are and not on just showing the flag in large mines with good safety records.

I would have to oppose the Senator's amendment as at this point being unnecessary, and as also counter to the general, real world situation that we face with this continuing resolution. I say again that the Mine Safety and Health Administration can, in the judgment of this Senator and apparently in the judgment of our counterparts in the House, absorb this cut, as every agency must do.

Mr. ROBERT C. BYRD. Mr. President, the real world situation to which the Senator referred is that 27 coal miners have been killed within the last 10 days, and the mines in which these tragedies occurred were not necessarily small operations.

The fact remains that even through the distinguished Senator says that language in the report would emphasize dealing with those mines that appear to have the most hazardous situation, the fact remains that all coal mining is hazardous, and the fact remains that you cannot get more inspections and better inspections with less money than they have been operating with in 1981.

This amount of money, as I stated, represents $6 million. We otherwise would be $6 million below the 1981 level, and that does not even consider the impact of inflation on funding of inspections.

I say, Mr. President, that this is the real world in which we are living. There should not be a price tag on the lives of coal miners who are asked to help us solve this Nation's energy problems. I hope the Senate will adopt the amendment.

Mr. SARBANES. Will the Senator from West Virginia yield?

Mr. ROBERT C. BYRD. I yield.

Mr. SARBANES. I commend the Senator from West Virginia for offering this amendment. I think it is an extremely important amendment.

I disagree strongly with the notion that these cuts can be absorbed without affecting the level of mine safety. That just contradicts all logic and all reason.

The article from the New York Times which was included by the Senator from West Virginia makes it very clear for people charged with the responsibility, and from objective outside observers, that one of the problems is indeed the level and the frequency of inspection.

The further point is that it is a great shame that the CONGRESSIONAL RECORD cannot reprint pictures. It has been said that a picture is worth a thousand words. I hold in my hand a picture in today's Baltimore Sun captioned "Mourning A Miner." Under the picture it says, "Melissa Prater is helped away from the gravesite of her fiance, Keith Crager, during his burial service at a small family cemetery near Hueysville, Ky. Mr. Crager was one of eight miners killed Monday in a mine explosion near Topmost, Ky."

The most dangerous occupation in this country is mining. The second most dangerous is firefighting.

Mr. President, I think to cut this Mine Safety Administration back in their funds at the very time when we see the outbreak of these deaths is the height of irresponsibility, and I hope the amendment of the Senator from West Virginia will carry.

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

Mr. SCHMITT. Mr. President, I certainly respect the expression of logic or illogic that the Senator from Maryland has made, but it is the Senator from Maryland and others who, somehow, think that more money is going to solve the problems of the mines. I spent a good deal of my younger days and professional days in the mines.

I know a little bit about it. I know a little bit about what the inherent hazards of that kind of activity are and how they are never going to be totally eliminated. There is a great deal more that can be done, but it is not going to be done by just money. It is going to be done by making these 72 inspections worth something.

It is not the quantity of inspections, it is the quality. It is the followup and it is the educational activities that are undertaken. And even with all of that, you are going to have accidents in the mines.

What we have to do with the Mine Safety and Health Administration is pick them up by the scruff of the neck, shake them, and make them work on the real problems. Just a whole bunch of inspectors and a whole bunch of inspections has not solved the problems of the miners that were killed in these accidents.

More money is not going to solve the problems any more than throwing more money into the space program got us to the moon. It was people. The same thing is going to happen here. When I was director of energy programs for NASA some years ago, we went to the Department of the Interior and suggested that, in spite of what had been done up until that time, and this was 1974 and 1975, the basic technology base of this country, a large part of it coming as a result of our space activities, was not being applied to the problem of safety and productivity in underground coal mines. We tried for a year to develop some kind of arrangement with the Department of the Interior so that those new technologies in communications and automation could be applied to improving mine safety and health and to improving productivity of the Nation's coal mines. Frankly, we were not able to do that.

It had nothing to do with the amount of money we were able to spend. It had to do with whether or not two agencies could agree on a patent policy.

Mr. SARBANES. Will the Senator yield?

Mr. SCHMITT. I shall yield in a moment, Mr. President.

The problem with this Government is that we have not applied what we know how to do in terms of management and technology to the problems of the miners

and the mines. That is the crime. It has nothing to do with money. It has to do with the fact that, through administration after administration, we have not dealt with the real problems. I think my record is clear in working for safety and health and productivity in the mines. My knowledge of what the real problems are in the mines, I think, is as much as anyone's in this body. I tell my friends that it is not going to be money that solves the problems. If it were money, I would be with them. But we are basically throwing that money away. That is what the crime is. We put all of this money into mine safety and health and we are not saving the miners.

I am happy to yield.

Mr. SARBANES. Does the Senator think we should appropriate less money?

Mr. SCHMITT. I think the money that is being appropriated is adequate. I think, in fact, we could go with less money. That is not the problem, Mr. President. The problem is how we are using it and we are not using it properly.

Mr. SARBANES. I disagree strongly, Mr. President. The Senator said earlier it was not more money that got us to the Moon, it was people. Has the Senator ever looked at the NASA budget that enabled us to carry out the programs that got a man to the Moon? There was a very significant and marked increase in expenditures for that program. That addition of money enabled us to bring in the people that made it possible for us to carry out the program.

For a Senator to stand over there who participated in that program and to assert that additional money was not essential to enabling the United States to go to the Moon is to absolutely contradict the facts. I challenge the Senator to look at the NASA budget and the American commitment that was made to that program.

Mr. SCHMITT. Mr. President, I challenge that Senator to look at what really made it work. That is the way we used that money and the organization that was put together and the people that made it work. They were motivated and educated to do it. We applied technology and management so it would happen. That was not the case with the mines.

Mr. SARBANES. And we provided the monetary resources that made it possible, Mr. President. That is all I want the Senator to concede.

Does the Senator contend that we could have gone to the Moon without the appropriations that made the project possible?

Mr. SCHMITT. Mr. President, I do not contend we could have gone to the Moon without using that money properly. The Mine Safety and Health Administration is not properly using that money or we would have lost the miners we lost last month. That is what I believe.

Mr. HATFIELD. Mr. President, I am ready for the vote.

Mr. BAKER. Mr. President, while I understand the intent of the distinguished Senator from West Virginia's amendment. I must inform my colleagues at this time that the language in the continuing resolution will not specifically have a deleterious effect on the coal mining inspection which is now so much more essential in view of the recent tragedies in Appalachian mines.

The continuing resolution does apply a 4-percent reduction to the total allocation for the Mine & Safety and Health Administration, however, the discretion for specific application is not mandated.

Therefore, it is my strong recomendation and understanding that the reduction will not hamper the administration from stepping up mine inspection.

Mr. KENNEDY. Mr. President, I want to make a brief remark relating to another mine safety issue.

The Labor/HHS appropriations bill includes language which was incorporated by reference in the last continuing resolution and will now be approved in the resolution before us which prohibits the expenditure of funds to enforce the Mine Safety and Health Act in surface sandstone and gravel mines.

The Senate overwhelmingly disapproved an amendment which would have stripped that language from the last continuing resolution.

I am not going to offer a similar amendment today.

But I do want to clarify a point that was raised earlier in connection with this issue.

Proponents of the MSHA rider argued that they were merely transferring jurisdiction over these mines from MSHA to OSHA.

Those of us who opposed the rider argued that this would not be the case because OSHA cannot inspect any facility which is under the jurisdiction of another Federal agency.

In other words since the rider does not amend OSHA or MSHA, stone sand and gravel mines will, in all probability, be totally exempt from Federal safety and health inspections for the duration of their continuing resolution.

I think every Member of this body should be aware of this fact.

I ask unanimous consent to have printed in the RECORD a letter from Secretary Donovan to Congressman NATCHER which, in my view, clearly demonstrates why the MSHA rider will have the very serious consequences opponents of the rider predicted.

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

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, D.C., December 10, 1981.

Hon. WILLIAM H. NATCHER,
Chairman, Subcommittee on Labor, Health and Human Services, Committee on Appropriations, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN NATCHER: This is in response to your request for information about the manner in which the Department of Labor would implement a rider passed by the House of Representatives as part of the DOL/HHS appropriations bill for FY 1982.

The rider provides that:

"None of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Federal Mine Safety and Health Act of 1977 with respect to any person engaged in the surface mining of stone, clay, colloidal phosphate, sand, or gravel, or with respect to any person engaged in construction activities on the surface area of any coal or other mine."

OVERVIEW

To implement this amendment, the Department would have to immediately proceed to take certain steps, both within the Mine Safety and Health Administration (MSHA) and within the Occupational Safety and Health Administration (OSHA). While such actions are, of course, still under review, it would appear that implementation will be a complex process.

MSHA IMPLEMENTATION ACTIONS

Upon enactment of the amendment, MSHA will have to immediately cease all inspection, enforcement, and related activities, including technical assistance, training assistance, and on-site consultation at the affected operations.

MSHA would also have to begin the process of consolidating its operations Nationwide. Currently, MSHA's metal and nonmetal mine safety and health field organization is comprised of 6 district offices, 12 subdistrict offices and 71 field offices. The rider would necessitate the closing of 42 of these offices at the earliest possible time. The resulting field structure would be responsible for the remaining metal and nonmetal mines.

Although some of these offices may expand as personnel are reassigned to areas with a high concentration of mines remaining under MSHA jurisdiction, most offices will be reduced in size, and we expect that 280 highly trained employees specifically budgeted for the affected sector will be lost. Reorganization of the field structure probably would not be completed until mid-April 1982, as GSA requires 120 days notice before space can be released and MSHA would be required to pay for empty and partially empty office space. Shutdown costs are estimated to exceed $4 million.

In addition, MSHA envisions a general disruption of all its operations since the affected mines are dispersed throughout the nation. Inspection work plans, staffing assignments, resource allocations and other administrative and management plans would require adjustment. This disruption and cost will be repeated at the end of the Fiscal Year unless the rider is extended.

Set forth in Attachment A is a list of the MSHA offices which would be closed or whose functions would be curtailed, and expenditures for activities that would no longer be carried out.

OSHA IMPLEMENTATION ACTIONS

Upon enactment, OSHA will have to take action to assure, to the extent possible, the continued protection of the affected employees from workplace hazards. Planning these actions is complicated, however, by the fact that OSHA activities are significantly constrained by a variety of factors.

A. Resource Constraints:

OSHA is operating under resource constraints of its own, and the rider will not transfer to it the resources which MSHA is precluded from using. Our planning anticipates that state agencies which operate occupational safety and health plans in about half the states will exercise jurisdiction over the affected activities. In states without plans, however, or in states that elect not to accept jurisdiction over the worksites involved, the allocation of limited Federal OSHA inspection resources would be required. OSHA has limited experience with sand, gravel, stone and related operations. Within the expected appropriation, it may not be possible to transfer to OSHA any MSHA personnel so experienced. OSHA's staff would therefore have to be retrained.

B. Legal, Regulatory and Programmatic Restrictions:

(1) The litigation likely to ensue concerning OSHA's authority at the involved workplaces, and the concomitant litiga-

tion over remaining MSHA authority under the law.

The question of authority arises in part because of section 4(b)(1) of the OSMA Act, which provides that:

"Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health."

Since the provisions of the Mine Act and MSHA's standards are neither repealed nor amended by the rider, but only the expenditure of funds to enforce them temporarily prohibited, it is likely that many operators will contest OSHA citations by contending that section 4(b)(1) of the OSHA Act precludes OSHA authority. Resolution of this litigation may take some time, since the legal precedents to date on section 4(b)(1) do not deal with the specific issues presented by this situation. While this or any other issue is being litigated, the contesting operator need not comply with an OSHA abatement order.

Questions about the exact line of OSHA/MSHA demarcation will also almost certainly be litigated. The text of the rider raises questions, for example, about continued MSHA jurisdiction at certain surface operations supporting underground mines. The applicable recordkeeping and reporting procedures at the facilities involved may also cause confusion. There are also questions presented by the rider about the continued viability of the MSHA standards in the case of criminal violation thereof (administered by the Department of Justice), or in private liability actions. The continued status of cases initiated by past MSHA enforcement actions, and now being pursued by the Office of the Solicitor with its funds through the normal review process, would also have to be determined, and litigation on this point is anticipated.

(2) Limits on OSHA's ability to conduct general schedule inspections of the affected workplaces.

Our planning recognizes that there are limits on OSHA's ability to conduct the inspections that locate such hazards. Aside from resource limitations noted previously, OSHA is constrained by an appropriations limitation from targeting its inspection resources to the vast majority of the operations affected by this rider. We do not expect OSHA to be able to schedule many "wall-to-wall" safety inspections and expect it to confine its implementation plans to responding to employee complaints, actual reports of deaths, health hazards, and related special circumstances.

(3) The inapplicability of many OSHA standards to the affected operations, combined with the difficulties of sustaining enforcement action without such specific standards.

While MSHA has developed specific standards which are tailored for the various aspects of surface mining, OSHA has no such standards. While some of OSHA's "General Industry" standards may be applicable, they would not cover most of the serious hazards involved. Implementation planning therefore centers around rulemaking action to apply appropriate parts of the OSHA construction standards to these operations, and to adopt the MSHA standards as needed. While planning is incomplete in this regard, past experience with standards procedures suggests that this activity will take time, although probably not as long as adopting regular final standards.

In the absence of specific standards, OSHA plans to apply its "general duty" clause. That clause provides that:

"Each employer . . . shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." . . . (Sec. 5(a)(1))

In the past, however, citations issued under this clause have generated a much higher rate of contest than citations of comparable severity issued for a violation of specific standards. This situation is caused in part by the complexities associated with this provision of the law, and its use therefore creates additional burdens on inspection resources and legal personnel, with accompanying impact on resource allocation.

MSHA/OSHA COORDINATION

The second part of the rider would result in the need to undertake actions to avoid confusion at mining sites about the presence there of both OSHA and MSHA inspectors. The language which we understand has been substituted in this regard for purposes of the continuing resolution avoids the problems and the need to plan accordingly.

Sincerely yours,

RAYMOND J. DONOVAN.

ATTACHMENT A.—*MSHA offices to be closed or curtailed*

Location	*Expenditures associated with activities (thousands not to be spent)*
Northeast:	
Pittsburgh, Pa. (subdistrict)	$181
State College, Pa.	115
Westminister, Md.	221
Charlottesville, Va.	200
Kingwood, W. Va.	77
Albany, N.Y. (subdistrict)	334
Port Henry, N.Y.	203
Geneva, N.Y.	209
Morristown, N.J.	254
Framingham, Mass.	202
Springfield, Mass.	115
Augusta, Maine	157
	2,308
Southeast:	
Birmingham, Ala. (subdistrict)	602
Tallahassee, Fla.	38
Bartow, Fla.	35
Macon, Ga.	70
Greenwood, Miss.	106
Columbia, S.C.	240
Knoxville, Tenn.	247
Franklin, Tenn.	291
Raleigh, N.C.	186
San Juan, Puerto Rico	103
	1,918
North Central:	
Duluth, Minn. (subdistrict)	140
Duluth, Minn. (field)	389
Mankato, Minn.	250
Madison, Wis.	361
Marquette, Mich.	175
Lansing, Mich.	330
Vincennes, Ind.	208
New Haven, Ind.	214
Hillsboro, Ill.	254
LaSalle, Ill.	415
Fairfield, Ohio	247
Newark, Ohio	70
	3,053
South Central:	
Rolla, Mo. (subdistrict)	245
Rolla, Mo. (field)	355
Fort Dodge, Iowa	239
Omaha, Nebr.	327
Dallas, Tex.	238
San Antonio, Tex.	70
Topeka, Kans.	105
Baton Rouge, La.	70
	1,649
Rocky Mountain:	
Denver, Colo. (subdistrict)	205
Denver, Colo. (field)	35
Grand Junction, Colo.	105
Watertown, S. Dak.	209
Rapid City, S. Dak.	35
Salt Lake City, Utah (subdistrict)	187
Salt Lake City, Utah (field)	105
Moab, Utah	70
Green River, Wyo.	20
Riverton, Wyo.	105
Helena, Mont.	70
	1,146
Western:	
Alameda, Calif. (field)	105
San Bernardino, Calif. (field)	175
Phoenix, Ariz. (subdistrict)	374
Phoenix, Ariz. (field)	35
Reno, Nev.	35
Coeur D'Alene, Idaho	35
Bellevue, Wash. (subdistrict)	368
Bellevue, Wash. (field)	480
Albany, Oreg.	343
	1,950
Technical assistance to industry:	
Pittsburgh/Bruceton, Pa.	490
Denver, Colo.	420
	910
Assessment conference support:	
10 Locations	350
Program administrative support:	
Pittsburgh, Pa.	35
Denver, Colo.	35
	70
Grand total	13,354

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. JOHNSTON (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Tennessee (Mr. SASSER). If he were present and voting, he would vote "yea." I have already voted "nay." So I withdraw my vote.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

The PRESIDING OFFICER (Mr. WARNER). Are there any other Senators desiring to vote?

The result was announced—yeas 38, nays 54, as follows:

[Rollcall Vote No. 481 Leg.]

YEAS—38

Baucus	Byrd, Robert C.	Eagleton
Biden	Chiles	Exon
Boren	Cranston	Ford
Bradley	DeConcini	Glenn
Bumpers	Dixon	Hart
Burdick	Dodd	Heflin

Heinz	Melcher	Riegle
Hollings	Mitchell	Sarbanes
Huddleston	Moynihan	Specter
Inouye	Nunn	Stennis
Jackson	Pell	Tsongas
Leahy	Pryor	Williams
Levin	Randolph	

NAYS—54

Abdnor	Gorton	Percy
Andrews	Grassley	Pressler
Armstrong	Hatch	Proxmire
Baker	Hatfield	Quayle
Bentsen	Hawkins	Roth
Boschwitz	Hayakawa	Rudman
Byrd, Harry F., Jr.	Helms	Schmitt
	Humphrey	Simpson
Chafee	Jepsen	Stafford
Cochran	Kassebaum	Stevens
Cohen	Kasten	Symms
D'Amato	Laxalt	Thurmond
Danforth	Long	Tower
Denton	Lugar	Wallop
Dole	Mattingly	Warner
Domenici	McClure	Weicker
Durenberger	Murkowski	Zorinsky
East	Nickles	
Garn	Packwood	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Johnston, against.

NOT VOTING—7

Cannon	Mathias	Sasser
Goldwater	Matsunaga	
Kennedy	Metzenbaum	

So the amendment of the Senator from West Virginia (UP No. 784) was rejected.

RESEARCH AND DEVELOPMENT

Mr. GLENN. Mr. President, I was going to put in an amendment this morning that would require that none of the 4-percent cuts or other reductions be made in the areas of research and development. I have decided not to put that amendment in but to talk a little bit about the subject of R. & D. this morning and to discuss this with the distinguished floor manager of the bill, Senator HATFIELD, because I know he has a concern equal to mine in this area.

There has been a growing concern in the scientific community about what we are doing for research, or what we are not doing for research, in this country. I am talking about the very basic R. & D. that has made this country what it is today and without which we will, indeed, become a second-rate power in the world.

Mr. President, many have said there are three basic elements to our economic success as a nation: No. 1, we had an emphasis on R. & D. and plowed back a greater percentage of our gross national product to R. & D. than any nation in history. Out of that came the inventiveness, the innovation, the inquiry into the unknown, the macroresearch and microresearch that has led us to our standard of living, our industrial preemience in the world, and our leadership in so many fields.

No. 2, along with basic R. & D. came an emphasis on an educated citizenry.

And, No. 3, a free enterprise system where capital would pounce on these matrices of new ideas to put them into commercial use.

Those three elements really are at the heart of what has made this country what it is. It was not the majestic rivers and purple mountain majesties and fruited plains that we sing about, but the combination of these three elements, particularly the amount of inquiry into the unknown.

Under the bill we are considering, under this continuing resolution, it will be up to those in the administration to use their discretion as to whether the cuts are to come from R. & D. I hope through this colloquy this morning we can encourage them not to make major cuts in research, which has already been cut back too far.

The Department of Energy is slated for dismantling, according to the administration. Yesterday the Subcommittee on Energy, Nuclear Proliferation, and Government Processes held a hearing, and Secretary Edwards was at the hearing, along with the distinguished floor manager of the bill, the senior Senator from Oregon. Senator HATFIELD gave one of the most eloquent statements before that committee that I have heard since I have been in the Senate. It was partly in reply to a letter that Secretary Edwards had sent to the Office of Management and Budget protesting the cuts that he had been asked to make in fiscal year 1983 even though he is committed to dismantling the Department of Energy, and said so.

The letter dealt with matters not only in defense but in areas of nuclear energy, uranium enrichment, fossil energy, energy information administration, and other energy programs.

I ask unanimous consent to have the letter printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. GLENN. In replying, at least in part, to that letter, the distinguished Senator from Oregon, in his statement, said, and I quote:

To illustrate further the Department's naivete about the importance of conservation and new energy technologies, we need only look to the U.S. auto industry where 50 percent of all cars sold in this country by 1983 will either be foreign-made or will be American cars which contain foreign made engines.

The drain this causes on the U.S. balance of payments deficit is enormous. In this same vein, the United States is planning to terminate energy research and development activities while the Japanese Government has recently doubled its investment in energy conservation; France's investment has increased 221 percent; and Germany's commitment has increased 66 percent to a total of $1 billion.

What do these countries know that we don't? Simply, Mr. Chairman, that investments in energy pay important and immediate dividends to the economy by reducing expensive and unnecessary dependence on foreign petroleum.

After some other statements, the distinguished Senator from Oregon went on to say:

Given both Secretary Weinberger and Secretary Haig have pledged to deploy military forces in the Middle East to defend oil resources, including the use of nuclear weapons, if necessary, conservation of energy without question becomes a mandate to preserve world peace and avert nuclear holocaust. I find totally irresponsible the administration's combined policy of DOE dismantlement and their willingness to sacrifice lives and risk nuclear war to defend oil interests in the Middle East. We will, in effect, be forced to employ violence because we failed to channel our genius toward the sane and logical alternatives of energy conservation and diversification. Thus the choices we make today about the future of DOE involve profound moral implications which must be brought to the public's attention and to the attention of this committee.

Mr. President, I ask unanimous consent that the entire statement of the distinguished Senator from Oregon, Senator HATFIELD, be printed in the RECORD at the end of my statement.

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

(See exhibit 2.)

Mr. GLENN. I do this because I think it is an outstanding statement which he made yesterday.

Mr. President, we asked the last administration to increase their R. & D. in the energy field, and I, along with others in this body, worked for some 3 years to get them to devote an amount equal to about 1 percent of our imported oil bill just to do research and development in this country on alternative energy sources and conservation; not competition with business, not competition with industry, not competition in setting up new businesses, but this very basic, fundamental research that will let us make some major breakthroughs, as we have made in the past in other areas.

That budget, when it came in in January of this year, contained $776 million for the areas I mentioned. The new administration chose to cut that by 62 percent. They chopped $483 million out of that very basic energy research and development that, to my view, will prolong our dependence on the Persian Gulf, rather than using the intellectual genius, the scientific genius for which this Nation is famous, and which Senator HATFIELD mentioned in his statement—using that genius to find new ways to get away from foreign dependence, to get alternative energy sources developed, to get means of storing energy developed, so that we can use these alternatives and lessen our dependency on the fossil fuels, oil and gas in particular.

Mr. President, what are other nations doing?

There was an excellent article in the Wall Street Journal of December 1 of this year entitled "Technology Duel" with the following subheading:

Japan strives to move from fine imitations to its own inventions. Switch involves more R&D, as well as refashioning schools and social values.

Mr. President, one paragraph out of the middle of that excellent article reads as follows:

To accomplish its purposes, Japan has set upon a policy of sharp increases in research and development spending, to 3% of gross national product in 1990 from 2.27% currently, with the government's share of the R&D bill to rise to 40% from 27.2%. (In the U.S., 2.5% of gross national product currently goes to R&D and the government's share is 50%, or 35.5% excluding military research, of which Japan has almost none.) Japan's new stress will be on basic research.

Mr. President, at this time we are cutting back, other nations have learned what that goose was that laid the golden egg in this country. And that has been

our ability to do the basic research that then becomes available for investment and is maximized by private industry moving in with a free enterprise system. Yet, we are about to take away much of the key elements of that strategy as we move away from our emphasis on research and the role of the Federal Government.

Mr. President, we are already aware that under this administration we will be cutting back severely on our R. & D. budgets. If present figures hold up, DOE's conservation program, for instance, will receive only $19 million in 1983, as compared to $712 million last year. Solar research and demonstration programs will receive only $70 million in 1983, as opposed to $500 million last year. Research on fossil fuels, such as coal, oil, and natural gas, will only receive $107 million in 1983 compared to $1 billion last year.

While the President's Science Adviser, Dr. George A. Keyworth, says that the state of science and technology in the United States may be OK right now, we need to ask what will happen later if we follow the administration's prescription. What will the state of our science and technology be like in 10 to 20 years? We will certainly lose significant ground to other countries if present policies go unchallenged.

As Senator HATFIELD pointed out yesterday, while the United States is planning to terminate energy research and development activities, particularly in the conservation area, the Japanese Government has doubled its investment in energy conservation; France's investment has increased 221 percent; and Germany's commitment has increased 66 percent to a total of $1 billion.

Mr. President, I ask unanimous consent that the article from the Wall Street Journal be printed in the RECORD at the close of my remarks.

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

(See exhibit 3.)

Mr. GLENN. Mr. President, there was another excellent article in the New York Times on December 8. The title is "Concern Grows Over Policy on National Labs."

Our national laboratories in this country have been developed over a couple of generations. They employ some of the finest scientists in the world. Some of the most brilliant scientific and technologically oriented people on this globe are in our national laboratories, doing key, basic thinking, not tied to a commercial project, but free to think about the very basics of brand new ways to develop energy, develop materials, and deelop ways of doing things that experience tells us can be spun off in the direction of new advancements benefiting all our people.

I will read, in part, from that particular article to show what is going on.

> Dr. George A. Keyworth 2d, the President's science adviser, a former head of the physics division at Los Alamos National Laboratory, dismissed as "lacking in realism" assertions that reductions in Federal support for research would seriously damage science. "Science in the U.S. is healthy today," he said.
>
> But William D. Carey, executive director of the American Association for the Advancement of Science, said, "We are letting the air out of our tires one pound at a time when we should make up our mind how much tire pressure will keep us out of the ditch."
>
> Some laboratories have already acted on the cuts they anticipate. At Argonne National Laboratory in Lemont, Ill., which is deeply involved in energy and environmental research, 600 positions already have been cut. Walter E. Massey, the laboratory's director, says 600 of the remaining 4,400 employees may have to be laid off.

That would be a total of 1,200 people laid off at Argonne National Laboratory.

Further quoting:

> At Brookhaven National Laboratory on Long Island, 270 of 3,600 employees have been laid off and officials say further cuts may eliminate 25 percent of the work force within the year.
>
> About 12 percent of the staff at the Fermi National Accelerator Laboratory in Batavia, Ill., has been dismissed.
>
> MORE LAYOFFS EXPECTED
>
> Lawrence Berkeley National Laboratory in Berkeley, Calif., trimmed its staff by 200 after the March budget projections. Dr. Earl K. Hyde, the laboratory's Deputy Director, said that the remaining 2,700 employees might be reduced by as many as 200 to 300 in a "worst case" situation.

Mr. President, I ask unanimous consent that that article also be printed in the RECORD at the end of my remarks.

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

(See exhibit 4.)

Mr. GLENN. Mr. President, I will quote just the closing remarks out of that article made by George C. Dacey, who heads the Sandia Weapons Laboratory in Albuquerque. He was quoted in the closing paragraph of that article. He said:

> Industry looks at the short range, the return on capital and investment. Therefore some demonstration of feasibility, bringing a project to the point where a prudent industrialist feels it is worth his involvement, is appropriate for multi-discipline labs," he said. "I think national laboratories should be that bridge between new knowledge and its being put into application by industry.

And I agree with him completely.

Mr. President, there was an editorial just a couple of days ago in the Cleveland Plain Dealer, involving the NASA Lewis Center in Cleveland. I will not read the whole editorial, but it quotes the head of that center, Dr. McCarthy. He stated at a Cleveland city club meeting the following:

> It is time that this country came to its senses and supported the vital research and technology necessary for national economic health. Cyclical, inadequate funding is the road to disaster.

Mr. President, the projects that are being worked on at Lewis Center and that are in danger of being cut back are such programs as the means to curb aircraft noise, to cut back on fuel consumption, to make more efficient engines, to develop alternative fuels to petroleum, and to make automotive engines more efficient.

I have visited the Lewis Center on several occasions. I know of its very basic research with respect to electrical energy storage, which has within it the seeds of one of the greatest steps forward this country could possibly make with regard to energy. If we could find ways of storing the electricity that we can get from wind power, wave power, tide power, and solar photovoltaics, we probably would not need to build new electric powerplants around this country for many years. Not only would we be getting those forces of nature converted to a usable form, but we also would be able, at the same time, to store the output of whole electric powerplants during nonpeak hours. And Lewis Center is developing such a system. Yet, funding for a center such as that is in danger of being cut back, even eliminated.

The Lewis Center also helped develop liquid fuel rockets that made possible the Apollo, Centaur, and Venus space missions. It has done work on harnessing wind energy to produce electricity. There is a wind farm working up at nearby Plumbrook that produces relatively cheap electricity. They are doing the same think out in Washington State, using the same technology.

The things they are looking into, Mr. President, range from work that made the Space Shuttle possible to things that affect every one of us such as the treatment of cancer by radiation that they are working on with some of the Cleveland hospitals.

They are also working on the development of alternative materials to the natural ones that are scarce in this country, such as chromium, tantalum, and cobalt.

The editorial in the Cleveland Plain Dealer, Mr. President, closed with a statement that I agree with completely. It says, after commenting about how other nations may be getting ahead of us in technology:

> That is no longer the case, but it would be foolish and false economics to shed a priceless asset for a temporary gain in the ledger.

I think that applies not only to the NASA labs, such as Lewis Center, in Cleveland, but it applies to our entire national laboratory effort that I see as an ongoing national resource to be nurtured not as something that should just go up and down with one year's budget or the next. These teams take many years to be put together. Laboratories do not come to fruition and do important work overnight. It is not something that we can dismiss in this year's budget and, by increasing the budget next year, expect to come back into fruition in a reasonable time period.

I ask unanimous consent that the editorial be printed in the RECORD at the close of my remarks.

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

(See exhibit 5.)

Mr. GLENN. Mr. President, in the December 1980 issue of the American Economic Review, there was an article by Edwin Mansfield, a well known professor of economics at the University of Pennsylvania. His paper is an econometric study of the impact of basic research on a firm's or industry's rate of technological innovation and productivity change.

I will not read the whole report—it is rather technical—but he winds up with a conclusion that we cannot ignore, after a very excellent article. The conclusion states in part as follows:

My results indicate that there is a statistically significant and direct relationship between the amount of basic research carried out by an industry or firm and its rate of increase of total factor productivity, when its expenditures on applied R. & D. are held constant. To some extent, this may reflect the tendency for basic research findings to be exploited more fully by the industries and firms that were responsible for them, or it may reflect the tendency for applied R. & D. to be more effective when carried out in conjunction with some basic research.

It goes on as follows:

Holding constant the amount spent on both applied R. & D. and basic research, an industry's rate of productivity increase during 1948–1966 seems to be directly and significantly related to the extent to which its R. & D. was long term. This appears to be the first systematic evidence that the composition as well as the size of an industry or firm's R. & D. expenditures affects its rate of productivity increase.

He further states:

My findings also indicate that the composition of many industry R. & D. expenditures have changed in the past decade. Practically all industries have cut the amount of their R. & D. expenditures going for basic research. Most industries have cut the proportion going for relatively risky projects. Some, but not most, industries have cut the proportion going for relatively long-term projects.

Mr. President, the business community itself is very concerned about this. In fact, one of President Reagan's very strongest supporters, the chairman of the Bendix Corp., in an article in the Washington Post of September of this year—an article which I ask unanimous consent to have printed in the RECORD at the end of my remarks—is reported as saying that he is saddened by the administrations' budget cuts in Government support for scientific research. He went on to say that Government supported research should be increased, not cut, to send a strong message to the country that science, technology, and innovation have been weakened by business' concentration on short-term results and Government's short-range economic policies.

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

(See exhibit 6.)

Mr. President, in testimony yesterday before the House Committee on Science and Technology, the Honorable GEORGE E. BROWN made an opening statement. I would quote from the last part of his statement, in which he said:

The United States is suffering economically from the schizophrenia over what the proper role of Government is in supporting research, development, and demonstration.

The U.S. still has the strongest basic research base in the world. While this base is threatened by the policies of the Reagan Administration, so, too, is our economy threatened today by our Nation's competitive disadvantage resulting from insufficient support of new technologies.

The termination or curtailment of programs that held up U.S. innovation and productivity are an example of a major switch in public policy that has been made without public debate or consent.

I believe that the Government can be a part of the solution to the needs of society, although I certainly do not wish to indicate blind support for ongoing programs.

I hope that no artificial boundaries between the research and development continuum, basic research, development, and demonstration, will be emphasized lest one part of the scientific and technological enterprise be cannibalized to feed another one.

I agree with Mr. BROWN completely.

Mr. President, at this point I wish to deliver a more formal statement that I have prepared on this subject.

RESEARCH AND DEVELOPMENT: THE AMERICAN CHALLENGE

Since World War II the United States has been the world's dominant nation in the development and use of technology. We emerged at that time as leaders in areas such as electronics, communications, atomic energy, computer science, and areonautics.

Our accomplishments in these areas almost destroyed the profession of technology forecasting.

For instance, technology forecasts made in 1937 entirely missed the development of the computer, atomic energy, antibiotics, radar, and the jet engine. Technology has been a focus of U.S. economic world leadership and a major tool in U.S. foreign policy.

Technology transfer has become one of the principal demands of the Third World on the industrialized world. We have forged alliances and incurred solutions to thorny regional issues on the basis of sharing our technology in energy areas, in communications, and even in military areas in some cases.

The backbone of our exports resides in technological products such as computers, aircraft, instruments, chemicals, pharmaceuticals, and agricultural products.

R. & D. AND PRODUCTIVITY

It is my belief that the transformation of the United States from a scientific backwater in the early part of this century, into the dominant technological force in the world has been largely the result of increased support for research and development from both Government and private sources. R. & D. is the key to innovation in our industrial enterprise, it is also an important component in the drive to raise the level of productivity in the United States. Recent studies show, in fact, that a given industry's or firm's rate of productivity increase is directly related to the amount spent on R. & D. Other studies have given some evidence that the composition of an industry's firm's R. & D. expenditures, as well as their size influences the rate of productivity increase.

For example, there is apparently a direct relation between the amount of basic research carried out by an industry or firm and its rate of productivity increase when its expenditures on applied R. & D. are held constant.

It should therefore come as no surprise that although the U.S. merchandise trade balance has had large deficits, some $30 billion in 1979, for example, R. & D.-intensive manufactured goods have a substantial trade surplus. The United States has had a trade surplus in R. & D.-intensive manufactured goods since 1960, and this surplus increased sharply between 1964 and 1975—from nearly $8 billion to over $29.3 billion. I might add that in recent years, nearly 90 percent of the trade surplus in R. & D.-intensive products has been generated by only three product groups: Nonelectrical machinery, plus computers, chemicals, and aircraft.

INFLATION AND PRODUCTIVITY

I think we will all agree that the rate of productivity increase affects the rate of inflation in our economic system. In the case, it follows that R. & D., by increasing productivity, can exert a restraining influence on inflation.

Unfortunately, our productivity rate has been falling. In the 1960's labor productivity increased at a 3-percent annual rate, whereas, in the 1970's the rate was only 1.5 percent a year. As a result, when compared with the productivity rates of France, Japan, Germany, Canada, and United Kingdom, the U.S. productivity gain between 1960 and 1976 was the smallest of those five countries. In actual numbers, our composite gain in this period was 55 percent while the Japanese gain in productivity was 289 percent.

We are faced in the United States with a vicious economic circle brought about by inflation and the interdependence of certain variables in our economic equation.

For example, high rates of inflation cause decreases in investment. In turn, the decrease in investment decreases productivity because workers no longer have the best tools available for doing their jobs. By reducing investment rates inflation causes the deferral of long-term ambitious projects by private firms, thereby reducing expenditures by industrial firms on R. & D.

In addition, if a myopic Federal Government takes the penny-wise but pound foolish approach of cutting R. & D. expenditures by Government as part of an anti-inflationary fiscal policy, we end up losing the tools that would enable us to increase productivity growth in the future, and thereby mitigate the effects of inflation.

NECESSITY FOR GOVERNMENT ROLE

Why, one might ask, should the Government provide for more R. & D. when the mood of the Nation would seem to dictate that we reduce the Federal presence? The simple answer is that private markets do not produce an adequate level of R. & D. One of the main reasons for this is the nonappropriability of benefits of basic scientific knowledge. Much R. & D. cannot be protected adequately by patents.

Consequently, any one researcher is not able to gain exclusive use of beneficial knowledge he or she may develop and is not able to charge a price to those who wish to use this knowledge.

In addition, R. & D. produces net benefits to the Nation as a whole, but private markets do not require "free riders" to adequately compensate those who perform the R. & D. for the benefits received. Therefore, without Government participation and support, too little R. & D. will take place and our scientific and technological leadership will evaporate.

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UNITED STATES MAY BE SLIPPING

Unfortunately, there is a considerable amount of data available indicating that the U.S. technological lead may indeed be slipping. I would like to review some of this data without making the claim that the data proves without a shadow of a doubt that, in fact, we are losing our lead.

The process of technological innovation is a complex one and no one can claim to know all the variables that go into it.

Nonetheless, there are some worrisome trends in the United States today. For example, the proportion of gross national product, (GNP) devoted to R. & D. is declining in the United States while increasing in Japan and Germany. In the United States it has declined from over 3 percent in the midsixties to only 2.2 percent today.

In Japan it rose from 1.5 percent in the midsixties to about 1.9 percent today. The growth rate of R. & D. spending is about 4.5 percent in the United States, 21 percent in Japan, and 15 percent in Germany.

However, these figures do not tell the whole story. For, if one restricts one's attention just to civilian R. & D. for GNP ratio, we find that the U.S. ratio has leveled off at about 1.4 percent, close to the French and U.K. ratios but much below the German and Japanese ratios which are at a level of approximately 2 percent. The relative decline in U.S. investment in R. & D. has components in both the private as well as the public sector.

Over the 12-year period, 1968–80, investment by industry in basic research as a fraction of net sales declined by 32 percent.

Similarly, investment by the Federal Government in basic research as a fraction of the Federal budget declined 27 percent over the same period. Overall, R. & D. spending by the Federal Government as a fraction of the Federal budget decreased 36 percent.

There are other worrisome indicators as well. At a time when domestic U.S. patents have decreased by almost 25 percent, U.S. patents of foreign origin have increased by more than 70 percent, thus the foreign origin share of total U.S. patents increased from 20 percent in 1966 to 36 percent in 1977.

SOME POSITIVE NOTES

This is not to say that the American scientific enterprise is in immediate threat of extinction. Among the eight researchers sharing the 1981 Nobel prizes in physics, chemistry, and physiology or medicine, there were five Americans. Every year since 1950 Americans have shared or exclusively received at least one of the science prizes and in 7 of the last 20 years, Americans were winners in all three categories.

As far as total expenditures for R. & D. are concerned, we spend more than France, West Germany, Japan, and the United Kingdom combined.

We also outspend each one of those countries in the area of civilian research. Even in the case of productivity, while U.S. productivity gains have gone down relative to those of Canada, France, West Germany, United Kingdom, and Japan, the U.S. productivity level exceeds those of all these countries.

For example, Japan's productivity level is still only two-thirds that of the United States. But as indicated earlier, these statistics, welcome though they are, do not compensate entirely for the trend of erosion. But these statistics are likewise deceiving for they do not reflect the trend which is clearly in the direction of an erosion of the American position and they do not reflect the nature of the R. & D. investments involved and how those investments might fit in with the likely direction of industrial demand and expansion in the world ahead.

Thus, a higher proportion of U.S. funds for R. & D. come from Government sources and over 50 percent of these are aimed at defense or space objectives.

In contrast, in Japan and West Germany, the majority of R. & D. funds are provided by industry and funds provided by Government sources are highly concentrated in areas more directly related to economic growth. Only 2 percent of Japan's and 8 percent of West Germany's R. & D. is defense related.

To remedy this situation, and to increase the productivity gains that would accrue from a higher level of investment in R. & D., the Senate adopted an amendment that I offered to the tax bill this past year that provided for a 25-percent incremental tax credit for corporations investing in basic R. & D. above a 3-year base level.

INSUFFICIENT R. & D. PERSONNEL

Unfortunately, the problem that we face in this area is not just one of money. The fundamental base of our R. & D. structure in the United States is in jeopardy. That base consists of people. In 1980 the United States graduated 58,000 bachelor's degree engineers. Japan, with half our population, graduated 74,000. It is estimated that the Soviet Union graduated about 300,000 engineers that year.

All over the country the demand for technically trained people has become so intense that some of the best professors at our universities are being lured away by the promise of high-paying jobs. As a result, our students are not receiving the best instruction that would otherwise have been available to them.

In addition, at the graduate level we are witnessing a disturbing trend in which smaller percentages of science and engineering students are going on to advanced training.

The 2,700 doctoral engineering degrees awarded in 1980 was the second lowest number since 1969 with notable decreases in computer science, mechanical engineering, and engineering science.

While the percentage of U.S. graduate students in technical areas is decreasing, foreign participation is rising. Forty-six percent of the engineering Ph. D.'s awarded in the United States in 1979 went to foreign citizens, two-thirds of whom were here on temporary visas.

But this is not the entire story either. The ability of the Defense Establishment to offer sufficiently high salaries to build up their work forces on a crash basis means there is a tendency for the most skilled scientists and engineers to leave the civilian sector for military production.

Even without the higher salaries, there is a natural tendency for technical people to be attracted to defense problems since the latter are frequently of greater inherent scientific interest than problems emanating from the civilian economy.

As Lester Thurow put it in a recent article, which would you rather work on—designing a new laser guidance system, or designing a new toaster?

Thus, while our military receives a superior defense product by enticing our best people away from civilian R. & D., the Japanese are beginning to press our computer industry to the wall. Most recently, Japan has decided to raise its R. & D. spending to 3 percent of GNP by 1990 with government's share of the R. & D. bill going from the present 27.2 to 40 percent, essentially all in civilian R. & D.

We have no choice except to produce more and better technical people and provide the incentives for them to enter the civilian sector.

While this need continues to grow, we are finding that the tools needed to train such people, the laboratory equipment at our universities, are falling into a dangerous state of obsolescence and disrepair. Some may claim that we are spending a lot of money in R. & D., but we can spend more, and we can spend it more wisely.

REAGAN ADMINISTRATION RESPONSE

The Reagan administration's sensitivity to the problems of the United States in scientific and technological areas is indicated by its treatment of our R. & D. programs in energy and in space.

Let me consider energy first.

In the case of energy conservation, which is the area that can provide us with the greatest amount of supply in the form of energy savings in the near term, this administration reduced the conservation R. & D. budget by nearly 30 percent in fiscal year 1981 and almost 74 percent in fiscal year 1982.

The solar energy R. & D. budget was cut by 12 percent in fiscal year 1981 and by 67 percent in fiscal year 1982. The coal R. & D. budget was cut by nearly 28 percent in fiscal year 1981 and over 72 percent in fiscal year 1982.

Only the nuclear R. & D. budget received increases in funds and this mainly for a breeder program which is focused on a timeframe for commercialization that is wholly out of tune with reality.

Even with the huge increase in the nuclear fission R. & D. budget the overall reduction in energy R. & D. by the Reagan administration for fiscal year 1982 is over 36 percent.

The administration's record in terms of space R. & D. is no better. The fiscal year 1982 NASA budget request was cut by the Reagan administration by $600 million. As a result, the space budget of the Department of Defense is now almost equivalent to the whole of NASA's budget.

Additional cuts amounting to 12 percent for nonspace shuttle programs have

been proposed by the administration for fiscal year 1982.

For fiscal year 1983, hundreds of millions of additional dollars are projected to fall by the wayside. If all the projected budget reductions by the Reagan administration come to pass then NASA, whose R. & D. budget is 15 percent of the entire Federal R. & D. budget, would be left with only one major space science program, the Earth orbiting space telescope scheduled for launch in 1985, and one major applications program, Landsat-D, scheduled for launch in 1982.

It is as if the administration is completely blind to the thousands of lives and billions of dollars that have been saved through technological applications coming from the space science program.

Our progress through the use of satellites alone has made the entire program worthwhile. Among the benefits we have received are such things as improved forecasts, early storm and flood warnings, reports to shippers on wind conditions and iceberg hazards, advice to farmers on when to plant, irrigate, fertilize, and spread insecticide, not to mention the mineral surveys and the crucial ability to verify arms control agreements through rapid global communication and reconnaissance.

PROPOSALS

Rather than mindless budget cutting, the Federal investment in basic R. & D., repeat basic, should grow. We should consider establishing new research institutes and "centers of excellence," on university campuses, as well as upgrading laboratories and laboratory equipment to provide a better climate for research and instruction at our institutions of higher learning.

Second, to encourage more graduate students in important scientific areas, we should increase the number of unrestricted science and engineering fellowships for graduate students and insure that fellowship stipends are high enough to attract the most capable students.

Third, in addition to incentives to corporations for the funding of scholarships and fellowships, as has already been done, we should consider having all defense contractors return a percentage of the R. & D. money that they receive to universities in the form of research contracts, fellowships, or upgrading of scientific equipment.

Finally, besides making more money available for basic and applied research, we must improve the deteriorating climate for innovation. Among other things that means we should seek a more rational and flexible approach to our regulatory apparatus in order to ease the most worrisome constraints on innovation without jeopardizing the public welfare.

For example, the climate for introduction of new drugs in the United States has become so hostile that American R. & D. moneys are moving abroad in the development of innovations in that area. We must turn that situation around.

SOME FUTURE EXPECTATIONS

Our past investments in R. & D. have paid off beyond our most optimistic dreams. If we continue our investments, we can reasonably expect advances in the 1980's even more dramatic than have occurred in the last several decades. Let us take the case of microelectronics as just one example. In the previous 25 years the power of a room-sized computer has been squeezed onto a silicon chip smaller than a stamp.

The $1 million computer of 1955 costs about $20 today. If we introduce a supercooled bath surrounding the central processing unit of a computer, so-called Josephson Junction Technology, it could become theoretically possible to take the largest computer operating in the world today and compress it into the size of a basketball.

The use of the microcomputer has already produced industrial robots that render obsolescent a good deal of what is currently thought of as automation. The number of such robots has doubled to 3,000 in the past 7 years. At the current rate, by 1990 industry sales could be somewhere between $700 million and $2 billion per year.

It is estimated that by 1985, 20 percent of the direct labor in automobile assembly will be done by robots. By 1988, half of the direct labor in small parts assembly for industry could be done by robots and by 1990 development of sensory techniques will permit robots to approximate human capability in most assembly operations.

One of the reasons that the Japanese are able to increase their productivity so greatly is because they have approximately two-thirds of the industrial robots existing in the world today. The United States can and must forge ahead in this area.

I could spend much more time detailing other marvels that may lie before us. The list is endless.

The question is, do we have the imagination? Do we have the will? If we do, the benefits will be boundless not only for us in the United States, but for all mankind.

I also ask unanimous consent that another article that was published in the Chronicle of Higher Education a couple of years ago, entitled "Basic Research the Key to Solving Energy Crisis, University Scientists Say," be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 7.)

Mr. GLENN. Mr. President, yesterday at the hearing before the Committee on Science and Technology in the House, there were also statements made by Dr. H. Guy Stever, chairman, Assembly of Engineering, National Research Council, and a statement by Dr. Frank Press, president of the National Academy of Sciences. I think these were both excellent statements and I ask unanimous consent that they be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 8.)

Mr. GLENN. Mr. President, I know that the distinguished Senator from Oregon in particular has a great interest in this same area. I plan, after the first of the year when we come back into session, to address this problem of R. & D. that we are facing, which I think is reaching critical levels. I think we are about to lay down the mantle of leadership in the world community in many areas.

If we do so, it will be a tragedy for this country. Yet that seems to be the direction in which we are tending. I shall not offer an amendment this morning, because I know that, in the interest of getting this continuing resolution to the White House and not sending it back to conference, there is no doubt that I would lose on a vote on the floor now. I hope we can use this discussion this morning to emphasize to those departments that will be making cuts under this continuing resolution that to the extent possible, they should not make those cuts in this R. & D. area that we think is so critical.

We shall be coming back up again after the Christmas holidays, when we come back into session, with new budget proposals. We shall be having the President's State of the Union Message as well as his new budget presented to us. I hope that some of the facts and figures I have entered into the RECORD here this morning can be of use and I hope also they will encourage those working with the President in his budget processes that they will see fit not to cut further into R. & D., which has already reached critical proportions.

I do not think there is any doubt that everyone is concerned about balancing the budget as soon as possible—whenever that may be. But to balance that by cutting funding that will hamstring this country into the long-term future, to me just does not make sense at all. It may be pennywise in this year's budget, but it is pound foolish for the long-term future.

Mr. President, I do not know whether the distinguished floor manager of the bill, the chairman of the Appropriations Committee, wishes to comment. I compliment him again on the excellent statement that he made yesterday, which I have entered into the RECORD today as part of my statement.

I yield the floor.

EXHIBIT 1

DEAR MR. STOCKMAN: On [Nov. 21] I met with my staff to review the passback material which transmitted the results of your review of the Department of Energy's FY–1983 budget. Before I address specifics of the individual program appeals, I want to focus on a major concern that I have with the principal assumption upon which the passback was based.

Throughout the passback material, the rationale for severe manpower and many dollar-level cuts was that the dismantlement of the Department of Energy would be completed by the end of FY–1982. While I am carrying out the president's mandate to dismantle the department as rapidly and efficiently as possible and have held a number of discussions with the president's immediate staff to narrow down and select the most appropriate plan for carrying out the dismantlement, I am convinced that the dismantlement process will extend into FY–1983. This process must be orderly and carefully orchestrated so that budgets and organizational plans proceed in tandem, and to assure that we observe the laws and regulations governing employees impacted by such substantive organization changes.

We are finalizing a dismantlement plan which will facilitate this process and permit identification of any necessary revisions to the FY–1983 budget. To move ahead with an

FY-1983 budget based on current OMB assumptions could undermine the president's overall objectives. Our credibility with the public will be lost if we suggest that we do not have a commonly agreed upon foundation for our activities. There are many indications that dismantlement legislation will be controversial and could be debated for a long time before final action is taken in the Congress; therefore, the character and timing of ultimate legislation is uncertain. Furthermore, thousands of adverse personnel actions would have to be initiated by June, 1982 (at the same time dismantlement legislation is being considered) in order to achieve the year-end reductions necessitated by your passback. Aside from those personnel reductions which would legitimately be linked to budgetary changes, we simply would have no legal basis for taking the full measure of the reductions which were contemplative of dismantlement. Based on recent experience, such actions will certainly result in strong negative reactions from external sources, with consequent impacts on the legislative process, and will likely generate court actions.

I believe the circumstances outlined above argue for approaching the FY-1983 energy budget in a different context—that the department will be in existence at least at the beginning of FY-1983 and therefore would require essentially the same organization and management structure as today, although it may be reduced substantially in funding and manpower from FY-1982. In any event, I feel strongly that the manpower levels must be related to the programmatic budget levels as long as the department is intact. Our revised FY-1983-budget request transmitted by this letter is based on this assumption.

In addition to the points stated above, I believe this concept will also facilitate achievement of the following objectives:

Ensuring orderly dismantlement and transition of programs and responses as a function of the OMB-Determination-Order process.

Maintaining stability and continuity of important ongoing programs.

Ensuring protection of DOE employee rights to compete for employment in successor organizations under terms of "transfer of function" regulations.

Realizing savings of 4,400 federal positions in energy programs by FY-1984, in keeping with the president's goal of reducing 75,000 positions overall.

The following table summarizes the amounts proposed by OMB and appealed by the department for each of our three major program areas, Defense, Energy and Strategic Petroleum Reserve.

BUDGET AUTHORITY

[In millions of dollars]

	Request	Allowance	Difference	Amount appealed	Revised request
Defense programs	5,604	5,304	−300	+279	5,583
Energy	4,609	3,760	−849	+641	4,401
Strategic petroleum reserve:					
Facilities and planning	604	242	−362	0	242
Oil acquisition	796	2,225	+1,430	0	2,225
Subtotal	11,613	11,531	−82	+920	12,451
Less: SPRO off budget		−2,225	−2,225		−2,225
DOE total	11,613	9,306	−2,307	+920	10,226

As indicated by the table, before the adjustment to take the Strategic Petroleum Reserve SPRO oil-acquisition funds off budget, the allowance made reductions of $1.5 billion and an addition of $1.4 billion to the department's request. Against the reductions of $1.5 billion, the department is requesting restoration of $.9 billion.

Before I discuss the specifics of these appeals, I would like to review the process by which the department's initial request of $11.6 billion was developed. This process demonstrates our commitment to the president's program.

On March 24, 1981, we received your guidance memorandum which provided target levels for the department for budget authority and outlays for FY-1983–1986. The budget authority provided by this memorandum totaled $14 billion for FY-1983. Recognizing that we would need to be at, or below, this level to support the president's Economic Recovery Program, the department worked during the summer months to develop a balanced budget for each of the three major program areas while remaining within the $14-billion target provided by your memorandum. To achieve this objective while recognizing the expanding requirements in the Defense-Program area required to support the Nuclear Weapons Stockpile Memorandum, we had to make some difficult decisions and initiate some significant redirection of programs supported in the FY-1982 revised budget particularly in the Energy area. In total, reductions of $3.3 billion were made during our internal review process to remain within the target level.

Immediately after our budget was submitted on Sept. 15, 1981, you and I had some discussions about additional reductions necessary if we were to be successful in our common efforts to bring interest rates down and stimulate the economy. As a result of these discussions, I initiated a department-wide effort to achieve additional budgetary reductions totaling $2 billion. On Sept. 25, I held final reviews with my assistant secretaries on reduction alternatives. That same day, we received your guidance memorandum directing an additional $1-billion cut, bringing your request to a $3 billion reduction in outlays below our Sept. 15 request level.

As you know, we were able to achieve this additional reduction, which amounted to more than a 20 percent decrease in our total budget, and to meet your deadline of Oct. 5 for submission of a revised budget request. The program cuts required to achieve an $11-billion budget were not made without impact. Again our objective was to develop a budget which supported the vital energy and economic goals of this administration. In this effort each program was carefully reviewed and structured to maximize achievement of our program goals within the new, very stringent fiscal restraints. I am proud of my staff for the yeoman service they performed in such a short period of time. While we would have liked to expand certain programs, such as filling the Strategic Petroleum Reserve above the minimum level shown in the revised budget, we could not do so without necessitating unacceptable reductions in other Defense and Energy programs.

With this as background, I would like to discuss our appeal to your allowance decisions. As indicated in the summary table, you have imposed reductions of $1.5 billion below funding levels we requested. In a continued effort to support the president's objectives we can accept $.6 billion of these reductions, however, we cannot conduct the kind of Defense and Energy programs which support the president's objectives without some funding and manpower [restoration].

DEFENSE

In the Defense Programs area we are requesting [restoration] of $279 million of the $300 million marked. The main issue here is the deletion of all funds requested for the Defense Waste Processing Facility at Savannah River and of $98 million of funds requested for the Waste Isolation Pilot Plant at Carlsbad, New Mexico. I feel very strongly that increases in the production of nuclear weapons in support of the Nuclear Weapons Stockpile Memorandum requires that we develop a permanent solution to the problem of disposal of high-level nuclear waste. Contrary to the arguments in the passback material, there is a conceptual design for the Defense Waste Processing Facility and Title I design efforts are now underway. Borosilicate glass has been the reference waste form for design purposes for two years. Alternative waste forms are being evaluated but R&D to date confirms borosilicate glass as the best overall candidate for defense waste. The scope of the Waste Isolation Pilot Plant does not go beyond that approved by Congress. In fact, that scope is required to demonstrate the safe disposal of radioactive wastes resulting from Defense Activities (Section 213 P.L. 96–164). The $98 million is essential to continue work on this R&D facility, and demonstrate the nation's resolve to permanently dispose of nuclear waste generated in support of our weapons program.

In Naval Reactors Development I am requesting [restoration] of $45 million of the $71 million deleted by your passback to continue work on construction of a materials facility at Savannah River. This facility is essential to ensure an uninterrupted supply of fuel for the Navy Nuclear Propulsion program.

In Inertial Confinement Fusion, I want to restore $37 million required to continue the programs approved by the Congress in FY-1982. In the Weapons area, I am appealing reductions in the restoration program required to overhaul our aging production facilities and the reduction in construction funds for weapons support facilities. We have allowed our plant to decay without corrective action for too long. Further delays will only increase the costs of this essential work. We need to move ahead now and get the job done.

I am appealing reductions in the Verification and Control Technology and in Security and Safeguards programs in order to protect our ability to detect nuclear detonations around the world and to prevent unauthorized removal of special nuclear material from our production complexes. Finally, in the Materials Production Program, I am requesting a realignment of funding allowed by the passback. This realignment is necessary to sustain key activities related to special isotope separations, necessary environmental and safety projects and the replacement production reactor to ensure long-term availability of special nuclear materials necessary to support a strong national defense.

ENERGY

I am transmitting to you appeals for a total of $.6 billion for our Energy programs. There are several areas of major concern including severe cuts in the Nuclear and Fossil program areas and the change in policy proposed for Fossil, Solar, Conservation and Geothermal programs. The policy change would redefine the federal role in support of non-Nuclear energy technologies and would require some significant revisions to the policies this administration has supported before the Congress and the public. The proposed revisions would limit federal involvement to only the most basic, generic kinds of

research; would eliminate environmental work which is essential to achieving feasibility of new technologies; and would discontinue work necessary to complete proof-of-concept activities which are essential if activities are to be turned over and accepted by private industry. In addition, the policy on discontinuation of demonstration activities would serve to terminate operation of facilities with significant sunk costs from which we are just now beginning to obtain data, such as the Barstow Central Receiver Plant, while, if literally interpreted, would argue for continuation of activities which this administration has proposed for termination such as SRC–I, H–Coal and the Donor Solvent Project. I want these proposed policy changes reconsidered so that we can stick to our objective of funding only long-term, high risk but potentially high pay-off research and development through the proof-of-concept stage.

Let me now address specific appeals in each of the Energy Program areas.

NUCLEAR ENERGY

Your proposed Nuclear Energy budget would not permit me to fulfill the president's commitment to the restoration of the nuclear industry. The appeal in the Nuclear Energy program area is for restoration of $203 million of the $344 million proposed for deletion. There are serious problems with both the proposal to establish private-sector financing for the Terminal Isolation program and with the proposal to terminate work in the Large Development Plant (LDP) within the Liquid Metal Fast Breeder Reactor program. A revolving fund for the Terminal Isolation program would require legislation and an establishment period prior to becoming operational. The utility companies would need approval of rate increases and time to accumulate the capital needed to invest in such a fund. These actions cannot be accomplished within the ten months remaining prior to the beginning of FY-1983. In the meantime, work on site characterization, construction of exploratory shafts and design of the Test and Evaluation Facility must proceed if we are to meet the 1989 completion date to which we are committed. [Restoration] of $110 million is essential to prevent substantial disruption to the program.

The discontinuation of the Large Development Plant will effectively prevent the building of any breeder plant beyond the Clinch River Breeder Reactor (CRBR). If we are to achieve the goal of private sector commercialization of the breeder, we must support continuation of the LDP program. I am also requesting [restoration] of funds for continuation of research and development work at Barnwell, for plutonium conversion, for waste treatment and for Light Water Reactor Safety. These funds are essential to preserve our options for obtaining plutonium from civilian-reprocessing plants, to continue work on a safer, easier plutonium-conversion process, to support establishment of regional, commercial low-level waste-burial grounds, and to permit minimal activities in response to the president's directive to restore the health of the light-water-reactor industry.

URANIUM ENRICHMENT

In the Uranium Enrichment program I am concerned about the proposal to require the Department of Defense to reimburse DOE for enrichment activities in support of the Naval Nuclear Propulsion Program. The $109 million which was deleted from the DOE budget is essential to ensure production of enriched uranium required to support the construction of shipboard and shore-based naval reactors. I have no objection to the transfer of this funding to DOD and establishment of a reimbursable agreement between our departments. However, I understand that no funds were provided to DOD to fund for this support. Funding must be provided in either the DOD or DOE budget to ensure continuation of these essential enrichment services. In addition, I am requesting restoration of funding for Advanced Isotope Separation to correctly price the program anticipated in your passback and restoration of $5 million to permit an orderly closeout of the Uranium Resources Assessment program.

FOSSIL ENERGY

I am requesting [restoration] of the entire $198 million deleted from the Fossil Energy program. This is a bare minimum we can accept. A viable, effective, sustainable Fossil Energy program is a key element of a balanced overall energy R. & D. effort. The proposed reduction in this area, which is tantamount to elimination of the activity, is unacceptable. The nation and the world will be employing fossil fuels as the dominant source of energy for decades to come. Technological base advances are needed to sustain this usage, to make such usage more economically efficient, to support a continuing shift to new forms and sources of these fuels, and to address growing environmental concerns. The proposed reductions completely eliminate any proof-of-concept activities which are essential to transferring technology-base results to the private sector.

In addition, a previously unidentified requirement exists for $2.4 million to support DOE management of the Great Plains gasification projects. No funds were included in the budget for this support in accordance with the administration's position that this effort would transfer to the Synthetic Fuels Corporation. It is now apparent that this transfer will not take place. This requirement can be accommodated within the $305 million request for Fossil Energy as a result of offsets from manpower savings.

ENERGY INFORMATION ADMINISTRATION

We are requesting an FY–1983 budget of $57 million for the Energy Information Administration (EIA). This level will allow the EIA to satisfy its legislative mandates, except the requirement to make mid- and long-term analysis. The data-analysis capability retained, which is specified in the EIA legislative requirement to collect, analyze and disseminate energy information, is absolutely necessary to bring relevance, accuracy, and credibility to raw statistics and to turn data into information. In addition, while the EIA energy information program will not be fully comprehensive, it will be defensible within the context of the law. Finally, at the level requested a reduction-in-force will probably not be required, saving the $1.3 million in severance pay allowed by OMB.

OTHER ENERGY PROGRAMS

I am requesting [restoration] of $12 million for essential environmental and nuclear-safety work. This restoration is essential to ensure the continued safe operation of the department's defense and nuclear programs, as well as to provide for the assessment of significant energy and environmental issues. In addition, while accepting reductions of $105 million in conservation, solar, renewable energy and power marketing programs, I am proposing some realignments among program areas to fund essential activities. I am also requesting an adjustment in the Alaska Power Administration to reinstate the $141,000 which was inadvertently deleted in the passback.

DEPARTMENTAL ADMINISTRATION

Funding for manpower and support services activities within the department should closely parallel program level changes in the remainder of the department. As I indicated at the beginning of this letter, dismantlement of the department prior to Oct. 1, 1982, is not a viable budget strategy. Accordingly, I am requesting [restoration] of $96 million for personnel and support activities essential to the continued orderly responsible and legal administration of the department. This represents a 13 percent reduction in departmental administration activities consistent with reductions taken in other department programs.

In addition, I am requesting [restoration] of $26 million of the $51 million deleted from the In-House Energy Management Program. These funds are necessary to permit completion of previously funded projects which will reduce operating expenses and energy consumption at field facilities. These projects have a short pay back period and are located at sites which support energy-research and defense-program activities. In the area of Common Use Stores inventories, funding for these inventories was not addressed in the passback. These materials support essential defense- and nuclear-program activities. In FY–1983, $27 million is required to maintain these inventories at adequate levels.

The passback also deleted all funds for the Office of Minority Economic Impact. This office is provided for by statute (P. L. 96–619) and has important responsibilities to evaluate the impact of energy policies and programs on minorities and to encourage participation of minority businesses in the department's contract activities. Resources to continue this office must be restored.

Finally, I am requesting [restoration] of funds for policy studies and for the Community Assistance program. The policy funds will allow analysis of critical energy issues such as the deregulation of natural gas and analyzing free-market approaches to emergency preparedness. Community assistance funds are required to meet support agreements with the Los Alamos and Oak Ridge communities.

MANPOWER

The department wholeheartedly supports the president's controls on federal employment and associated funding, as a means of achieving the president's economic objectives and in implementing his energy programs. We have taken a number of major steps to quickly and permanently reduce the federal workforce in the department. To date, full-time permanent federal employment has been reduced from 19,927 in January 1981, when I took office, to 17,700 in November 1981, a reduction of 2,127 or 11 percent. I anticipate additional reductions of approximately 1,000 people during FY-1982, which will permit us to be substantially below our FY-1982 ceiling of 17,634 and contribute to meeting our lower FY-1983 allowance.

As I mentioned earlier, the OMB FY-1983 FTP/FTE [fulltime personnel/full-time equivalent] mark of 13,490 employees proposes dismantlement implementation in FY-1982 accompanied by heavy programmatic cuts. This decrease of 3,874 positions from the FY-1982 level represents a further reduction of 22 percent in our permanent federal workforce.

We have grave problems with a reduction of this magnitude. Discounting those areas you granted exemptions from the reduction, i.e., PMA's, NPR's, SPRO and [the Federal Energy Regulatory Commission], and a minor reduction in defense programs, a reduction of 4,711 FTE or 51 percent is proposed for the remainder of DOE in the outlay energy programs and associated support areas. Specifically, the mark presupposes dismantlement during FY-1982 by withdrawing anticipated savings in advance of a firm plan. Further, the mark entails staffing reductions in our six multi-purpose operations offices of 34 percent which would imperil execution of our outlay programs. I do not believe that a reduction of this size will allow the department to carry out the president's responsibilities in the energy area. The following table summarizes our appeal.

DEPARTMENT OF ENERGY STAFFING, FISCAL YEARS 1982-83—FTP/FTE

	1982	1983 OMB allowance	Percent change from 1982	1983 DOE appeal	Percent change from 1982
OMB allowance	17,364	13,490	−22	15,490	−11
Exempted areas:					
Federal Energy Regulatory Commission	1,636	1,777	+9	1,663	+2
Power Marketing Administration	4,091	4,921	+20	4,921	+20
Strategic Petroleum Reserve	192	179	−7	179	−7
Naval Petroleum Reserve	120	120		120	
Subtotal	6,039	6,997	+16	6,883	+14
Defense programs (includes naval reactors)	2,150	2,029	−6	2,115	−2
Subtotal	8,189	9,026	+10	8,998	+10
Energy and support	9,175	4,464	−51	6,492	−29

In summary, I wish to appeal restoration of 2,000 FTP/FTE's to a level of 15,490 for fiscal year 1983. The department would as a result have a net reduction of 11 percent or 1,874 FTE from fiscal year 1982. The areas of requested restorations are as follows:

HEADQUARTERS ORGANIZATION

We appeal for restoration of 629 FTP/FTE's for headquarters outlay and information and regulation program offices. The appeal addresses increases for fossil programs (+329), defense programs (+79), and other critical areas.

OPERATIONS OFFICES

We appeal restoration of 508 FTP/FTE positions for six (6) multi-purpose operations offices. Certain unique characteristics of the operations offices make it essential that manpower resources be restored. The operations offices represent the level within the department where programs and projects are actually implemented and managed. Further decline in federal staffing at the operations offices would severely disrupt accomplishment of essential residual operations as numerous programs wind down and contracts are closed out. We have already made significant cuts to operations offices' staffing levels in our efforts to achieve reductions in line with the president's program. Further cuts reflected in the OMB passback would not leave us enough manpower to assure effective management of the continuing baseline workload in the defense, nuclear and energy research programs, and to effectively close out projects to safeguard and preserve government resources and facilities.

DEPARTMENTAL ADMINISTRATION

We appeal restoration of 977 FTP/FTE's in the departmental administration account. The bulk of this restoration is FTE's reduced advance for dismantlement. Until such time as the dismantlement plan is formulated and legislation passed, appropriate savings cannot be calculated. The appeal also includes an adjustment of 114 FTP/FTE's from FERC to the assistant secretary for management and administration. The functional transfer of FERC support is currently being addressed and should be settled shortly so that revised funding and manpower levels can be reflected in the president's fiscal year 1983 budget. We will advise you promptly following settlement of this matter.

We are all members of the president's team and need to cooperate in order to fulfill his commitment to the nation. I look forward to working with you in that spirit to reach an agreement on our revised budget.

Sincerely,

JAMES B. EDWARDS.

EXHIBIT 2

STATEMENT OF SENATOR MARK O. HATFIELD

Mr. Chairman, Members of the Subcommittee: I thank you for calling this hearing and allowing me to testify this morning on an issue on great personal interest.

While I understand this hearing will cover the entire Energy Department, I want to commend Senator Percy for his special interest and involvement in energy conservation through the Senate and through the Alliance To Save Energy, a prominent advocacy organization which he chairs.

The present and future status of the Department of Energy is of vital significance to this nation and to our allies in Europe and the Far East. Budgetary uncertainty within the Department (of Energy) and the threat of total dismantlement of this nation's leading energy advocate portends enormous domestic and international implications, which I will outline in a moment.

You are aware, Mr. Chairman, of my strong commitment to preserving energy conservation and renewable energy technologies as part of our national energy policy. Because these two areas of the DOE budget and reorganization plan are, in fact, the first two programs targeted for extinction, I would like to focus on these areas in my comments this morning.

For the second time in as many years, the Congress next month will be reviewing a new budget for the Department of Energy which proposes drastic cuts in all areas of the energy spectrum except nuclear power and defense activities. Energy research and development in coal, this country's most abundant energy resource, was cut 40 percent this year, and is expected to receive further reductions and possibly complete shut-down in FY 1983. The energy conservation and solar energy budgets were hit harder by the FY 1982 cuts, with overall reductions in the neighborhood of 60 percent. Forthcoming requests for these program areas (which are said to tbe about $19 million for conservation and $83 million for solar) can be viewed as nothing but a close-out scenario.

On that point, Mr. Chairman, I would like to submit for the record a copy of a letter from Secretary Edwards to OMB Director David Stockman in which the Secretary comments about the future of DOE within the context of the 1983 budget (quote), "I am carrying out the President's mandate to dismantle the Department as rapidly and efficiently as possible and have held a number of discussions with the President's immediate staff to narrow down and select the most appropriate plan for carrying out the dismantlement . . ." The letter goes on to discuss certain matters which the secretary says are necessary for the " . . . orderly and carefully orchestrated budget and organization plans."

I realize that the policy to dismantle the Department of Energy is not entirely his own creation and understand that Secretary Edwards has, in fact, taken issue with the Office of Management and Budget in some instances. Nevertheless, the Department of Energy, under orders from OMB and the White House, is proceeding with dismantlement and has done little to preserve the conservation and solar programs.

For example, Mr. Chairman, I wish to submit for the record testimony provided last week to a House of Representatives Subcommittee at which Dr. Arthur Rosenfeld, Director of Building Energy Sciences at Lawrence Berkeley Laboratories, states that "DOE program officers told him that the on-going research in building conservation technologies would be terminated". Despite the fact that Congress has made available $17 million for those activities this fiscal year, and that the Congress has not even received the President's FY 1983 budget recommendation, let alone acted upon it.

Mr. Chairman, the point which must be impresed upon the Subcommittee and indeed the Congress, is that this "de facto" dismantlement of national energy programs is actively and openly being implemented by the Administration. This is in direct violation of the intent of the Congress which, in the Budget Reconciliation Act and in the Continuing Resolution stated that such programs shall not be terminated.

Surely the cry will be made by the Office of Management and Budget that increasing budget deficits demand further cuts. On that point, Mr. Chairman, I would like to submit for the Committee records an article which appeared in the Wall Street Journal entitled, "Reagan's Plan to Ax Energy Agency Not Likely to Affect Budget". The Wall Street Journal article points out that the dismantlement plan over the next two fiscal years would save only about $3 to $4 billion, which would come from terminating the coal, conservation and solar energy program activities because the remaining $9–10 billion must be spent on nuclear power, defense activities contained in the DOE budget, and money for filling the Strategic Petroleum Reserve.

Mr. Chairman, clearly the Administration is using this country's economic problems and the President's mandate for a more efficient government as an excuse to do away with programs and policies it does not feel are important. The fact is, Mr. Chairman, these programs to reduce and diversify our energy base are of critical importance to this nation's economy. For example:

In 1981 the cost of energy used to run this country's economy will be over $400 billion.

Every $5.50 increase in the price of oil (whether domestic or foreign) raises inflation by 2 percent, 400,000 jobs are lost, and our gross national product is lowered by 1.4 percent.

The cost of energy (exclusive of transportation) for many low-income families in this country comprises 30–40 percent of their total income.

To illustrate further the Department's naivete about the importance of conservation and new energy technologies, we need only look to the U.S. auto industry where 50 percent of all cars sold in this country, by 1983, will either be foreign-made or will be American cars which contain foreign engines. The drain this causes on the U.S. balance of payment deficit it enormous. In this same vein, the U.S. is planning to terminate energy research and development activities while the Japanese government has recently doubled its investment in energy conservation, France's investment has increased 221 percent, and Germany's commitment increased 66 percent to a total of $1 billion. What do these countries know that we don't? Simply, Mr. Chairman, that investments in energy pay important and immediate dividends to the economy by reducing expensive and unnecessary dependence on foreign petroleum.

Mr. Chairman, I have said a good deal already about DOE dismantlement and energy conservation, but my examples can just as easily be transposed to other domestic energy sources. Conservation, however,. is

looked upon on a very different light than other energy resources and needs a stronger push to gain credibility. Most people associate energy conservation with the environmental movement, a no-growth economy, and alternative lifestyles. Surely conservation embodies a mandate or vision of living which is more consistent with our natural surroundings, but I offer yet another outlook on energy conservation, one which extends beyond the importance of preserving the environment or limiting growth, but one that is necessary for our very survival! Given that both Secretary Weinberger and Secretary Haig have pledged to deploy military forces in the Middle East to defend oil resources, including the use of nuclear weapons, if necessary, the conservation of energy without question becomes a mandate to preserve world peace and avert nuclear holocaust. I find totally irresponsible the Administration's combined policy of DOE dismantlement and their willingness to sacrifice lives and risk nuclear war to defend oil interests in the Middle East. We will, in effect, be forced to employ violence because we failed to channel our genius toward the sane and logical alternatives of energy conservation and diversification. Thus, the choices we made today about the future of DOE involve profound moral implications which must be brought to the public's attention, and to the attention of this Committee.

Again, I commend the Chairman and Subcommittee for investigating this very important matter and I thank you all for allowing me to testify.

EXHIBIT 3

[From the Wall Street Journal, Dec. 1, 1981]

TECHNOLOGY DUEL: JAPAN STRIVES TO MOVE FROM FINE IMITATIONS TO ITS OWN INVENTIONS

(By Urban C. Lehner)

TSUKUBA, JAPAN.—In 1950, a 23-year-old engineer named Nobutoshi Kihara "invented" the tape recorder.

Actually, German scientists had invented it earlier, during World War II. But Mr. Kihara had never seen the Germans' machine and had no technical information on it. All he knew was that the Germans had made one. His impressive success in creating the device anew helped propel his obscure Tokyo-based company—now called Sony Corp.—to world prominence.

A few months ago, a team led by Mr. Kihara, who now is a Sony managing director, came up with another breakthrough: a camera that doesn't use film. The images are recorded instead on a special magnetic disk. After taking as many as 50 pictures, the user can pop the disk out of the camera, insert it in an apparatus attached to his television set, view the pictures and decide which ones he wants to make prints of. After pictures have been printed, the disk can be reused. Sony hopes to market the camera, which it calls Mavica, within two years at a price of about $1,000.

Sony truly invented the filmless still camera. No one else has achieved anything like it. But Sony didn't invent a vital component that makes the Mavica possible—a specialized semiconductor, a charged coupling device (CCD) that converts rays of light into electronic signals. Chicago-based Bell & Howell Co. holds the basic patent on the CCD.

Thus has technology here advanced. Japan has gone beyond merely imitating the inventions of others, though it still does some of that. Today many Japanese companies specialize in improving on or finding new applications for existing technology.

Overall, based on such measures as patents registered, research expenditures and technological exports, Japan's science and technology agency reckons that although the country still is far behind the U.S., its science and technology have rapidly grown to become comparable to West Germany's.

But the Japanese have yet to originate epoch-making new technologies that make possible whole new industries, as the light bulb did or the jet engine or the CCD. Toru Namiki, an official of the Ministry of International Trade and Industry (MITI), says one study shows that in a recent 20-year period, Japan came up with 26 technological innovations, only two of which were momentous. The U.S. had 237 innovations, 65 of great significance.

FROM IMITATION TO CREATION

The challenge for the future, business and government leaders agree, is to originate technologies. "The century of catch-up modernization is now ended," MITI said in a report last year. Hitachi Ltd's chairman, Hirokichi Yoshiyama, says that Japan must give priority in the 1980s and beyond to the development of unique technologies, particularly ones that lay the groundwork for innovations. Otherwise, some Japanese fear increasing resistance in other advanced countries to the one-way flow of technology from Japan that is so injurious to some foreign industries.

To accomplish its purposes, Japan has set upon a policy of sharp increases in research and development spending, to 3 percent of gross national product in 1990 from 2.27 percent currently, with the government's share of the R&D bill to rise to 40 percent from 27.2 percent. In the U.S. 2.5 percent of gross national product currently goes to R&D and the government's share is 50 percent or 35.5 percent excluding military research, of which Japan has almost none. Japan's new stress will be on basic research.

Japan also is consolidating physically some of its research so as to improve efficiency. MITI recently moved its own labs to a new science city here in Tsukuba 25 miles north of Tokyo. The agency plans to build 16 "technopolises" to house other research labs, high-technology businesses and their employees in the 1990s.

A PUSH IN ELECTRONICS

Japanese companies, too, are increasing their R&D efforts, especially in such industries as electronics. Hitachi, which employs more than 9,000 researchers, has increased its R&D outlays to 128 billion yen in the year ended last March 31, or 3.81 percent of sales, from 36.2 billion yen, or 2.97 percent of sales, nine years earlier. In semiconductors and computers, it is spending 13 percent to 15 percent of sales on R&D, and it is increasing emphasis on basic research.

Still, it won't be easy for Japan to stimulate innovation as it was to stimulate imitation, many observers believe. Japan's social system stresses conformity and group harmony. Its educational system stresses memorization by students and deference by young faculty members to their elders. Its laboratories tend to be large bullpens where researchers work in groups.

These conditions aren't conducive to creativity, asserts H. Stephen Spacil, a General Electric Co. scientist stationed in Tokyo as a scientific observer.

Thus, the decision to encourage scientific innovation has occasioned some national soul-searching. Can and should Japan change its social and educational system? And if it does, how is Japan to avoid losing the sources of its current economic strength?

The problem, writes the research chief of Matsushita Electric Industrial Co., Shunkichi Kiska, is that while it wouldn't be easy for Japan to display greater creativity by altering its educational and social systems, it would be even more difficult for a research institute or a business enterprise to enhance creativity quickly.

One specific effort to encourage creativity just got under way at the Japan Research Development Corp. (JRDC), a non-profit outfit created recently by the science and technology agency. It is a series of four research projects, each to last five years, in which scientists from abroad will be invited here to work with Japanese scientists, exposing them "to different ways of thinking," as the JRDC's Noboru Fujikawa puts it. Ten foreign scientists already have applied for the first project, an effort to develop a vaguely defined "perfect integrated circuit."

But even those who expect Japan to meet the creativity challenge don't expect that it will happen overnight. Justin Bloom, who just finished a six-year stint as the science counselor at the U.S. embassy in Tokyo, believes that Japan is entering a golden age of creativity in science. But he doubts that the age will flower until Japan revamps its system of higher education.

Masanori Moritani, a senior researcher at Nomura Research Institute, an affiliate of Nomura Securities Co., thinks it will be 10 or even 20 years before the government's efforts to spur creativity will really pay off.

JAPAN'S CURRENT STRENGTHS

That, of course, doesn't mean that Japanese technology is in the doldrums. All signs are that it will continue to progress even without any basic changes in the country's social and educational system. In a number of specific areas, Japan is showing great strength.

Steel: Most people, perhaps correctly, don't think of steel as a high-technology industry. But the Japanese have raised steelmaking to new heights. Increasingly, they are exporting this technology by licensing its use to steel-makers in such countries as South Korea, and even in the U.S. Indeed, steel is the one industry in which Japan currently exports more technology than it imports.

It is generally agreed that Japan will continue to be strong in steel. With world demand for steel weak and likely to remain so, steel-makers in the U.S. have looked for ways to diversify out of what they see as an unpromising business. Japanese steel-makers have responded to the slump differently. They are busy trying to create new demand by developing new products. For example, Nippon Kokan K.K., Japan's second-largest steel-maker, is working on lighter steels and composites of steel and plastic for use in future fuel-efficient automobiles. Recently the company developed a steel for use in natural-gas pipelines that can withstand pressures of 80,000 pounds per square inch, which is 10,000 pounds higher than the current pipeline-industry standard.

Social Technology: Experts say that Japan has done an excellent job technologically in such areas as disaster prevention (for example, its extensive earthquake-prediction system) and mass transportation (Japan's 125-mile-per-hour bullet trains).

At MIT's robot lab here in Tsukuba, researchers are trying to perfect a guide-dog robot for the blind. (Japan has 340,000 blind people but only 380 guide dogs.) The robot, which has been under development for five years and could easily take another five years to perfect, will be programmed to travel its master's normal routes (house to office, for example) and will be able to see and avoid such hazards as open manholes, the researchers say.

Production Technology: "If you think of technology as production technology," says Kenichi Ohmae, who runs the Tokyo office of the consulting firm McKinsey & Co., "Japan has been very innovative."

The category includes robots, and in that field, says Paul Aron, the president of U.S. operations for Daiwa Securities Co., the Japanese are convinced they are going to be preeminent.

The Japanese also have proved skillful in coming up with equipment to improve manufacturing productivity.

The world doesn't see much of this stuff, though. It isn't for sale. "Many large Japanese companies have labs that do nothing but design production equipment for their own factories," says GE's Mr. Spacil, adding: "That's rather rare in the U.S." At Osaka-based Matsushita Electrical Industrial Co., Minore Morita, the managing director in charge of production engineering, says the purpose of this is keeping ahead of competitors. Matsushita employs 3,000 engineers and makes about 30 percent to 40 percent of its production equipment in-house—several hundreds of millions of dollars a year worth.

Applications and New Products: The Japanese will undoubtedly continue to find new and better uses for technologies developed elsewhere. Competitive pressures at home and abroad encourage them to exploit existing technology. "I see no limit to our creation of new products," says Sony's Mr. Kihara.

Foreign competitors make it easy for the Japanese by not manufacturing what they have developed. For instance, liquid-crystal displays, used in electronic watches and calculators, were developed in the U.S. and in Britain, but in neither country did anyone show much interest in producing them. Today Sharp Co. and Mitachi each have 25 percent of the world market. The combined U.S. share is less than 10 percent.

Pharmaceuticals: Japan has long been strong in fermentation technology, and its drug companies are beginning to spend significantly on developing new-product applications. Although the Japanese aren't soon likely to overtake their American and European competitors in pharmaceuticals generally, it won't be long before they are real contenders in some product lines, including anti-cancer drugs. One problem the industry faces is that some of Japan's talented scientists are doing their work in the U.S. and in other countries.

Nuclear Energy: McKinsey's Mr. Ohmae (who has a Ph.D. in nuclear engineering) says Japan has surpassed France and is probably on a par with the U.S. The anti-nuclear movement here is weaker than in the U.S., which is ironic considering the vehement opposition here to nuclear weapons. By one estimate, as much as two-thirds of all government R&D money here goes to nuclear-energy research. Japan, more dependent on foreign oil than any other advanced country, plans to lessen that dependence by constructing reactors, which it hopes also to export.

Computers: The Japanese haven't been as successful in cracking world markets as they had hoped, but they haven't given up, and their computer makers are pouring money into R&D. The government, looking toward the 1990s, is financing two ambitious research programs. One is to develop a supercomputer that will work 1,000 times faster than today's fastest. The other is to develop a fifth-generation computer that "thinks" like human beings and can "understand" what they are saying. (Some Western experts doubt that even the Japanese can build such a beast.)

Despite their strengths, many Japanese will continue to worry about the state of their technology until Japan demonstrates an ability to innovate. In 1963, William Shockley, one of the three Bell Laboratories scientists who invented the transistor, visited Japan and was interviewed on television by Makoto Kikuchi, who today is the director of Sony's research center in Yokohama. Mr. Kikuchi remembers well Mr. Shockley's taunts: "Do you really think you can establish a Western kind of science and technology on a base of Japanese culture and language? Don't you have any feeling of incompatibility?"

A lot of viewers here undoubtedly nodded their heads when they heard that, for it jibes with a popular notion that the Japanese aren't scientifically innovative. McKinsey's Mr. Ohmae crystallizes the debate here when he says the real question is, Can Japanese scientists learn to create?

EXHIBIT 4

CONCERN GROWS OVER POLICY ON NATIONAL LABS

(By Nathaniel Sheppard, Jr.)

CHICAGO.—Many American scientists are apprehensive about the Reagan Administration's emerging science policy and its probable effects on the country's national research laboratories.

In March, two months after he took office, President Reagan proposed a science budget for the current fiscal year. It would have raised research and development funds for the Defense Department $4.7 billion above the level for the fiscal year last, while reducing the research and development budget for the Department of Energy, which supports the national research laboratories, by $344 million.

Mr. Reagan modified his proposal Sept. 24, a week before the start of the 1982 fiscal year, reducing the Defense Department increase to $3.8 billion but deepening the energy cuts by another $663 million, for a total proposed cut of more than $1 billion.

The March proposals resulted in substantial layoffs and other cost-cutting measures at the major national laboratories. If they are enacted by Congress as proposed, laboratories with nonmilitary research missions will have to make further layoffs, perhaps as much as 25 percent of their work forces.

Some of the national laboratories originated during World War II when scientists were recruited to work on the atomic bomb and their secretive posts became laboratories after the war.

"We are going to have a more narrowly focused role for Federal Government," said N. Douglas Pewitt, assistant director of the White House Office of Science and Technology Policy. "We will no longer support things within the capability of private industry." Toward that end, he said, "the role of the national labs will be examined in detail by this office."

CITES LIGHT BULB PROJECT

Asked for examples of development efforts under way at national laboratories that might better be handled by private industry, he cited building a more energy-efficient lightbulb. "We have poured a few million dollars into this area when it would have been better to have left this type of research to private industry," he said.

"A more contentious example," he said, "is Federal support of an effort that could only be called product improvement—fabricating technology for solar photo volt cells. We have spent $20 million to $30 million a year on this and this has minimized private industry competition." Photovoltaic cells produce electricity through light and chemical action.

Officials at laboratories dependent on nonmilitary research have begun to retrench. Staffs at most of these laboratories have been trimmed by the 12 percent guidelines set in March and now administrators are faced with new cuts at least equally deep. The cuts, some say, will jeopardize many important projects under way.

Recently nearly 100 prominent scientists, meeting in Washington, issued a warning that the budget cuts "will do irreversible damage unless longer-term research, in contrast to development and demonstration, is protected."

Dr. George A. Keyworth 2d, the President's science adviser, a former head of the physics division at Los Alamos National Laboratory, dismissed as "lacking in realism" assertions that reductions in Federal support for research would seriously damage science. "Science in the U.S. is healthy today," he said.

But William D. Carey, executive director of the American Association for the Advancement of Science, said, "We are letting the air out of our tires one pound at a time when we should make up our mind how much tire pressure will keep us out of the ditch."

Some laboratories have already acted on the cuts they anticipate. At Argonne National Laboratory in Lemont, Ill., which is deeply involved in energy and environmental research, 600 positions already have been cut. Walter E. Massey, the laboratory's director, says 600 of the remaining 4,400 employees may have to be laid off.

At Brookhaven National Laboratory on Long Island, 270 of 3,600 employees have been laid off and officials say further cuts may eliminate 25 percent of the work force within the year.

About 12 percent of the staff at the Fermi National Accelerator Laboratory in Batavia, Ill., has been dismissed.

MORE LAYOFFS EXPECTED

Lawrence Berkeley National Laboratory in Berkeley, Calif., trimmed its staff by 200 after the March budget projections. Dr. Earl K. Hyde, the laboratory's Deputy Director, said that the remaining 2,700 employees might be reduced by as many as 200 to 300 in a "worst case" situation.

Because of the uncertainty over how the cuts will be mandated by D.O.E. managers, officials at the Oak Ridge National Laboratory in Tennessee have made no layoffs. Wayne Range, a regional D.O.E. spokesman, says the complex's uranium enriching plant is in a "layoff situation," although its weapons plant is adding people.

What is clear is that the size and role of national laboratories will change significantly under the Reagan Administration and scientists, as a group, are complaining that they have had no say in this restructuring.

"I believe there is a strong role for national laboratories to bridge the gap between the university and industry," said George C. Dacey, who heads the Sandia weapons laboratory in Albuquerque.

"Industry looks at the short range, the return on capital and investment. Therefore some demonstration of feasibility, bringing a project to the point where a prudent industrialist feels it is worth his involvement, is appropriate for multi-discipline labs," he said. "I think national laboratories should be that bridge between new knowledge and its being put into application by industry."

EXHIBIT 5

[From the Cleveland Plain-Dealer, Dec. 6, 1981]

SAVING LEWIS CENTER

It isn't official but there is reason to fear for the future of the Lewis Research Center, a NASA gem in Cleveland. The center, with its $500 million annual budget, is shaping up as a target for the Reagan spending cutters. The Plain Dealer applauds bipartisan effort of the Ohio congressional delegation to make the case for saving Lewis.

The drive will gather momentum Tuesday when three Cleveland area congressmen and former astronaut Neil A. Armstrong testify before a House aviation subcommittee on NASA funding. It already got a head of steam Friday when the director of the Cleveland center, Dr. John F. McCarthy Jr., went before the City Club and enumerated the benefits of Lewis to Cleveland and of NASA to the nation.

While federal protocol restrained McCarthy from expressing outright criticism of the administration, his fear for the future of Lewis was obvious and his message on behalf of NASA a strong one. After detailing the accomplishments of NASA programs, he concluded: "It is time that this country

came to its senses and supported the vital research and technology necessary for national economic health. Cyclical, inadequate funding is the road to disaster."

Of course NASA has its critics and there are those who think space exploration, for instance, is a waste of money. To which McCarthy and like thinkers point out that the entire NASA budget of about $6 billion is less than 1% of the total government spending. As for Lewis, its work is down to earth as well as in space. The center is working on programs to curb aircraft noise and fuel consumption, to develop alternative fuels to petroleum and to make automotive engines more efficient.

The friends of the Cleveland center are in the dark because they have no specific figures that suggest how to meet President Reagan's fiscal goals and at the same time take Lewis out of danger. The final budget will not be known until January. The campaign for Lewis must make its points to Congress and the administration now.

It is hardly a parochial crusade to urge that Lewis be spared any damaging blows. The center employs 2,700 persons. Not so long ago the work force was 5,500. The ax has fallen before. Today's payroll includes about 1,300 scientists and engineers; fine minds who would presumably be lost to the area if the center had to close.

Lewis pumps about $125 million into the Greater Cleveland economy. In addition to those employed at the center, more than 4,000 other workers throughout the region depend on Lewis. Projects researched and tested at Lewis have national impact. Lewis, for example, helped develop the liquid fueled rockets that made possible the Apollo, Centaur and Venus space missions. Less glamorous but potentially as beneficial is Lewis' work on harnessing the wind to produce electricity. A so-called wind farm that came out of Lewis technology is producing cheap electricity in Washington state.

The Columbia space shuttle that made its mark this year owed much to work done at Lewis. So do some strides in the treatment of cancer by radiation. A goal for the future is the vital one of finding alternative materials to the natural ones that are scarce in this country—chronium, tantalum, cobalt.

The Plain Dealer urges Ohio's representatives to battle with a stout stick to save an establishment that has done magnificent work for the country since it was started as an aircraft engine research laboratory in 1941. As McCarthy said, it has an important role to play if this country intends to meet the challenge from Japan and Europe in areas of high technology that once were ours alone. That is no longer the case, but it would be foolish and false economics to shed a priceless asset for a temporary gain in the ledger.

EXHIBIT 6

[From the Washington Post, Sept. 23, 1981]

BENDIX HEAD CRITICAL OF BUDGET CUTS

(By Peter Behr)

COLUMBIA.—One of President Reagan's strongest business supporters, Bendix Corp. Chairman William M. Agee, said today he is saddened by the administration's budget cuts in government support for scientific research.

Agee, interviewed at the dedication of Bendix's new Advanced Technology Center for long-range research here, said corporate tax reductions in Reagan's new economy program are valuable for business but won't give the boost to industrial research necessary to the country's technological base. That base, he said, "is not nearly as strong as it should be."

Government-supported research should be increased, not cut, he said, to send a strong message to the country that science, technology and innovation have the highest priority. "Any cuts of any consequence in this area" are damaging, he added.

"I think a coalition between government and private enterprise of the NASA type, whether in bio-technology, an extension of the space program or some other area of advanced technology is very, very important to provide a strong signal" to the country, Agee said. That signal could affect the number of young people who choose science as a career and could stimulate greater scientific activity by business, he added.

Agee said the new Advanced Technology Center is an example of his company's commitment to long-range research.

The center, which has 114 employes, is "not associated with product engineering or the pressure to contribute to immediate business returns," said John W. Weil, chief technical officer.

Instead, its objective is to develop fundamentally new ideas to meet the needs in Bendix's automotive, aerospace and industrial businesses eight or 10 years in the future, said Agee and John J. Martin, the center's general manager.

The company will spend $10 million to $15 million on the center this year and expects to increase that figure by 20 percent next year.

Among the research projects shown to visitors today were projects to:

Perfect techniques for making metal parts such as machinery gears from powdered metal rather than from pieces cut from solid metal. A major goal is to find ways of binding particles together tightly enough to ensure sufficient strength in the metal part.

Study the brain functions of bats as a guide to improving radar communications.

Develop very small, tough chemical sensors to provide better control of industrial manufacturing processes and pollution.

Agee said Bendix is willing to wait five years or more for the center to make a significant contribution to the company's business products.

In his view, the U.S. economy has been weakened by business' concentration on short-term results and government's short-range economic policies. Bendix has deliberately invested in long-range technology at the expense of short-term profits, Agee said.

Bendix, the 88th largest company on Fortune magazine's list of the 500 largest corporations, is better able to afford such investments in technology than many other companies. It reported sales of $3.4 billion for the nine months ending June 30 this year, compared with $2.8 billion for the same months in 1980. Net income rose from $146 million to $389 million over the same period.

The location of the center in Columbia adds to Bendix's sizable presence in the Washington area, Maryland Gov. Harry R. Hughes noted today. He said Maryland had faced competition from other states in attracting the Bendix center and thanked Agee for the company's confidence in the state.

Bendix has an electronics subsidiary in Rosslyn, a communications division in Towson in Baltimore County and a field engineering division near the new research center.

After viewing a mystifying display of lasers, electron microscopes and computer consoles, Hughes left the men's room saying he was glad to have spotted some familiar looking equipment.

Agee said the Baltimore-Washington area is "a very good environment" for a scientifically based business. It was hard to shift the company's scientists to Maryland from Bendix's base in Michigan, he added, but with the concentration of technological firms, universities and research facilities the region provided "the best environment we could find."

EXHIBIT 7

[From the Chronicle of Higher Education, May 1, 1978]

BASIC RESEARCH THE KEY TO SOLVING ENERGY CRISIS, UNIVERSITY SCIENTISTS SAY

(They view this week's Sun Day celebration as an opportunity to focus attention on world's plight; what's needed, they say, is money to gain fundamental knowledge about how energy is produced.)

(By Ann C. Roark)

Alarm clocks will be ringing before the crack of dawn on many college campuses Wednesday. Professors and students will wake up not to prepare for lectures or final exams, but to watch the sun rise.

Wednesday is Sun Day.

Some 150 communities around the United States, along with at least 19 other countries, plan to mark the day with solar conferences, teach-ins, "sun dances," sunrise services, and solar rallies. The nationwide "celebration of the sun" is, according to its environmentalist and anti-nuclear-power supporters, designed to promote solar energy as the answer to the world fuel shortage.

"Sun Day can be whatever kind of celebration you want it to be," the Washington-based National Sun Day staff has written in its promotional literature. "One person has suggested the world's largest solar clothes-dryer—a coast-to-coast clothes line to be set up May 3. Others are planning funeral services to mark the end of the petroleum era. And Old Uncle Gaylord's Ice Cream Parlor in San Francisco is giving away "Sun Day" sundaes."

Despite such light-hearted publicity, Sun Day's organizer, Denis Hayes, takes the event very seriously. Its purpose, says Mr. Hayes, who is senior researcher at World Watch, an international research organization in Washington, is twofold: to inform the public that solar energy is not remote or exotic and to mount a political campaign that will push for rapid development of solar technology.

So far, according to many observers, Mr. Hayes has proved to be at least as successful a Sun Day politician as he was an Earth Day booster. Eight years ago the former Stanford University student and trustee organized a nationwide celebration of the Earth, an event that many credit with making the environmental movement the political force it is today.

For Sun Day, Mr. Hayes has brought together some 26 paid organizers in Washington. Over the past few months they have set up a coast-to-coast network of some 400 local and regional organizers and coordinators. They have raised thousands of dollars—some from major foundations. They have persuaded Congress to pass a resolution heralding Sun Day. And they have even prevailed on the President to issue a proclamation calling on all Americans to observe the day with "appropriate activities and ceremonies."

WASHINGTON MONUMENT RALLY

In Washington despite the Carter Administration's apparent indifference to solar technology, top government officials plan to join thousands of politicians and students who will rally around the Washington Monument in celebration of the sun. Representatives of the Department of Energy and the Department of Housing and Urban Development are scheduled to make speeches. Others will set up solar workshops and still others will operate "Sun Dial" information centers which persons may call toll free, for information about solar energy.

Mr. Carter himself is expected to visit the Solar Research Institute, a new federal facility in Golden, Colo., to announce the information of a high-level panel to examine and coordinate the Administration's solar-energy program.

On campuses around the country, many scientists—even those who are not advocates

of solar power—are supporting Sun Day in a big way.

It gives them a chance, the scientist say, to call attention to the nation's—and the world's—energy plight.

Although public-opinion polls in many Western countries show that the general public believes the energy crisis ended with the lifting of the 1973 Arab oil embargo, most experts agree that current supplies of fossil fuel are running out—and doing so rapidly.

"DESPERATE" OIL SITUATION SEEN

Most estimates indicate, for example, that in the 20 years from 1960 to 1980, the rate of energy consumption will have doubled in the same two decades, more fossil fuel will have been consumed than was used in the previous 200 years.

"It is clear to me," says Thomas F. Jones, vice-president of research at the Massachusetts Institute of Technology, "that the oil situation will become desperate—maybe even in my lifetime. And I'm over 60.

"There are—relatively—good supplies of coal. If we can just take out the [polluting] sulfur, they should last us at least into the next century.

"But what then?"

That's the question an increasing number of university scientists are asking. Thus far they've had little success in finding the answer.

Part of the problem, according to a national survey by Phillip LeBel of the New York Institute of Technology, is that nearly two-thirds of all energy-related research on the campuses has been carried out by social scientists who have focused on public-policy questions rather than on hard science.

DIFFICULT SCIENTIFIC PROBLEM

Now, however, growing numbers of physicists and chemists are urging their department to turn their attention to understanding the energy technologies we now have and to finding new, more efficient ones.

Such an effort, they say, could present some of the most difficult problems science has ever faced.

The alternatives, as scientists now see them, are not as promising as the public might like to believe.

The sun, for example, is a clean and unexhaustible source of power, according to its supporters. But, critics are quick to point out, harnessing it is expensive, partly, because there is not yet a mass market for such developments as solar space stations that could beam electric power to earth or large-scale power plants that could generate electricity by trapping sunlight in clusters of mirrors. Even the relatively simple solar cells, which are made of silicon crystals that emit a tiny electrical current when the sun shines on them, cost many times as much as other forms of energy.

For many scientists, nuclear fission is another questionable source of power. In high-pressure, high-temperature chemical processors known as breeder reactors, uranium, the heaviest of the natural elements, is bombarded by neutrons to produce controlled explosions, or fissions.

NUCLEAR FISSION CRITICIZED

Although some scientists believe it is a highly efficient way to produce energy, nuclear fission has been severely criticized by others who say its radioactive wastes make it an extremely hazardous and potentially deadly way of developing energy.

Some scientists point to fusion as the other most promising but largely unrealized method of obtaining large quantities of energy from the atomic nucleus. In that process two extremely light nuclei, such as those of hydrogen, are merged to form a new element: helium. The process is capable of releasing vast quantities of energy for society, but only, scientists say, if a good deal more can be learned about how to control the process.

With relatively few energy options open and many obstacles to developing them, some researchers contend that what's needed is considerably more basic research into how energy is actually produced in the first place and how it can safely be stored over the long run.

"There is a lack of fundamental research," says Francis P. Koster, director of the University of Massachusetts' new energy institute. "People are blindly building hardware and demonstration plants, but they aren't finding out how energy is created.

"If we are going to have a breakthrough in research 20 years from now," he argues, "it'll be because people were doing some damn good basic materials research today."

COMPLETELY NEW LOOK

M.I.T.'s Tom Jones contends that what physicists and engineers need to do immediately is to take a "completely new look at all energy" processes "to see what's been overlooked in basic knowledge."

"We've never even really taken a complete cataloguing of what's there. What we need to go back and do is 'research,' in its truest sense."

One thing that floors many scientists is how little is known about the most basic of energy processes—photosynthesis.

While scientists know that the chloroplasts of green plants absorb the energy of sunlight and transform it into chemical energy in the form of sugar or glucose, researchers admit they are still a long way from completely understanding how one kind of energy is actually transformed into another.

Finding the key to that biochemical problem could have profound implications for man-made energy technology.

Yet some scientists complain that little effort has been made to study such "esoteric" areas of energy research. The government, they say, has failed to finance the kind of research that would seek answers to such questions.

"If they don't see the immediate relation to the problem they are trying to solve, [government officials] are not interested," says James A Gibbons, an electrical engineer at Stanford University.

As a result of such "quick-fix" attitudes, critics say, the government has spent the largest portion of its $10-billion annual research budget on applied-research projects carried out by federally owned laboratories and by large corporations, while largely ignoring the basic, highly experimental research capabilities of universities.

"I'm appalled at the level of [federal energy] research in higher education," says S. C. Hycka, director of the energy task force at the National Association of College and University Business Officers.

"It seems to me the reason we have [federal] funding is to provide the intelligence we need to solve urgent problems—for when we need a Manhattan Project, for when we need to send a man to the moon, for the day we need to crawl out from under an energy crisis.

"It absolutely drives me up the wall that federal government is not turning to the universities to help them solve this energy crisis."

Some government officials recognize the problem and say they are trying to do something about it.

For example, the Department of Energy's research agency, under the direction of a former chemistry professor, John M. Deutch, planned to hold a conference in Washington last week with key administrators and researchers from more than 60 major research universities.

The focus was to be the very question that has so troubled universities: what their role is to be in the nation's energy research effort.

"It's not an easy picture, and there's not going to be a sudden turnaround, but things are looking up," says Sidney G. Roth, special assistant to the director of the research division.

For example, Mr. Roth says, in the past 3½ years the contracts and grants awarded to universities have increased from approximately $140 million to over $200 million.

Moreover, he says, the Department of Energy for the first time has included money in its budget for unsolicited grant proposals—a move that should allow university scientists more latitude in carrying out the basic research they think is so important.

PANEL REPORT EXPECTED

In another move that may improve relations with the universities, a Department of Energy advisory panel will recommend within the next two weeks to Frank Press, the President's science adviser, that the department's basic-research efforts be upgraded. The panel, composed of university professors as well as state, local, and federal officials, is also expected to propose structural and administrative changes in the department to promote greater cooperation among scientific disciplines.

Despite such efforts, some lawmakers argue that scientists, particularly the university professors who conduct basic research have done a poor job of convincing the public that their research will ever pay off.

Some scientists, on the other hand, argue that the public conception of scientific research is so badly distorted that they can hardly hope to change it in time to deal with the energy crisis.

The depth of the misunderstanding was evident one day last month when the former M.I.T. professor who now heads the research division at the Department of Energy defended the department's request for $618 million for energy research for the coming fiscal year.

Mr. Deutch tried to explain to a House appropriations panel why scientists' demands for more support for basic research were reasonable—that, indeed, such research held the key to the eventual discovery of radically new sources of energy.

TOO SCIENTIFIC

The lawmakers were not easily convinced. Democrats and Republicans alike contended that basic, or what they called esoteric, research would simply open up more and more uncertain options instead of getting down to practical applications.

"Energy research is getting just too scientific . . . just too professional," argued Rep. John Myers, Republican of Indiana.

"There must be some point at which you start making decisions and start to eliminate some of these programs."

Mr. Deutch politely agreed but argued that basic research programs were not the place to start "cutting options."

After all, said Mr. Deutch, without such research, what would we know of "quarks," an important subatomic particle in energy research?

"I thought that was some kind of stone," a Congressman replied.

So Mr. Deutch mentioned "charm," an attribute given to the behavior of some particles.

The Congressman from Indiana wondered if they were running a "charm school here someplace."

COW-PASTURE LANGUAGE

The session ended with lawmakers demanding a list, in what one called "cow-pasture language" telling what the taxpayer would get for the $618 million.

"What they really want," said one observer, "is another Einstein or Newton to revolutionize the way we think. But we can't do that. At least, we can't count on it.

"Why, do you know," the observer added, "in this whole complex area of energy research, we haven't come up with anything really new since solar-energy conversion systems. And the Greeks knew about those, hundreds of years before Christ.

"But look how long it's taken us even to start talking about them."

EXHIBIT 8

STATEMENT BY DR. H. GUYFORD STEVER

Mr. Chairman, members of the committee: Thank you for the opportunity to testify today on "U.S. Science and Technology under Budget Stress."

It is generally recognized throughout the world that national health, economic well-being, and defense depend strongly on science and technology. Starting from a good base following World War II, the United States has built a strong research and development program with many competent people working in well-equipped institutions on projects aimed at meeting the broad spectrum of our nation's needs. That program has been the envy of other countries, both developed and developing, and has served as a model for many national research and development programs. This effort has long been considered one of our American strong points in ensuring both economic progress and defense.

Before commenting on the impact of budget stress on this program, let me give a 1981 snapshot of that research and development program. R&D in this country is a big business: almost $70 billion this year. The United States spends almost one-third of the world's R&D funds. About 47 percent of these funds come from the federal government, and 49 percent from industry; universities and nonprofit organizations—mostly foundations—supply 2 percent each.

Private industry is overwhelmingly the nation's biggest performer of R&D, using its own funds and half of the government's R&D funds; government laboratories spend only 13 percent of the total, practically all from government sources. Universities spend 9 percent of the funds, again mainly from the government; that 9 percent includes 3 percent for the federally funded research and development centers (FFRDC's administered by the universities for the government) (laboratories such as Los Alamos of the University of California, working in nuclear weapons; the Jet Propulsion Laboratory of California Institute of Technology, working in space flight; and Draper Laboratories of MIT, working in guidance and control). Nonprofit laboratories, such as the Stanford Research Institute, perform 3 percent of the work.

The character of our work is divided among basic research, applied research, and development in portions of 13, 22, and 65 percent, respectively. While there are no formulas for determining the proper balance among these three categories of R&D, our balance appears about right considering the average amounts of the three categories that go into all innovations, large and small. (Of course, from innovation to innovation there is great variation in the percentages, but this is a good average.)

About one-quarter of the nation's 2.8 million scientists and engineers are employed in research and development. Those 670,000 R&D scientists and engineers are divided among government (10 percent); industry (71 percent); universities, including the FFRDC's (12 percent); and nonprofits (4 percent).

Those, then are the dimensions of the nation's R&D structure. I think it is a good structure. It has served us well in the past, producing the innovations that were necessary to improve our health, our standard of living, and our defense. It is not a centrally planned effort, though it is carefully observed and studied both here and abroad. It results from a myriad of separate considerations and decisions by many industrial companies, large and small, by government departments and agencies, and by congresses and Presidential administrations. It has been hammered into shape over the decades since World War II.

Several distinguished leaders of research and development in centrally planned economies overseas have told me from time to time that we needed more centralized planning and control in our R&D structure, to accommodate the increasing complexity and interdependence of all the matters that R&D affects. With that I do not agree. I have always considered the pluralistic R&D program of the United States as one of our great strengths. I still do. It has enabled us to explore newly developing fields of science, to capitalize quickly on discoveries and innovations, and to bring new ideas into the market place. It uses the initiative and strength of many, many minds approaching our problems from different points of view, taking from those minds the best that they have to offer. Individual initiative is not stifled as it is where control is exerted from the top.

On the other hand, the subject of your hearings today may pinpoint one of the weaknesses of our decentralized R&D program. Centrally planned economies often plan for five and ten year programs, and they budget for them. A weakness of our R&D budgeting in the past has been that expenditures rise and fall with short-term economic and political cycles; the economic cycles control the inputs of funds from the private sector, and the political cycles control funding from federal sources.

Most basic research in the physical, biological, and medical sciences is performed in universities. As one consequence, we turn out graduates who have been steeped in creative thinking. That is a very important advantage of our structure, for graduates in science and engineering who have not been exposed to the atmosphere of university research miss something very important in their education. Our university research is high in quality; U.S. citizens have received about half the Nobel prizes in science since 1930. In the universities, we have performed the fundamental scientific research underlying the solid state in computers, nuclear power, genetic engineering, antibiotics, scientific instruments, and many other big business fields of today.

Receiving most of their research funds from federal sources, the universities are the most sensitive of our R&D structure's elements to changes in federal funding, both long-term and short-term. There is a long-term effect that has been cumulative in the universities; in earlier days (two or three decades ago), universities in the United States were the envy of universities elsewhere in the world. Their equipment and facilities could bear comparison with those of any institution involved in R&D. Today university laboratories and equipment are in many cases obsolescent, due to a long-term decline, beginning in about 1971, in the number of real dollars put into research and development by the federal government; though this trend was reversed in 1975, the increase has brought funding only back to about the 1971 level, and most of that has been used for program expenses rather than equipment and facilities. Today, our universities are not well equipped or well supplied with facilities to do the research jobs before them.

Any proposed short-term drop in funds for university research will add to the effects of the long-term drop, and programs will suffer. Already universities are finding it difficult to attract and retain talented young professors, whose salaries are lower, and whose research opportunities are narrower, then they would be in industry. This shortage of funds spills over to students; they have more difficulty getting thesis research support, graduate fellowships, and scholarships. They also sense the lowering of morale in university research, and they are quick to read signs that they may be entering fields where opportunities are not as great as they once were.

There is another influence of changing funding levels for universities. Our system has developed a weakness over recent decades as a result of the increasing proportion of federal funds in research support for universities and the corresponding decline in industrial funding of university research. This concentration of funding in the federal government has focused research in the universities on government missions—defense, health, weather, climate, space, and so on—and away from those sciences and technologies that help industry develop their manufacturing processes and the technology for efficient production. It has also lessened the interest of graduates in going into industry from the universities to work on the innovations needed for an expanding and competitive economy. This shift of emphasis in universities, away from industrial needs and toward those of government, has been noted; in recent years there have been many attempts to counter the shift, including industry efforts to get closer to the universities and support more research and federal programs to put some government R&D funds into strengthening university-industry ties. Many of these attempts will be affected by the short-term tightening of federal research funding.

In our research and development structure, applied research and development are concentrated in private companies, which know their businesses and customers and can manage the development of successful ideas, so as to accommodate the economics of the business world. Government actions greatly affect industrial R&D programs, by creating a climate that enables industry to make profits and to invest those profits in the applied research and development necessary to upgrade industrial processes and produce new products.

On this subject, Senator Lloyd Bentsen, Democrat from Texas, who recently served as chairman of the Joint Economic Committee of the Congress, has summed up the importance of innovation in a paper entitled, "Taxation, Research and Development." He writes, "Today's investment in research and innovation will help forge tomorrow's economic and social course. Industrial innovation is at the core of the economic well-being of the United States and is a major contributor to economic growth. Innovation influences inflation and stimulates productivity, employment and the ability of U.S. products to compete in domestic and world markets." He goes on to say, "Through investment, inventive individuals—working independently or for a company—obtain the financial backing which enables them to pursue the research and development. Investment provides the facilities not only for the actual research work, but also for the plants and tools to transform the innovative ideas into a marketable product. And it is investment through education which equips individuals with the knowledge and skill to engage in R&D work."

During about the last decade and a half, it has become increasingly clear that international competition in industrial markets is increasing very rapidly. Some of the effects are very clear: our marketplaces are filled with foreign-made products, some of our most basic industries have been devastated or badly damaged in both domestic and foreign markets, and jobs are going overseas. In the case of our competition with Japan, change crept up on us gradually. First came

the production of simple radio and television circuits; then, in shipbuilding and iron and steel manufacturing, the cry became "cheap labor." When Japanese scientific instruments, cameras, and machine tools began to make their marks in the world, we noticed something more than just cheap labor. When Japan began to take the lead in the automotive field, we realized that they had a very well worked out total business system. Now they are challenging us in the highest technology fields of computers and communications. For example, I am told that if the contract for AT&T's northeast corridor optical fiber system had gone to the lowest bidder, it would have gone to a Japanese consortium.

In recent years, in private and public forums, we have explored this problem of competition. On the witness stand have been industrialists, investors, government administrators, members of Congress, educators, engineers, economists, lawyers, scientists, inventors, entrepreneurs, consumers, labor leaders, environmentalists, taxpayers, and stockholders. The result is a much better understanding of the issues, and, at last, a renewed effort to create a financial climate favorable to innovation. This climate definitely worsened very much in the 1970's. Tax laws now, however, are being rewritten to encourage investment in long-term gains rather than ordinary income. If such a favorable tax climate can be established, and if inflation can be beaten back—for it still remains an enormous block to long-term investment—we have a chance of tapping once again the research and developmental potential of the country to get the new processes and products that will make us more competitive again.

Industrial leaders have already recognized that the national concentration on short-term gains, brought on partly by inflation and partly by an unfavorable investment climate, has pulled them away from a proper balance between short- and long-term gains in their capital investments. They are moving toward a better balance. Government has a big role to play here, not only in creating the tax environment but also in beating inflation. And it has another role, which is to ensure the strengthening of university research and education, which produces the scientists and engineers who conceive innovative ideas and the economists and managers who understand the innovative process of innovation and can recognize and apply those ideas.

In our R&D structure, government laboratories concentrate primarily on fields for which the federal government has direct responsibility—weaponry, climate and weather, oceanography, and so on. However, in one such field, space, there is a very large "spin-off" of industrial products and processes, for NASA's research often leads to innovation. Similar effects can be seen in two other areas where government has assumed the primary responsibility for basic and applied research, namely health and agriculture. Pharmaceutical companies and others in the health field have benefitted from federally sponsored biomedical research, and our food industries have also depended heavily on government-sponsored research.

It is my thesis that the total government support of research and development is already too low; a further reduction of it is going to constitute another blow to this important sector. With respect to our international competition, though we led all developed countries in the number of R&D scientists and engineers as a proportion of the labor force, with about 65 per 10,000 employees in 1967, this proportion dropped steadily until about 1974, when it reached a value more like 55. Since 1975 we have increased this number slightly, but it is still lower than it was in 1967. In the Soviet Union the number of R&D scientists and engineers per 10,000 members of the labor force was well below the U.S. value in 1967 but has climbed steadily since. Some estimates place the current value of this index in the Soviet Union at about 80, which is well above the U.S. level. The numbers for West Germany and Japan have also climbed steadily and are approaching our level. If one subtracted the numbers of scientists and engineers involved in military R&D, of which Japan and West Germany do very little, one would find that both have more scientists and engineers per 10,000 members of the labor force than we do.

There is simply no question that for the last decade and a half we have not paid enough attention to the total magnitude of R&D funding in this country. And if one superimposes on that trend the short-term cutback now proposed, one finds only a worsening situation.

The funding of our national R&D effort has been shared over the years by the nonfederal sector (mainly industry) and the federal government. Ever since 1967, some have shown a strong desire to reduce the federal R&D funding load and increase the nonfederal load. That in fact has steadily occurred. In 1967 industry supported less than 40 percent of all R&D in the country, and the federal government supported about 60 percent. Today, as a result of steady change over the intervening fourteen years, the federal government, as I said earlier, provides 47 percent of the nation's R&D funding, with 49 percent coming from industry. So if reducing the federal responsibility in this area is our objective, we are accomplishing it. However, anyone who thinks that such a change can be accomplished rapidly does not understand the dynamics of the research and development system. It takes institutions like industry a long time to build greater strength in research and development by adding facilities, equipment, and personnel. It takes universities a long time to produce scientists and engineers to do the research and development. It takes funding agencies a long time to adjust as well. Personally, I am in favor of increasing the percentage of R&D funding from private sources. But I believe that trend must be a slow, steady trend, as it has been over the past fourteen years.

In summary, I think we have had a decade and a half in which we have neglected our research and development in comparison with our competitors. I think also that we have failed to establish the necessary climate for innovation in using the results of research and development, with a consequent reduction in the numbers of innovations the United States has produced compared to the rest of the world. Frankly, I think now we should be talking not about weakening our R&D resources, but rather about some long-term plans to ensure their stable and strong support.

STATEMENT BY DR. FRANK PRESS

I am most pleased, Mr. Chairman, to have this opportunity to review with your committee the implications of current reduction in budgeted levels of support for many areas of federally sponsored research and development, and the impact upon the American scientific enterprise of continuing uncertainties about future prospects for funding. These hearings can also serve as a constructive assessment of whether these budget actions imply a change of Federal policy in this area.

On October 26–27, in collaboration with many of my colleagues, I convened a conference at the National Academy of Sciences on the Federal Research and Development Budget for 1982 and Future Years. Although this convocation called together members of the scientific and technological community to address the problems arising from reductions in and uncertainty about current Federal support of sciences, its purpose also was to survey circumstances of the past fifteen years, which have seen no growth in funding of scientific research and government funded R&D, during a period in which the intrinsic costs of doing science continue to increase. The conference has, I hope, set in motion an informed dialogue between public officials and representatives of the scientific and technological community. As you have requested, Mr. Chairman, I will summarize the results of that convocation at the Academy and with your permission include in the record as an attachment to my testimony a more detailed statement on the deliberation of that conference as well as a list of the attendees.

The conference attendees included nearly 100 university officials, laboratory directors, industrial research executives, scientists and engineers, and individuals experienced in public policy. Also present were Congressional staff, including several from this committee. The conferees were briefed by the President's Director of the Office of Science and Technology Policy, a senior representative from the Office of Management and Budget, and officials of six governmental departments and agencies with major research and development programs. At the end of the conference, a consensus was reached on a number of findings and conclusions. In my testimony, I will highlight only the more salient conclusions of the conference. I urge you to read carefully the more detailed summary statement and commentary on the conference attached to my testimony.

From these discussions emerged several matters of considerable significance to the future health of American science. It is clear that like other sectors of our society the nation's scientific and technological enterprise has been hurt by the problems of the economy—inflation, high interest rates, industrial stagnation. Efforts by the Congress and recent Administrations to combat the effects of these ills on basic research through some real growth have unfortunately not kept pace with the problems.

Further, as a percentage of the Gross National Product, national support for research and development has declined since the mid-1960's. Because of lack of real growth in research support over the years in the face of the intrinsic inflation inherent in the research enterprise, many fields of science are now especially sensitive to decreases in funding.

Instability and abrupt changes in funding also have severe effects. For example, research teams, which take years to assemble, are broken up and investments in experiments involving large facilities such as accelerators, spacecraft, oceanographic vessels and other instruments are poorly used. Because of the intrinsic relationship between the performance of basic research and the training of scientists and engineers to carry out such research, instability or abrupt changes in support levels also can lead to future critical personnel shortages.

The participants in the conference were fully aware that the nation must pass through a period of restraint in public expenditures and that the impact of this adjustment must be shared by those in the research community receiving Federal support. At the same time, they underscored in their discussion the necessity for recognizing that scientific research is an expenditure from which all sectors of society benefit, that scientific and technological advances are important to the nation's future economic health and security, and that there are no significant sources of support for such a collective benefit other than the Federal Government. It is especially noteworthy, in this

regard, that those expenditures in basic research have, over time, consistently produced benefits in three critical areas of national concern—public health, economic development and national security.

Participants in the conference noted that industrial support for research and development was increasing, including outlays for research carried out at universities. Industrial executives cautioned, however, that it was unlikely that increased industrial support of university-based reseach and development would offset proposed reduction in Federal expenditures announced by Administration officials, and it was unrealistic to make such an assumption. Moreover, it was noted further that industry will likely focus its support on a few fields or disciplines. Only the Federal government provides an across-the-board support in basic research; and this has long been accepted as a legitimate role.

Since basic science and engineering are long-term investments, the conferees urged that the government plan carefully for their support and that such plans be protected from abrupt changes.

In recognition of those long accepted principles of the Federal role in support of research and development, the conferees concluded that if further reductions are required in the President's Fall Budget Program, this process should not involve a simple across-the-board cut in all budgetary accounts. The conferees proposed alternatively that the Administration and the Congress should:

Make budgetary adjustments that maintain support of the basic sciences by reallocating funds between research and development, and between agencies;

Instruct the agencies to maintain the strength of science in agency budget allocation;

Direct that a larger part of increases in the national security budget be applied to the funding of basic research that is essential to the maintenance of that security;

In recognition of the importance of the nation's scientific and engineering manpower pool, continue graduate student support through research grants, fellowships and traineeships;

Recognize the need to revitalize the instrumentation and facility base on which future scientific and technological advance depends.

Mr. Chairman, a recurring theme throughout these discussions was recognition that the scientific base of the nation has suffered a decade of neglect with little or no real growth, and that the above steps are essential to maintain the competence of staff and the quality of work being performed in the nation's laboratories.

In viewing the future beyond 1982, the conferees called for acceptance by the government of several principles. It was agreed that a strengthened mechanism is needed through which the scientific and engineering communities can provide continuing advice to the government on resource allocation and assist in the analysis of the impact and benefits of alternative shorter and longer term budget strategies for government investment in science and engineering.

The conferees also called for the initiation of an evaluation of the institutional system for supporting research and development, including the mechanisms for allocating resources and evaluation of the need for some facilities. Finally, the conferees urged that policies at all levels of government should be established which will assure the continued flow of an adequate supply of scientists and engineers into the nation's research endeavors.

Mr. Chairman, it appears to me that we must once again reaffirm the credo so aptly outlined in the 1945 report, Science, The Endless Frontier, that the advancement of science is unquestionably in the public interest and that support of basic research is a legitimate responsibility of government. The question faced by the Administration and the Congress is not whether we support research, for that decision lies behind us. Today, the question involves a search for redefinition of the means and mechanism for determining appropriate levels of support under current and future fiscal circumstances.

I suspect that the first major concern that must be dealt with is one of credibility, i.e., the growing uncertainty within the scientific and technological community over what are the present long-term objectives of the Federal government for supporting fundamental research. A series of events extending back for a number of years has led to this current climate of confusion and uncertainty. Federal support of basic scientific research in constant dollars has remained static since 1967. The instruments for research and the laboratories are aging and various attempts to recognize and ameliorate the problems have not met with success. During the past year support for social and behavioral science research was specifically targeted for reductions, suggesting an implicit policy decision to reduce the Federal role in these areas of research. The Federal role in support of science education has been brought into question. Hopefully, we will see a call for improved quality rather than elimination of the program. Added to these are the proposed reductions for fiscal year 1982 and for further rounds of budget cuts in fiscal year 1983. If these reductions are actually imposed at significant levels or without a sense of priorities (e.g., greater emphasis on research rather than on certain appropriations for development, support for more productive institutions, etc.), damage could occur to the institutions of science, which have made the U.S. preeminent over the past four decades.

The major circumstances leading to the erosion of this support are well known. The diversion of resources to support the war in Viet Nam, the impact of spiralling inflation and the growing demands of an ever-increasing array of Federal programs for a larger share of the Federal budget. This situation cannot of itself fully explain, however, the current anxiety that exists over the future of American science. In the current and recent Administrations, knowledgeable officials have testified to the continuing health of American science and certainly these statements have a basis in fact. We publish a substantial share of all scientific papers and our scientists are recognized as leaders in most scientific disciplines. The capabilities of American laboratories continue to contribute at the growing edge of innovation in most scientific areas and American scientists continue to receive the overwhelming share of Nobel prizes. Even though American technology increasingly has been challenged by other industrial nations, our leadership in fundamental research remains the world standard of excellence.

However, responsible leadership requires not only recognition of our present position but also trends which might cause serious erosion. In spite of our apparent strength, there remains an underlying uncertainty about our national scientific endeavor considered in the broader context of other social and economic troubles. There are many manifestations of these trends. First and foremost are the economic pressures of the ever-increasing technological competition of other industrialized nations. Added to this are the worldwide rise in petroleum prices and the inability of domestic petroleum production to keep apace of domestic consumption. There is some public concern, less today than a decade ago, about the risks and hazards arising from the uses of technology. I believe there is growing public recognition of the social and physical amenities, which science and technology have provided to our society.

Perhaps the greatest anxiety of those engaged in our scientific and technological endeavors stems from the increasing difficulty of maintaining this enterprise with a nearly static level of (constant dollar) funding. The ability of the nation's scientists and engineers to contribute their full potential is impeded under these circumstances. Many high quality investigators are denied sufficient support; many outstanding research proposals are not funded at all; often the time period of grant support is inadequate to permit successful project completion; as a result of all of this, training of the next generation of scientists and engineers has suffered. At the same time, the indirect costs of research, the increasing workload burden of responding to governmental administrative requirements, and the associated difficulties in the funding of higher education have cut heavily into the absolute amounts available for actual research.

If these conditions describe a steady trend of events in the course of our national affairs, there is a substantial basis for the anxieties manifested in many parts of the scientific community about how long American science can sustain a position worthy of a great nation such as ours.

Mr. Chairman, for fifteen years we have professed a policy recognizing the importance of Federal support of science, but have not acted on it in an organized, well thought out manner. Today, we should (a) first recognize that our best efforts have not kept pace with a policy of continued strengthening of the nation's S&T base, and (b) seek, either to implement that policy, or face the alternative policy options with which we must grapple in a situation of static or declining Federal support of science. The implication of this latter alternative can place unforeseen stress and dislocation upon an endeavor in which some growth is vital to the exploration of new opportunities.

A basic dilemma that we face under a policy of reduced budgets for science and technology is a conflict between assuring support for the highest quality scientific endeavors and at the same time supporting broader national goals of strengthening academic capability for science at all levels throughout the nation. I will recall for you the instructions of former President Johnson in a 1965 statement to his cabinet on this subject. He said:

"At present, one-half of the Federal expenditures for research go to 20 major institutions, most of which were strong before the advent of Federal research funds. During the period of increasing Federal support since World War II, the number of institutions carrying out research and providing advanced education has grown impressively. Strong centers have developed in areas which were previously not well served. It is a particular purpose of this policy to accelerate this beneficial trend since the funds are still concentrated in too few institutions in too few areas of the country. We want to find excellence and build it up wherever it is found so that creative centers of excellence may grow in every part of the nation."

These remarks enunciated a policy of continuing growth in Federal research very shortly before annual support levels for science reached their peak level. Under that policy the Federal Government supported not only the best of the scientific enterprise but as well the relatively next best, all in order to achieve a wider geographic distribution. American science has, of course, always been performed by a wide array of institutions. Basic research is carried out in universities, industrial and governmental laboratories and by nonprofit organizations and has

been supported by private foundations, by industry and by government. Underlying this policy is the belief that improvement in the quality of American science is closely tied to widespread use of public funds to support the scientific enterprise. Such a practice was possible with a budget support policy of general growth in Federal expenditures.

I submit, Mr. Chairman, that under today's circumstances of financial austerity and the growing national consensus that this may prevail for some years, it may be necessary to reexamine this pluralistic cornerstone of Federal science policy. Under continuing tight budgetary constraints, if American science is to continue in a productive and healthy pattern we consider essential for maintaining our comparative technological strength, a reevaluation may be required of the compromise between egalitarianism and elitism that has characterized past Federal funding policy for science. Such a compromise may no longer be realistic. However, the consequences of such a reevaluation can, as you may well imagine, create great stress within the American scientific enterprise.

My hope is, of course, that we are experiencing a temporary constraint upon public expenditures for science during a finite period of fiscal austerity. I hope that these constraints are imposed within a strategy of minimizing damage. However, I am not sanguine about such a temporary state of affairs after fifteen years of no real growth in the support of research or R&D. Certainly, the trend is not easily reversible unless the President and the Congress jointly cooperate to rekindle the nation's enthusiasm and support of the opportunities that scientific and technological innovations offer for new discoveries, new industries, solving national problems and fostering our social and economic well-being.

There is no need for me to address to this Committee a detailed justification for why the health of science and the well-being of our society are closely linked. In your deliberations you are constantly made aware of the contributions that research and technological applications have made to economic and social progress and of the remarkable panorama of scientific frontiers in which U.S. scientists are effectively engaged in exploration. Much has been accomplished, but the major fields of science continue to offer many opportunities for fruitful investigation.

Some time ago, in 1978, I had occasion to ask a number of public officials to identify some outstanding research questions including those with prospective important relationships to contemporary problems and issues in society. That list, which is attached as an appendix, well illustrates the consequences that could flow from the continued vigorous support of basic research by many agencies of the government and by our nation's industries and businesses.

The frontiers in science remain exciting. Many of these frontiers have been aptly described in the first and second Five-Year Outlook reports submitted by the Academy for the Administration and the Congress.

I would like to cite from the summary observation of the just released publication of Outlook II, examples of the excitement that pervades many areas of science, not only because of the remarkable success of our scientific endeavors in extending the frontiers of knowledge but also in terms of scientific contributions to the spawning of new industrial enterprises.

"The chapter on Sun and Earth describes the remarkable ingenuity, careful planning, and clever instrumentation that has been used to gain further insight into the physics of the sun and the manner in which the sun's radiations govern the properties of the gaseous layers surrounding the earth, determining their chemical composition and the nature of both the magnetosphere and the ionosphere—with important implications for radio communication. Solar energy, a fraction of which is directly used for plant photosynthesis, is largely absorbed at the earth's surface, from where it ultimately stokes the engine which creates weather in the lower atmosphere. Nevertheless, the extent to which meterological phenomena are determined by variations in the emanations from the sun remains uncertain."

"The chapters on Chemical Synthesis of New Materials and The Science of Macromolecules suggest that chemists have the gifts of wizards, capable of creating in the laboratory any stable chemical structure that can be imagined. The chemical properties of such newly synthesized materials are fairly predictable, but predictions of their physical properties are still somewhat chancy. Surprise is still the order of the day. Nevertheless, a sufficient basis of understanding has been established to suggest that synthetic chemistry will have an ever more productive future in tailoring molecules to order for the diverse purposes of man."

"A recurring theme in the chapters on basic science and on technology is the way in which the findings and the instrumentation developed in one area of science find application elsewhere."

"The first Five-Year Outlook portrayed the manner in which the development of solid state physics and the computer and communications industries have gone hand in hand, each stimulating and making the other possible. A not dissimilar circumstance has existed in the field related to synthetic polymers and their various applications in fibers and plastics."

"As indicated in the chapter, Directions in Nutrition Research, much of our current understanding of the functioning of vitamin D is traceable to decades of work on the stereochemistry of organic molecules, on the kinds of molecular rearrangements occasioned by the absorption of light, and on the diverse physical instrumentation now employed to help decode the structure of molecules. Or note the statement in the chapter, on Some Major Human Diseases, describing the kaleidoscopic interchange of ideas from one research area to another:

'Who could have predicted . . . that studies of the genetics of skin transplantation in mice would provide a principal clue to understanding rheumatoid arthritis in man; that a variant in the structure of the sulfonamides developed as antibacterial agents would make possible management of glaucoma of the eye, or that the combination of a viral infection and inappropriate formation of an antibody to some structure on the surface of one's own cells could give rise to a family of diverse disease?' "

"Such interweavings occur no less in the physical sciences and in the development of new technology. For example, the theory of plate tectonics provides a meaningful framework for resource exploration of commercially useful minerals and hydrocarbons. Yet this great new synthesis of geophysical understanding owes its creation to the curiosity of paleontologists about the shell structures of almost microscopic creatures found in cores drilled in the ocean floor, to painstaking surveys over the ocean floor to detect magnetic polarities in seabed rocks, to inquisitiveness about the geography of the Hawaiian Islands, to matching the flora and fauna in different continental borders, to a maze of work on the properties of chemical isotopes, and to the imaginative application of that work to the dating of ancient rocks and sediments."

"It is an inspiring fact that lasers, invented out of the insights afforded by quantum physics, have spawned new arts and technologies. They enable much more precise alignment of untold different physical arrangements, including tunnels built under riverbeds or drilled through mountains. Lasers are the basis for one approach to controlled fusion, are used to repair damaged retinas, and are at the heart of the instrumentation which makes possible the detection of fleeting intermediates in chemical syntheses. They also are used to drive photochemical synthetic processes in the laboratory and may soon find similar commercial application."

"In sum, the scientific enterprise will be seen as an extraordinarily dynamic system. The practitioners of each field successively attack in increasingly sophisticated fashion the layer of questions revealed by previous research. In the process, they find new surprises and unsuspected arrangements which generate more questions as well as more opportunities for applications to human welfare."

It is evident from this survey that American science is a system with tremendous potential for expanded scientific productivity. The concerns and doubts addressed in my remarks today are associated primarily with the ever-widening margins between increasing costs of doing science and levels of funding made available for this purpose.

The conference held at the Academy on October 26 and 27, and your hearings, which will undoubtedly extend over into the next session, can begin the needed dialogue for addressing the uncertainties faced by our scientific and technical enterprise and offers to us the opportunity for bringing a greater measure of stability to the budgetary process. It is in that vein that I offer for your consideration a series of recommendations to aid in restoring an order of program stability and predictability to our national scientific enterprise. It should go far toward reaffirming our commitment to the policy that continued sound investments in fundamental research by the Federal government are essential to our national goals. I present these recommendations to assist in establishing a planning framework for your committee's consideration and further debate as you return next year to the task at hand.

I propose a ten-year compact between government, industry and universities to establish new national goals for support of science as follows:

(a) The basic scientific research budget for the Federal government should increase each year at a rate that would cover inflation and permit 1 percent or 2 percent real growth. This annual rate of increase would respond to the need for stability and predictability in establishing long-term planning goals and also provide for the intrinsic inflation in the costs of doing science as new methods and techniques emerge. This might be considered the base program for all scientific fields.

(b) In addition, another 1 percent annual increase would be provided to support special targets of opportunity in particular fields, or for areas of research related to particular national needs, and to provide supplementary funding to assist in meeting costs for such items as essential instrumentation and plant facility needs. This category may be considered a means of assigning high priority to certain fields in which the pace of discovery is particularly high and significant.

(c) Within present levels of program support, the scientific community and the government will cooperate to find ways of transferring funds from the less productive areas or institutions now supported by Federal research funds to the more productive ones. Increased productivity could be accomplished by reducing indirect costs, reducing regulations and improving efficiency through longer-term awards. A reasonable target should have the result of increasing annual support by as much as 2 percent.

(d) A commitment from industry of 1 percent growth (i.e., about $50 million/year) on top of their present contribution to university research.

(e) To assure continuation of adequate support of graduate education needs in sci-

ence and technology, a cooperative partnership including government, industry and universities is proposed. Under such an arrangement:

(1) The NSF and the mission agencies should support a coordinated program of national research fellowships and traineeships, with NSF providing support for an overall program of merit, much along the lines of the current activity, with mission agencies complementing the NSF program by establishing fellowships that will encourage careers in areas where there are known to be special scientific and engineering manpower needs. Examples would include: toxicology (EPA), combustion science and engineering (Energy), and computer sciences and integrated circuits (DOD, NSF).

(2) Industry should be encouraged to establish additional named fellowships in fields where their needs are greatest. Selection of awardees who would be recipient of these fellowships could be managed in collaboration with a Federal agency, such as the National Science Foundation or by an independent group that would administer the fellowship program to ensure a national competition of merit.

Such a compact between government, industry and the universities encompassing the above initiatives could provide the commitment for assuring the stability, predictability and real growth needed for a strong U.S. effort in science and technology. It may seem to be an expensive program, but it need not be so, if some astute transfers are made from development to research in the overall Federal research and development budget.

It would be my recommendation, Mr. Chairman, that program responsibility for carrying out these new initiatives should be assigned as a task to the Director, the Office of Science and Technology Policy, especially with regard to the last two items, which would require close surveillance and exercise of a comprehensive overview.

I end my remarks by saying that the approach I have recommended recognizes that a strong scientific and technological enterprise is closely and intrinsically bound together with a healthy society and a strong economy. It also would reinforce our existing practice of relying upon support of individual research projects and a shared responsibility between the public and private sectors for the performance of fundamental research. The pluralistic nature of this institutional arrangement has given us a flexible system of research and development and has provided the incentives for individual excellence. I urge that we continue the basic system which has served us well over the past several decades, but also introduce modifications and improvements that the times require.

Conference on the Research and Development Budget for 1982 and Future Years

SUMMARY

In brief, the purposes of the meeting, held October 26 and 27, 1981, at the National Academy of Sciences in Washington, D.C., were to:

Obtain factual information on federal budgetary plans for FY 1982 and beyond, from government officials directly concerned with science policy and with civilian research and development budgets;

Develop an informed dialogue among conference participants and with agency officials about the impacts of the prospective reductions;

Propose budgetary alternatives, for FY 1982 and for future years; and,

Consider initiating reviews of the institutional structures and procedures for supporting research and development in the national laboratories and in the universities.

During his welcoming remarks to the conferees, Dr. Frank Press, president of the National Academy of Sciences, stressed that he had convened the meeting because he believed all could benefit from an informed dialogue, and, secondly, that he did not view the conference as the basis for confrontation with officials representing the departments and agencies. Dr. Press also stressed that he was acting as a convenor of a number of key officials in government with leaders in research and development, and that it was not a meeting of the Academy.

On October 26, the conferees met with representatives from six governmental departures and agencies. A number of conference participants served as panelists for discussion. Comments from the floor followed each panel presentation. On October 27 the conferees met in executive session, at which time they adopted a consensus statement. (The consensus statement and the list of participants are attached.)

This summary first discusses the current and prospective budget plans, as presented by the governmental representatives and as shown in the analysis by Dr. Willis Shapley, consultant to the American Association for the Advancement of Science. Secondly, it describes impacts—immediate and beyond—of the prospective budgetary reductions. Finally, it reports on possible involvements by the scientific and technical community in governmental decision making.

CURRENT AND PROSPECTIVE BUDGET PLANS

Overview of the current budget and its status

The FY 1982 budget presented by the Administration in March 1981 reduced the totals proposed for research and development by the previous Administration, but it generally maintained the principles of federal responsibility for longer-term research and those applied research and development activities that support recognized federal missions such as national security. The exception in the March budget to these principles was the severe reduction in support for basic research in the social sciences. However, in September, the Administration proposed a further reduction in the FY 1982 budget—the so-called "12 percent across the board cut." That proposal would reduce the $42.2 billion of R&D appropriations request of the March budget by $3.1 billion—$1.0 billion from the Department of Defense (DOD) and $2.1 billion from all other programs. Of the $42.2 billion, about $5.5 billion is ascribed to basic research and that amount would be cut by about $600 million.

In constant 1980 dollars and applying the Administration's annual inflation rate of 9 percent, the percentage difference between the 1980 budget and the proposed September budget is: DOD, +26 percent; NASA, −7 percent; DOE, −29 percent; NSF, −17 percent; HHS, −19 percent (NIH, −18 percent). For basic research, the overall reduction is 11 percent.

The present actions of the Congress on the FY 1982 appropriations requests call for reductions from the March budgets of lesser magnitude, being a reduction of about $1.0 billion from total R&D funding and taken from the DOD budget. While some other reductions have been made by the appropropriations committees, there have also been increases totalling about $200 million. The Congressional actions are not complete; the government is currently operating on a continuing resolution empowering agencies to expend at levels and rates consistent with 1981 appropriations levels. The Administration, however, has further instructed agencies to expend at rates consistent with the proposed September revisions to the 1982 budget. The Administration proposes to set these levels formally through the deferral process, and deferral requests were being sent to the Congress by the Administration in late October. The resolution of the 1982 appropriation process will require much further discussion between the two governmental branches. Several participants at the October 26–27 Conference, including Administration officials indicated that the outcome will be negotiated, and that the conferees should not assume that the 12 percent reduction proposals will be enacted as such.

Views of administration officials

The Administration, through the Executive office of the President, was represented by Dr. George A. Keyworth, director of the Office of Science and Technology Policy, and Mr. Frederick Khedouri, the Associate Director for Natural Resources, Energy, and Science in the Office of Management and Budget. Dr. Keyworth cautioned against assuming the worst possible scenario concerning the budget. He indicated that he felt that, overall, science was healthy; that the Administration would still adhere to a philosophy of supporting research; but that it would take a more critical attitude toward demonstration programs, especially where the civilian sector might be expected to do the job. He felt greater attention needed to be placed on identification of research areas of maximum promise, with the assumption that these would be supported. Maintaining the strength of top research universities, supporting high quality research, and responding to instrumentation needs were all urged by Dr. Keyworth.

Mr. Khedouri acknowledged that the budget outcome for 1982 is unclear; there will be negotiation and the gap between the Administration and Congress will narrow. The Administration's aim is to establish targets and to stick to goals; there will be active, not passive, response by the Administration to revisions of targets, by the Congress or by revised economic forecasts. This will require two to three years of hard budget decisions. He indicated that the usual budget process might have to be abridged over these years, but that the framework for research would be protected. He advanced the notion that from his perspective the issue was about a change in rate of growth of the budget rather than absolute reductions. Mr. Khedouri asserted that, overall, there was some real growth in research; and that basic science was faring well compared to demonstration and social programs. One should not assume, however, that there can be, or should be, more and more science support from the government. The scientific community could help in reallocation.

Research agencies

The research and development leaders from NSF, NASA, and the Departments of Energy and Health and Human Services (NIH) made a number of points concerning the budget proposals, including that they are using different tactics to cope with the proposed reductions.

National Science Foundation

The NSF, for example, is attempting to shield basic research in the mathematical, physical, and engineering sciences to a greater extent than some other areas because of the underfunding over a decade in these disciplines. Dr. John Slaughter, Director of the NSF, said that the National Science Board (NSB) and key NSF executives recognize NSF's critical role in research and that in this period of tight funding the catalytic effect of NSF funding—in prompting funding by other agencies, industry, and, other private sources—needs exploration and emphasis. The NSF will support research in the social sciences. The statement of the NSB on the social sciences was stressed.

Further, the NSF has continued to be concerned about instrumentation and has led an interagency group considering ways to in-

crease instrumentation funding. NSF is avoiding applying "simplistic" formulas, such as ratios of the existing grants renewed to new ones funded.

However thoughtful these tactics, there will, realistically, be significant effects' on money actually available and the nature of what is funded. For example, in NSF's case, some 60 percent of its grant money is committed to projects having another year or more to run.

National Aeronautics and Space Administration

NASA is terminating, or grossly reducing, specific programs, rather than applying across-the-board cuts. Which program to cut is a derivative of several variables, including the long-term gain for science generally as, for example, the broad gain in astronomy promised by the orbiting later this decade of the Space Telescope. Hans Mark, Deputy Administrator of NASA, made several comments about the budget situation. It is only partly true that Shuttle costs are reducing funding for science. There are severe problems of inflation, exacerbated by the lack of technical craftsmen and skilled workers, affecting not only the Shuttle but all aerospace procurement, e.g., Atlas Centaur launch vehicles. NASA recognizes that procurement and development costs associated with the Shuttle obscure other elements of the budget and has sought and received from OMB an agreement that the Shuttle be budgeted separately from the rest of the agency's programs.

NASA has told OMB that it cannot operate a planetary program with only one project each decade, and that this activity should be supported properly or not at all. Other research missions, e.g., aeronautics research, are being viewed in a similar fashion. Mark said that he and Administrator Beggs want the advice of the scientific community. With regard to cooperative missions, such as the Solar Polar Mission, it was difficult to generate diplomatic support, since in the broader context many agreements are honored neither by the United States nor by the Europeans Mark shared the frustration of losing support for projects with interagency funding, such as the National Oceanic Satellite System, and the difficulty of turning the high public interest in space into political and budgetary strength for the program.

The Department of Energy

The budgetary situation in the DOE is complicated by the announced plan of the Administration to abolish the department. There are no decisions and Dr. Alvin Trivelpiece, Director of the Office of Energy Research, reported no emerging preferred alternatives. At present, the agency plan is to effect a percentage reduction across all elements of the department, including the large commercial-scale demonstrations, the basic energy sciences, and the high-energy physics programs.

The Energy Research Advisory Board has begun to look at the future roles of the national laboratories. DOE recognizes that universities use some facilities of the national laboratories, such as computers. The twin uncertainties of DOE funding in the basic sciences and the future of the Department are severely hampering the ability of laboratory directors and individual scientists to plan research programs.

Department of Health and Human Services

Dr. Edward Brandt, Assistant Secretary for Health, in summarizing the situation at NIH, said that he recognizes that the proposed budget reduction will severely affect the policy of supporting an adequate number of new research grants each year and training clinicians for research careers; it will certainly affect NIH's special responsibility in biomedical research. Moreover, Dr. Brandt acknowledged that the current year cut was severe because of the commitments to continuing grants, and that level or reduced funding would affect basic biomedical research. Over several years, the impact of reduced budgets could be severe and the current goal of 5000 new awards each year could not be met. He offered no solutions. The Department is not planning for drastic responses to the proposed budget reductions, e.g., elimination of an NIH institute, because of the low likelihood that such a step would be sustained.

Department of Defense

From a cross-agency perspective, there is little likelihood that reductions in basic research funding will be offset, wholly or in part, by increases in DOD funding for basic research. The reasons include the uniqueness of the DOD mision and, more heavily, the several years of constrained spending that DOD now wishes to recoup. DOD increases will be scrutinized by Congress; further, sustaining basic research under the combined pressure, of anticipated reductions in the rate of growth of the DOD budget and new or intensified development programs will be difficult.

Other agencies

It was noted that the effects of the costs extend not only to the immediate plans of the larger, more visible R&D agencies, but may be—in fact, are—more severe for the smaller agencies; for example, a proposed 50 percent reduction in EPA's research budget; a 15 percent cut in NCAA's budget, and so forth. A danger is that in the effort to restore funding for the more prominent research agencies that those severe cuts in the smaller, less visible agencies may be sustained.

It was also noted that some research is the result of "piggybacking" and may be lost through what seem, on first order, to be non-research cuts. This piggybacking is particularly illustrated in the social sciences: demographers in census, economists in assembling national economic accounts, anthropologists in international exchange programs, and so forth depend on other programs as the framework for their research efforts. As these activities are reduced in scope, the effect on social science research will be severe.

IMPACTS: IMMEDIATE AND BEYOND

The effects of federal budget reductions—namely the proposed September levels—can be examined in several ways: by the effects on the basic research enterprises, per se; by the effects on national goals, including national security, improved productivity, availability of adequate number of scientists and engineers, and by the ability of the industrial R&D endeavor to offset reductions in federal R&D work and support. These and many other effects were addressed by many of the conferees. A number of the major points made by conferees are summarized below.

Effects on the basic research enterprise

American science, especially its basic research component, is now appraised as generally healthy. However, slippage has been taking place in recent years. That is revealed in several ways, such as the erosion, vis-a-vis other research nations, of the historic American leadership in high energy physics and in astronomy. Virtually no part of a decadal strategy for space science research prepared in 1975 has been done. X-ray astronomy may in future years be dominated by observational work of European and Japanese Astronomers. Other nations will be sending missions to Halley's Comet; the U.S. will not. In high-energy physics, Europeans are leading in reporting experimental results, and, with the money invested in new European facilities, that dominance will continue and probably widen. In any case, the implications of reductions in basic research support need to be faced early. Sustained reductions over several years will lead to a major change in the U.S. position vis-a-vis European nations and Japan.

Some participants in the conference did not share the view that the research enterprise was generally healthy and stressed that it is more fragile than planners in Washington realize. They further cited the quality of life in the laboratory here and the contrast in laboratory working conditions and resources in the United States vis-a-vis Europe. The behavior of the funding agencies is another indicator of problems for the research enterprise. Sustained underfunding of research has many ramifications. One outcome, given prospects for further reductions in successive fiscal years, is conservatism in funding extended projects: established operations may do better; new people will be denied programs and lost. It is a misconception to say that investigators whose funding is skipped for a few years can then come back.

Some agencies by virtue of their missions are more vulnerable to current and future reductions. For example, NSF, with most of its money allocated for grants, has less flexibility in responding to cuts than does DOE, which conducts a more heterogeneous research program, one that includes not only basic science but also development and demonstration programs. While there is greater flexibility in some agencies, there are also great pressures to continue investments in large scale demonstration plants. These pressures will inevitably affect those agencies supporting longer-term research.

Some at the conference stressed the multiplier effects of budget cuts, stating that the system was in many ways taut, that small changes, up or down, in funding had pronounced impacts on all aspects of research, funding for procurement, manpower and training, and so on.

Mismatches: Budgeting and the Research System

Damage is done by the "mismatches" between the dynamics of government actions and the time constants of the research system. Government budgets change drastically, in amounts and within months. The basic research system generally operates in considerably longer time frames, typically several years; that is, the time needed to conduct an experimental program, to construct large facilities, to develop research teams that can work harmoniously and effectively, for a graduate student to complete a thesis. When mismatches occur between the timing of budget reductions or redistributions and those time constants of research, the effects can be severe—in sunk costs lost, in incompleted theses, in aborted careers in science and engineering. The majority of research performers have no reserves; universities have less funds to support transitions between grants. The results are severe dislocations when precipitate budget changes occur. Leverage effects are a consequence of these mismatches; that is, relatively small cuts having greatly magnified effects, in research productivity and in time lost.

Instrumentation

Instrumentation of research universities is now in quite bad shape, with apparently no immediate prospects for relief. Students are using obsolescent equipment. The first of several efforts over the coming years intended to reduce this problem, a $75 million request by the NSF, was deleted in the March budget. An interagency effort to share the burden of instrumentation funding has produced an agreement among department and agencies that the instrumentation problem is serious; but, because of funding pressure, the outcome of any proposed budgetary initiative is in doubt.

Manpower

The decline in the number of Ph. D.'s in physics is symptomatic of difficulties in the research system, given that, at the graduate level, training and education commingle with basic research. Despite a rough doubling of the GNP (1972 dollars) since 1963 and a substantial increase in the working age population, the number of Ph. D. graduates in physics will decline in the near future to pre-sputnik levels. That decline will directly affect the country's national security; that is, in having sufficient scientific and technical talent to develop new defense technologies.

NIH training grants will be reduced substantially. Moreover, the government has no way to cope with the already evident decline in the number of physicians training for a basic or clinical research career. (Note: After the conference, the NSF fellowship support programs were reinstated by OMB in the fiscal year 1982 request.)

National Laboratories

The budget reductions are already severely affecting the national laboratories. Given future plans, some laboratories may be virtually dismantled or greatly reduced. Unique capabilities may be irreversibly damaged; thus, the dismantling of programs in planetary science may impoverish the Jet Propulsion Laboratory, even though JPL has taught the world a lesson in quality control. The role of the national laboratories needs examination, including the nature and quality of their basic research that is done and their relations with the research universities.

Impacts on national concerns: Productivity and national security

Research—basic work in the natural, social, and engineering sciences—is the country's major investment in the future use of its resources, most directly in providing fertile ground new technologies that amplify the value of increasingly restricted resources. Without adequate investments in intellectual capital, there may be continuing erosion in the country's ability to compete internationally in high technology. The real growth of U.S. funding of basic research over a ten-year-period has been less than that of Japan, West Germany, and France. Data on expenditures for research and development in the industrial countries, such as those contained in Science Indicators, were cited, and supported with first-hand observations, by both industry and academic participants. Several conferees stressed that future international competitiveness required more, not less investment in research by the government and by industry. A continued flow of trained manpower for industry and universities requires a strong governmentally supported research effort.

There should be collaboration between government, the universities, and industry; however, attitudinal changes were necessary to a more favorable spirit of collaboration. The tax measures recently enacted will help, but, when considering both government and industry investment, it should be kept in mind that the proportion of the national resources being directed to R&D is declining in the United States in comparison to some other industrial nations. The relationships of the budget actions to defense and national security were of concern to the conferees. The effect of sustained tight budgets in basic research on manpower availability and the general knowledge base on the nation will be pronounced.

Industry research

Industry couples directly to the basic research system in its concern with the health of graduate education; that is, in assuring the continuing production of people trained in research and fully conversant with the frontiers of fundamental science.

While a number of specific agreements between particular universities and industries exist or are being arranged, the amount of support by industry for academic research particularly and university education generally is likely to be limited. Thus, a tripling over the next decade of industrial support currently directed to university based research would about equal the proposed federal cut in R&D funding for one year. There is no indication that industry can or will have the capacity to substitute for the government's historical role in the support of basic research. It is a misconception to believe that the scale of changes being proposed in the federal funding will be offset by industry activity on campuses or in its own laboratories. Further, it should be kept in mind that industry will likely focus its increased support of research in universities on a few fields or disciplines, such as electronics and geology.

DECISIONS: INVOLVING THE S&T COMMUNITY

As a first principle, the conferees agreed that several years of reductions in basic research funding will be damaging. However, given that overall budgetary reductions will occur in FY 1982, the issue is how to manage budget redistributions so as to protect the basic research system.

A number of the attendees at the conference asserted that a process or dialogue needed to be restored to the budget process. The root issue is participation by the scientific community itself in the decisions that are made; a measure of due process is needed. Barring that, we will get second-rate science, second-rate technology, and become a second-rate world power, said one participant. The problem to be faced, it was noted, is that the research system is now entering a negative growth cycle. How can we see to productivity in research in a period of chronic negative growth?

There is again a mismatch problem: between the day-to-day, often crisis environment of governmental decision making and the ability of the scientific community to mobilize and to prepare consentient advice. Whatever the difficulties, advice and judgments—on the quality of programs, relative importance of different fields and subsets within fields, and so forth—are critical. NASA, for example, needs advice—political and scientific—as to what sort of institution it should be. Other agencies, such as DOE, don't have good standards as to what to support. For example, how many fellowships should there be and in which fields?

For its part, the research community needs sufficient notice of departures from previous budgetary trends, to allow corrections in the number of graduate students accepted, faculty positions offered, equipment purchased, major experiments, and so on. Does the government, for example, believe that "crisis budgeting," similar to the revised budget issued in September, will recur for several years?

In all, what is needed is an interactive, continuing exchange of information between the government's fiscal and science policy officers and the scientific and engineering community. No adequate mechanism to accomplish that now exists. As a corollary, there is now no apparent way to manage "an orderly retreat" from the present R&D effort, in lieu of "brute force" methods. As an example, can funds be set aside to provide for termination of grants, which, while small in amount, would lessen the dislocations of a transition, when it occurs, from full funding to no funding?

As to tactics, one way to conserve funds for basic research, to protect the enterprise, may be to combine the government's retreat from development and demonstration programs—those efforts that private sector should do, excepting those that are so costly and long term, such as fusion, that industry cannot support them—with increased funding for basic research.

STATEMENT

The conference on research and development was a meeting on October 26–27, 1981, of about 100 university officials, laboratory directors, industrial research executives, scientists and engineers, and individuals experienced in public policy, who were drawn together at the invitation of Dr. Frank Press, President, National Academy of Sciences. The conferees met to discuss the impact of the prospective budget reductions proposed by the Administration upon the Nation's scientific research capabilities. Officials of the Administration discussed their proposals with the group. Observers from the staff of the Congress and the press were present. The conferees reached consensus on the following:

The problems of the economy—inflation, high interest rates, industrial stagnation—have eroded research and development just as they have impacted other sectors of our society. The participants in the conference understand that the nation must pass through a period of restraint in public expenditures. Yet the proposed reductions in the President's September or Fall Budget will do irreversible damage unless longer term research, in contrast to development and demonstration, is protected.

It is the view of the conference that continued sound investments in research and development by the Federal Government are essential to our national goals, including public welfare, a strong national security, and a renewal of growth in productivity. Much of our economic growth over the last three decades is directly attributable to research and development that has been supported by both government and industry and even earlier investments in research. Because of the important relationship between research, technology and increased productivity, the expressed goals of this Administration for a strong economy and improved national security demand more, rather than less investment in basic research. Furthermore, the intrinsic relation between the performance of basic research and the training of scientists and engineers makes continuing strong support necessary to prevent future critical personnel shortages.

Within the current support by the government of research and development, nearly $40 billion, less than 15 percent represents basic scientific and engineering research. Support of scientific research is a public expenditure from which all sectors of society benefit. Basic science is a long-term investment, and depends on government support. There are no significant sources of support for such a collective benefit which can replace the Federal Government.

Instability and abrupt changes in funding have severe effects: research teams are broken up; investments in experiments involving large facilities such as accelerators, spacecraft, oceanographic vessels and other instruments are poorly used. The continued flow of new researchers into our industrial and university laboratories is best maintained by their stable and continued participation in university based graduate research.

Because of low investments in research over a decade and high inflation, many fields of science are now especially sensitive to decreases in funding. The conference urges that the Government plan carefully for the support of the natural sciences, engineering sciences and social sciences, and protect such plans from abrupt change.

In the March budget revisions the Administration recognized the general, long accepted principles of the Federal role in support of research and development. There is special concern for defense and renewed growth in productivity.

The proposed reductions in the President's Fall Budget Program would establish an overall percentage cut in all the various budgetary accounts. The conference strongly

recommends instead that the Administration and Congress should:

View research and development across the entire government, making budgetary adjustments or reductions that maintain the basic sciences by reallocating funds between research and development;

Instruct Departments and Agencies to maintain the strength of science in agency budget allocations;

Direct a larger part of the increased budget for national security to the funding of basic research that is essential to the maintenance of that security;

Recognize that the scientific base of the nation has suffered a decade of little or no growth and must be strengthened in order to maintain competence in the nation's laboratories;

Recognize that education is the sciences is inextricably linked to research and continue graduate student support through research grants, fellowships, and traineeships;

Recognize the need to revitalize the instrumentation and facility base on which future scientific and technological advance depends.

These principles should be applied to the budget for 1982 and beyond.

A much strengthened mechanism is needed through which the scientific and engineering communities advise on resource allocations and analyze the impacts and benefits of various shorter term and longer term budget strategies for government investment in research and development.

It is timely to initiate an analysis and evaluation of the institutional system for the support of research and development including the distribution of resources, the continued need for some facilities, grant mechanisms, etc. There should be input into this review from the scientific and engineering communities in universities, the national laboratories and industry. Further, review must look across Departments and Agencies to achieve the most productive allocation of resources.

The strength of the nation depends on the continued supply of scientists and engineers. A large number of the best young people must be attracted into these disciplines for careers in industry, the government, and universities. Policies at all levels of government to insure the continued flow of scientists and engineers must be developed. The education of the nation's youth in science and engineering requires priority attention not only by the Federal Government, but also by citizens and officials at the state and local levels and also by the private sector.

The growing relation between universities and industry are laudible and the nation can only benefit from these partnerships. Yet such a relation cannot become a substitute for the strong government-university partnership in support of basic research which now exists. The industrial members of the conference strongly support the continued investment in basic research by the government.

Mr. HATFIELD. Mr. President, I thank the Senator from Ohio for his very generous remarks, not only about my own testimony, but more especially, I wish to commend him for his address here today on this vital and profound subject that we must confront as a nation.

Mr. President, I do not want the time frame in which we are operating this morning to indicate that there is other than the greatest importance attached to the Senator's remarks. I wish to suggest that, shortly after the new session, the Senator, a group of us, perhaps, get a special order of business to set aside a morning or a full day, for that matter, to come to the floor and, from every angle, from every perspective of the Senate, focus on this subject in an extended discussion, or colloquy. I think it would provide us with the opportunity not only to bring this to the attention of our colleagues, but to the Nation as a whole.

I think the target time we have been aiming for, to vote finally on this resolution this morning at 11:30, should not in any way lessen a recognition of the vital part that the Senator has played in this discussion this morning. I want him to understand that and I shall be happy to join him in getting a specified period of time set aside so we may all engage in this very important subject.

Mr. GLENN. Mr. President, if the Senator will yield for a moment, I appreciate his very kind remarks. I already have my staff working on this, as a matter of fact. I want to put together a much more complete view of the history of research in this country, the role it plays now, perhaps break it down into specific areas. Then, hopefully, we can put together some thoughts for the future on this that can, maybe, guide us in our budget considerations in the coming year. I think this is extremely important for the long-term benefit of this country. In fact, I think it is crucial.

What I am planning is a series of talks over a week or 2 weeks here, in the early morning period, when we give our more lengthy speeches. Or perhaps we could set aside a half a day for the kind of colloquy on the floor that focuses on these points, as the Senator suggests.

I think this is reaching very critical importance where we must not allow our national labs or national research effort, which has done so much to make this country what it is today, to be hacked apart. I am sure the Senator appreciates that.

Mr. HATFIELD. Mr. President, I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, hundreds of millions of basic research dollars are spent by the Department of Energy for high energy physics—discovering new atomic particles through the use of terribly expensive reactors at college campuses and Government labs. Why not shift a portion of those dollars into directed R. & D., instead of opposing a 4-percent cut across the board?

Japan and Germany have made great strides in productivity over the last few years, living off the results of U.S. basic research in materials, science, computer research, et cetera. Our Nobel prize record is far superior to theirs and our total basic research budget over the last 10 years has been much higher than theirs, yet their productivity is much higher. Why? Because they have a much better record of utilizing results of basic research. That is why business tax breaks, which stimulate private applied research, not more Federal grants, may be the best answer.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator.

I want to indicate, Mr. President, as the Senator from Oregon has, my interest in this subject that Senator GLENN has raised this morning. I think it may be worthwhile to note in passing that, indeed, this country did prosper based upon one of its greatest natural resources. That is the minds and the energies of the American people. We have a very vigorous and we have had a very dynamic and growing society, based upon the intellect of our people as well as the other resources, which we sometimes recognize more prominently as natural resources.

I hope, however, that we do have and we shall have the chance to discuss that further at a later time, we do have a recognition that, earlier, that research took place outside of Government primarily. For a variety of reasons, we have excluded, more and more, that opportunity and reason for research in the private sector. We need to be looking at how we revitalize that, at the same time that we maintain the vitality in the publicly funded research efforts.

I think it is also, perhaps, important to note that much of research, if it is judged by ordinary methods of looking at success or failure, is failure. Because it is so judged, it is more difficult to finance in the public sector because it is easy to criticize.

Mr. GLENN. If the Senator will yield for just a comment?

Mr. McCLURE. Yes.

Mr. GLENN. Mr. President, the thing that I stressed in starting out, which I stress repeatedly in talking about this, is the following. I do not want to see Government in competition with private industry. The Government's role in this, to me, is basic research. Then, private industry steps in once it is brought to the point where there are clear indications of commercial usefulness—but the Government's role is to bring it to that point.

I believe the analysis of the work of American Nobel laureates would show that the basic research, the basic breakthrough made by Nobel laureates have been made, by and large, through the universities and through Government-supported basic research. I repeat, that is the kind of thing I think we should be stressing, that Government not try to be competitive with what private industry is already doing.

Mr. McCLURE. Without being a flack for private industry, I think Du Pont made not only their reputation but their fortune based upon that kind of basic research financed in the private sector.

Mr. GLENN. I wish all industries had the same attitude toward research that Du Pont has.

Mr. McCLURE. I think some of Government policy has reflected on that reduction in the private sector. We need to be looking at what we have done in terms of taxing and regulatory policies in this country, as well, as it affects that end of it. I do not say that at all to detract from the necessity of maintaining a strong, federally supported and State-supported basic research program in this country. I fully support that. I am sure we shall have many, many occasions in the next year as we fight the budgetary battles, to focus upon the degree to which we do

or do not support the basic research efforts through the Federal budget.

I shall join with the Senator from Ohio and the Senator from Oregon and others who are involved in it and interested in it in the effort to maintain a strong and appropriately supported and directed Federal research program.

Mr. GLENN. Mr. President, I thank the distinguished Senator for his remarks.

Mr. HATFIELD. Mr. President, I believe we have one more brief colloquy with the Senator from Georgia, and then we will be ready for final passage.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. I thank the Senator from Oregon.

THE CENTERS FOR DISEASE CONTROL

Mr. NUNN. Mr. President, the Centers for Disease Control are headquartered in my home State of Georgia. From its beginning, the primary goal of the CDC has been to solve any disease problem presented and to assist the State health departments in identifying and treating threats to the health and safety of the public. Through the years, the scope of services available to the States has expanded to meet contemporary health needs, but the primary functions of the CDC remain to protect the public from the spread of diseases.

The CDC has assisted the States in establishing innovative health promotion and risk reduction programs designed to help individuals make personal choices that can improve their health and well-being or prevent specific consequences.

Response is the key to the CDC's national and international reputation. No other facility in the world has the immediate response capability and expertise available to conduct disease surveillance, research and problem identification, and eradication activities. Its teams of experts have responded to such recent health threats as: Legionnaire's disease, toxic-shock syndrome, environmental health hazards resulting from the eruption of Mount St. Helens, Love Canal, and outbreaks of infectious diseases all over the world.

By subjecting the Centers for Disease Control to a 4 percent across-the-board cut, I believe that there is the possibility that certain vital functions of this agency may not be able to operate at a level sufficient to meet its goals. It is my understanding, however, that section 143 of House Joint Resolution 370 does include language which would provide the Department of Health and Human Services with a certain amount of flexibility with which to apply the 4-percent reduction within the various activities of the CDC account. Is that correct?

Mr. SCHMITT. Yes, that is correct. The language provides that although this account must be reduced by 4 percent, the actual reduction applied to specific programs or projects may vary, but not to exceed 6 percent, as long as the overall 4-percent reduction is achieved, of course. as stated in Chairman HATFIELD's colloquy with Senator CHILES, any change from the basic 4-percent cut would be considered a reprograming. and would require the approval of the appropriations committees.

Mr. NUNN. Am I correct, then, that a particular program could be reduced anywhere from zero to 6 percent, provided that the total account is reduced by the mandated 4 percent?

Mr. SCHMITT. Certainly, that is the intent of this provision in the continuing resolution. It does give the Department flexibility to reduce programs of lower priority while protecting those vital to the public health. I share the Senator's concern about the budget for the Centers for Disease Control, and agree that these activities are among the most important of the Federal Government in the health area. I feel confident that that belief is reflected in the priorities of the Senate bill, which is basically included in this continuing resolution.

We have also seen to it that language has been included in the statement of managers to accompany this bill, which reads as follows:

This resolution acknowledges serious concern for the funding of federal disease prevention programs. The Department of Health and Human Services should assess accurately its funding needs for these disease prevention efforts in order to do the best possible job of preventing and controlling morbidity and mortality associated with various various diseases, epidemics and other conditions which endanger the public health. The Department should use available financial resources, including discretionary funds, reprogrammings, and supplemental appropriation requests, to supplement its disease control programs.

Mr. NUNN. I thank the Senator from New Mexico.

I will continue to follow this program with a great deal of interest and concern, not only because it is in the State of Georgia, but also because I know that the dedicated people at the Centers for Disease Control have an important mission to play in the health of this Nation.

Mr. KENNEDY. Mr. President, on November 23, the President vetoed the continuing resolution passed by Congress on November 22, throwing the Government into chaos and causing hardship for many Americans. He claimed that the veto was necessary to avoid continuing budget busting policy of big spending and big deficits.

Now we are told that this new continuing resolution is acceptable to the President and that he will sign it. I think my colleagues and the American people deserve to know how this continuing resolution differs from the vetoed resolution. They deserve to know what is in the bill the President prefers.

It is a bill that the administration's own experts predict may well cost the taxpayers more than the vetoed resolution—through fraud, abuse, and waste as a result of $400 million additional cuts in the administration of key entitlement programs such as social security, unemployment insurance, and medicare.

Its spending cuts over the vetoed bill mean bitter medicine for those who will bear the burden, yet, those cuts are no cure at all for the administration's $100 billion deficits.

It is a bill that does nothing to combat our worsening recession.

It is a bill that does nothing to help 9 million unemployed Americans find work.

It is a bill that does nothing to stem the record number of bankruptcies of our Nation's small businesses.

It is a bill that does nothing to ease the financial hardships being inflicted on States, cities, and towns.

Worst of all, it is a bill that will cause deeper human suffering, as millions more are slashed from health services for mothers and children from health prevention programs, from job training for youth, from programs for senior citizens, from education, from housing. This list goes on and on.

This is the meaning of the bill that the President wants. But it is not the bill the American people want. They want an economic program that means jobs for American workers and homes for American families. They want a Federal budget that does not ignore the needs of the young, the disadvantaged, and the elderly. They want a policy that does not cut spending for programs that help the many in order to make room for exorbitant tax cuts for the privileged few. Above all, they want a policy that fights inflation without causing recession.

This resolution marks the end of a difficult year for the American people. The President's program is now in place for all America to judge. I have been proud to stand up from the beginning to oppose a program that is wreaking havoc with the well-being of our people. And I shall continue to speak out in the weeks and months ahead against a policy that turns its back on the cause of a just and prosperous society.

I urge my colleagues to defeat this continuing resolution.

SECTION OF HOUSE JOINT RESOLUTION 370 REGARDING IRS REVENUE RULING 81–216

Mr. D'AMATO. Mr. President, I rise to speak in support of that section of this continuing resolution which is identical to the amendments originally offered by myself and my distinguished colleagues, Senator WEICKER, chairman of the Senate Small Business Committee, Senator STEVENS, the assistant majority leader, and Senator DOLE, chairman of the Senate Finance Committee.

This amendment is one with which we are all familiar. It was offered to House Joint Resolution 357, the continuing resolution recently vetoed by President Reagan. Vetoed, I might add, for reasons having nothing to do with this amendment. When offered to House Joint Resolution 357, this amendment was twice adopted unanimously by this Chamber. It was adopted by voice vote in the House. This amendment has clearly received congressional support in the past and is clearly deserving of congressional approval at this time.

This amendment prohibits the Internal Revenue Service from enforcing Revenue Ruling 81–216 arbitrarily issued on August 24, 1981. Revenue Ruling 81–216 prohibits the pooling of multiple lots of small issue industrial development bonds (IDB's) into a single issue. This ruling, which was imposed on August 24 with no prior notice, and which was made effective immediately, has done more to impede economic development than any other bureaucratic action taken during the past year. As such, Revenue Ruling 81–216 must be over-

turned. The first step in that process, of course, is to prohibit its enforcement, and that is what this amendment is all about. With the adoption of this amendment the IRS will not be allowed to expend any funds by enforcing 81–216 on small businesses.

During the past decade, the tax-exempt small issue IDB program has been a vital tool for local economic development. Without IDB financing, thousands of small businesses would be unable to secure the necessary capital for expansion and would be unable to secure the necessary capital for the generation of thousands of new jobs. With today's continued high interest rates, small entrepreneurs cannot expand, or even survive, without the financing made available through industrial development bonds.

According to the Congressional Budget Office, over $8 billion of IDB's were issued in 1980. All such IDB's were issued in accordance with section 103 (b)(6) of the Internal Revenue Code; 84 percent of this capital was used by small- and medium-sized businesses, in other words, business smaller than those on the Fortune 1,000 list; 48 States have now authorized an industrial development bond program.

Prior to August 24, approximately half of the industrial development bonds issued in this country were issued as part of an umbrella or pooled lot. These umbrella or pooled lots are precisely what has been prohibited by Revenue Ruling 81–215. This prohibition, however, has absolutely no basis at all. An umbrella bond is simply what it says it is. It is a composite of many individual small issue IDB's. It is a composite which is a perfectly legitimate mechanism under the law as enacted by Congress.

The composite IDB should be allowed. The composite IDB will be allowed. Today we will prohibit the enforcement of Revenue Ruling 81–216 and soon in the future we will enact substantive legislation to make it clear that composite issues are a vital part of the section 103 (b)(6) small issue industrial development bond program.

The choice is simple. If you support high interest rates for small businesses and farmers, you should vote against our amendment. If you believe that small firms and farms have special problems that demand time-honored solutions in order for them to gain access to affordable credit, then you should vote for our amendment. If our amendment were to fail, IRS Revenue Ruling 81-216 would remain in effect.

To be properly understood, our amendment and the entire small issue IDB program must be placed in context. Interest rates today have reached astronomical rates never envisioned when IDB legislation was first enacted by Congress in 1968. Small business bankruptcies are up over 50 percent over the last year.

Although over 80 percent of the net new jobs generated in this country during the period from 1969–76 were created by small business, that is, those with fewer than 100 employees, high interest rates now prevent this needed expansion by small business. Put very simply, if affordable capital is not made available, small businesses which are traditionally the bedrock of the American economy, will no longer thrive.

The only long-term solution to this problem, of course, is to reduce inflation and to lower interest rates. In the meantime, however, we cannot afford to forgo the economic activity and generation of jobs which result from the small issue IDB program. Thus, we cannot allow the abrupt and unwarranted termination of the IDB program by the IRS.

The small issue IDB program has been overwhelmingly successful. It has generated tens of billions of dollars of new economic activity and has been responsible for the creation of tens of thousands of new jobs. Thus, Revenue Ruling 81–216, an arbitrary fiat of the IRS which virtually killed the program, is completely unconscionable. With absolutely no opportunity for advance public comment, the IRS on August 24, ended what had been common practice under the law for more than 12 years.

Not only had the pooling of small issue IDB's been a common practice, but it had also been specifically sanctioned by several published IRS rulings. For example, only 3 years ago the IRS specifically stated in Revenue Ruling 78–159 that pooling was within both the intent and the letter of the law and would and should be allowed. Admittedly the IRS has the authority to reverse itself and reinterpret the law. However, to do so on such an important issue with no opportunity for public comment, and with no opportunity for congressional input is utterly and totally ridiculous.

Although the effects of Ruling 81–216 on the economy are enormous, the direct impact of this ruling on the Federal deficit is minimal. It is estimated that the revenue gain from this IRS action, should 81–216 be allowed to remain in effect, will be only $54.8 million in fiscal 1982. For the entire 5-year period, fiscal 1982–86, the estimated revenue gain is only $280.2 million. These figures, of course, take no account of the obvious feedback effects which result from the issuance of IDB's. When the higher corporate profits of small businesses and the greater number of employed persons are also considered, Ruling 81–216 may even be a net revenue loser.

Given that over 2 months of fiscal 1982 have already passed, passage of this amendment, at most, would cost the Federal Treasury $40 million. It must be remembered, however, that this $40 million revenue loss has already been authorized by Congress when small issue IDB's were first enacted. It must be remembered, however, that this $40 million does not consider feedback effects and it must be remembered, however, that this $40 million in revenue foregone will generate $5 billion in economic activity through the revised use of small issue industrial development bonds in pooled lots.

Revenue considerations, therefore, are not really a question in the passage of this amendment. The only considerations are the ability of small firms to expand in the face of today's high interest rates and the future of the small issue IDB program. We must today decide whether or not we will encourage small businesses. We must today decide whether or not we will promote economic development. We must today decide whether or not we will allow the IRS to arbitrarily overturn deliberate legitimate actions taken by the Congress.

It is important to realize that the authors of this amendment do not believe that Revenue Ruling 81–216 is a correct interpretation of the Internal Revenue Code. We believe that 81–216 is an incorrect interpretation of the law. Holders of small issue IDB's do believe that they are investing in a specific project in a specific location.

In fact, each bond in a pooled lot must carry the name of the project and the name of the local government that issued the bond. It must comply with existing State and local laws where the project is located. The face amount in a composite issue is not the key factor. Rather, the important part is that each bond is identifiable with a separate project in a separate local government jurisdiction. Thus, when the IRS claims anything to the contrary in Revenue Ruling 81–216, they are incorrect.

Second, the $1-million limit is not the only limit on small issue IDB's under existing law. For $10-million issues, there is a 6-year capital expenditure rule which limits the total investment in a single project. In 1968 dollars, the year the limits were first imposed by Congress, a project costing $10 million today would be valued at substantially less than the original $5-million limit.

Furthermore, the legislative history behind the 1968 restrictions indicated that Congress was principally concerned with the construction of very large facilities in one location by one company. There was no intent to prohibit a pooling of unrelated multiple lots.

Certainly one of the prime goals and intentions of Congress was to help provide low cost loans to small businesses and small farms. By pooling several loans into a single package, States have been able to reduce the cost of each loan and to make individual loans as small as $20,000 to very small companies.

Given these facts, and without a public comment period or a formal hearing prior to the issuance of 81–216, how could the IRS be so certain that its revised interpretation of the law was correct? How could the IRS so blindly ignore its own prior interpretations which have allowed pooling for more than 12 years? With this amendment we are making a clear statement about the correctness of the interpretation of the law. Put very simply, in issuing Revenue Ruling 81–216, the authors of this amendment believe that the IRS was wrong.

Some have questioned whether or not passage of this amendment will interfere with Treasury's duty to interpret the tax laws. This is simply not true. The principle of congressional oversight of executive branch actions is well established. Congress has frequently overturned administrative rulings and will continue to do so in the future. No one can seriously question both the authority and the duty of Congress to act in circumstances such as these.

Our use of the appropriations process for this amendment in this circumstance

is clearly because of the emergency situation. If we do not act now, small business and small farm loan programs in virtually every State will have been abruptly terminated without just cause. We cannot allow that to happen.

Our amendment is not unique. During Senate debate on the continuing resolution for fiscal 1981, at least four similar amendments were adopted. In addition, two similar amendments were withdrawn only after assurances were made by the Treasury Department that enforcement of the disputed provisions would be delayed for at least 6 months to give Congress the time necessary to act through the normal legislative process. A similar delay in enforcement is all we seek to accomplish with our amendment. For the next few months we will act through the normal legislative process to make certain that 81–216 is never forced upon us again.

This amendment has the unanimous support of the National Governors' Association. It has the support of mayors, small businessmen, farmers, and State and local economic development officials. It has the support of all those who realize the economic stimulus that results from the issuance of small issue IDB's.

The IDB issue is a federalism. IDB's allow local communities to make their own decisions over their future economic development. In an era of declining Federal dominance, this opportunity for local control should not be terminated.

IDB's have little effect on the borrowing cost of municipalities for general obligation bonds. County executives who testified at the October 5 hearing of the Urban and Rural Economic Development Subcommittee of the Senate Small Business Committee, which I chair, made this point quite clearly. Purchasers of IDB's are different than those who invest in municipal bonds. And the two forms of investment generally do not compete against each other in the same market.

The argument that IDB's dry up the available credit for taxable conventional loans is ludicrous when compared with the potentially devestating effect on the credit market of all savers certificates and the forecasted Federal deficit. Moreover, conventional credit seems more than readily available to large companies such as du Pont and Sears-Roebuck which have tied up billions of dollars in their takeover bid; it is the small businesses and farms helped by pooled small issue IDB's who now find financing unavailable and unaffordable. Thus, we must restore the pooled IDB program for their use.

Transaction costs for small issue IDB's are comparable with the 4- to 7-percent fees now charged by banks for conventional commercial loans. The pooling of small issue IDB's, however, considerably reduces the transaction costs. Thus, Revenue Ruling 81–216 has the effect of increasing transaction fees for small businesses when they use small issue IDB's.

Marketing cost efficiencies are major reasons why pooled IDB's have been used. For example, a typical $1 million, unpooled, small issue IDB will incur $68,525 in marketing costs. A pooled bond issue of $20 million with 20 recipients on the other hand, would incur fees totalling only $888,250. Expenses for bond counsel, underwriter, et cetera, are nowhere near 20 times as large in the pooled version as they are in the solo issue.

These economies of scale permitted prior to Revenue Ruling 81–216 reduced typical marketing costs from 6.9 percent in an unpooled IDB to only 4.4 percent on the average in pooled IDB's. This results in an extra $24,113 in usable capital for every $1 million borrower, under the pooled IDB program. If we do not allow pooled IDB's, we are saying "Give this extra $25,000 to the middlemen, to the bond counsels, to the underwriters, to those reaping the transaction fees, rather than give it to the small businessman who can use it to expand his plant, to update equipment, to survive in a hostile economy and to provide employment for thousands of Americans who need jobs."

Let me make it clear, however, that this amendment is only a first step. During the next several months the Senate Finance Committee and the House Ways and Means Committee will be examining the entire IDB program. They will seek to eliminate abuses, but they will also seek, I hope, to make it clear that small businesses should not be eliminated from this program. They will also seek to make it clear that any revenue ruling which impedes the ability of small business to use this program is unfounded and unwarranted and unwanted.

I have the assurances of my distinguished colleague, Senator DOLE, that the Finance Committee will move quickly in this regard and I laud his efforts and I am pleased to have his support for this amendment. We must prohibit the enforcement of 81–216. We must restore small businesses to the industrial development bond program.

It is important to realize, however, that this amendment is not a precedent for future legislation to affect stand-alone, as opposed to pooled, IDB's. This amendment restricts the use of IDB's in pooled form in small businesses. We in no way intend that this restriction should be seen as a precedent to the stand-alone program.

This amendment prohibits the enforcement of 81–216 for any firm with less than $25 million in capital expenditures exclusive of research and development expenses over the 3-year period ending September 30, 1982. In other words, the 800 or 900 largest firms in this country, in the world, will no longer be allowed to use the pooled IDB program. They will not, however, at local option be prohibited from using the stand-alone IDB program. Thus it is extremely important to realize that this capital expenditure limit is not a precedent for the stand-alone program. For the stand-alone program it would be far too restrictive. It would impede the ability of local officials to best determine their own economic futures.

This amendment also requires that the obligations of an issue which is part of a pooled lot be guaranteed or secured directly or indirectly in whole or in part by a government or agency of the government. This too should not be seen as a precedent for the stand-alone program. It is inserted here simply as a way to insure that in the interim, before the Finance Committee passes new legislation to revitalize the entire IDB program, that the proceeds of pooled lot IDB's be used only for those projects sanctioned by State or local governments. In my opinion, a partial, indirect guarantee is little different than an official sanction or authorization.

Furthermore it should be noted that the so-called Aggie bond programs, those programs whose proceeds go entirely to agricultural uses, are completely protected. To put the same restrictions on these programs as were placed on other small-issue pooled IDB's would have eliminated these programs since they were established a different way. Thus, these programs do not have the restriction of governmental guarantee. These programs are completely protected.

With other programs for small businesses being cut to the bone, including EDA, UDAG, SBA, and so forth, this tool of local economic development must be kept open to local and State decisionmaking. This is a point made so well in testimony before my subcommittee. This is the main reason for passage of this amendment.

One final point worthy of note, is the considerable debate that has arisen over whether or not bond counsels will issue favorable opinions for pooled lot IDB's on the basis of this amendment. The answer, as in most human endeavors, is that some will and some will not. I do not think that we should worry ourselves about the actions of bond counsels while considering this amendment. What we are doing here is sending a message. A message to the IRS that 81–216 was wrong. A message to the IRS that nothing like 81–216 should be promulgated in the future.

We are sending a message to the small businessmen and the small farmers of this Nation. We are sending a message to State and local economic development officials of this Nation. We are sending a message to the mayors and Governors that we will have an IDB program in the future and that we will allow pooled IDB's.

If some bond counsels will not issue opinions based upon an appropriations amendment, if some bond counsels require substantive legislation to issue favorable opinions, well let them wait. Eventually they will have substantive legislation. However, some bond counsels will interpret this amendment correctly. They will understand the congressional commitment to the pooled IDB program. Favorable opinions will be written. If not by all, then by some.

Mr. President, I urge that we accept this vital amendment as part of the continuing resolution.

Mr. MATTINGLY. Mr. President, while I intend to support the continuing resolution to continue funding for the Federal Government through March 31, 1982, I nevertheless feel obligated to rise

today to express my opposition to the provision in the resolution which calls for a pay increase for top-level Government employees.

Let me preface my further comments on this subject by saying from the outset that I am not an anti-top-level Government employee. Moreover, I recognize and appreciate the arguments advanced for lifting the pay cap for these individuals. However, I find it totally irresponsible and inequitable to eliminate the pay cap for these individuals at a time when we are asking other Americans, including food stamp recipients, individuals seeking financial assistance for higher education, elderly Americans and veterans, to cut back on their share of the Government pie.

We have made great strides this year in controlling the Federal Government's spending habits. We must continue this effort. Elimination of the pay cap for top-level Government employees at this time is contrary to our past efforts.

The best benefit we can bestow on these individuals and, for that matter, all Americans, is to control the spending habits of the Federal Government and thus reduce the inflation which robs us all.

Mr. President, again, I would like to emphasize that I am not against or hostile to top level Government employees; however, now is not the time to take such action. I believe we should get our economic house in order and then consider the issue of Federal employee compensation and benefits in a total, comprehensive package as opposed to the band-aid approach which is being advanced today.

Mr. LEVIN. Mr. President, I would like to take this opportunity to state my opposition to the continuing resolution. I will vote against this resolution because it represents another example of how the Reagan economic program has made equity stand on its head. These cuts, which are more severe than those that were hammered out during all-night negotiating sessions 3 weeks ago and that precipitated a Presidential veto, will increase the hardships on many Americans who have already been asked to bear too much of the burden of budget cuts this year.

The 4-percent across-the-board cut for the Departments of Agriculture, Housing and Urban Development, Interior, Labor, Health and Human Services, and Treasury fails to recognize the priorities among programs and comes on top of cuts which are already having a disproportionately adverse impact on States such as my State of Michigan.

Also the phantom 2-percent cut in the Department of Defense appropriation bill, which may be in effect for less than a week, shows once again that the administration apparently believes that the Defense Department is the only part of the Government which spends its money with surgical precision.

I am for budget cuts, and I am for a strong defense, and I am for reducing the deficit so that we can take pressure off of high interest rates, but I cannot accede to the administration virtually putting a gun to the head of the Congress in order to get its way under the threat of shutting down the Government.

Mr. President, that may make good theater and great headlines for the administration, but it is a poor way to make public policy. The Constitution gives the Congress the power over spending, and the President the right to veto. But now the President has resorted to the threat of shutting down the Government.

This, along with the way the reconciliation process has developed over this year, is another step in shipping the ultimate power of the purse down Pennsylvania Avenue to the White House. I cannot acquiesce to such a shift in power, and voting for this resolution would in effect do that. Voting for this resolution would be saying that it is fine with me that the President can tell us where to dot the 'i" and cross the "t" in budget terms if we do not do what he wants, then he will shut down the Government. I refuse to do this.

Mr. BURDICK. Mr. President, I ask the chairman of the Appropriations Committee, Mr. HATFIELD, to clarify the budget status of the loan programs administered by the Rural Electrification Administration, the Farmers Home Administration, and the Federal Financing Bank. Specifically, how will these loan programs be affected by the 4-percent reduction included in this continuing resolution?

Mr. HATFIELD. Mr. President, I can well appreciate the concerns expressed by the Senator from North Dakota, in that the across-the-board reduction is a very unusual device, being employed for the first time in an appropriation measure, and one which I am not fully comfortable with. But it is in this continuing resolution because we are confronted with an extremely difficult problem, and that is to achieve a significant budgetary savings in a stopgap funding measure which covers most of the Federal Government. Let me emphasize that point. Section 143 of the resolution, the across-the-board cut provision, is designed to achieve budget authority savings of 4 percent so that budgetary outlays will be reduced by approximately $4 billion in the current fiscal year.

The programs that the distinguished Senator mentioned do not involve budget authority granted in this resolution. In the case of insured and guaranteed Farmers Home Administration loans, the resolution merely authorizes that agency to make loans at a certain level. Actual financing of the loans are either by private lenders in the case of a guarantee, and from an already capitalized revolving fund for insured loans.

For the Rural Electrification Administration revolving fund, the answer is the same. Insured and guaranteed telephone and electric loans are not provided any funding in this bill and, therefore, any reduction against the budget authority provided by the measure can have no impact on this program.

There are only two items in the REA program that I believe may be reduced by 4 percent. One is the capitalization of the Rural Telephone Bank account, a $30 million appropriation, which although off budget, is actual budget authority. Since no funds were requested by the administration for this account, and since the reduction here would be only $1.2 million, I believe that this relatively small reduction can be absorbed by that agency without too much difficulty. The salaries and expenses account of REA will also be reduced slightly, but will still exceed the current budget request.

Finally, Mr. President, with respect to the Federal Financing Bank's role in actually making loans guaranteed by the Rural Electrification Administration, let me assure the Senator from North Dakota that there is no intention here to in any way affect the ongoing operations of the Bank. I would point out that the FFB does not require appropriated funds for its operations so the reduction contained in section 143 of the resolution will have no effect.

Furthermore, Congress has spoken on several occasions to direct the unimpaired continued operations of the FFB. The first concurrent budget resolution and also the report accompanying the agriculture appropriations bill for fiscal year 1982 both called for continued access to FFB financing by REA-eligible utilities.

I share the Senator's strong concern over our Nation's rural development program, and believe, as he does, that these low-cost credit activities are a necessary and significant means of providing rural residents basic public services such as telephone and electrical service. I fully agree that our efforts in this area should be maintained.

Mr. BURDICK. I thank the Senator.

Mr. GRASSLEY. Mr. President, one of the most sobering aspects of the necessity in considering this continuing resolution is that we must do so under such severe time constraints. This is very unfortunate for we are dealing with a mammoth piece of legislation, containing numerous sections of great import, and yet here we are about to vote upon it before we have had the full opportunity to study it. House Joint Resolution 340 was passed only yesterday by the House, and had you not taken the time to read the CONGRESSIONAL RECORD, there would be little way of knowing all that was contained in this legislation for we have not yet received our printed copies.

I read the RECORD today, however, and there is an obscure, small section that caught my eye. This small section simply makes a change of date from 1981 to 1980. It is important to note that it so happens that this section provides a very nice windfall for Members of Congress, for it extends to 1981 the recently passed provision lifting the $3,000 ceiling on the amount of business-related tax deductions that we can claim while away from home.

I do not know how others feel about this, but I am disgusted. I disapprove of the exemption and voted against it during the debate of the first continuing resolution, House Joint Resolution 325, on September 24, 1981. The idea of extending this exemption to the current year is even more objectionable. But more than this, I am appalled at the

tactics used here to get this provision passed. I think that if everyone had had the opportunity to learn about this amendment that was slipped in during House debate, it would have been easily defeated. The September vote was close, 50 to 48.

Our constituents should expect more from us. They should be able to look to their U.S. Congress with pride. It is antics like this that make it no wonder that the general feeling is negative.

I am casting my vote in favor of this continuing appropriations bill for only two reasons: because an earlier decision of the Senate bars amendments at this point and because it is essential that we pass legislation to provide funding for our Government's operations. Needless to say, I support this legislation with great hesitancy.

● Mr. EXON. I inquire of the Senator if the continuing resolution will provide for adequate funding for the ongoing programs of the National Institute of Education.

Mr. SCHMITT. My answer to the Senator from Nebraska is, yes, the continuing resolution allows funding of NIE at a reasonable level for fiscal year 1982, although somewhat reduced from fiscal year 1981.

Mr. EXON. I thank the Senator. My concern is for the continuation of funds for such projects as the University of Mid-America (UMA) of Lincoln, Nebr. UMA was pioneered some years ago by the University of Nebraska. UMA has initiated new methods of providing higher education throughout the Midwest States by means of telecommunications. The results have been highly encouraging.

Thousands of students have been allowed to participate in college courses through this consortium of 11 State universities. More importantly for the future, UMA has proposed a national extension of this new form of higher education via telecommunications through a new vehicle—an American Open University (AOU). I have seen the plans for this AOU, and I believe it will provide a most significant nationwide service to many persons who have not been able to attend college.

I understand also that AOU expects to be self-sufficient financially after a 3-year beginning development period. This will certainly be an admirable new approach to meeting some of our Nation's higher education needs.

Would it be the Senator's expectation that the committee will consider support for the startup development of AOU next year and in subsequent years?

Mr. SCHMITT. While we have not yet seen the administration's budget proposal for NIE for fiscal year 1983 and beyond, let me assure the Senator that the committee will take a look at this kind of telecommunications service for education during the course of our fiscal year 1983 appropriations hearings.

Mr. EXON. I thank the Senator.●

● Mr. JEPSEN. Mr. President, House Joint Resolution 370 represents a 100-percent improvement over the continuing resolution vetoed by the President almost a month ago. In this final bill, Federal spending is reduced by over $4 billion in 1982. While I regret that we did not cut more dollars, the current legislation is certainly another step in the right direction and does meet the latest request of President Reagan.

This resolution is another example of the old "good news/bad news" formula. On the one hand, we have the good news—the budget cuts. On the other hand, I feel there are two controversial sections that are definitely bad news.

Considering the current depressed economy, we would have been well advised to postpone any wage adjustments for key Government executives—even though they have not had a salary increase in 5 years. In addition, the new method of allowing expenses for lawmakers is resented by many people, even though it simply corrects the tax laws so that those elected to office will be treated like all other Americans.

Yet given the balance of the two, I think the American people come out ahead with the approval of this resolution. And it is with those mixed feelings that I voted for this resolution.●

● Mr. HEINZ. I have a question regarding this continuing resolution with regard to railroad retirement benefits and I would like clarification from the distinguished chairman of the Appropriations Committee regarding a matter that needs attention—the failure of this continuing resolution to provide the additional $90 million required for full funding of the so-called windfall benefits.

Mr. HATFIELD. I would be happy to respond to the Senator from Pennsylvania's inquiry on this matter.

Mr. HEINZ. As I understand it, this resolution applies a 4-percent spending cut to an appropriated level of $395 million, for a funding level of roughly $379 million. Yesterday, in the House, Mr. CONTE acknowledged that this resolution is deficient in this area, and he pledged—and I quote—"that we will have a supplemental up here for the balance [of that funding] come February."

I would like clarification that if the Senate does not today consider an amendment to restore full funding, that the chairman of the Appropriations Committee will consider a supplemental at that time.

Mr. HATFIELD. I will be glad to do all I can to see that the committee expeditiously considers a supplemental, if one comes over from the House.●

SUPPORT OF MAINTAINING CURRENT WORKABLE INTEREST RATE FOR SECTION 202 ELDERLY HOUSING LOANS

● Mr. HEINZ. I would like to address briefly a technical point of major concern which is directly related to the action we are taking today to provide funding for the section 202 program in the current fiscal year. Specifically, I am concerned that the existing interest rate for section 202 loans be maintained in effect for the current fiscal year in order to insure the most efficient use of funds being provided in fiscal year 1982 for this highly successful direct loan program to provide housing for the elderly and handicapped.

Under current law, the HUD Secretary annually establishes the interest rate for section 202 loans. He has the discretion to establish a rate which may not exceed the average Treasury borrowing cost for the preceding fiscal year, plus a HUD administrative charge to cover its processing costs and expected losses. Indeed, it may be lower as appropriate to make the program work.

During fiscal year 1981, the loan rate, including HUD's administrative charge, was established at 9¼ percent for both construction and permanent financing. The Secretary is about to establish the rate for loans made during the current fiscal year. Rigid application of last year's record high Treasury borrowing costs would result in a 2½-percent increase in the section 202 loan rate to a new rate of 11¾ percent. Would the Senator agree that it would make more sense to retain the 9¼-percent interest rate?

Mr. GARN. Clearly raising the interest rate to 11¾ percent would make infeasible many section 202 projects currently being processed or proposed, unless there were a concomitant increase in rental subsidies or other project income to cover the substantial additional debt service requirements resulting from the substantially higher loan rate. Given the limited section 8 funds, increasing rental subsidies would not be as appropriate.

Many of my colleagues and I are very much aware of this problem and believe that the Secretary has adequate authority under the statute to provide a remedy. Accordingly, it is our strong sense that the section 202 loan interest rate be kept during the current fiscal year at the rate in effect during the past year. It is further strongly recommended to the Secretary that this be administratively accomplished as soon as possible. Stabilizing the interest rate will assure a continued and stable flow of loan funds to finance section 202 projects without significant drain on the Federal Treasury since Treasury borrowing costs in the current fiscal year are falling well below those experienced last year.

Mr. HEINZ. I am pleased that the Senator agrees with the view that I share with a number of my colleagues, including those on the Banking Committee and in the House. Literally thousands of units of very much needed elderly housing hang in the balance. Absent this action, the Congress support for the program as expressed in the funding measure would be directly frustrated.●

Mr. BRADLEY. Mr. President, today the Senate will vote on the so-called compromise continuing resolution to provide funding for the Government during fiscal year 1982. This resolution has been agreed to beforehand by the President and the Republican congressional leadership; it is a compromise between the Republicans. Not surprisingly, the Democrats in Congress were not consulted. It is a compromise between the President's September insistence on a new $16 billion in spending cuts—on top of the $35 billion provided in the Reconciliation Act—and the the position of the congressional Republicans that $16 billion was too much, or at least that it

would not pass. The compromise calls for a $4 billion cut.

Mr. President, $4 billion in additional spending cuts can be viewed as a compromise only in light of the $16 billion September figure. The true meaning of this resolution is the compromise of our commitments to the elderly, and many other Americans. The true meaning of these additional cuts in vital programs is the compromise of our chances for real economic growth.

Mr. President, in the debate on Federal spending, it is important to recognize that some Government spending is essential to achieve economic growth, and only economic growth will provide us with the revenues that we need to fulfill our commitments to our elderly citizens, the poor, farmers, and the cities.

I oppose this resolution because the reductions in moneys for a variety of key programs will seriously impair our country's prospect for a bright economic future.

Mr. President, in order to promote economic growth, we must promote investment. By investment, I mean more than investment in new plant and equipment, for which we have provided ample incentives in this year's tax bill. Investment is also required in our economic infrastructure, in the railroads, highways, and mass transit systems which move people to jobs and goods to markets in this country and to our ports for shipment around the globe. Further reductions in our support of these vital transportation systems can only count as false economies, hindering rather than helping the economy back on the path of sustained growth.

Mr. President, another kind of investment must be present in addition to investment in plant and equipment and investment in economic infrastructure. That is investment in people. We need a work force which is healthy, a work force that has the education and training required for the jobs of today and of tomorrow, a work force that has a view of future improvements in the standard of living that will assure maximum contributions to the economy.

Yet the necessary investment in human capital would be compromised under this resolution. Cost-effective preventive health care for low-income children—such as immunizations against potentially crippling diseases—would be cut. Programs to prevent and treat alcoholism, drug abuse, and mental illness—diseases entailing significant economic losses as well as enormous personal suffering—would be cut.

Aid to school districts that enroll significant numbers of disadvantaged children—providing them with the education that will be so important to their future prospects for employment—would be cut. Funding for Pell grants and other assistance to needy students seeking to finance college or other postsecondary education—to develop their skills as fully as possible—would be cut. Training programs for younger Americans who have never held a job and for experienced workers who no longer have jobs because of competition from abroad would be cut.

Mr. President, how can such cuts be justified? The economic development potential of this country depends upon the maximum efficient utilization of our manpower. This resolution, in providing for severely reduced levels of funding for preventive health programs, educational aid at all levels and worker retraining under trade adjustment assistance and youth training programs, undermines our national interest in a skilled, motivated work force, both now and in the next century.

The final area requiring a strong Federal commitment is our important investment in research and development. We must make sure that we remain on the cutting edge of technological change if we are to retain our competitive advantage in the world economy. Yet this resolution would compromise America's leadership position in science and technology. It would force reductions in funding for science education programs and the instrumentation grants that will help to modernize the teaching laboratories where our future scientists learn their craft.

Funding for the National Institutes of Health, the vital center of our Nation's extraordinary biomedical research efforts, would be cut. NASA's nondefense programs in space science, space applications, aeronautics, and space technology—already seriously constrained by earlier reductions—would be cut further. These are precisely the areas which, in the next decade and beyond, are going to give this country the kind of commercially valuable advantage that it can attain only if the Federal Government makes these expenditures.

Mr. President, who would argue that reducing funding for the training of our young scientists and for basic scientific research constitute sound national policy? To reduce our capacity for the education of the science and technology professionals of the future, to slow our progress in understanding the diseases that afflict mankind and developing new approaches to treatment and prevention, to throw away our current advantage in space—all should be unthinkable; with this resolution, we will be starting down that path.

Mr. President, the reductions in nondefense programs called for under the continuing resolution should be rejected. The economies to be achieved by the 4-percent across-the-board cut are false economies. This $4 billion compromise would sacrifice our long-term objectives for a healthy, vibrant economy in order to realize very short-term budgetary savings, savings which will contribute very little, indeed, to reducing a 1982 budget deficit of $100 billion. The future health of our economy requires a more farsighted view. I, therefore, urge my colleagues to join me in voting against the resolution.

APPROPRIATIONS FOR THE VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

Mr. CRANSTON. Mr. President, I note that, in the joint explanatory statement accompanying the continuing resolution on H.R. 4034, the HUD-Independent Agencies Appropriations Act, 1982—page 11 of House Report No. 97-22—which was filed on September 11, 1981, the conferees pointed out that the appropriations for the Veterans' Administration's medical administration and miscellaneous operating expenses account included $4,000,000 above the President's then-pending budget request. That amount, the conferees noted—

is earmarked for the nurse scholarship programs authorized by the Veterans' Administration Health-Care Personnel Act of 1980.

In both the continuing resolution agreed to by the Senate today, House Joint Resolution 370, and in H.R. 4034 as amended by the Senate on November 21 and agreed to by the House yesterday, the appropriations level for the MAMOE account is $4 million above the President's September 30 budget request. I believe it is thus clear that the Congress intends in these measures for the scholarship program, the authority for which was enacted last year, to be funded in fiscal year 1982 at the $4 million level. Therefore, I urge that the administration immediately undertake to implement the scholarship program in order to help insure that all possible efforts are made to help the VA overcome the difficulties it has encountered in the recruitment and retention of well-qualified nurses and other health care professionals in the VA health-care system.

I congratulate my good friend from Mississippi (Mr. MONTGOMERY), the chairman of the Veterans' Affairs Committee in the other body, for his leadership in this effort to appropriate funds needed to get the program underway.

Mr. PELL. Mr. President, I am voting against the continuing appropriations resolution for 1982. The resolution will require additional cuts in Federal Government spending for programs of vital importance to our Nation, to our State and local governments, and to the average American.

The budget cuts imposed by this resolution are in addition to the deep cuts already approved by the Congress this year in programs to meet the health, education, housing, research, and economic needs of the Nation.

After the Congress had approved those budget cuts, the administration in September, faced with a ballooning deficit because of the failure of its economic program, proposed additional budget cuts. I stated at that time that I could not support additional cuts in essential programs that had already been subjected to severe spending reductions.

This continuing resolution imposes those additional budget cuts but leaves unscathed a huge increase in military spending that cannot be justified by the real defense needs of the Nation.

The most recent estimate by the administration of the budget deficit for the 1982 fiscal year is more than $100 billion compared with its original estimate in March of $45 billion. The estimated deficit has shot upward not because of increased domestic spending, but because of a huge increase in payments on the Federal debt caused by the administration's high interest rate pol-

icy and the huge tax cut taking effect next year which will slash Government revenues.

Instead of attacking those causes, however, the administration proposed additional spending cuts, in programs already cut to the one.

Equally troubling, Mr. President, is the fact that, while we are being asked to cut ever deeper into programs that provide essential services to the American people in an effort to narrow the budget deficit, the Federal Government is encouraging corporations to cut their tax payments by buying and selling excess Federal tax credits under the so-called leasing provision of the 1981 Economic Recovery Tax Act.

The leasing provision of the Tax Act permits wealthy corporations to shelter their profits from Federal taxes by buying tax credits from other failing businesses that have so many tax credits they just cannot use them all. That provision, which should more properly be called a leeching provision, will cost the Treasury Department nearly $3 billion next year.

That means, that for every $4 of the taxpayers' money that is saved through budget cuts in this resolution, $3 will leak out the back door of the Treasury to corporations that have made deals to buy and sell tax credits.

In my view we would be much better off eliminating the outrageous tax credit sale provision of the tax law than to cut ever deeper into programs that meet the real and serious needs of the American people. It is for that reason that I have introduced legislation (S. 1896) to repeal the tax credit sales loopholes of the tax law.

I hope that, when the Congress returns to its budget problems in January, some attention is given to the taxpavers' money that is being given to corporations through this back door tax credit sale provision instead of focusing repeatedly on the front door spending that already been subjected to repeated cuts.

Mr. HATFIELD. Mr. President, there has been considerable concern expressed about the status of the numerous deferral messages submitted to Congress subsequent to adoption of the first continuing resolution and the President's September budget request. As my colleagues will recall, those deferrals were submitted in order to hold spending in line with the President's request for the interim period of the continuing resolution and keep congressional options open on the final determination of spending levels. That is, where funds provided under the authority of the first continuing resolution were in excess of the President's September request, a deferral was put in place in order to hold funds to the President's request level.

It was clearly understood at the time the deferrals were submitted that they were to serve only to restrain spending while Congress made its final determinations on fiscal year 1982 spending levels, and that they would be withdrawn when those determinations were made.

Mr. President, this second continuing resolution represents those final determinations, and the deferrals submitted should be withdrawn. Three appropriations bills have been signed into law, two more have been sent to the President for his signature, two conference reports are pending in the House, two more bills are expected to go to conference soon, and four are awaiting final floor action.

Furthermore, the President has given us every assurance that as additional regular bills are sent to the White House for his signature, they will be measured against the spending levels provided in this continuing resolution, and if they meet the same overall spending goals, not line by line, but in total on a bill-by-bill basis, those regular bills will be signed.

Therefore, Mr. President, I want to make clear, as chairman of the Appropriations Committee, that the final fiscal year 1982 spending level decisions have been made, and under the terms previously agreed upon, the deferrals should now be withdrawn. The uncertainty they have created for program managers cannot continue.

Mr. President, I wish to say one final word, and then I will ask for a third reading.

This package has come to the Senate through the effort of many people, particularly Representative SILVIO CONTE, of Massachusetts, who worked very diligently in getting this as a substitute in the House for the committee bill, and one that has received the assurance from the White House that it will be signed. So I pay special commendation to Representative CONTE and all the other members of the House committee, as well as the members of the Senate committee, who worked diligently on this program.

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

Mr. HATFIELD. I yield.

Mr. SCHMITT. Mr. President, I wish to compliment the Senator for his activities, and I am sure many others would join me in this.

Representative CONTE did a great deal of work, but we must also recognize that that work was built on a platform established by the distinguished Senator from Oregon, as he brought the appropriations process clearly into focus as it relates to this continuing resolution. I personally thank him for his efforts, and I am sure all others who have been involved in the detail and those on the peripheries would so thank him also.

Mr. HATFIELD. The Senator is very kind, generous, and gracious, and I am pleased to hear his remarks. I thank him.

The PRESIDING OFFICER. The question is on third reading of the joint resolution.

The joint resolution was read a third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

The joint resolution (H.J. Res. 370) was passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HATFIELD. Mr. President, we have completed the action on the continuing resolution. That action was completed on the basis of a voice vote and the lack of any request or demand for a rollcall vote. I would only observe that there were 10 Senators on the floor at the time, 6 from the minority party and 4 from the majority party.

As we proceeded through the schedule this morning, it was indicated that we would go to the two amendments that had been agreed to by unanimous consent last night, one offered by the Senator from West Virginia (Mr. ROBERT C. BYRD), the minority leader, and one to be offered by the Senator from Ohio (Mr. GLENN). Senator BYRD offered his amendment. Senator GLENN indicated he would engage in a colloquy rather than offer an amendment.

I, at that point, indicated that following Senator GLENN's colloquy, we would go to third reading and final passage. After Senator GLENN completed that, Senator NUNN asked for a colloquy. I indicated, again, that following Senator NUNN's colloquy, we would go to third reading and to final passage. After he finished, the Senator from Massachusetts (Mr. KENNEDY) asked for recognition in order to give a tribute to a friend. Again, I indicated that following Senator KENNEDY's statement, we would go to third reading and final passage.

We did reach that point of third reading and final passage and it was by voice vote. I waited, momentarily, at least, until I moved to reconsider to see if there would be any request at that time with a number of Senators present on the floor. There was no request for the yeas and nays for a rollcall vote. So I moved to reconsider and that was laid on the table.

Subsequent to that situation as I have now described it, there have been Senators who have indicated they would like to have a rollcall on final passage. I certainly have no objection. In fact, I anticipated that we would have a rollcall. But, none was requested. Both Senator PROXMIRE, the comanager of the bill, and I had not had anyone request this of us.

So, at this time, Mr. President, to accommodate those colleagues who feel strongly about this, I ask unanimous consent that a rollcall on the final passage of the continuing resolution be in order and that the yeas and nays be ordered.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I wish to support the distinguished manager of the bill, the chairman of the

Appropriations Committee, on his description of the circumstances as they occurred and to commend him for his willingness to ask unanimous consent of the Senate to proceed with a rollcall vote on final passage, notwithstanding the disposition of this measure previously by voice vote.

While I was not on the floor at the time that action was taken, I have had it described to me in great detail and I believe that the Senator from Oregon acted with absolute propriety in the way it was done and, indeed, with great caution and care.

The distinguished occupant of the chair, the Senator from Virginia (Mr. WARNER), acted precisely according to the provisions of the rules and with absolute fairness. This is no one's fault, Mr. President. It is simply a question of the first opportunity for the Senate to vote today and people being geared up to take care of it.

I do not believe that the Senator from Oregon or the Senator from Wisconsin or anyone else would ever entertain the thought of depriving a Senator of the rollcall vote if it is requested.

Mr. PROXMIRE. Will the Senator yield?

Mr. BAKER. Yes.

Mr. PROXMIRE. I feel strongly that I was to blame for this. I was the minority manager of the bill. I should have asked for a rollcall. I apologize for not having done so. I was delinquent in not doing so. I was on the floor and I was alert and aware. It was simply completely my fault. It was not the majority's fault. They went through with what they understood was the situation. I will take the full blame for it. I apologize to my leader for having neglected to notify him. I do hope we have a rollcall under the circumstances.

Mr. BAKER. Mr. President, as far as I am concerned, no apologies are necessary. I have the highest regard and respect for the Senator from Wisconsin, who always acts in the most exemplary way. I do not think it was his fault. I think it was an inadvertence all the way around. For my part, I am perfectly willing for the Senators to have a rollcall vote as requested by the Senator from Oregon.

Mr. GARN. Mr. President, reserving the right to object, and I will not object, but only for one reason: Because the Senator from Oregon and the majority leader asked me not to.

This Senator waited around the floor for 40 minutes, expecting a vote, being surprised that there was not one, but observing what went on, with six Members of the minority here not asking for one. I think the vote ought to be final.

Let us be blunt about it. The minority fouled up. I think it ought to be final and we should not be putting the Senate back through another vote because they were not alert enough to do it.

Simply because of the request of the manager of the bill and the majority leader, I will not object, but I certainly feel like it.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I will not be blunt about anything. I am just grateful to the distinguished manager of the resolution for his reasonableness and for his courtesy in this instance.

None of us would attempt to assess any blame. I try to be on the floor at all times whenever I can to protect the rights of the minority. Fortunately, we have a majority leader here who bends over backward also to protect the rights of the minority and we have other Senators on the other side of the aisle who do the same.

I think in doing that they realize, as we realized when we were in the majority, that there has to be a spirit of comity, courtesy, cooperation, reasonableness, and understanding here if we are going to get the Senate's work done.

So nobody is attempting to assess blame. We, on this side, just assumed that there would be a rollcall vote. If we had assumed otherwise, if we had understood otherwise, some of the Senators on this side would have certainly notified me or the managers of the bill, and they would have been put on notice.

The managers are correct. They were not told about a rollcall. But it was just assumed, I think, that there would be one on a continuing resolution, which is a big appropriations measure, in connection with which there has been a lot of heated controversy. We just took it for granted there would be a rollcall vote.

The Chair acted with due diligence. The Chair has the responsibility to put the question on a matter if no Senator seeks attention. So there is no attempt to blame anybody.

I appreciate the statement by the distinguished Senator from Oregon (Mr. HATFIELD). I appreciate the very generous statement that has been made by Mr. PROXMIRE. I appreciate the attitude of the majority leader.

Again, I thank the Senator from Oregon for attempting to get us out of this little problem. I hope that his request will not be objected to.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Oregon?

Mr. HATFIELD. Mr. President, the unanimous-consent request as phrased, is that adequate to get to the point?

Mr. BAKER. Reserving the right to object, Mr. President, the point of the request, as I understand it, is to make the order to set aside the motion to reconsider and the motion to table the motion to reconsider, and to make an order to have a rollcall vote on final passage and nothing else in order to have the yeas and nays requested at this time on that measure.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATFIELD. I ask for the yeas and nays.

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

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Montana (Mr. MELCHER), and the Senator from Ohio (Mr. METZENBAUM) are necessarily absent.

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

The result was announced—yeas 60, nays 35, as follows:

[Rollcall Vote No. 482 Leg.]

YEAS—60

Abdnor	Hatfield	Nunn
Andrews	Hawkins	Packwood
Armstrong	Hayakawa	Percy
Baker	Heinz	Proxmire
Boschwitz	Helms	Quayle
Byrd, Harry F., Jr.	Huddleston	Rudman
Chafee	Humphrey	Schmitt
Cochran	Inouye	Simpson
Cohen	Jackson	Specter
D'Amato	Jepsen	Stafford
Danforth	Johnston	Stennis
Denton	Kassebaum	Stevens
Dole	Kasten	Symms
Domenici	Laxalt	Thurmond
Durenberger	Long	Tower
East	Lugar	Wallop
Garn	Matsunaga	Warner
Gorton	Mattingly	Weicker
Grassley	McClure	Zorinsky
Hatch	Murkowski	
	Nickles	

NAYS—35

Baucus	Dodd	Moynihan
Bentsen	Eagleton	Pell
Biden	Exon	Pressler
Boren	Ford	Pryor
Bradley	Glenn	Randolph
Bumpers	Hart	Riegle
Burdick	Heflin	Roth
Byrd, Robert C.	Hollings	Sarbanes
Chiles	Kennedy	Sasser
Cranston	Leahy	Tsongas
DeConcini	Levin	Williams
Dixon	Mitchell	

NOT VOTING—5

Cannon	Mathias	Metzenbaum
Goldwater	Melcher	

So the joint resolution (H.J. Res. 370) was passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The Senate will be in order.

SENATE SCHEDULE

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. Mr. President, I have asked the majority leader to yield in order that I may inquire of him what the program is for the remainder of today, whether or not there will be a Saturday session, what the program is for next week, and if he can foresee a date for sine die adjournment, to indicate what that date is.

Mr. BAKER. Mr. President, I thank the minority leader for his inquiry.

Mr. President, there will be no Saturday session this week. I am happy to say that the Senate has made such good progress in the passage of the continuing resolution and a number of other conference reports and appropriation bills that to have a Saturday session, it seems to me, would be an undue imposition on the schedules and the time and energy of the Senate and Members of the Senate. Therefore, I am prepared to say that we will not be in session this Saturday.

I expect this afternoon to proceed next, in a moment, to put a unanimous-consent request in respect to the Department of Justice authorization bill. If that is agreed to, the next order of business before the Senate would be automatically a cloture vote in response to the motion filed under rule XXII against further debate on the State-Justice-Commerce appropriations bill. I say to Senators that that will happen quickly, so I urge them to stay on the floor in order to gain that time.

Mr. President, after the vote on cloture, assuming cloture is not invoked, the leadership intends to ask the Senate to consider the Treasury-Post Office appropriations bill, H.R. 4121. There is still some work being done on that, but I hope we can get it before the Senate and disposed of this afternoon.

In addition, I hope we can take up and dispose of, this afternoon, the Consular Convention with the People's Republic of China.

There is a conference report on the Older Americans Act, S. 1086, and I hope we can take that up as well.

There may be other conference reports or other matters that may be dealt with on a mutually agreed upon basis today, and we would move to them as the circumstances warranted and the consent of the Senate would dictate.

Mr. President, I do not expect the Senate to be in late today. I expect that by 6 o'clock we will have finished whatever can be done in the course of this calendar day.

On Monday, I hope we can take up the conference report on the defense appropriations bill. I clearly confess that that is probably a very slim chance, but that is the one big item we have yet to dispose of before sine die adjournment. If we cannot get to the defense appropriations conference report on Monday, then perhaps we can do it on Tuesday; if not on Tuesday, Wednesday.

In all candor, I must say that, barring unforeseen circumstances, the time for the disposition of the conference report on the defense appropriations measure will determine the time for sine die adjournment.

I hope—I say again, for emphasis, that this is only my personal hope—I hope we can finish the defense appropriations bill and other matters that must be dealt with in this session by Wednesday, at the close of business, in order to provide for sine die adjournment.

In addition to the defense appropriations conference report, there are some other matters I might mention.

For example, the military construction appropriations conference report may be available shortly, and I hope the Senate will proceed to that matter as soon as possible.

The Department of Transportation appropriations conference report is in the same category.

There is a tentative agreement among certain people who have special interests in this piece of legislation—it is not yet a unanimous-consent agreement, and I will not now put one—that we could proceed to the consideration of the agents identities bill, S. 391, on next Wednesday

In addition, some disposition must be made over the President's proposal for the reinstitution of minimum benefits for social security.

There may be other matters that will have to be dealt with, but these are the ones that appear to me as necessary items, as "must" items; but they fit very easily into the time remaining between now and next Wednesday or Thursday, without the necessity of a Saturday session.

So it is my hope that we can have a good day today—we will not be in session tomorrow—that, Monday, Tuesday, or Wednesday will be adequate time for us to deal with these other matters; and that, pending the agreement of the House of Representatives and the availability of the defense appropriations bill, we can adjourn sine die on Wednesday, the 16th.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader for his very lucid statement. I think we should be able to determine our schedule accordingly. I hope the schedule he has laid out can be expedited. We will do everything on our side that is possible to help expedite it.

Mr. BAKER. I am very grateful to the minority leader. We will try together, as the joint leadership, to make that happen.

UNANIMOUS-CONSENT REQUEST—DEPARTMENT OF JUSTICE AUTHORIZATION BILL, S. 951

Mr. BAKER. Mr. President, the unanimous-consent request I am about to put has been submitted to the minority leader, and I will put it for his consideration at this moment.

I ask unanimous consent that, notwithstanding the provisions of rule XXII, the amendment by the Senator from North Carolina (Mr. HELMS), as amended, be laid aside, along with the measure it proposes to amend, the Department of Justice authorization bill, S. 951, and that at the hour of 2 p.m., on Monday, February 1, 1982, the bill be laid before the Senate so that a vote may occur on the Helms amendment, such vote to occur without intervening motion, debate, point of order, or appeal.

I further ask unanimous consent that notwithstanding any cloture motion which may be filed in connection with S. 951, the bill be laid aside upon disposition of the Helms amendment, and that the measure may be called up at any subsequent time by the majority leader, after consultation with the minority leader, with a vote on any such cloture motion to occur 1 hour after the Senate returns to the consideration of the bill.

Mr. JOHNSTON. Mr. President, reserving the right to object, does it say that the majority leader may by nondebatable motion call it up?

Mr. BAKER. No, it does not. But this really extends beyond that. It gives me the authority to do it, without the requirement for a motion, after consulting with the minority leader.

Mr. JOHNSTON. So there would be no possibility of a filibuster on motioning that matter up?

Mr. BAKER. The Senator is correct.

Mr. JOHNSTON. When we vote on February 1 at 2 p.m., will the bill then be before the Senate for the purpose of filing a further cloture motion?

Mr. BAKER. Yes; it would be, under the provisions of this order.

Mr. President, I add to the request that the bill will be before the Senate for the disposition of that amendment and for the purpose of filing a subsequent cloture motion if desired.

Mr. JOHNSTON. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. BAKER. Is the Senator going to object?

Mr. PACKWOOD. For the moment I am.

Mr. BAKER. Why not reserve the right to object.

Mr. PACKWOOD. Mr. President, I reserve the right to object.

The PRESIDING OFFICER. The Senator from Oregon reserves the right to object.

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.

Mr. BAKER. Mr. President, I put the request at this time.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Objection. Is this the request?

Mr. BAKER. This is the request.

Mr. PACKWOOD. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. BAKER. Mr. President, I withdraw the statement I made earlier.

The Senate will be in session today and it will be in session tomorrow.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. Will the Senator suspend until the Senate Chamber is in order?

Mr. ROBERT C. BYRD. Mr. President, do I understand because the request was objected to we will be in session tomorrow?

Mr. BAKER. Yes.

Mr. President, I have no choice. I had thought that we had liquidated the issue on the Department of Justice authorization bill by setting a vote for next February 1. That would permit us in turn to go to the State-Justice appropriations bill immediately, and I intended after we did this to ask for authority to take that bill back to the calendar, if the cloture motion did not prevail and since it is the first cloture motion there is at least some chance that it would not, and that cleared the decks then for us to get to the other matters, but as the matter stands at this time we still have the Department of Justice matter to deal with. We still have State and Justice to deal with, I suppose, and at this moment I see no alternative.

Mr. ROBERT C. BYRD. Mr. President, I understand the majority leader's tribulations and I sympathize with him in this regard, but we are clearly to understand, then, that there will be a Saturday session because of this objection.

Mr. BAKER. Mr. President, I regret to say that, but I think I have no alternative.

Mr. JOHNSTON. Mr. President, if the majority leader will yield, might we know the nature of the problem because all of the problem with respect to the Department of Justice authorization bill and busing has been cleared. The desks are cleared between the distinguished Senator from Connecticut and myself and the Senator from North Carolina. And there is something else involved here which maybe we can work out.

Mr. PACKWOOD. I can explain it.

Mr. JOHNSTON. Yes.

Mr. PACKWOOD. Under the particular parliamentary situation that we are in, the legislative veto of the used car rule cannot be brought up. Senator PRESSLER wishes to bring it up, but it is not part of the unanimous-consent order. So long as we stay in this parliamentary situation, it will not be brought up for the remainder of this session. If we adjourn before December 20, and we are going to, his disapproval resolution will not be considered, and we have the next session to consider it. I am perfectly happy to agree with this unanimous-consent order, because I have no quarrel with the substance of the agreements on busing and prayer. I mean I will vote a particular way, but I have no quarrel with the agreement. But I do have a quarrel on the used-car rule.

Mr. JOHNSTON. Because of the situation we are in now Senator PRESSLER cannot bring up his amendment; is that correct?

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. And under the unanimous-consent request Senator PRESSLER cannot bring up his amendment, and neither can the Senator bring up the amendment. The difference is under one everyone must stay on Saturday and vote all day long and on the other we can go home Saturday and we could probably go home Wednesday.

I wonder if there is some logic I am missing here for the reason to stay in Saturday and voting all next week?

Mr. PRESSLER. Mr. President, this is the first that I knew there was objection to bringing the resolution to disapprove the FTC's used-car regulations to the floor. We have 47 cosponsors of this in the Senate.

Mr. JOHNSTON. Of which I am one.

Mr. PRESSLER. It passed through the Commerce Committee by a 12 to 4 vote, and we had lengthy hearings and followed all the necessary procedures, including notifying the leadership immediately of our desire to bring it to the floor. I am somewhat puzzled because this is the first I hear that there was an objection to bringing it to the floor.

Mr. PACKWOOD. I object because I want a further airing of it. The law is, if we adjourn before December 20, and the entire period for the review of the rules does not run, we will have ample time to exercise our legislative veto the first 3 months of the next session, so there is no need to prohibit it from going into effect in the next 4 or 5 days.

Mr. JOHNSTON. I would urge the Senator from South Dakota, if I am correct, and I am advised that I am—and some of these parliamentary wizards around here can probably tell you as well—but if we cannot vote under either scenario for your bill, why not take the easiest scenario on the other colleagues, and the reason is that I am getting calls from colleagues who say, "Won't you work out something so we do not have to work on Saturday?"

Senator WEICKER has been good enough to work it out with us so we do not have to work on Saturday, and, as a matter of fact, we can go home on Wednesday. If we do not agree with this then, Senator PRESSLER, under neither situation do you get what you want. We have to work on Saturday, and I think we will have to go through Friday of next week as well.

Mr. KASTEN. Mr. President, will the Senator from Oregon yield further? It is my understanding that this is a completely separate issue. In other words, the legislative veto of the used-car rule has nothing to do with any of the appropriations measures.

Mr. PACKWOOD. That is correct.

Mr. KASTEN. So we can proceed with these appropriation measures and then argue about whether or not you are going to allow the legislative veto process to go on. This is the first time that we have ever had an opportunity to consider a legislative veto of an FTC rule. Ninety days will run out, and the effect of this delay is that the effort we have begun in September, with hearings in October, and the effort of a number of people to make this process work will essentially be aborted. The result will be that we will have to begin a new 90-day review period next year and have new hearings. We would have to start the whole process over.

This is the first test of the legislative veto for FTC rules. As chairman of the Consumer Subcommittee, I have tried to work with it. But it has nothing to do with the appropriations measures, and I would hope the Senator from Oregon would accede to any kind of request on the appropriations measure and fight out the legislative veto on its own merits.

Mr. PACKWOOD. I am perfectly willing to do that next year, and that is when we are going to fight it out, because the 90 days will not expire before we adjourn and, therefore, the entire process will run again. The FTC used-car rule is not going into effect this year. The time for its consideration will start running again, and we will debate it. But at the moment, it is not privileged to be brought up and cannot be brought up while we remain in this parliamentary situation. If those who favor the disapproval resolution would be willing to set it aside for the remainder of this year, then I would be willing to accept the unanimous-consent request. That is my objection.

Mr. KASTEN. Mr. President, if the Senator will yield further, we have 47 cosponsors of the measure, and I would guess that we could probably have as many as 50 or 55 cosponsors. The legislative veto process was not meant to be stopped by the scheduling of a unanimous-consent agreement which affects the appropriations process. The appropriations process should go on its own, and you either have the votes or you do not.

Mr. PACKWOOD. At one stage, I had 56 signatures on a letter and/or a resolution of disapproval on AWACS, but somehow something fell off, and that resolution was not passed. Just because——

Mr. FORD. Mr. President, will the Senator from Oregon yield for a question?

Mr. PACKWOOD. Yes.

Mr. FORD. Is the President of the United States with you or against you?

Mr. PACKWOOD. The letter we have from his consumer adviser indicates he is for it.

Mr. FORD. There is a letter on top of that stating that he does not agree with the consumer adviser.

Mr. KASTEN. The consumer adviser is on one side, and the administration and OMB are on the other.

Mr. JOHNSTON. Madam President, will the Senator from Wisconsin yield?

Mr. KASTEN. I would be pleased to yield.

Mr. JOHNSTON. Does the Senator from Wisconsin and the Senator from South Dakota understand that under the rules there is no way you can call this up over the objection of any one Senator?

Mr. KASTEN. Under the rules that is not the case.

Mr. JOHNSTON. I mean under the present parliamentary situation.

Mr. KASTEN. I understand. As we are seeking a unanimous-consent request, I understand that.

Mr. JOHNSTON. That is right. So if Senator PACKWOOD objects, you cannot bring it up. All you can do is keep us in Saturday and probably until Friday of next week instead of Wednesday of next week. Does the Senator understand that?

Mr. KASTEN. All I am asking for is that we go ahead with the appropriations process and simply, maybe next week, at a date certain next week, have a vote on the used-car rule veto. I do not care about a Saturday session, I do not

care about holding this up, but the process was not meant to work this way.

Mr. JOHNSTON. I am saying Senators have been very reasonable. I think I am probably 1 of those 47 coauthors. But in any event you cannot bring it up if Senator PACKWOOD objects, and he is objecting. I just hope the Senator will find a way to let us go Saturday.

Mr. KASTEN. I just hope we can move the appropriations process and not be here on Saturday, and vote before the period expires to get a vote up or down.

Mr. BAKER. Mr. President, I do not know whether this will fly or not, but let me try. The situation is this in a nutshell: By reason of a unanimous-consent agreement that was entered into a few days ago, the provisions of rule XXII, postcloture in respect to any bill, would not prevent us from proceeding to certain listed items, and the legislative veto item on used-car dealers is not one of that listed group.

Senator PACKWOOD has objected to my present unanimous-consent request because if we postpone DOJ then there is no postcloture proceeding now pending before us; that would permit, under the privileged status of this, the used-car matter to come up. That would also apply under the previous order, depending on whether you got cloture on State, Justice.

Now this may not accomplish anything, Madam President, but I would propose, and I now ask unanimous consent that we temporarily lay aside the Department of Justice authorization bill and the amendments thereto, notwithstanding the provisions of rule XXII, and that we proceed immediately to the State, Justice, Commerce bill on which there will be an immediate cloture vote.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Are there objections?

Mr. JOHNSTON and Mr. PACKWOOD addressed the Chair.

Mr. JOHNSTON. Madam President, reserving the right to object, you make no provision under that for a later vote on the amendment on the Department of Justice authorization?

Mr. BAKER. I must say in all candor to my friend from Louisiana that if cloture is invoked, I suspect there would be no longer any objection to going back to this unanimous-consent agreement. If cloture is not invoked, then, of course, we will still not come under the provisions of rule XXII, and we will have to once again try to formulate this agreement and ask the Senate to agree to it.

Mr. JOHNSTON. Do you come back to the Department of Justice after that or do you then get into a situation where you have to motion up the Department of Justice authorization?

Mr. BAKER. Yes. Under those circumstances I assume you would come back to it after the disposition of the cloture vote. I will include that in the request.

Mr. PACKWOOD. Do I understand under the request we will have the cloture vote——

Mr. BAKER. On State, Justice.

Mr. PACKWOOD. On State, Justice.

Mr. BAKER. And regardless of the outcome of that we will go back to the Department of Justice.

Mr. PACKWOOD. So when that vote is over we will be right back where we are now?

Mr. BAKER. Right.

Mr. JOHNSTON. Regardless of the outcome of that you go back to the Department of Justice authorization?

Mr. BAKER. Yes.

Mr. JOHNSTON. And stay on it pursuant to rule XXII unless that is changed?

Mr. BAKER. Yes.

Mr. JOHNSTON. Is that correct?

Mr. PACKWOOD. I want to make sure when we come back to this that the resolution disapproving the used-car rule would still not be privileged to be brought up. We would be operating under the same unanimous-consent agreement.

Mr. WEICKER. Madam President, reserving the right to object——

As one who has a small interest in the one who has a small interest in the matters that are being bandied about, I might add that I am not so sure I enjoy the piggybacking being done in my efforts on the floor. I would hope the distinguished Senator from Oregon would join me out here when, if indeed he prevails, we are going to be in all night and we are going to be having rollcall votes.

Mr. ROBERT C. BYRD. Madam President, may we have order in the Senate? Would the Chair clear the aisle so that I can see the Senator who is speaking?

The PRESIDING OFFICER. The Senator will suspend until the Senate is in order.

The Senator from Connecticut.

Mr. WEICKER. Madam President, first of all, I want to thank the distinguished Senator from Louisiana and the distinguished Senator from North Carolina for correctly phrasing the situation that brought about this compromise. It was done in order to accommodate the Members. But by the nature of this debate, the only way I can conduct it is through rollcall votes which would guarantee the fact that we would be having rollcall votes all of tonight and all of tomorrow. It was not just a question of staying in with me on the floor and a few others. That is one thing. The fact is that, obviously, the impact of it would have been far more reaching than just not being here to listen to my pearls of wisdom.

So I want to make it clear that it was in an effort to accommodate the membership that this agreement was arrived at. And if it does not meet the desires of the Senate, then I think you should know what the alternative is going to be not just with what the majority leader indicated, but the fact that I would suspect we are talking about, considering the times that are involved here if we go through tomorrow, of having at least a couple dozen votes and maybe even more.

I hope this thing can be worked out. I say to my good friend from South Dakota that I do not intend to drop the matter. There is no way that this matter is going to get brought up.

I request of the majority leader that we might have an opportunity to have a quorum call and all of us sit down and discuss this.

Mr. BAKER. I think that is a reasonable request.

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

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

Mr. BAKER. Madam President, Senators are attempting to arrange their points of view and their respective interests. My request, which I had put, has now been objected to, but I intend to put it again later. In the meantime, I think a fair amount of progress has been made and there is some progress still to be made which will permit us to get some agreement. But I think that is not likely to occur for the next 30 minutes.

If there are other items that could be taken up by unanimous consent, and I suppose that is the only way we can do it in this situation, procedurally, I am perfectly willing to consider them. For the moment, Madam President, I once again suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE RETIREMENT OF H. STUART KNIGHT, DIRECTOR OF U.S. SECRET SERVICE

Mr. ABDNOR. Madam President, one of the real misfortunes that has befallen this administration was the retirement on November 30 of H. Stuart Knight, Director of the U.S. Secret Service.

Director Knight has concluded 32 years of distinguished service with the U.S. Secret Service. Mr. Knight's career spanned the administrations of eight Presidents and has been marked by achievements which established him as a leader in the law enforcement communities of the world.

Madam President, Mr. Knight was appointed as a special agent of the Secret Service in 1950. He distinguished himself early in his career and received the Treasury Department's Exceptional Service Award for bravery and professional competence during the Latin American visit of then Vice President Richard M. Nixon. Mr. Knight's career included assignment as a senior agent in charge of the Washington and Los Angeles field offices, the Presidential and Vice Presidential protective divisions, and Assistant Director of the Service, before he was named Director in 1973.

During World War II, Mr. Knight served in the Pacific theater of operations, where he earned the Silver Star, Bronze Star, and the Purple Heart. After the war, he graduated from Michigan State University, as well as the Industrial College of the Armed Forces and the Federal Executive Institute. He also

completed a year of graduate study at Princeton.

Throughout his professional life, Mr. Knight has participated actively in both the national and international law enforcement communities. He is presently a member of the executive committee of the International Association of Chiefs of Police and formerly vice president of the International Criminal Police Organization (INTERPOL).

Among his awards and commendations are the Enforcement Award of the Association of Federal Investigators and the "Mr. Sam Award" of the Touchdown Club of Washington.

In recognition of his outstanding performance as Director of the U.S. Secret Service, Mr. Knight received the Alexander Hamilton Award, which is the Treasury Department's highest commendation.

Director Knight set standards of personal excellence and leadership which will remain unexcellable in the U.S. Secret Service and throughout the entire Federal law enforcement community.

On the occasion of Mr. Knight's retirement on November 30, he made some remarks which I think should be called to the attention of the Senate and Congress and the administration.

Madam President, I ask unanimous consent that the remarks of Director Knight be printed in their entirety in the RECORD directly following my remarks.

I know that all the many friends of Mr. Knight here in the Senate wish him well in his retirement and our knowledge that his future career will be crowned with more success.

Stu, thanks for a job well done.

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

REMARKS BY H. STUART KNIGHT, DIRECTOR, U.S. SECRET SERVICE, ON THE OCCASION OF HIS RETIREMENT, NOVEMBER 30, 1981

Thank you very much. Good evening. I know it's traditional to acknowledge the head table, then all of the distinguished guests, and then ladies and gentlemen. I'm not going to do that, because as far as I'm concerned you're all head table people. The good news is that I'm going to be very brief, because that's my style. But the bad news is there are a few things I want to say. And I gotcha! So I'm gonna say it.

The first thing I want to say is how lucky I am. Now I know that you've heard that many, many times and it's a cliche. But I firmly believe that throughout my life, there have been things that I've aspired to and wanted to accomplish or achieve. I've tried my darndest and it didn't seem to be working, and then suddenly I'd get lucky. I believe that I am lucky.

The luckiest thing that ever happened to me, without a doubt, is when I met my wife. Not only did I meet her, but subsequently she agreed that I could be her husband. Because if I've been at all successful, much of the tribute has to go to her. With her help and her understanding, through the good times and especially the bad times, her quiet support gave me the strength and the resolve to carry on. She had me believe in the rightness of things.

We have had some good times, mostly good times, a few bad times, and I've developed a philosophy that I didn't develop myself, that I learned from a book that I read about a man who spent time in the concentration camps during the World War. He spoke about his bad experiences and he said, "That which does not destroy me, strengthens me." And I believe that, too.

I said I was lucky. Reference has been made to the fact that I wasn't born in this country, so I was lucky in a sense that my parents came here. I was lucky to get a good education. I think I was particularly lucky to be selected from the Berkeley Police Department to become a Secret Service Agent. During that time, and this even surprises me, I've had the opportunity to travel and work in 65 foreign countries. It used to be you join the Navy and see the world. I think now you join the Secret Service, you see the world.

I was also lucky eight years ago to take over the stewardship of the Secret Service from a man like Jim Rowley. He founded and described for me really the basis of any organization, five principles for which he had the highest regard: professionalism, honesty, integrity, dedication, and loyalty. And I have tried my doggonedest to perpetuate those principles as he had started them.

I've heard a lot of tribute tonight and you may think I'm a man without weaknesses. Well, that's not true, and I think you all know that. Do I have any weaknesses? Certainly. I know one of my weaknesses is a low level of tolerance for incompetence. But I think I handled that very well.

I also have a low level of tolerance for people who fail to subscribe to the five principles I just enumerated. And I must confess I am not at all sure I handle that well. Have I made mistakes? Certainly. Are there things I would want to do over? Perhaps. But whatever I did, I thought I did it because it was right, because it was legal, because it was moral, because it was ethical. Some people haven't liked the decisions I've made, I understand that. But they have a problem, and that's their problem, I did what I thought was right.

Also I've been lucky as you see tonight with the awards and tributes, but one very lucky thing that happened to me was to become affiliated with Law Enforcement Exploring. If you have some doubts about the future of this country, if you're lacking in enthusiasm, if you think maybe the road ahead is going to be rocky and uncertain, just associate with these young law enforcement people, that are in Exploring. And if you're not infected by their enthusiasm, you might as well close the casket. As an aside to that, sometimes a fellow says, "What do you think about that?", and the answer is "How do I know what I think about that til I start talking?". Someone once asked me, "Why are you affiliated with Exploring?", and before I could think of what I was saying, I said, "Because it makes me feel good."

Next Sunday as a matter of fact, the Skins are playing the Eagles here and Pete Rosell, the commissioner of the National Football League, on behalf of the National Football League charities, is going to present to me a check for $10,000 to help Law Enforcement Exploring. This donation is being made primarily through the efforts of our colleagues in the Drug Enforcement Administration, and I appreciate their support to Exploring.

The question is "What am I gonna do?". Well, many things. Tim McNamar aligned one thing. Eventually, perhaps, Betty and I will go back to Sierra Madre where we still own a home. And that highlights what I perceive to be the single most serious problem facing the Secret Service, but not only federal law enforcement agencies, any government institution which has personnel throughout the country. The reason I have that home in Sierra Madre is because I couldn't sell it 10 years ago. And the major problem we have now is getting someone, with promotions and all, to relocate.

It used to be tough. You had to take your children out of school, your spouse would perhaps have to quit her job, you would have to skimp along on very, very limited weight allowances so that you could move. but there are two other factors that have now entered the equation. One is the high interest rates on mortgages, and the other is the cap. So you call up someone, and you say, "Hey, I want to promote you." And he says, "What are you talking about? You're asking me to give up an 8 or 9 percent mortgage, and take on something that's 16 percent for the next 30 years? And you can't give me any more money, I'm already making as much money as the Deputy."

The long range, long term implications of that are really kinda scary, because we may wind up with the mobile, rather than the able. And I hope someone can do something, because that is the major problem facing Federal managers today.

I would be remiss were I not to mention all the wonderful people in the Secret Service, whether they be in the Treasury Security Force, the Uniformed Division, the Office of Administration or wherever. I think that in any organization which is service oriented and labor intensive such as we are, people are the key and we have great people. I'm proud of every one of them.

I don't want you to think of this as the end of anything. What the caterpillar calls the end, the Master calls the butterfly. There's a simple test as to whether or not your mission on earth is finished. If you're alive, it isn't. So I intend to be around for awhile. Secret Service started in 1865, so they were around a long time before I was. Hopefully, they will be around a long time after I'm gone.

But there is a major change about to take place in the Service that was alluded to earlier with the AT&F, and those of you who have been in my office perhaps recall seeing a saying that I have hanging in the outer office about change. I would like to read that for you:

"And it ought to be remembered that there is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success than to take the lead in the introduction of a new order of things. Because the innovator has for enemies all those who have done well under the old conditions, and lukewarm defenders in those who may do well under the new. This coolness arises partly from the incredulity of men who do not readily believe in new things until they have had long experience in them."

Many of you will recognize that came from "The Prince" by Machiavelli. I don't want to mislead you. Just because I happen to like that one section doesn't mean I subscribe to all of Machiavelli's theories.

But the only thing I would say to the people who are staying is maintain your perspective. You must use it or you lose it, because your conscience is the measure of the honesty of your selfishness, listen to it carefully.

A colleague wrote to me, "That the seeds of our departure are implicit and imbedded in our arrival." So don't be dismayed by saying goodbye, the farewell is necessary before we can meet again. And meeting again after a lifetime of only moments is certain for those who are friends. I feel good about all of you, I feel good about myself, thank you for being here, but most of all thank you for being my friends.

Mr. ABDNOR. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RAIL BASING MODE FOR THE MX MISSILE

Mr. DIXON. Madam President, on December 3, I spoke in support of the amendment offered by my good friend, the Senator from Arkansas (Mr. PRYOR). His amendment struck out money for the superhardened silo basing for the MX missile. I pointed out then that the MX missile will be no less vulnerable in the hardened silos than are the Titan and Minuteman now in these silos.

Madam President, I urged the administration to bring together the warring factions within the armed services and produce with them a basing system for the MX missile that is achievable and that protects a $14 billion missile from destruction.

In that vein, Madam President, I call the attention of my colleagues to an article written by Bruce Ingersoll in the Chicago Sun-Times of December 6. In my judgment, it presents an excellent suggestion for the basing of the MX.

The article points out that our country's railroad industry has been trying to convince the Defense Department to consider deploying the MX missiles on a fleet of disguised trains that would be dispersed throughout the country.

Madam President, I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DIXON. Madam President, many feel that railroad cars to carry the MX missile can be built now. These rail cars could traverse perhaps 100,000 miles of track currently available that would not bring the missiles into large population areas.

Safety considerations must be paramount in the use of the rail mobile MX. The weapon itself would be fail-safe against an inadvertent or accidental nuclear explosion while moving on the railroads. Experience with an air crash in Spain with a nuclear warhead revealed that the unarmed warhead, as this would be, would not inadvertently explode. This would indicate there would be no danger of a nuclear reaction, even in the unlikely event of a railroad derailment.

Aside from relieving the taxpayer of the heavy burden of alternate and unsatisfactory basing modes, the mobile rail MX provides U.S. strategists and SALT—or START—negotiators with a system that is largely invulnerable to Soviet missile attack. This invulnerability has been attested to by unclassified published studies of the Defense Department and the Congressional Office of Technology Assessment.

Madam President, I intend to send a copy of the Sun-Times article, with an illustration by its artist, Jack Jordan, to every Member of this body, and I hope that my colleagues will feel free to correspond with me on this proposal.

I also hope, Madam President, that the chairman and ranking member of the Senate Armed Services Committee will request a full study by the Office of Technology Assessment of the railroad basing of the MX missile.

It is my understanding that only two possible MX basing modes using railroad cars have been studied and other railroad possibilities have not been examined.

I hope, Madam President, that we in the Senate can bring about a total examination of the rail basing mode for the MX missile.

EXHIBIT 1

ICG OFFERS TRIAL RUN HERE: DEPLOY MX MISSILES BY TRAIN, U.S. URGED

(By Bruce Ingersoll)

WASHINGTON.—The U.S. railroad industry is waging a quiet but persistent campaign to persuade Pentagon brass to consider deploying nuclear-tipped MX missiles on a special fleet of disguised trains and dispersing them throughout the country.

The Illinois Central Gulf RR, one of the most ardent advocates of MX missile trains, already has volunteered to conduct the first trial runs on its 8,300-mile system from Chicago to the Gulf of Mexico.

ICG officials, moreover, have come up with a preliminary list of 30 military bases, arsenals and power plants with tight security where these missile trains could be parked and put on strategic alert. Eight of the "security sites" are in Illinois.

The Association of American Railroads, representing the 37 largest carriers, argues that a rail-borne MX system would be far cheaper than any of the elaborate MX-deployment schemes seriously considered by the Carter and Reagan administrations.

In meetings with Defense Department officials, AAR lobbyists have been urging what amounts to a revival of the Minuteman missile-train concept that was tested successfully in 1960 but discarded in favor of putting the Minuteman in underground silos.

By taking advantage of the 180,000-mile rail network, said John E. Murray, AAR vice president, the government could save billions in MX construction costs and still close the United States' "window of vulnerability" to a Soviet nuclear attack. The window symbolizes the fears of some defense experts that the Air Force's immobile phalanx of Minuteman and Titan missile has become vulnerable to the improving accuracy of Soviet warheads.

The Air Force could confuse the Soviets by putting the mammoth MXs aboard missile carriers masked to look like ordinary freight cars and secretly shuttling them from one security site to another, Murray said. If the Soviets attacked the missile-car roofs would open and the 10-warhead MXs would be thrust upright for the counterattack.

"We have the most underutilized rail system in the industrialized world," Murray said. "Seventy percent of our traffic moves on 20 percent of our trackage. We wouldn't have to go through metropolitan areas. We could circumvent them and run these missile trains out with the jackrabbits in the West."

Sam R. Watkins, vice president of government affairs for IC Industries, parent of the ICG, shares Murray's enthusiasm.

"The capital investment would be practically nothing compared to the costs of building thousands of missile shelters or burying the MX deep underground or building airplanes to fly it around [on continuous patrol]," he said. "The rails are in place and cars could very easily be converted [into missile carriers].

"These trains would go all over the country—the East, the South, everywhere," he added. "They would be so spread out that the Soviets couldn't knock them out with an aerial [nuclear] barrage."

Rail executives have been loathe to go public with their MX lobbying campaign, lest they appear self-serving, said Murray. The railroads would not handle missile trains out of patriotism alone; they expect to profit from the defense business. But the mileage payments would not be "extravagant," he said.

"The trouble is, it possesses the novelty of straightforward simplicity."

Two years ago, Benjamin F. Biaggini, board chairman of Southern Pacific Co., tried to interest the Pentagon in hiding the MX in rail tunnels in the West.

The response from William Perry, the Pentagon chief of research and development at the time, was discouraging. The main problem would be the rubble from a nuclear blast that would trap the missiles inside the tunnels, thwarting any counterattack.

Undaunted, Biaggini broached the idea to Defense Secretary Caspar W. Weinberger, a fellow Californian, in a letter last February.

In the meantime, Murray, a retired two-star Army general, has continued to push the more comprehensive MX-deployment plan, meeting with Army Lt. Gen. Oren E. DeHaven, logistics director for the Joint Chiefs of Staff, and other Pentagon officials.

In the Air Force, the plan may have just one backer—Col. George Fischer, a logistics officer in Colorado Springs, Colo. Fischer was the assistant commander of the Minuteman III missile train during Strategic Air Command tests from June to November, 1960.

The 13-car train, including two prototype missile cars, a command car, a diner and sleeping cars for the missile crewmen, technicians and security guards, was completely self-sufficient, Fischer said in telephone interview.

It operated out of Hill Air Force Base, Utah, making trips primarily in the northwestern part of the country, he said. The train maintained radio contact with the SAC command post as it moved from one siding to another, spending a few hours here or a few days there under a random system devised by Rand Corp.

The Minuteman III train proved completely feasible, Fischer said, but there was no pressing need for missile mobility back then. The Soviets were years away from developing sufficient accuracy to threaten U.S. missile silos. Moreover, the operating costs of $1 million a month—or $60 million a month for a fleet of 60 missile trains—seemed high at the time.

Col. John Politi, deputy special assistant for the MX, said the Air Force took another look at the rail-borne missile concept last year and rejected it most emphatically.

"The basic problem is its survivability," he said. "It's vulnerable to sabotage and terrorist attack. It can be tracked by enemy agents too easily."

The other main obstacle would be the howl of public protest at the very thought of nuclear-tipped missiles whistling across grade crossings and through small towns, Politi said.

"With nuclear weapons," he asserted, "a lot of contact with the public is simply unacceptable."

The AAR's Murray has several counterarguments. In addition to camouflaging the missile carriers as boxcars or auto-rack cars, the Air Force could keep Soviet spies guessing by running decoy trains. And by parking the MX trains at well-secured defense installations and power plants, he said, the odds of terrorism and sabotage could be reduced sharply.

The Illinois Central Gulf list of security sites includes these in Illinois—the Joliet Army ammunition plant, Chanute Air Base at Rantoul, Scott Air Base at Belleville, Commonwealth Edison's Braidwood nuclear power plant, Illinois Power's Clinton nuclear power plant as well as conventional power plants at Joliet, Baldwin and Newton.

As for public acceptance, Murray said, railroads already are hauling tons of ammunition, spent nuclear fuel, nuclear reactor

parts and missile parts virtually without incident.

Mr. DIXON. 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. CHAFEE). Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. BAKER. Mr. President, I am happy to say that I believe that the difficulties and complications which produced an earlier objection to the unanimous-consent request that I put have been addressed and eliminated.

I wish to put the unanimous-consent request at this time. I anticipate that there will be reservations for the purpose of establishing certain understandings between the parties.

Mr. President, I submitted them to the minority leader and put them at this time for his consideration and that of all Senators.

Mr. President, I ask unanimous consent that, notwithstanding the provisions of rule XXII, the amendment of the Senator from North Carolina (Mr. HELMS), as amended, be laid aside, along with the measure it proposes to amend, the Department of Justice authorization bill, S. 951, and that at the hour of 11 a.m. on Monday, February 1, 1982, the bill be laid before the Senate and that following 3 hours of debate, 1 hour each under the control of the distinguished Senator from Connecticut (Mr. WEICKER) and the distinguished Senator from Louisiana (Mr. JOHNSTON) and 1 hour under the control of the distinguished Senator from Michigan (Mr. LEVIN), a vote to occur on the Helms amendment, such vote to occur without intervening motion, point of order, or appeal.

I further ask unanimous consent that, notwithstanding any cloture motion which may be filed in connection with S. 951, the bill be laid aside upon disposition of the Helms amendment and that the measure may be called up at any subsequent time by the majority leader, after consulting with the minority leader, with a vote on any such cloture motion to occur 1 hour after the Senate returns to the consideration of the bill.

Mr. President, I further ask unanimous consent that it shall not be in order for the remainder of the 97th Congress, first session, to proceed to the consideration of Senate Concurrent Resolution 33.

Further, I ask unanimous consent that in respect to H.R. 4169, which is the State-Justice-Commerce appropriations bill, that if cloture is invoked on that measure and the Senate adjourns sine die while the measure is pending, the bill be returned to the calendar, to be called up at any subsequent time by the majority leader, after consulting with the minority leader.

Finally, Mr. President, I ask unanimous consent that if cloture fails the bills S. 951 and H.R. 4169 be returned to the calendar and that they no longer have the status of being the unfinished business of the Senate.

Mr. FORD. Mr. President, reserving the right to object, will the majority leader yield for just a question or two?

Mr. BAKER. I yield.

Mr. FORD. Has the majority leader in his endeavor to secure this unanimous-consent agreement discussed a time certain for Senate Concurrent Resolution 33 to be considered in committee?

Mr. BAKER. Yes. I say to the distinguished Senator from Kentucky that there have been extensive conversations between the Senator from Oregon, the chairman of the Commerce Committee, the principal author of the resolution, Senator PRESSLER, and Senator KASTEN, and I yield at this point so that they may advise the Senator from Kentucky on what if any arrangements they have discussed and how they relate to the requests that I have just put.

Mr. PACKWOOD. I have indicated to the Senator from Wisconsin and the Senator from South Dakota that we would have a committee markup. We would not mention a date certain, but I would give them my word it would be in a reasonable period of time. I do not intend to drag it out to the 75th day before we would have a markup, and that was acceptable to them.

Mr. FORD. That was acceptable to them, I understand. But it seems to me that we are learning about the protection of the minority, and the distinguished Senator from Oregon has taught this Senator many lessons in the few short years that I have been here, such as today.

The Senator from Oregon understands that I have been an opponent of the legislative veto because I think it has been an indictment of Congress as to our inability to pass legislation and to direct our agencies to do what we want them to do, and I think we are learning a valuable lesson here today. The legislative veto is in the same problem area as anything else would be, and you are exercising the right, and I admire you for that, but I do think it is a shame that you take the committee back through the same route it has gone, and that we have to go through the markups, and we have to do all those things within 75 days.

I hope you could give this unanimous-consent agreement—let the distinguished majority leader add to it—a couple of weeks after we come back on January 25, and get it back on the floor and get rid of it. We have had the hearing and done everything——

Mr. PACKWOOD. I can assure you we do not need any more hearings. If the Senator from Kentucky and the Senator from Wisconsin want more hearings, that is their business. I do not intend to ask for any more hearings. But I would like to have leeway, if the Senator from Kentucky will accept my assurances that I will not unduly delay this. We will have a number of markups, and we will reach it quite early, even if I have to call a special executive session. I do not intend as chairman to hold it up unduly.

I do not like disapproval of this FTC rule. I think it is good protection for those who are buying used cars. But I figure if the consumer groups who are opposed to the disapproval cannot, between this date and the time we take it up, and a reasonable period afterward, find the votes to defeat it, delay of another 2 months is not going to make any difference.

Mr. FORD. I might say to my distinguished colleague from Oregon that 75 days have already run on this, and this is not anything new to the FTC, not anything new to the distinguished Senator from Oregon. This has been going on for 6 years, and now you want to just extend it a few more months to generate some support.

Mr. PACKWOOD. One of the reasons we did not pick a specific date is that there is a question in the law as to whether or not the Federal Trade Commission has to resubmit this rule.

Mr. FORD. That just indicates a further reason why we ought to go on and expedite it.

Mr. PACKWOOD. No. What I mean is, if they do not submit the rule, there will be nothing to pass on. The law is clouded as to whether or not the Federal Trade Commission has an obligation, a mandatory obligation, to reissue this rule or whether, because it is a new Commission, with a new chairman, they may choose not to issue it at all or issue it in some amended form. But again I can assure the Senator from Kentucky, you have my word that I do not intend to unduly delay this.

Mr. FORD. Let me just say to the distinguished Senator from Oregon that I have been dealing with the Federal Trade Commission, as he has, for a long time, and just what you have said to me is that the Federal Trade Commission will probably come back with another rule or they will cloud the issue again.

We will not be taking up the same type of regulation or rule that we just got another hearing, and that will be the argument after the first of the year that it is not the identical one, that they have a right, because the issue is clouded, to issue another one.

So I respect the Senator for his legal talent as well as his other talents, and would say to the Senator that this would be a ploy that I could see that we will have a new rule, we will have to have new hearings, and we will go through the whole 75 days again.

Now all you are doing is taking us down the road to something that is not going to happen, and I would hope the Senator will give us at least a time certain if we get a new rule, fine, that we will do it within a couple of weeks.

If not, and they do not have to issue a new rule, they do not send one up, we do not even have to have that hearing, and I would like to have an understanding with the Senator on that.

Mr. PACKWOOD. Much as I hate to disagree with my distinguished colleague, I am reluctant to pick a day certain now and say that we will have a markup on x day or this bill will be reported out by

x day. I give the Senator my assurances that there will not be any untoward delay.

Mr. FORD. I understand that. But then we will get into that gray area, and I have been in the gray area several times with people who do not want the same thing I do, and when you get into the gray area, then we begin to say, "Well, we had better not do this, there is nothing positive about it," so we get more delays, and that is not what we want.

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

Mr. FORD. I will not object at this time.

Mr. KASTEN. I thank the Senator from Kentucky.

As the chairman of the Consumer Subcommittee, I just wanted to see if I could put this into perspective a little bit.

First of all, the 90 days are going to expire on the 20th of December. Under the present circumstances, under the rules of cloture, the used car rule would go into effect if we are still in session then, because the vote would be prevented up until that day. If the used car rule, in fact, went into effect for this reason, the Senate would have been prevented from even having a vote on the veto. So we must withdraw the issue right now. It is clear that the Senate will not be in session on the 20th of December. Therefore, there will not be a 90-day period of time for review, and, therefore, we will be able to begin the process over at the beginning of the next session.

Now, the legislative veto provision of the FTC Improvements Act of 1980 says that:

> The Commission shall be required to resubmit the final rule involved at the beginning of the next regular session of the Congress.

It is our understanding this will be the same rule that they submitted before.

But from the point of view of people who are opposed to the rule—and I am—resubmission of the rule means it will not take effect; the rule is put off. If we were to delay now, the effect would be just the opposite, because we would never be able to have that vote. So the danger is that the rule would take effect, and also that the legislative veto concept would not work, because the Senate would not have the chance to exercise its will.

We have been guaranteed prompt committee action by the chairman of the committee. He has said today that he is not going to seek to unduly delay this issue.

I would also remind the Senate that once the issue is out of the committee, a motion to proceed to its consideration is a privileged motion, and we will take it up in the Senate.

So I say to the chairman and the Senator from Kentucky, in particular, I think we have worked out a way that we can reach the end we all desire.

The Senate can proceed with its business, the rule will not go into effect, and the legislative veto process can work in a deliberate, businesslike way when the 90 days begin with the beginning of the next session.

I would like to yield to the Senator from South Dakota.

Mr. PRESSLER. Mr. President, I wish to commend my colleague from Wisconsin for his efforts.

We are in position, that 9 days—this being the 11th of December—from now, on the 20th, if the Senate is still in session and has not acted on this matter, the FTC rule will go into effect.

As I understand my distinguished colleague from Oregon, it will be his intention of continue his objections during the pendency of the 100 hours of past cloture debate. This period of time would take us beyond December 20.

Therefore, we have little choice in terms of the fact that if we attempt to keep the Senate in order to take up the disapproval resolution, we will lose because of the running of the clock. Then the rule would go into effect on December 20 so that two-House veto could not be invoked.

Mr. KASTEN. The Senator is correct. Because of the cloture rules under which we are operating, we would not get an up-or-down vote on the question of the legislative veto of the used car rule, and the rule could go into effect. So this action for delay, and resubmission of the rule, has the effect of helping the used car dealers that the Senator from South Dakota has been working with, and I think we have a solution which should satisfy everyone.

Mr. PRESSLER. Could I ask the chairman of the subcommittee a question for clarification for the record. Under this two-House veto, can one Member call that to the floor under the parliamentary situation which now exists?

(Mr. ANDREWS assumed the chair.)

Mr. BAKER addressed the Chair.

Mr. KASTEN. No, under the parliamentary situation in which we now exist—and I will yield to the majority leader—we are operating under cloture rules and scheduling all activity under unanimous consent.

The PRESIDING OFFICER. I might remind the Senator that the majority leader has the floor.

Mr. BAKER. I yield to the Senator from Wisconsin.

Mr. KASTEN. Under the way we are operating now, one Senator can prevent any scheduling. So, under the circumstances, the best of all possible resolutions is the one we have chosen. The rule will not go into effect and the 90-day period and the veto process will begin again, probably on or about January 25.

Mr. PRESSLER. One further point for clarification. Will the FTC have to submit a new rule at the beginning of the next session or will the same proposal stay alive?

Mr. KASTEN. There is a legal question on that point. Most of the lawyers with whom we have discussed this issue interpret statutory language, "The Commission shall be required to resubmit," to mean that the Commission shall be required to submit the same rule they submitted now. That is a legal question that we can work with and discuss further. But it is our general opinion, and the opinion of the people we consulted, both in the House and the Senate, that the rule will be the same rule and will be submitted on or about January 25, when we go back into session.

Mr. PRESSLER. Let me conclude by saying that I have a very high regard for my colleague from Oregon. I know he is exercising his right under our parliamentary situation. I respect his right. I thank him for being willing to work out an agreement. I certainly am not one in this body who wishes to keep us in session at times when it would be futile. If I felt that by going to the 20th we could get the rule, I would do it, and if we had to be in session around the clock until the 20th to get the rule, I would do it. But we will lose if we do that by virtue of the number of hours remaining for debate. My understanding is that the opponents of this resolution will remain steadfast on this point. I do, however, wish to thank everyone for their consideration in attempts to find a way around this impasse.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I wish to thank the Senator from South Dakota, the Senator from Wisconsin, the Senator from Oregon, the Senator from Kentucky, and others who have worked so hard to arrive at this arrangement. Indeed, I commend the Senator from South Dakota because, as he correctly stated, by undertaking to proceed in this way, he has salvaged from the last few days of session the possibility of proceeding without this approval. So I think he has accomplished a good purpose and, at the same time, he has facilitated the action of the Senate.

I wish to commend the Senator from Wisconsin, the Senator from South Dakota, the Senator from Kentucky, and the chairman of the Commerce Committee for their very thorough understanding of a very complex issue which is fairly new and novel in its application.

Mr. President, I yield to the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, reserving the right to object, and I shall not object, I have two quick matters. First of all, will it be in order to file a cloture motion after the adoption, hopefully, of the amendment of the distinguished Senator from North Carolina and myself?

Mr. BAKER. Yes, it would be, in my view and interpretation of the request as it is put. And I wish to make that a part of the request.

Mr. JOHNSTON. Second, do I understand the agreement, which is not part of this unanimous-consent agreement but part of an understanding between the majority leader and myself, that after we lay this bill aside, after the adoption of the Johnston-Helms amendment, assuming that it is adopted, that the majority leader intends to return to the matter and also after the vote on what would at that time be the third invocation of cloture, once that is invoked, that we will at the earliest possible time, earliest feasible time, return to the bill and stay on it until final disposition?

Mr. BAKER. Mr. President, I can assure the Senator from Louisiana that I am anxious to pass this bill and that, indeed, I will ask the Senate, after consulting with the minority leader, to re-

turn to the consideration of this measure as soon as it is feasible to do so, consistent with only the most pressing items of business that the Senate may have to transact.

I would estimate that we will be able to finish this bill and all the amendments to it sometime in the spring, and perhaps in the winter. But I have no desire to slow down the consideration of this measure. Indeed, I want to see it taken to final passage as soon after the February 1 date contemplated in this agreement as is possible.

Mr. JOHNSTON. I say to the majority leader that I hope, consistent with what he says, that that would be early during the month of February, but my confidence in him is such that I will leave it to his good faith to pick the exact date.

Mr. FORD. Mr. President, reserving the right to object, and I will not object, I would like to ask the majority leader about the parliamentary situation. If a new rule under the Federal Trade Commission is issued and is filed on January 25 or January 26, or shortly thereafter, and under your unanimous-consent agreement we go into a vote at 2 p.m. on February 2—which is on cloture, am I correct?

Mr. BAKER. On the Johnston amendment on February 1.

Mr. FORD. Are we back in the same procedure at that time as we are now?

Mr. BAKER. We are not. The order provides that post-cloture we may still lay the said matter aside and go to other matters.

Mr. FORD. I do not want to get caught in the same parliamentary maneuver next year under this same piece of legislation in the same circumstances that would apply then so that one person could object and the FTC rule could fly down the road and we would not be able to get an up-or-down vote on the used car rule.

Mr. KASTEN. If the Senator will yield, I had exactly the same concern. In discussions with the majority leader and with counsel, I have been told that we will not find ourselves in this position and the Senate will, in fact, be able to work its will on the legislative veto provision.

Mr. FORD. I might say to my good friend from Wisconsin that there are a lot of mechanics on this floor as it relates to parliamentary procedures. I just do not want to get caught in a mechanical problem. That is the reason I want to bring it up, so we do have legislation where it says we will not be in this same type of parliamentary procedure in the late days of February when the distinguished Senator said he would expedite this procedure. I thank the Senator.

Mr. BAKER. I thank the Senator.

The PRESIDING OFFICER. Is there objection? Hearing none, the unanimous-consent request is granted.

Mr. BAKER. Mr. President, I thank the Chair and I thank all Senators who participated for so long in arriving at this complex agreement.

Mr. President, what is the business before the Senate?

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 1982

CLOTURE MOTION

The PRESIDING OFFICER. The business before the Senate is the unfinished business H.R. 4169, on which cloture has been filed. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

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 the debate upon the bill (H.R. 4169) Commerce, Justice, State, Appropriations.

Jesse Helms, Paul Laxalt, Orrin G. Hatch, S. I. Hayakawa, James A. McClure, John Warner, Don Nickles, James Abdnor, Charles Grassley, John P. East, Richard G. Lugar, Peter V. Domenici, Mack Mattingly, Bob Dole, Steven Symms, and David Boren.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the bill (H.R. 4169), as amended shall be brought to a close? The yeas and nays are mandatory under the rule and the clerk will call the roll.

Mr. BAKER. Mr. President, before any Senator answers, I now say, in view of this agreement, once again, there will be no session of the Senate on Saturday.

The legislative clerk called the roll.

Mr. LEAHY (after having voted in the affirmative). Mr. President, on this vote, I have a pair with the distinguished Senator from Rhode Island (Mr. PELL). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "aye." Therefore, I withdraw my vote.

Mr. BUMPERS. Regular order, Mr. President.

The PRESIDING OFFICER. The regular order is being followed. The clerk is tallying the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Rhode Island (Mr. PELL), and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

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

The yeas and nays resulted—yeas 59, nays 35, as follows:

[Rollcall Vote No. 483 Leg.]

YEAS—59

Abdnor	Ford	Melcher
Andrews	Garn	Murkowski
Armstrong	Grassley	Nickles
Bentsen	Hatch	Nunn
Biden	Hawkins	Pressler
Boren	Hayakawa	Proxmire
Byrd, Harry F., Jr.	Heflin	Pryor
Byrd, Robert C.	Helms	Quayle
Chiles	Hollings	Randolph
Cochran	Huddleston	Roth
D'Amato	Humphrey	Sasser
DeConcini	Jepsen	Schmitt
Denton	Johnston	Simpson
Dixon	Kassebaum	Stennis
Dole	Kasten	Symms
Domenici	Laxalt	Thurmond
Durenberger	Long	Tower
East	Lugar	Wallop
Exon	Mattingly	Warner
	McClure	Zorinsky

NAYS—35

Baker	Glenn	Moynihan
Baucus	Gorton	Packwood
Boschwitz	Hart	Percy
Bradley	Hatfield	Rudman
Bumpers	Heinz	Sarbanes
Burdick	Inouye	Specter
Chafee	Jackson	Stafford
Cohen	Kennedy	Stevens
Cranston	Levin	Tsongas
Danforth	Matsunaga	Weicker
Dodd	Metzenbaum	Williams
Eagleton	Mitchell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Leahy, for.

NOT VOTING—5

Cannon	Mathias	Riegle
Goldwater	Pell	

The PRESIDING OFFICER. On this vote, the yeas are 59, the nays are 35. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

OLDER AMERICANS ACT AMENDMENTS OF 1981—CONFERENCE REPORT

Mr. BAKER. Mr. President, I submit a report of the committee of conference on S. 1086 and as for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1086) to extend and revise the Older Americans Act of 1965, 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 is printed in the House proceedings of the RECORD of December 10, 1981.)

Mr. BAKER. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. RANDOLPH. Mr. President, I suggest that Senators take their seats while listening to the majority leader. I think it will make it easier for him and will be more helpful to us.

The PRESIDING OFFICER. The majority leader has the floor. Senators will take their seats or retire to the cloakroom.

Mr. BAKER. I thank the Chair.

Mr. President, I intend to ask the Senate to remain in session until 6 o'clock today. As I indicated earlier, there will not now be a session of the Senate on Saturday. At the appropriate time, when we finish our business today, I will ask that the Senate go over until 11 o'clock on Monday. I will not put that request at this time, but I will confer with the minority leader in a little while and make those arrangements later.

I have just asked the Chair to lay before the Senate this conference report. I hope we can complete this conference report in a fairly short time and proceed to one other matter.

I suggest that we take up from the

executive calendar, the Consular Treaty with the People's Republic of China, to be dealt with this afternoon as well.

I think we can do both those matters before 6 o'clock.

I now inquire of Senators, especially those who will manage this measure, if there is a disposition to enter into a time agreement on this conference report on the Older Americans Act.

Mr. EAGLETON. I suggest 1 minute, equally divided.

Mr. GRASSLEY. Mr. President, reserving the right to object——

Mr. BAKER. I have not put a request, but I yield to the Senator from Iowa.

Mr. GRASSLEY. There has not been a limit put on the debate?

Mr. BAKER. No. I was inquiring if there is an inclination to do that. I had thought we could do this conference report in perhaps 30 minutes, equally divided. If the Senators from Iowa wishes more time, I have no desire to limit him.

Mr. GRASSLEY. I should like 7 or 8 minutes.

Mr. BAKER. Mr. President, it sounds like one of those matters where it may be faster without an agreement.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The question is on the adoption of the conference report.

Mr. EAGLETON. Mr. President, the distinguished Senator from Alabama is the floor manager of this bill, and while he is coming to his chair, I will present my statement.

I am pleased to lend my support and urge all of my colleagues to support the conference report on S. 1086, the Older Americans Act Amendments of 1981.

As my colleagues know, the amendments made in 1978 to the Older Americans Act substantially revised the nutrition and supportive services under the act, consolidating program administration in an effort to foster greater coordination and allow area agencies on aging greater flexibility in managing their funds.

Further, the consolidation was intended to assist area agencies on aging in developing comprehensive systems of services and increase the flexibility and significance of the area agencies' scope of operations.

I am delighted that the bill before us does not change the basic structure of those 1978 amendments. The Older Americans Act, unlike so many bills which come before this body, is not an amalgamation of unrelated programs. It is a comprehensive delineation of the long-term goals of American society with regard to our elderly citizens.

The act commits this Nation to work actively to enhance the quality of life of older Americans, and creates realistic alternatives for hundreds of thousands of older Americans in delaying and, hopefully, preventing unnecessary institutionalization.

Since 1965, we have extended this act many times. While we have modified and altered its provisions over the last 16 years, it is my view that these modifications have contributed to strengthening and coordinating systems of services reaching into every community, making possible a broad range of nutrition, transportation, counseling, and the more intensive home health and supportive services for the frail elderly.

This act has proven itself worthy of our continued support and its program components deserve to be maintained even in these times of fiscal austerity. This conference report before us today is an extension of the long tradition of strengthening the Older Americans Act.

The conference report to S. 1086 extends the Older Americans Act for 3 fiscal years, through September 30, 1984. Let me briefly highlight how this conference report deals with key elements of the act:

The separate nutrition programs for congregate meals and home-delivered meals are maintained with funding authorizations which increase annually by 7 percent. The existing requirement that each nutrition project, including home-delivered meal projects, serve meals in a congregate setting was changed to require that every State plan give primary emphasis to serving congregate meals, except that an area agency on aging may provide home-delivered meals based on a determination of need without requiring that home-delivered meal providers also provide congregate meals.

The existing requirement that each State operate an ombudsman program was strengthened by expanding the institutions over which the State ombudsman has responsibility to include boarding homes.

In addition, while the existing minimum funding requirement for the ombudsman program is retained, each State is required to reserve an amount sufficient to operate an effective ombudsman program.

With respect to supportive services—transportation, in-home, education and training, residential repair, and so forth, the existing requirement that a State spend at least 50 percent of its supportive services funds on transportation in-home, and legal services was changed to require instead that "an adequate portion" of area plan funds be spent on the three priority services.

The deletion of the rigid 50 percent requirement reflects Congress awareness that the strict percentage requirement reduced local flexibility to best meet the needs of the elderly within each community.

However, the new requirement that an "adequate portion" of each area agency supportive services allotment be spent on the three priority services of transportation, in-home, and legal services is not intended to reduce support for these services or to allow funding that is de minimus.

The conference report also contains an important new provision designed to enhance each State's ability to have an effective nutrition and supportive services system by allowing each State an interchange of up to 20 percent of its supportive services allotment or its nutrition allotment.

The conference report adds three new important areas of supportive services for which funds under the act may be used: The installation of security devices and structured modifications of homes to prevent unlawful entry, services to encourage employment, and a senior opportunities and services (SOS) program designed to identify and meet the special needs of the elderly poor.

The community service employment program for older workers, operated by the Department of Labor, is extended with several changes which seek to provide greater placement of employees under the program in private business concerns.

The existing funding levels for the programs under the act for fiscal year 1982, as contained in the continuing resolution just adopted by the House and the Senate, and the new authorization levels contained in this conference report are as contained in a table which I ask unanimous consent to have printed in the RECORD.

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

	Fiscal year 1982 appropriations under the continuing resolution	1982 authorization	1983 authorization	1984 authorization
Federal Council on Aging	$192,000	$200,000	$214,000	$228,900
Supportive services and senior centers	241,920,000	306,000,000	327,400,000	350,300,000
Congregate nutrition	288,000,000	319,000,000	341,400,000	365,300,000
Home-delivered nutrition	57,600,000	60,000,000	64,200,000	68,700,000
Research, training, and demonstration projects	22,272,000	23,200,000	24,800,000	26,600,000
Grants to Indian tribes	5,760,000	6,500,000	7,000,000	7,500,000
Community services employment	266,020,000	[1] 277,100,000	[1] 296,500,000	[1] 317,300,000

[1] And such additional sums as may be necessary for each year to enable the Secretary to provide for at least 54,200 part-time employment positions under the program.

Mr. DENTON. Mr. President, I thank my friend and colleague, the senior Senator from Missouri and the ranking member of the Subcommittee on Aging, Family and Human Services, for his statement and for his great assistance in this Older Americans Act, which is the matter before the Senate at this time—the conference report on S. 1086, the Older Americans Act Amendments of 1981.

I can say with all sincerity that this report is a finely crafted compromise—one which on a few points even exceeded my expectations. All deliberations on S. 1086 and the House version of that bill have begun from a common base of agreement—that this Nation's older Americans need and deserve to live in comfort and dignity. I believe that all the Members of this body recognized the importance of the Older Americans Act in

meeting these aims when they passed the 1981 amendments unanimously on November 2.

The final bill, as recommended by this compromise, would reauthorize the Older Americans Act for 3 years at a level of $1,085,300,000 in fiscal year 1982, which is consistent with the Budget Reconciliation Act, $1,161,514,000 in fiscal year 1983, and $1,240,928,900 in fiscal year 1984.

It would eliminate the authorization for the National Information and Resource Clearing House for the Aging. The Clearing House, throughout most of its existence, has been an ineffective vehicle for collecting and disseminating information and materials on aging.

Separate authorizations for social services, congregate meals and home-delivered meals would be maintained and States would be allowed to transfer up to 20 percent of funds between nutrition and social services allotments. This transferability will be extremely important in insuring that States are able to provide the most appropriate mix of services to their elderly constituencies.

The bill would remove the requirement that 50 percent of an area agency on aging's social services funds be spent on access, in-home and legal services and instead requires that "an adequate proportion" be spent.

Boarding homes in which a certain number of elderly persons reside would be placed under the provisions of the long-term care ombudsman program, requiring States to respond to complaints of elderly residents of those homes.

A State, which on or before October 1, 1980, had functioned as a single planning and service area, would be allowed to designate one or more additional planning and service areas within the State to be administered by an area agency on aging. The State agency on aging would be required to continue to perform the functions of an area agency on aging for the balance of the State. This will be helpful to those States which have largely rural populations with only a few urban areas.

State and area agencies on aging will be given additional flexibility by a provision which would allow them to submit a 2-, 3-, or 4-year plan for providing services to the elderly.

The bill would solve a problem which has long existed in some congregate meals projects. It would allow meals to be served to handicapped and disabled persons under age 60 who reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided. I believe this is an important step in diminishing fragmentation among Federal programs.

Current law allows providers of nutrition services to solicit contributions from program participants and requires that these contributions be used to increase the number of meals served. The use of these contributions would be expanded to include access to nutrition services and other supportive services directly related to nutrition services.

This legislation would give State agencies on aging explicit authority to fund additional services such as those related to crime prevention, including the installation of security devices; the provision of certain employment services; the provision of education and training services to enable older persons to cope with their changing economic, health, and personal needs; the provision of outreach and informational services in the native language of limited English-speaking persons; and senior opportunities and services programs.

The commodities program for the elderly would continue to be administered within the Department of Agriculture, but expenditures under that program would be capped at $93.2 million in fiscal year 1982, $100 million in fiscal year 1983, and $105 million in fiscal year 1984. Such additional sums as may be necessary to maintain the level of reimbursement for the number of meals served in fiscal year 1981 would also be authorized.

The authority of the Commissioner on Aging to fund projects related to training and recruiting personnel in the field of aging, supporting research and development activities related to the act, and demonstrating certain approaches to meeting special needs of the elderly, would be continued. It is the intent of the conference report that among the suggested demonstration projects which the Commissioner may fund, high priority be given to projects designed to provide mental health services to the elderly.

With regard to the senior community service employment program, the bill would require the Secretary of Labor to use at least 1 percent, but not more than 3 percent, of the funds in excess of the 1978 funding level to demonstrate methods of training and placement of older persons in private sector employment.

The Secretary was given permissive authority to implement a similar provision in the 1978 amendments to the act, but regrettably did not do so. I believe that if we are to continue our present efforts to serve the employment needs of older Americans we must concentrate on helping them to develop the skills and confidence to obtain private sector jobs.

At the same time, I must acknowledge that the program as it is presently structured provides vital community services which might not otherwise be possible were it not for the manpower of its older workers.

The 1978 amendments to the act gave area agencies on aging, rather than State agencies, primary authority for selecting nutrition service providers. To avoid any disruption while the area agencies were gaining expertise in their new responsibilities, a provision requiring that existing nutrition projects continue to be funded was put into the law.

The agreement before us would provide that no contract awarded after September 30, 1982, be entered into for the provision of nutrition services unless that contract is awarded through a competitive process. Where there is no evidence of improved quality of service and cost effectiveness on the part of another bidder, an existing provider who was receiving funds prior to the 1978 amendments shall be given preference.

Finally, a number of changes to increase the flexibility of Indian tribal organizations receiving direct grants under the act would be made. The requirement that they provide legal and ombudsman services would be removed.

Funds that would otherwise be required to be expended for nutrition services could be used for social services when the need for nutrition services is being met from another source. The requirement that Indians participating in the program must be 60 years of age or older is changed to read "older Indians."

As chairman of the Subcommittee on Aging, Family and Human Services, it has been a pleasure and a privilege for me to shepherd this reauthorization through the Senate, under the auspices and with the excellent guidance of the chairman of the full Labor and Human Resources Committee, Senator HATCH. I also thank the distinguished ranking minority member of the Subcommittee on Aging, Family and Human Services, Senator EAGLETON, and the equally distinguished ranking minority member of the Labor and Human Resources Committee, Senator KENNEDY, whom I just thanked personally.

I believe the staff members on both sides of the aisle deserve recognition for the fine work done on this bill behind the scenes, as well—particularly Marsha McCord, sitting with Senator EAGLETON, Cynthia Hilton and Gail Jimerson, seated at my side.

I commend this conference report to the consideration of my colleagues and recommend its immediate passage.

Mr. GRASSLEY. Mr. President, I wish to ask the Senator from Alabama some questions if he would participate.

First of all, I say to the Senator from Alabama it was the Senate's position when this bill passed the Senate that we would not have forward funding of the title V program. That was the position the Senate took. The House of Representatives took a different position. I wish to have the Senator explain why the Senate receded to the House on this position, particularly in light of the fact that the Secretary of Labor had written to us in the Senate, I think at the behest of the Office of Management and Budget, that we would not have forward funding of title V programs. And for the benefit of my colleagues, the title V programs are the programs that for instance include jobs for senior citizens, like the Green Thumb program, as an example.

Mr. DENTON. I am glad to respond to my friend the Senator from Iowa. The Secretary of Labor and I just finished a 35-minute conversation a few moments ago in which his misapprehensions or those of one of his subordinates regarding some confusion which existed between his identification of some employment programs for the elderly and such training programs as CETA were cleared up.

For the Senator's information, the Republicans and Democrats on the Senate side as well as those on the House side in conference disagreed with the Senate position, which the Senator outlined, in that they recognized that since the inception of this program in 1968 it has been forward funded, and that if

it were not forward funded this year there would be serious dislocations among the elderly whom it is serving. So there was agreement by a majority of the conference colleagues on this matter, a sentiment which I of course share as an individual.

Mr. GRASSLEY. So what the Senator is saying is the Secretary of Labor is withdrawing his position that was started in that letter that he, the Senator, and discussed privately.

Mr. DENTON. I am saying that the Secretary of Labor had not read the letter which he signed, and that the subordinate who wrote it is now being engaged in a conversation with the Secretary of Labor as a result of the conversation we had, and that the subordinate will be meeting with our subcommittee people to clarify his misapprehensions regarding the program.

Mr. GRASSLEY. Is there any question in the Senator's mind about this whole process of contracting with certain national organizations? And I list, for instance, the National Council of Senior Citizens, the National Council on Aging, the Farmers Union, the Black Caucus on Aging, et cetera, several organizations that contract for some of these job programs. Is there going to be any oversight by the Senator's committee of the whole process of contracting, No. 1, performance by any organization that might contract and more specifically whether or not the 15-percent administrative fee figure that is in most contracts, which seems to me a phenomenal cost of taxpayers' money to have an organization administer programs for the Federal Government, to see if this 15-percent figure is accurate or necessary?

Mr. DENTON. I can assure the Senator that the 15-percent overhead figure which is allowed by law is not met by any of those organizations to which he refers. The closest is one which does have 14-percent administrative cost. The others range down to as low as 6 percent, and I am sure that some of these organizations in some States have conceivably engaged in activities which one could consider justifiably objectionable in the sense of political lobbying, but they are not engaged in that sort of thing throughout the country with title V money. They are indeed spending it usefully according to all the oversight hearings we heard, but we will take into account and exercise special attention in our oversight responsibilities in the matter the Senator has raised.

Mr. GRASSLEY. I thank the Senator from Alabama for agreeing to monitor that very closely and particularly I suggest if there is one organization that is way out of line with the rest of them as he suggested at 14 percent, then take a special look at whether that figure needs to be that high and whether or not it cannot be done for a lesser amount and then also in the process of contracting out for a lesser amount then, of course, that means that there will be that many more jobs provided for senior citizens, and after all that is what this program is all about, which is jobs for senior citizens. We want to encourage the employment of senior citizens. We want to encourage as much as we can people who want to stay in the work force to do that.

There are a lot of advantages to it. We do not need to discuss those advantages at this point. But as far as taxpayers' money is concerned, whether or not the level of title V employment I think at some 50,000 has been fairly constant over the years and yet the level of appropriation for these programs is going up and up and up, and consequently it seems to me we should be creating more jobs with more appropriations of funds.

Part of my interest in this comes not only because in a general way I am interested because of being a member of the Committee on Aging, but at the October break the senior Senator from Illinois, Senator PERCY, and I held hearings in the quad city areas of Illinois and Iowa and out of that hearing came the general feeling that perhaps there was too much money being spent for agencies that contract to serve the purpose of employment or hiring senior citizens for Federal programs, and whether or not less of that money should not be spent in Washington and more in the local level and totally less spent through Government and more going to meet the needs of the people in employment.

It seemed to me there was a general consensus from that hearing that there was more being spent on administrative costs of contracting out than should be, and so I make that point.

Then in closing I make a point that I made to the Senator and other members of this subcommittee who were conferees in this full committee that we do have issued in August a General Accounting Office report studying some of the programs that I have referred to, particularly those in title V. This study makes suggestions on reform, suggestions on changes, that I feel behooves the subcommittee to look into the process of monitoring and oversight to see if we could not accomplish some of the suggestions that are laid out here by the General Accounting Office. To the extent that we are all pursuing a reduction of waste and mismanagement of money, not even speaking of fraud, and I do not think there is any intent of fraud in this report or any reference to fraud in this report.

We have just this week, in amendments that have come up on various bills, tried to combat waste and mismanagement of taxpayers' money, and here we have a General Accounting Office report, in regard to title V programs, that I do not think that in the adoption of this conference report we are giving the heed that we should. I do not say that the Senator in any way is intending to avoid it because I know that he is busy and I am busy, but I did try through a letter to each one of the conferees, prior to the conference, to bring up the point and particularly the GAO report and my objection to forward funding.

I sent this letter because of a letter that we received from the Secretary of Labor, although the Senator tells me the Secretary of Labor in fact did not sign the letter. I did not know that. But it seemed to me to conform with certain goals that the Office of Management and Budget has been trying to accomplish, namely not doing any more forward funding than necessary. By not forward funding it would give us a chance to more quickly in the Reagan administration zero in on a review of some of these programs that obviously forward funding makes very difficult to change.

So it is only with that in mind that I call it to the Senator's attention and with the assurances that he has given me in his oversight capacity; namely that he is going to look into this, particularly the percentage of the money that goes for the eight title V contracting associations. I am satisfied the Senator in no way intends to object to this and I am going to be fully supportive of it as I was in the instance when it passed the Senate.

But remembering when it first passed the Senate, we did not have forward funding in the Senate bill, and to that extent I thought it was more closely in line with the goals that we Republicans in this body are trying to accomplish and what this administration is trying to accomplish.

Would the Senator from Alabama like to have me yield to him?

Mr. DENTON. Very briefly. I thank my friend from Iowa. I wish to assure him that I am in favor of the same general goal that he has outlined, namely, more money reaching the people intended to be helped rather than the people passing it on.

I assure the Senator that the 15 percent, the 14 percent, which that one particular organization expended, did get our attention and we learned after investigation that since they are placing elderly people in rural areas, requiring transportation to do the placement and that sort of thing, that it did entail extra expenses which seemed to be commensurate with the difficulties they had to overcome, with fewer opportunities for placement in the rural areas.

The considerations which you have raised came up, I believe, after our committee passed the bill, and we took note of that and some of the arguments you mention.

However, the GAO letter tells the Secretary of Labor to check his shop for his contracting procedures, on which we are in accord. He would have to do some of that. But the GAO proposed no changes to my knowledge, in the congressional program, as we are administering it, in that same report.

The lumping of CETA with the senior community services employment program was an error, which I have just discussed with the Secretary of Labor, and he acknowledges that it was. That was the adverse side of that report.

If you separate out the senior community services employment program from CETA, there is no weight of adverse evidence. But I assure my friend we will look into and continue to pursue the matter of improving program efficiency where it is possible.

Mr. GRASSLEY. Before I yield the floor, I would suggest two things to the Senator from Alabama: No. 1, that we think in terms of maybe putting a 10-percent limit on any contract of any one agency or organization; and No. 2, that we look at the prospect of less of that

administrative funding being spent at the national level, presumably here in Washington, although I cannot say it would be totally here in Washington, and more of it spent at the local and State level in the administering of funds.

Mr. DENTON. We will be happy to look into the Senator's recommendations. Thank you very much.

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

● Mr. PRYOR. Mr. President, yesterday Members of the House of Representatives and the Senate met in conference to consider S. 1086, the Older Americans Act Amendments of 1981. This act provides for a 3-year reauthorization of programs for the elderly as first created by the Older Americans Act of 1965.

In the little more than 15 years that this act has been law, we have seen sweeping changes and expansion of the services provided in response to dramatic shifts in the needs of our elderly and to changes in our national policy on aging.

In the last decade or so, when I first became involved in programs for the elderly, we had only begun to understand the challenge that was soon to face our Nation—that of the graying of our population. We began to realize that, as a greater and greater proportion of our Nation approached retirement age, our institutions would be challenged far beyond any imaginable expectations. Throughout that time, we worked to develop the services and the aging organization so that this challenge can be met, and so that the increased services could be more efficiently and most effectively delivered.

I am gratified by the progress we have made in most recent years. Some of the most important accomplishments we have achieved relative to the Older Americans Act include the establishment of a national nutrition program for older Americans which is now operating in every State, providing daily meals and socialization for hundreds of thousands of citizens per day throughout the Nation; a vast home-delivered meals program which services some of the most needy among our elderly: the disabled and homebound, and which, I am certain, has been most instrumental in keeping some of our more frail senior citizens out of nursing homes; a nationwide ombudsman program designed to specifically aid those elderly confined to long-term care facilities; and a nationwide community service employment service providing community employment positions for a vast number of low-income persons who are 55 and over, having poor employment prospects, yet who are interested in getting into the workforce.

Most recently, we have sought to fine tune these exceptional programs, providing for greater flexibility so that the elderly can be even more effectively served. Mr. President, I believe these accomplishments attest to the Congress interest in our Nation's elderly, and I want to take this opportunity today to commend the distinguished members of the Aging, Family, and Human Services Subcommittee of the Senate's Human Resources Committee for the long hours they have spent in reviewing the Older Americans Act programs in an effort to arrive at this excellent piece of legislation.●

Mr. DOLE. Mr. President, this year, perhaps more than in recent years, there has been a great amount of attention given to issues affecting older Americans—we have just been through a process which included taking temporary measures to address the funding crisis in the social security system. Last week, the White House Conference on Aging attracted a lot of publicity, and resulted in over 600 recommendations from the various committees which the Congress will consider in hearings next year.

Along with programs such as social security and medicare, the Older Americans Act has provided valuable services to our Nation's elderly citizens in the form of employment programs, nutrition programs like the congregate meals program, Meals on Wheels, and home delivered meals.

Increasing numbers of our citizens are age 65 or over, and they are living longer and more active lives, due to progress in the field of medicine. As chairman of the Nutrition Subcommittee, the Senator from Kansas is especially aware of the role that nutrition programs play in promoting good health among our older people.

In addition to providing direct nutrition benefits, the programs authorized by the Older Americans Act contribute significantly to the development of social contacts, which are so necessary for people at this time of their lives, when their families may have moved away and they find themselves feeling very isolated from people around them. Just recently, a new senior citizens center opened in my hometown of Russell, Kans., and it has been a great success for that area. The elderly living in rural areas have very special problems, complicated by distance and transportation problems and we need to address these needs.

The challenges that presented themselves when many of our elderly programs came into being have given way to new challenges, most of which are linked to the state of our economy. Those who are forced to live on fixed incomes suffer the most when inflation is high—they retire from productive jobs only to find that inflation has ravaged their best hopes for the carefree years ahead of them. I hope that we will soon see an end to the economic woes that affect all our citizens, due to the Reagan administration's economic recovery policies.

When our country became independent two centuries ago, every 50th American was age 65 or older, which was about 2 percent of our total population. However, at the beginning of 1980, older Americans comprised 11 percent of our population. There are now over 25 million older Americans, and their numbers are steadily growing. These demographic changes put a lot of stress on resources available to address their unique problems. However, we owe a large part of our country's history to those who have already made their contributions to our country's history. There comes a time when parents become grandparents, and roles are reversed for their children.

This administration has no intention of forgetting the needs of its elderly—we have a President who is quite well aware of the talents and potential that those over 65 possess. We must find ways for older Americans to continue to be active in our society—they still have much to offer, and there is much that we can learn from them. In his poem "Ulysses," Alfred Lord Tennyson says:

Old age hath yet his honor and his toil;
Death closes all; but something ere the end,
Some work of noble note, may yet be done . . .
Come, my friends, 'Tis not too late to seek a newer world.

Push off, and sitting well in order smite
The sounding furrows; for my purpose holds
To sail beyond the sunset, and the baths
Of all the western stars, until I die . . .

Though much is taken, much abides; and though
We are not now that strength which in old days
Moved earth and heaven; that which we are, we are,
One equal temper of heroic hearts,
Made weak by time and fate, but strong in will
To strive, to seek, to find, and not to yield.

Mr. CHILES. Mr. President, I rise in support of the conference report on S. 1086, the Older Americans Act Amendments of 1981. The Older Americans Act of 1965, as amended, is an extraordinary piece of legislation in that it contains a comprehensive declaration of our society's long-term goals for older persons. Further, the act commits Congress, Federal agencies, and citizens to work together to enhance the quality of life for all older persons.

The Older Americans Act has served as a vehicle through which Federal, State and local governments have allocated valuable resources for a wide variety of services for the elderly. This legislation has withstood the test of time. It provides opportunities for the integration of all older people into the mainstream of society while it assists those who depend on services to receive support they require to lead their lives with dignity.

I should like to commend the conferees who worked out the agreements contained in this conference report and recommend its immediate and unanimous adoption.

Mr. HEINZ. Mr. President, today, the Congress takes another step in realizing the promise of the Older Americans Act of 1965. Much has been accomplished in the last 15 years, but clearly, our task is yet unfinished.

The Older Americans Act is directed toward giving older persons opportunities for participation in the full benefits of this country. Health, economic security, honor and dignity for all older Americans are challenging goals, yet have been made a partial reality through the progress made under the Older Americans Act.

Since the enactment of the Older Americans Act of 1965, the program has grown from a few small social service grants and research projects to a network of over 1,500 individual community service projects which service older persons. These programs are administered by 57 State and territorial units on aging

through a complex of over 700 locally based area agencies on aging.

The Older Americans Act has produced a network of effective and successful programs that have provided significant benefits to the elderly in our country. In my own home State of Pennsylvania, I am pleased to say that over $70 million has been expended in support of programs initiated under the Older Americans Act. These funds have supported a broad array of services provided by 49 area agencies on aging and more than 500 senior centers throughout the Commonwealth. The social, economic and emotional benefit derived by over one-half million older persons who have participated in these programs is immeasurable.

As chairman of the Special Committee on Aging, I have a deep concern for the utility and efficacy of these programs.

The Special Committee on Aging held an oversight hearing on the reauthorization of the Older Americans Act in April of this year. The results of our hearing, consultation with older citizens, and service providers led us to make a number of significant recommendations which would streamline and improve the efficiency of programs, increasing flexibility to meet local needs, and increase the participation of older persons in the operation of programs intended to serve them.

I believe that these new amendments will encourage the development of a service system which is more responsive to the needs of older citizens at the community level. Revisions to the act which will eliminate the present 50-percent spending requirement for priority services, allow for a transfer of up to 20 percent of the appropriated funds between social and nutritional services, and encourage the development of employment services under the supportive services category are all steps in the right direction.

Additionally, I am gratified that my amendment to add crime prevention and victim assistance programs as allowable services under title III–B has been included.

I believe the bill we pass today will be of great benefit to the older citizens of this Nation. In the future we will have the benefit of the policy recommendations of the White House Conference on Aging and the experience of a well established delivery system in place, in order to make far-reaching and enlightened revisions of the act to enable older citizens to truly reap the benefits of this country.

I wish to congratulate Senator DENTON and Representative ANDREWS for their fine efforts in bringing this bill to passage.

SEVERAL SENATORS. Vote!

Mr. ANDREWS. Mr. President, were the yeas and nays ordered?

The PRESIDING OFFICER (Mr. EAST). The yeas and nays have not been ordered.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the conference report on S. 1086. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Florida (Mrs. HAWKINS), the Senator from Maryland (Mr. MATHIAS), and the Senator from New Hampshire (Mr. RUDMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mrs. HAWKINS), would vote "yea."

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Nevada (Mr. CANNON), the Senator from Montana (Mr. MELCHER), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON) would vote "aye."

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

The result was announced—yeas 90, nays 0, as follows:

[Rollcall Vote No. 484 Leg.]

YEAS—90

Abdnor	Garn	Moynihan
Andrews	Glenn	Murkowski
Armstrong	Gorton	Nickles
Baker	Grassley	Nunn
Baucus	Hart	Packwood
Bentsen	Hatch	Pell
Biden	Hatfield	Percy
Boren	Hayakawa	Pressler
Boschwitz	Heflin	Proxmire
Bradley	Heinz	Pryor
Burdick	Helms	Quayle
Byrd, Robert C.	Hollings	Randolph
Chafee	Huddleston	Roth
Chiles	Humphrey	Sarbanes
Cochran	Inouye	Sasser
Cohen	Jackson	Schmitt
Cranston	Jepsen	Simpson
D'Amato	Johnston	Specter
Danforth	Kassebaum	Stafford
DeConcini	Kasten	Stennis
Denton	Kennedy	Stevens
Dixon	Laxalt	Symms
Dodd	Leahy	Thurmond
Dole	Levin	Tower
Domenici	Long	Tsongas
Durenberger	Lugar	Wallop
Eagleton	Matsunaga	Warner
East	Mattingly	Weicker
Exon	McClure	Williams
Ford	Mitchell	Zorinsky

NOT VOTING—10

Bumpers	Goldwater	Metzenbaum
Byrd, Harry F., Jr.	Hawkins	Riegle
Cannon	Mathias	Rudman
	Melcher	

So the conference report was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the conference report was adopted.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, there are a few items that can be taken care of this afternoon. I see the Senator from Pennsylvania on the floor seeking recognition. I wonder if I can ask his indulgence for a moment or two.

Mr. SPECTER. Certainly.

INTERNATIONAL DEVELOPMENT AND SECURITY ASSISTANCE ACT

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1196.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the bill (S. 1196) entitled "An Act to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize appropriations for development and security assistance programs for the fiscal year 1982, to authorize appropriations for the Peace Corps for the fiscal year 1982, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Zablocki, Mr. Fascell, Mr. Hamilton, Mr. Bingham, Mr. Solarz, Mr. Bonker, Mr. Mica, Mr. Barnes, Mr. Wolpe, Mr. Bowen, Mr. Broomfield, Mr. Derwinski, Mr. Findley, Mr. Winn, and Mr. Lagomarsino be the managers of the conference on the part of the House.

Mr. BAKER. Mr. President, I move that the Senate disagree with the House amendments, agree to a conference requested by the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. PERCY, Mr. HELMS, Mr. HAYAKAWA, Mr. LUGAR, Mr. MATHIAS, Mr. PELL, Mr. BIDEN, Mr. GLENN, and Mr. SARBANES for all provisions except title VI of the Senate bill and title IV of the House amendment (relating to the food-for-peace program, Public Law 480); Mr. CRANSTON (in lieu of Mr. BIDEN) as an additional conferee solely for considerations for provisions dealing with the Peace Corps; Mrs. KASSEBAUM as a substitute conferee (for Mr. MATHIAS) on December 11, 1981, only; and Mr. HELMS, Mr. DOLE, Mr. HAYAKAWA, Mr. LUGAR, Mr. HUDDLESTON, Mr. LEAHY, and Mr. ZORINSKY for consideration of title VI of the Senate bill and title IV of the House amendment (relating to the food-for-peace program, Public Law 480).

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATION, 1982

Mr. BAKER. Mr. President, I ask unanimous consent that, when the House bill, H.R. 4559, is received, it be deemed to have been read twice, the Senate be deemed to have proceeded to H.R. 4559, and that the series of amendments contained in the printed version of H.R. 4559 at the desk representing Senate action on S. 1802 be considered as agreed to and the bill be considered as having been read a third time and passed, and that the Senate insist on its amendments, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be au-

thorized to appoint conferees on the part of the Senate.

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

The PRESIDING OFFICER appointed Mr. KASTEN, Mr. HATFIELD, Mr. D'AMATO, Mr. RUDMAN, Mr. SPECTER, Mr. INOUYE, Mr. JOHNSTON, Mr. LEAHY, Mr. DECONCINI, and Mr. PROXMIRE conferees on the part of the Senate.

Mr. BAKER. Mr. President, I thank the Senator from Pennsylvania for permitting me to undertake this routine business. Now I yield the floor.

DISAPPROVAL OF DEFERRAL NO. D82–193

Mr. SPECTER. I thank the distinguished majority leader for providing this time for the submission of a resolution, which I now send to the desk, to disapprove deferral No. D82–193, deferring budget authority for the Federal juvenile justice program, the treatment alternatives to street crime program, the public safety officers' benefit program and other programs not identified in the deferral.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution submitted by Mr. SPECTER, for himself and Mr. KENNEDY, Mr. METZENBAUM, Mr. WEICKER, Mr. MATHIAS, Mr. DURENBERGER, Mr. LEVIN, Mr. REIGLE, and Mr. HEFLIN (S. Res. 260) disapproving deferral D82–193.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I yield to the minority leader.

Mr. ROBERT C. BYRD. Mr. President, has the request been put yet for immediate consideration?

The PRESIDING OFFICER. No, it has not.

Mr. BAKER. Mr. President, I apologize to the Senator. I was momentarily distracted talking to another Senator. I thank the minority leader for making that inquiry.

The PRESIDING OFFICER. Was a parliamentary inquiry being made?

Mr. BAKER. Yes.

The PRESIDING OFFICER. The clerk has simply stated the resolution by title for the information of the Senate. No request has been made for its immediate consideration.

Mr. BAKER. I thank the Chair.

Mr. President, as the Senator from Pennsylvania knows, I think, if such a request is made, I shall be constrained to object. I now yield the floor.

Mr. SPECTER. Mr. President, no such request will be made, because I knew that the majority leader would be so constrained. No request would have been made in any event, because the matter has not been cleared through the Committee on the Budget. I have had a conference with the distinguished Senator from New Mexico (Mr. DOMENICI) who has advised that he will take that matter up and seek to obtain clearance by Monday.

I have already received assurances from the distinguished Senator from Oregon, the chairman of the Committee on Appropriations, (Mr. HATFIELD) that there will be no objection from that committee and have received assurances from the distinguished Senator from South Carolina (Mr. THURMOND), the chairman of the Committee on the Judiciary, that there will be no objection from that committee.

On my inquiry of the distinguished Senator from New Mexico, chairman of the Budget Committee, I was informed that he would be cooperative in every way possible, but that it would take, presumably, until Monday to poll the committee and receive those clearances. I thought it advisable, because there is substantial interest in this resolution, to send it to the desk today and make a brief statement on it. I have sent it to the desk and I have carefully refrained from asking for immediate consideration.

Mr. BAKER. Mr. President, I thank the Senator for that explanation. I apologize to him for a momentary lapse of my attention. As I indicated, I was talking to another Senator. I acknowledge that the Senator from Pennsylvania indicated to me that he intended to proceed in this way. I never doubted that. I simply wanted to make sure that it had proceeded as I had understood.

Mr. ROBERT C. BYRD. Will the distinguished majority leader yield for a parliamentary inquiry?

Mr. BAKER. Yes, I yield.

Mr. ROBERT C. BYRD. Mr. President, what is the status of the resolution?

The PRESIDING OFFICER. Without objection, the resolution will be received and appropriately referred.

● Mr. DOMENICI. Mr. President, bringing up a resolution of disapproval of a deferral directly to the Senate floor directly violates Senate Resolution 45. Senate Resolution 45, adopted January 30, 1975, states:

That bills and resolutions introduced with respect to such messages shall be referred to the Appropriations Committee, Budget Committee, and . . . any other committee exercising jurisdiction.

The budget and authorizing committees are given 20 days to report their views to the Appropriations Committee which is responsible for reporting such measures.

Disapproving D82–193, a deferral of $10.7 million from law enforcement assistance, without following the procedure established in Senate Resolution 45 would be a dangerous precedent. Only a majority of either Chamber of Congress is required to disapprove a deferral. If deferral resolutions are considered without following the established procedure many additional disapprovals are likely. Disapproving large numbers of deferrals would undermine fiscal restraint.

I therefore appreciate the fact that the distinguished junior Senator from Pennsylvania has not asked that the resolution disapproving D82–193 be brought up at this time. I assure the Senator that the Budget Committee will consider the resolution and report it to the Senate with a recommendation as expeditiously as possible.●

The PRESIDING OFFICER. The Senator may proceed.

Mr. SPECTER. Mr. President, the funding for important aspects of the Office of Justice Assistance, Research and Statistics and most particularly that for the juvenile justice program administered by the Office of Juvenile Justice and Delinquency Prevention has been impeded.

According to information provided by the comptroller's office of the Department of Justice, some 19 States will have significant problems in funding their juvenile justice programs during the period preceding today as early as November and extending through to the end of the year if no formula grants are released. To date, all program funding has been deferred. None has been forthcoming since the beginning of the new fiscal year on October 1, 1981, with regard to formula block grants to the States or the categorical, special emphasis programs administered through the Office at the Department of Justice.

The 19 States already in jeopardy include Alabama, Arizona, Arkansas, Louisiana, Maryland, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, and, in addition to those States, the District of Columbia.

There is a very serious situation posed by the deferral, as disclosed further by testimony presented on October 28 at a hearing before the Senate Subcommittee on Juvenile Justice: Some 20 projects in Minnesota are likely to die even if there is only a delay in Federal funds; three-quarters of juvenile justice programs in Massachusetts will close if no funding is provided by February 1; and several projects in Ohio were predicted to be forced to close in Ohio by December 1. In fact, 10 of those projects have already closed their doors in Ohio and that number could rise to 30 by the end of this month.

Mr. President, the issue of juvenile crime prevention is one of enormous importance and needs no elaboration this afternoon. It is a factor vividly imprinted on the American scene by the tremendous impact of juvenile crime in this country. The Office of Juvenile Justice and Delinquency Prevention is but a modest effort within the Department of Justice to restrain that terrible crime impact, which can move beyond the juvenile period to career criminals causing enormous domestic violence.

The Office of Juvenile Justice and Delinquency Prevention was funded in fiscal year 1981 with $100 million and the projections in the budget by President Carter for fiscal year 1982 called for $135 million. In light of the budget cuts, a significant effort was made to reduce those funds and they were in fact reduced in the budget request formulated by the subcommittee which I chair to $70 million. After extensive consideration, the Committee on the Judiciary approved that figure and it has been consistently approved by this body. Efforts have been made to cut it in the budget, reconciliation and appropriation processes, but the figure has been retained. Indeed, the continuing resolution on which we acted today and earlier ap-

proved by the House includes $70 million in budget authority for juvenile justice.

On October 1, the Office of Management and Budget began deferring this budget authority, although that deferral, which this resolution seeks to disapprove, was not received by the Senate until October 29. In the ensuing 2½ months, there has been enormous damage done to very vital programs. We seek as immediate a remedy as possible with the submission of this impoundment resolution of disapproval. The sequence to which I have already referred is part of this effort to have as early disposition as possible. We had hoped that this matter could be brought up for action today, but it has been deferred until Monday so that the distinguished Senator from New Mexico can undertake the polling of the Budget Committee to see if the appropriate waiver can be obtained. We shall pursue it at that time.

Mr. President, I yield the floor and thank the distinguished majority leader for yielding the floor to me so I could present this statement.

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.

SETTLEMENT OF CERTAIN CLAIMS AGAINST CZECHOSLOVAKIA

Mr. MOYNIHAN. Mr. President, I introduce a bill, on behalf of myself, Mr. DOLE, and Mr. PERCY and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York?

Mr. MOYNIHAN. Mr. President, this bill has been cleared by both the Finance and Foreign Relations Committees on this side of the aisle.

Mr. BAKER. This matter has been cleared on this side of the aisle, as well.

The PRESIDING OFFICER. There being no objection, the Senate proceeded to consider the bill (S. 1946) to provide for the final settlement of certain claims against Czechoslovakia, and for other purposes, which was read the first time by title and the second time at length.

APPRECIATION FOR EFFORTS OF AMBASSADOR RIDGEWAY

Mr. DOLE. Mr. President, at the outset, I take the opportunity to express sincere thanks and appreciation to Ambassador Ridgeway for her handling of the very delicate negotiations with Czechoslovakia which led to the agreement we are considering today.

In 1974 the Congress rejected an agreement with Czechoslovakia which would have paid claimants $20 million over a number of years. At the very end of the last Congress, Senator Ribicoff held hearings on the Czech settlement question and every member of the Finance Committee who was present expressed intense frustration at the lack of a settlement more than 30 years after U.S. citizens' property was seized.

The committee urged the State Department to make one last effort to conclude a reasonable settlement with Czechoslovakia Ambassador Ridgeway was given this task and through her expertise, managed to achieve that which had eluded her predecessors—a reasonable settlement. She has worked closely with the Congress and the claims holders and their attorneys throughout these negotiations. The $81 million settlement which she was able to conclude by itself is witness to her abilities.

THE BILL UNDER CONSIDERATION

The legislation which we have before us today consists of two basic parts. It approves the agreement concluded with Czechoslovakia—a step which is necessary in order that certain Czech gold still held by the allies since its recovery after World War II can be returned. The bill also provides authority for the Government to implement the Czechoslovakia claims settlement program.

The agreement which is before us provides for the payment of:

Settle our citizens' nationalization claims by the payment of $81.5 million by Czechoslovakia to the United States—that amount is in excess of 100 percent of the outstanding principal balance of certified claims and thus is a settlement virtually unprecedented in the history of U.S. expropriation claims settlements;

Provides for the payment in full by Czechoslovakia of the more than $8 million it owes to the U.S. Government under a 1946 agreement on the purchase of surplus Army property by Czechoslovakia;

Provides for the removal by Czechoslovakia of its restrictions on two U.S. Government bank accounts in Czechoslovakia, Czechoslovak crown accounts valued at approximately $1 million; and

Provides for a negotiation with the Foreign Bondholders Protective Council to settle claims of American holders of defaulted bonds issued or guaranteed by the pre-World War II Czechoslovak Government.

The implementing legislation provides $500,000 for the Government for expenses incurred in administration of the claims. An account of $79.5 million is provided for certified claims holders and $1.5 million is provided for property seized from U.S. citizens after 1958. No money is provided for the so-called "Benes" group. This conforms to international law and U.S. precedents.

Mr. President I believe this agreement and implementing legislation are an excellent conclusion to the administration's efforts to solve this longstanding problem.

Mr. MOYNIHAN. Mr. President, this bill, like the resolution of a vexing matter that it represents, is a tribute to the senior Senator from Louisiana (Mr. LONG). Over the years, he has insisted that the Department of State would more successfully negotiate the claims of Americans whose property was seized by the Communist Government of Czechoslovakia if Congress were to insist that some minimal element of equity be involved and that the claims of individuals and not simply the concerns of Government be paramount. His support for S. 754, a bill I introduced last March, to resolve these claims in the absence of an acceptable negotiated agreement, has been instrumental in the achievement of such an agreement.

Mr. President, I would just like to reiterate the point that the Senator from Louisiana has been characteristically modest. He vastly understates the role he has played in the resolution of these claims. I am grateful for the guidance he has provided on this issue.

Mr. President, I have no further comments.

Mr. PERCY. Mr. President, this bill does not provide for payments to the so-called "Benes group," persons whose property was seized by the Benes Government of Czechoslovakia against a promise to compensate subsequently repudiated by the Communists after their February 1948 takeover.

These claims were adjudicated and rejected by the Foreign Claims Settlement Commission under the previous settlement program. The commission found that the "taking" occurred at the time of actual nationalization, not when the promise of compensation was repudiated. Thus, these individuals were not U.S. nationals at the time of taking, even though they may have had that status at the time of repudiation. Under accepted principles of international law, a claimant must have been a U.S. national at the time of taking and thereafter until the claim is presented. To reverse the commission's findings at this time would retroactively change the legal standards under which the commission was required to function by law enacted by the Congress.

What is wrong with this?

It would be unfair to the other claimants whose claims were approved by the commission. The Czechoslovak agreement was negotiated on the basis of the previous claims adjudications. The amounts sought were based on the claims approved by the commission under standards prescribed by the Congress, plus post-1958 claims to be adjudicated under the same standards. It is unfair for the Congress to "change the rules" to the detriment of these valid claimants.

Second, this would inevitably set precedents detrimental to the orderly settlement of our international claims. Claimants in other situations who have been turned down by the commission will know that they can apply to Congress to change the rules. Moreover, future claims negotiators will not know beforehand for whose benefit they negotiate.

Mr. LONG. Mr. President, today there comes before the Senate a bill to approve a settlement of claims between the United States and the Communist Government of Czechoslovakia. It is not the best result that could have been had. But it is a much better settlement than the Department of State has ever sent up to the Congress in the course of this matter, which has spanned 32 years or more, and it is unlikely now that any better result is possible. For that reason, I intend to support it. But for the benefit of the Sen-

ate, I would like to put this agreement in historical context.

Over the years since the end of World War II, we have had several efforts to settle these claims. The claims covered by the bill now before the Senate represent the interests of American citizens whose property was seized by the Government of Czechoslovakia after it took over that country in February 1948. In 1958, Congress authorized the Foreign Claims Settlement Commission to adjudicate these claims, a work that was completed in 1962. At that time, the commission certified 2,630 awards for a total value of $72.6 million in principal and $41 million in interest.

Then, the United States paid against these awards $8.5 million that had been realized from the sale of steel mill equipment seized on order of the United States for this purpose. Thereafter, in 1963 the Czechoslovakian Communist Government offered a small amount of money to settle these claims, which was wisely rejected by President Kennedy.

Subsequently, in 1974, the Department of State negotiated an agreement for the settlement of these claims. By that time, if you update the amount of the certified claims for interest from 1958 to 1974, the value of the claim would have been about $183 million instead of the $113 million certified by the Foreign Claims Settlement Commission. Nevertheless, that agreement would have provided only $4 million on signature of the agreement and another $16.5 million in 12 annual installments.

It would have been 1986, in other words, before the certified claimants were paid less than one-third of the principal of their claims. When this preposterous proposal was presented to the Finance Committee in 1974, the reaction was predictable, Mr. President. The committee could not understand why the United States had to accept less than 100 cents on the dollar.

At that time, the State Department argued to the Finance Committee that this settlement would be consistent with other settlements it had made with other Communist countries in similar matters; that this deal was as good as could be gotten; and that for Congress to reject the deal would destroy the credibility of the United States because its negotiators' agreements would be rejected.

Well, Mr. President, the committee felt exactly the opposite. The committee saw no reason to be consistent with settlements that were unfavorable to the United States; it saw no reason not to get as good a deal as the United States could get; and it felt that it would increase rather than decrease the credibility of the United States for Congress to reject an unsatisfactory deal. At the time I said, "It is my guess and I may prove to be in the minority on this, that if we act like tough Yankee traders of old, we will get these claims paid off a hundred cents on the dollar."

Well, Mr. President, the bill before us does exactly that. It provides $81.5 million which pays off the principal of these claims certified in 1962—100 percent. The bill approves this agreement and authorizes the Secretary to implement it by exchanging the gold held in the United States for cash from the Government of Czechoslovakia and then to distribute the cash according to formulas set forth in the bill to persons who properly have a claim upon it.

This is a direct result of our adopting a policy of tough trading. Earlier this year, the Finance Committee reported out S. 754, introduced by Senator MOYNIHAN, which would have resulted, if enacted, in the United States using the gold to create a fund that over a period of years would pay off all claimants with full interest and then return the gold to Czechoslovakia. Frankly, I thought the best thing to do would be simply to sell the gold and distribute the results to claimants.

Now, this agreement, Mr. President, has one defect, which is that it does not nearly compensate these claimants for the loss of the use of this money over the intervening years; there is only a small amount of money provided for interest on claims. Yesterday, the London fixing on gold was about $410 an ounce, making this gold worth over $118 million. With interest accumulated through 1979, the $72 million worth of certified claims against Czechoslovakia were worth well in excess of $200 million, and therefore a sale and direct distribution of the proceeds of the sale to the claimants would be much more fair. However, that is not possible at this time and this agreement is. Since it results in at least returning to the claimants 100 percent of their certified losses, I must support it.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1946

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Czechoslovakian Claims Settlement Act of 1981."

APPROVAL OF AGREEMENT

SEC. 2. (a) The agreement between the Government of the United States of America and the Government of the Czechoslovak Socialist Republic on the settlement of certain outstanding claims and financial issues, initialed at Prague on November 6, 1981, is hereby approved by the Congress.

(b) The President may, without further approval by the Congress, execute such technical revisions of the agreement approved by subsection (a) of this section as in his judgment may from time to time be required to facilitate its implementation. Nothing in this subsection shall be construed to authorize any revision of such agreement to reduce any amount to be paid by the Government of the Czechoslovak Socialist Republic to the United States Government thereunder, or to defer the payment thereof.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) "agreement" means the agreement on the settlement of certain outstanding claims and financial issues approved by section 2(a) of this Act;

(2) "national of the United States" has the meaning given such term by section 401(1) of the International Claims Settlement Act of 1949;

(3) "Commission" means the Foreign Claims Settlement Commission of the United States;

(4) "Fund" means the Czechoslovakian Claims Fund established by section 402(b) of the International Claims Settlement Act of 1949; and

(5) "Secretary" means the Secretary of the Treasury.

THE FUND

SEC. 4. (a) The Secretary shall cover into the Fund the amount paid by the Government of the Czechoslovak Socialist Republic in settlement and discharge of claims of nationals of the United States pursuant to article 1(1) of the agreement, and shall deduct therefrom $500,000 for reimbursement to the United States Government for expenses incurred by the Department of the Treasury and the Commission in the administration of this Act and title IV of the International Claims Settlement Act of 1949. The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts. The deduction required by this subsection shall be made in lieu of the deduction provided in Section 402(e) of the International Claims Settlement Act of 1949.

(b) The Secretary shall establish two accounts in the Fund into which the amount covered into the Fund pursuant to subsection (a) of this section, less the deduction provided for in such subsection, shall be covered as follows:

(1) An account into which not less than $79,500,000 shall be covered, to be available for payment in accordance with section 7 of this Act on account of awards certified pursuant to section 410 of the International Claims Settlement Act of 1949.

(2) An account into which $1,500,000 shall be covered, to be available for payments in accordance with section 7 of this Act on account of awards certified pursuant to section 6(c) of this Act.

(c)(1) Until such time as the Secretary makes payments on awards pursuant to section 7 of this Act, the Secretary shall invest any amounts covered into the accounts established pursuant to subsection (b) of this section in public debt securities which produce maximum short-term interest on income.

(2)(A) the income from the investment pursuant to paragraph (1) of this subsection of amounts in the account established pursuant to subsection (b)(1) of this section shall be credited to and form part of that account and shall be available for payment in accordance with section 7(b) of this Act.

(b) The income from the investment pursuant to paragraph (1) of this subsection of amounts in the account established pursuant to subsection (b)(2) of this section shall be credited to and form part of such account, to be available for payment in accordance with section 7(c)(1) of this Act.

DETERMINATION OF CLAIMS

SEC. 5. The Commission is authorized to receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property, including any rights or interest therein, owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and the date on which the agreement enters into force. In making the determination with respect to the validity and amount of such claims and the value of properties, rights, or interests taken, the Commission is authorized to accept the fair or proved value of

such property, right, or interest as of a time when the property or business interest taken was last operated, used, managed, or controlled by the national or nationals of the United States asserting a claim, regardless of whether such time is prior to the actual date of nationalization or other taking by the Czechoslovak Socialist Republic.

PROCEDURES AND CERTIFICATION OF CLAIMS

SEC. 6. (a) To the extent that they are not inconsistent with this Act, the provisions of sections 401, 403, 405, 406, 407, 408, 409, 414, 415, and 416 of the International Claims Settlement Act of 1949 shall be applicable with respect to claims determined by the Commission pursuant to section 5 of this Act, together with such regulations as the Commission may prescribe.

(b) Not later than sixty days after the date of the enactment of this Act, the Commission shall establish and publish in the Federal Register a period of time within which claims described in section 5 of this Act must be filed with the Commission, and the date for the completion of the Commission's affairs in connection with the determination of such claims. Such filing period shall not be greater than one year from the date of such publication in the Federal Register, and such completion date shall not be more than two years after the final date for the filing of such claims.

(c) The Commission shall certify to the Secretary any awards determined under section 5 of this Act, for payment on account by the Secretary in accordance with section 7 of this Act.

PAYMENTS OF AWARDS

SEC. 7. (a) In accordance with the provisions of this section, the Secretary shall make payments, out of the amounts available under Section 4 of this Act, including accumulated interest, on account of awards certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949 or pursuant to section 6(c) of this Act.

(b) As soon as practicable after the date of the enactment of this Act, the Secretary shall make pro rata payments from amounts in the account established pursuant to section 4(b)(1) of this Act, including accumulated interest, on the unpaid balance of each award certified by the Commission pursuant to section 410 of the International Claims Act of 1949.

(c)(1) As soon as practicable after the certification of any awards by the Commission pursuant to section 6(c) of this Act, the Secretary shall make payments on account of each such award from the amounts, including accumulated interest, in the account established pursuant to section 4(b)(2) of this Act.

(2) In the event that the amounts in the account established pursuant to section 4(b)(2) of this Act exceed the aggregate total of all awards certified by the Commission pursuant to section 6(c) of this Act, the Secretary shall cover such excess amounts into the account established pursuant to section 4(b)(1) of this Act, to be available for payments pursuant to subsection (b) of this section on the unpaid balance of awards certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949.

(d) Payments under this section shall be made in accordance with section 413(a)(2) of the International Claims Settlement Act of 1949. Such payments, and applications therefore, shall be made in accordance with such regulations as the Secretary may prescribe.

(e) In the event that—

(1) the Secretary is unable, within three years after the date of the establishment of the account prescribed by section 4(b)(1) of this Act, to locate any of the persons entitled to receive payment under this section on account of awards certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949 or their lawful heirs, successors, or legal representatives or, having been located, no valid application for payment is made by or on behalf of such persons within six months after their having been located; or

(2) no valid application for payment is made by or on behalf of any of the persons entitled to receive payment under this section on account of awards certified by the Commission pursuant to section 6(c) of this Act within six months after the completion by the Commission of the determination and certification of claims pursuant to sections 5 and 6 of this Act,

the Secretary shall give notice by publication in the Federal Register, and in such other publications as the Secretary may determine, to the effect that, unless valid application for payment is made within sixty days of the date of such publication, such person's award pursuant to title IV of the International Claims Settlement Act of 1949 or this Act, as the case may be, and right to receive payment shall lapse, and upon the expiration of such sixty-day period such award and right to receive payment shall lapse, and the amounts payable to such person shall be paid pro rata on account of all other awards payable out of the same account as the lapsed award would have been paid pursuant to section 410 of title IV of the International Claims Settlement Act of 1949, or this Act, as the case may be.

IMPLEMENTATION OF AGREEMENT

SEC. 8. (a) If, within sixty days after the date of the enactment of this Act, the Government of the Czechoslovak Socialist Republic does not make the payment to the United States Government provided for in article 1 of the Agreement, the provisions of this Act shall cease to be effective, and the provisions of the Agreement may not be implemented unless the Congress approves the Agreement after the end of that sixty-day period.

(b) The President shall have the authority to waive the provisions of this section for a period not to exceed thirty days, provided that he supplies to Congress, in writing, his reasons for so doing.

SOCIAL SECURITY AGREEMENT

SEC. 9. The Secretary of State shall conduct a detailed review of the exchange of letters between the United States and Czechoslovakia providing for reciprocal social security payments to residents of the two countries. Such review should include the extent to which Czechoslovakia is complying with the spirit and provisions of the letters, a comparison of the benetfis being realized by residents of Czechoslovakia and of the United States under the letters, and an evaluation of the basis of differences in such benefits. The Secretary of State, in consultation with the Secretary of Health and Human Services, shall report to the Congress, not later than six months after the date of the enactment of this Act, the results of such review, together with any recommendations for legislation or changes in the agreement made by the letters that may be necessary to achieve greater comparability and equity of benefit for the residents of the two countries. Such report should include specific assessments of the feasibility, likely effects, and advisability of terminating United States social security payments to residents of Czechoslovakia in response to inequities and incomparabilities of benefits payments under the exchange of letters.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I thank the majority leader and the minority leader for their courtesy in allowing this matter to come up at this hour. It is important to the claimants, who have waited the better part of 40 years for this.

Mr. BAKER. We are pleased to do so. I thank the Senator from New York for bringing up the matter.

EXECUTIVE SESSION—CONSULAR CONVENTION WITH THE PEOPLE'S REPUBLIC OF CHINA

Mr. BAKER. Mr. President, we may be able to proceed with an item on the Executive Calendar, No. 3, the Consular Convention with the People's Republic of China.

I inquire of the distinguished minority leader if he is in a position to clear that for consideration at this time.

Mr. ROBERT C. BYRD. Mr. President, this side is ready to proceed.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of considering the Consular Convention with the People's Republic of China, Executive Calendar No. 3.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the Consular Convention with the People's Republic of China.

Mr. BAKER. Mr. President, I ask unanimous consent that the treaty be advanced through all its parliamentary stages up to and including the presentation of the resolution of ratification.

The PRESIDING OFFICER. Without objection, the treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Consular Convention between the United States of America and the People's Republic of China, signed at Washington on September 17, 1980, without reservation.

Mr. PERCY. Mr. President, the Consular Convention between the United States of America and the People's Republic of China, along with a separate exchange of letters, was signed at Washington on September 17, 1980. The new administration has reviewed the Consular Convention, endorses its provisions, and recommends that the Senate consent to its ratification.

Previously, consular relationships between the United States and the People's Republic of China have not been subject to formal agreement. This Consular Convention will establish firm obligations in such important matters as free communication between a citizen and his con-

sul, notification to consular officers of the arrest and detention of their citizens, and permission for visits by consuls of those detained. The consuls of both countries will also be authorized to perform the customary wide variety of other consular services which contribute to the improvement of both governmental and commercial interaction between our two countries.

The Committee on Foreign Relations held a public hearing on the Consular Convention with the People's Republic of China on June 9, 1981, at which time Mr. John H. Holdridge, Assistant Secretary of State for East Asian and Pacific Affairs, testified in its support. Mr. Holdridge testified that the convention will greatly facilitate the ability of American and Chinese consuls to extend assistance to their fellow nationals and should contribute substantially to the growth of travel and commerce between the two countries.

On July 16, 1981, the Committee on Foreign Relations considered the Consular Convention in open session. At that time the committee by vote of 15 to 0 ordered it reported favorably to the Senate for its advice and consent.

The bilateral Consular Convention between the United States and the People's Republic of China was negotiated for two primary purposes: To secure the broadest protection for interests of the United States and of U.S. nationals in the People's Republic of China, and to further the process of normalization of relations following the establishment of diplomatic relations between the two countries in January 1979. The bilateral Consular Convention will complement the multilateral Vienna Convention on Consular Relations of 1963 which is also in force between the two countries, but which treats certain important consular issues in only limited fashion.

The Consular Convention is similar in scope and content to Consular Conventions which have been negotiated by the United States during the last decade. Most of these conventions have been negotiated with East European countries and concentrate on addressing problems which arise in specific fashion in those countries. These problems include consular notification and access to detained nationals of the sending state and protection of property interests—including interests in estate—of U.S. nationals, both those residing in China and those in the United States who have interests in property in China.

Articles 1 through 12 follow the customary rules relating to the establishment of consulates, appointment of consular officials, and privileges and immunities for consular posts.

Article 13 establishes immunity for consular personnel. Consular officers of the receiving state are accorded immunity from both criminal, as well as civil and administrative jurisdiction with respect to their official activities.

Articles 14 through 21 list further consular privileges and immunities, those similar in nature to those included in other bilateral Consular Conventions.

Articles 22 through 40 outline in detailed form consular functions which officers of the sending state are entitled to perform in the receiving state. These functions relate to protection of nationals, protection of estates in which nationals have an interest, performance of notarial functions, and assistance to vessels.

Article 35 is of particular significance in this regard in that it guarantees that a consular officer of a sending state will be notified within a maximum of 4 days of the arrest or detention of a national of the sending state. The consular officer is further entitled to visit such national within 2 days from the date of notification of arrest or detention as well as to attend the trial of such person. These guarantees are particularly important for the performance of consular functions in China in view of its large geographic area, its relatively unsophisticated communications system, as well as Chinese legal limitations on access to persons who have been arrested or detained.

Attached to the Consular Convention is an exchange of notes which sets forth commitments of both sides with respect to: First, unification of families; second, travel of persons considered to have dual nationality; third, consular notification and access in the case of persons considered to have dual nationality; and fourth, payment of foreign benefits.

A second exchange of notes authorizes the opening of three consulates in addition to those authorized at the time of the signing of the convention.

I urge my colleagues to give favorable consideration to the China Consular Convention and, in summary, I would like to emphasize these points particularly:

It is in the U.S. interest that the United States-People's Republic of China Consular Convention be consented to by the Senate as soon as possible.

This convention is extremely important in that it provides us with concrete ways in which we can protect U.S. citizens and their interests in China.

In expectation of the convention's ratification, Beijing now accepts informally a number of the convention's consular provisions. Our failure to ratify the convention, could jeopardize many important guarantees, including:

First. Prompt notification of arrests of U.S. nationals, the right to visit regularly with them, and to attend their trials.

Second. Facilitation of the reunion of families and of travel by persons who claim dual nationality, both of which are important to the many Chinese-Americans who travel to or have relations in China.

While the Consular Convention's sole purpose is to protect U.S. citizens and their interests in China, our continued delay could begin to have unfortunate political implications for our relations with China.

At minimum, continued delay raises questions about our ability to follow through on even the most noncontroversial bilateral commitments.

Finally, the Chinese ratification process in the National People's Congress has now been completed, and we should not lag behind. To do so could jeopardize the current Chinese informal acceptance of a number of its provisions and make consular assistance to U.S. citizens in China more difficult. To give my colleagues an idea of the magnitude of this problem, I would point out that the number of American visitors to China last year was 60,000 to 70,000, and will be about 100,000 this year. The number of Americans traveling to China will probably continue to increase. These Americans deserve the full protection provided by the Consular Convention.

I urge my colleagues advise and consent to the ratification of the Consular Convention with China.

Mr. HAYAKAWA. Mr. President, I chaired the hearing on June 9, during which Mr. Holdridge, the Assistant Secretary of State for East Asian and Pacific Affairs, testified in support of the Consular Convention with the People's Republic of China (PRC).

The convention was negotiated by the previous administration; signed by President Carter and Vice Premier Bo Yibo during the latter's visit to the United States last September; and forwarded to the Senate for its advice and consent to ratification in January by President Carter.

I have examined the convention and find its provisions to be similar to many other consular agreements into which the United States has entered with both Socialist countries and allies. Its purpose is to protect and preserve the rights and privileges of our citizens as they travel, reside, or conduct business in China. Mr. Holdridge testified that the convention will greatly facilitate the ability of our consuls to extend assistance to Americans and will contribute substantially to the growth of travel and commerce between our two countries.

In this regard, it is interesting to note that about 6,500 business visas were issued last year for visits to this country—reflecting substantial Chinese interest in purchasing American products. In 1980, U.S. exports to China totaled $3.8 billion, ranking China just behind South Korea as our third largest export market in Asia. On a worldwide scale, and considering the European community as a unit, China is our eighth largest export market

The Consular Convention, I believe, will prove advantageous for American tourists, educators, artists, and athletes, as well as for businessmen. Between 60,000 and 70,000 tourists visited China last year and perhaps 100,000 will do so this year. Under a bilateral cultural agreement, exchanges between Chinese and American educational, cultural, and professional, organizations have been growing rapidly.

In addition to regular consular services, the convention guarantees that consuls will receive prompt notification of arrests of Americans and the right to visit regularly with such Americans. Attached to the convention are two exchanges of letters:

First. One sets forth commitments regarding reunification of families: persons having dual nationality; and payment of foreign benefits.

Second. The other provides for the opening of three additional consulates in each country—in the United States in New York, Chicago, and Honolulu.

I believe that the Consular Convention is in the U.S. national interest and will regulate the relations between our two countries in an equitable manner, to our mutual benefit.

The committee reported the convention favorably by a vote of 15 to 0. I, therefore, recommend that the Senate grant its advice and consent to ratification.

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification.

Mr. BAKER. Mr. President, I ask for consideration of the resolution of ratification by a division vote.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

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

There being no objection, the Senate resumed the consideration of legislative business.

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, not to extend past 5:30 p.m., in which Senators may speak for not more than 5 minutes each.

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

Mr. BAKER. Mr. President, there will be no more record votes today.

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

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

LEASING PROVISIONS UNDER ACRS

Mr. LONG. Mr. President, a hearing on the new rules for leasing was held yesterday by the Finance Committee with Mr. John Chapoton speaking for the administration.

It seemed to me that the case for the new rules on tax leasing is rather compelling. For example, without leasing for tax purposes, the benefit of the investment tax credit as well as the new rules for depreciation under ACRS, the so-called accelerated cost recovery system, would not be available to 46 percent of the corporations in the United States.

Mr. Chapoton pointed out that the proposed leasing rules did not at all increase the cost to the Treasury because in the course of broadening the application of the tax benefits of accelerated depreciation as well as the investment tax credit under the leasing rules the administration also recommended that the cost of the overall ACRS program be reduced. The result is that a great many more American firms could utilize the leasing provisions to benefit from a proposal that will help companies to modernize and provide more jobs.

It is important to keep in mind that leasing rules of one sort or another have existed for many years. Leasing started when we passed the investment tax credit in 1962 under President Kennedy. This was such a strong tax advantage that companies could hardly afford not to take advantage of it. Those who were not paying enough taxes to take advantage of the tax credit found it advantageous to arrange for someone else to buy the equipment and lease it to them so that they could have the advantage of the investment tax credit.

The difference between the old rules and the new rules is simply that previously those who, because of low tax liability—usually because they are new firms or have suffered a few bad years—would not be able to enjoy the benefit of the investment tax credit or the accelerated depreciation, had to arrange with firms under rules that were very burdensome. For example, one of the rules required that in order for a company to lease equipment to the firm that would use the equipment, the leasing firm, which is not the one using it, would be required to assume a 20-percent liability.

Just think of a company like Pan American, losing money and unable to use the investment tax credit and the accelerated depreciation, going to an insurance company and persuading the insurance company, which otherwise would loan them money in the transaction, to take title and lease the plane to Pan American. In a case like that, under ACRS as well as the investment tax credit, if the tax benefits could be enjoyed, they would reduce the cost of the plane by 30 percent, so that it is almost impossible to think of a company surviving if it had to pay 30 percent more for its equipment.

If we turn it around the other way, think of the company that is in a profit position, such as Delta, being able to buy equipment, let us say, at $70 million where Pan American would have to pay $100 million. That extra $30 million meant an increase of about 42 percent in the cost of purchasing equipment compared to what the cost would be if one could enjoy the tax benefits.

So, to enjoy the benefit a company that would be willing to lend money would take title and lease the plane, thereby reducing the cost of the equipment to the company using it, such as Pan American in this illustration.

Now, it simply raised the cost of the transaction to require, as the old rule did, that the lessor would have to have a 20-percent "at risk" investment in the property. In other words, the more burden that is placed on the leasing firm, the more that firm is going to charge the lessee to engage in the transaction.

So the new rule would simply reduce this "at risk" requirement from 20 percent down to 10 percent and thereby make the cost of the transaction to the firm using the equipment less than it would be otherwise.

Mr. President, to do that simply helps those who need help. It helps see to it that those firms with the low tax payments, that seek to enjoy the same tax benefits as the more successful, more profitable firms, would have to pay less of a penalty in order to obtain the tax benefits which Congress would like to see all enjoy.

Now, another one of the rules had the effect of precluding the lessor firm at the end of the transaction, when the cost had been amortized, from selling the equipment or passing it on to the leasing firm for a nominal price such as $1.

All that requirement did was simply make it more difficult for financially troubled firms to enjoy the benefit that we intended for such firms when we provided the new tax advantages of the investment tax credit and ACRS.

Now, there are other provisions, Mr. President, which, in the old rules, made them more burdensome for companies that we sought to help. In one instance, for example, the rules just made no sense whatever, and the Treasury just dispensed with it. So what we have here is a new set of rules that is easier for business to comply with. It is a set of rules that is more favorable to businesses that are new on the scene and to small businesses having a difficult time. It is also more favorable to firms, such as Chrysler, Pan American, American Motors, Ford Motor Co., and others that are having a difficult time in the competitive scene. With world competition being what it is, particularly world trade in imports, putting pressure on those companies for their very survival, it makes it easier for those firms to enjoy the benefits that Congress intended when it said it wanted American business to modernize in order to improve its competitive position.

Mr. President, the investment tax credit it clearly a subsidy. It always was intended to be. It helped to reduce the cost of acquiring equipment. In my judgment, ACRS is the same thing. It is a subsidy by way of a tax writeoff to encourage something that we believe is good for the country, that American companies should modernize and become more efficient in order to compete domestically and throughout the world.

In all situations where the Congress has sought to subsidize using the appropriations system—and that is how we did it in most instances—invariably we would provide the subsidy for those who needed it the most.

It is almost unheard of and without any logical support that we would provide a subsidy and then limit availability of that subsidy to those who do not need it or to those who need it very little and not make it available to those who need it very much.

So that without the leasing rules the tax subsidy would have the effect of providing the subsidy for those who need it the least and denying it to those who need it the most. That is contrary to any system of subsidy where one feels that something is worth subsidizing. This investment subsidy should not be denied to those companies who need it the most, particularly if those companies have a chance to survive in the competitive struggle otherwise.

(Mr. WARNER assumed the chair.)

Mr. LONG. That leads us to another question that has been raised from time to time. It has been said by some that we should not use the tax subsidy to save what would otherwise be a failing company. Then that gets us to the question, What is a failing company? For example, if we take a company like Chrysler, which Congress has voted to save, we thought that the risk entailed justified putting taxpayers' money into it to save that company.

If we think that that company is worth saving so much that we vote to put the taxpayers' money into it, then how in the name of commonsense can someone suggest that when we provide a tax advantage to General Motors, to Datsun, to the foreign companies as well as domestic companies having plants in the United States, why would you want to leave Chrysler out of it when you are providing that advantage for all its competitors?

You talk about something that makes no sense, just the height of idiocy. Imagine agreeing that we are going to try to save the Chrysler Corp., to save those jobs and to save those payrolls, and then proceeding to provide subsidies to Volkswagen and Datsun and General Motors, and at the same time proceeding to exclude from that subsidy Chrysler as well as American Motors.

Incidentally, another company which Congress voted to give a tax advantage to in order to keep it in business, the Ford Motor Co., we have not had to try to go in and try to save it with taxpayers' money, no direct proposals specifically for their benefit, but another fine company that has done a great deal for the American economy down through the years—so that if one believes in a subsidy, it is difficult for me to see how one can justify a subsidy on the basis that those who need it the least will get it and those who need it the most will not get it. That is just contrary to all commonsense that one can suggest.

Furthermore, Mr. President, I would challenge any Senator, even if he wanted to stand here and say that he voted for that tax bill not knowing what was in it, I challenge him to go back home and explain to his own merchants why he denied this tax advantage for all American business.

How is he going to explain to his own little civic club in his own hometown that he voted for this tax subsidy for business to modernize, and then how would he like to have half those people stand up in the audience and say, "Just a minute, Senator, you voted to leave me out. You voted to give it to General Motors, you voted to give it to General Electric, you voted to give it to all kinds of big companies, you voted to even give it to Datsun and Volkswagen but you voted to leave me out." How can you justify doing that to the fellow in the grocery store business, the fellow with a drugstore or the automobile dealer in your hometown or just anybody on Main Street? How can you justify voting for something which says that everybody gets it except those who need it?

Now, that just does not make any sense, Mr. President. When people think about what they did, if they did not know what they voted for, they will find out they voted for something that made a lot of good sense when they voted for the new leasing rule. First, the new rules make it simpler to take advantage of what Congress intended for manufacturers and for those who buy plants and equipment; second, these rules make it less expensive to take advantage of these tax benefits for those whom we wanted to have it, so the costs to the middleman were a great deal less and made it less burdensome to enjoy the benefit for those we wanted to assist.

Mr. President, this Senator has always felt that it would have made even better sense to say with the investment tax credit that it was refundable, that it was a tax credit we wanted everyone to have, and that those who bought the equipment should have the benefit of the subsidy for that purpose and, therefore, we are not qualifying it with how much you paid into the Treasury, whether you paid a lot or a little. But we simply said that "you earned the tax advantage and we will just give you a check if you do not pay that much in taxes so that you can deduct it from your tax liability."

Some years ago Senator KENNEDY joined me in offering just such a bill. I see my friend from New Jersey (Mr. BRADLEY) finds some appeal in that approach. I say you would not have to have a leasing arrangement. You would simply inform the Treasury that you bought this equipment and you are entitled to a tax credit, and just as one would send a check to say, "All right, here this is something you can use to pay your taxes with," which you could endorse to someone else if you would like to do so, and you would just mail a check to the Treasury, what we call a refundable tax credit.

And that is not new in American law. We do it with the poor already with regard to it being something of a negative income tax to see that we, in effect, give back what they paid in social security taxes so that the low-income people would have an earned income credit. And to get it, they do not have to prove they paid that much taxes. So the precedent is there.

That would be the logical way or the most logical way to do it. But if you seek to do it that way, you run into a problem. The Appropriations Committee feels that we might use a refundable tax credit, even though it might be a good device in certain situations it might tend to be used in lieu of an appropriation to do something. And so our friends on the Appropriations Committee tend to resist very bitterly, in a determined fashion, the use of a refundable tax credit to achieve such a purpose.

Now, if we are not going to use that, then there are ways the taxwriting committee can achieve the same purpose in ways that fall entirely within the jurisdiction of the taxwriting committee; hence, the leasing rule, which simply makes it possible for a company which would be entitled to tax credits to enjoy the benefit of it by doing business with another company that has a big tax liability and therefore could use the tax credits.

There are other ways it could be done that are even less desirable. For example, the same result could be achieved by merger. The company having the tax credits could merge with the company that had the big tax liability and file a consolidated balance sheet. So by merging the smaller firms and newer firms, they could enjoy the benefits that they would like to achieve.

But, better yet, why require some company to merge to enjoy a benefit we would want them to have? Why not just say that they get it, period. And that is the approach that the taxwriting committee sought to do in this case.

Now, this leasing arrangement was not the suggestion of the Finance Committee. It was not the suggestion of the Ways and Means Committee. It was the suggestion of the Treasury.

I think it is a matter of great credit to John Chapoton, a very responsible official in the Treasury Department. He proposed that these leasing rules be made more reasonable and easier to comply with.

He wrote an article discussing this subject in the Wall Street Journal the other day. It is parallel to the testimony he gave before the Senate Finance Committee.

Mr. President, I ask unanimous consent that the article by John E. Chapoton, "A Clarification of the New Rules for Tax Leasing," be printed in the RECORD.

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

A CLARIFICATION OF THE NEW RULES FOR TAX LEASING

(By John E. Chapoton)

The liberalized leasing rules of the Economic Recovery Tax Act of 1981 are an integral part of the President's tax program to restore economic growth. They allow all firms making new investments access to the incentives in the recent tax bill and do not encourage unprofitable investment. The new rules represent sound tax policy.

To see the need for the new leasing rules, one must clearly understand the operation of the investment incentives in the tax bill. The principal new investment incentive in the new tax act is the Accelerated Cost Recovery System, or ACRS. ACRS lets firms deduct the cost of their investment over a much shorter time than previously. This effectively raises the after-tax rate of return on the new investment. This increase is the

major direct investment incentive in the President's tax program.

But the ACRS deductions are available in the first years the asset is used, when the asset may not be producing much income. The deductions serve their purpose only if they can offset income from older assets. Indeed an asset must produce income during its first two years of operation equal to almost 59 percent of its cost if it is to absorb the ACRS deductions and credits attributable to the asset.

Even highly profitable assets don't generally return 59 percent of this cost in two years, so if a firm doesn't have other taxable income or can't transfer its deductions to firms that can use them, then the accelerated deductions under ACRS will be postponed. Much of the new investment incentive will be permanently lost.

Enterprises that may not have current taxable income include firms just starting up, firms with large investment plans whose deductions have reduced taxable income, and firms with temporary losses but profitable investment opportunities. (These last must have profitable opportunities; leasing will not make bad investments profitable.)

The essence of the new leasing rules allows a firm that does not have taxable income but is making new investments to take advantage of ACRS.

Consider, for example, a new firm we will call Newco. Newco makes an investment, but because it is just starting up, it has no taxable income. Newco may allow some other firm, call it Ex Corp., which does have significant taxable income, to own Newco's new equipment for tax purposes and to lease that equipment back to Newco. This allows Newco to use the equipment in its business, but at the same time lets Ex Corp. take the credit and accelerated deductions from the investment against its other income.

Three important aspects of such a lease should be understood.

First, the tax benefits of ACRS will be passed through to the firm actually making the new investment. This is because Ex Corp. must compete with other firms for Newco's deductions by offering favorable lease terms. Such competition means Newco will receive virtually the full value of its deductions. The investment incentive inherent in ACRS has remained where it should—in the hands of the investing firm.

Second, no extra deductions or tax credits are created. The total deductions taken are the same as would have been taken if Newco had taxable income or if Ex Corp. made the investment directly. They are exactly equal to the legally prescribed ACRS deductions. The Treasury loses no more revenues than those used to provide equal investment incentives to all firms.

Finally, the lease transaction will not encourage Newco to undertake an investment unless it expects that investment to be economically profitable; leasing will not encourage uneconomical or tax-motivated investment.

Notwithstanding the lease agreement, Newco makes a substantial investment in the asset, and the income that asset generates will be taxed. Unless the asset produces enough income, Newco won't be able to make a profit on its investment. This same point applies to firms with current losses. If these firms don't have profitable investment opportunities and cannot convince investors to provide funds for these investments, leasing won't help them. Leasing does not guarantee a profit for bad investments.

If tax leasing weren't allowed, inefficient investment decisions would result. Newco mightn't make a particular investment even though, if it received the same incentives as other firms, that investment would be profitable to the firm and valuable to society. Or Ex Corp. might undertake that same investment instead of Newco, since Ex Corp. has greater tax incentives to do so, despite the fact that Ex Corp. might lack some expertise to pursue the investment. Finally, Ex Corp. might acquire Newco to take advantage of Newco's unused ACRS deductions. A tax-motivated merger serves no economic purpose.

Tax leasing is unfamiliar, even to some sophisticated investors. That shouldn't lead to the conclusion, however, that tax leasing results in undesirable tax avoidance. It is a market-oriented means of providing equal tax incentives to all firms that do what our economy needs—make new investments. Tax leasing, unfamiliar as it may be to some, is good tax policy.

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

Mr. LONG. Yes.

Mr. BRADLEY. If there was not this leasing provision and we did not have refundable tax credits, I gather from what the Senator is saying a lot of the firms that are out there today who are really losing money would not be able to benefit in any way from these new investments that they might make. Is that right?

Mr. LONG. Forty-six percent of all the companies, 46 percent of all the corporations would not be able to share the benefits that would be available to a great company like General Electric and many others, the majority of them.

But I would ask, as I said, why would we want to say that General Electric gets the benefits we voted to provide, but then say some little fellow manufacturing light bulbs in Louisiana or New Jersey would not share the benefits? That would not make any sense.

For that matter, there is a company being taken over by the employees in the State of New Jersey. I hope very much it works, because I am a strong believer in employee stock ownership. Now, those people are giving high productivity and they are taking a cut in pay and they are giving more productivity than before trying to save their company. Why would you want to vote for a law that says General Motors will get the tax credit but the company in New Jersey, the workers, working like beavers trying to make it go, cannot get the machinery to be competitive? Why should they not get it?

Mr. BRADLEY. Would it also mean that not only would they not then get the machinery to be competitive, but they would not also have any kind of cash flow situation and they would also ultimately have to be laying more people off of work?

Mr. LONG. They could not compete. For example, take the company that I mentioned in the State of New Jersey that I read about a few days ago. In making these bearings, when they bought the new equipment, they would have to be paying, let us say, 100 cents on the dollar, while their competitor was only paying 70 cents on the dollar. Do you think that is fair? Basically, they would be paying 42 percent more than their competitor.

If you think these people ought to be given a chance, why would you want to penalize them by making them pay 42 percent more than their competitor? And that is what it would work out to when one is paying 70 and the other is paying 100.

Some people are quick to criticize and some people are quick to suspect that something is wrong because they do not understand it. But I would urge Senators to keep in mind that just because a Senator does not understand something, that does not mean it is necessarily wrong. There are a lot of things that Senators do not understand that are right, and this is one of them, I believe.

I thank the Senator.

Mr. HAYAKAWA addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

NATIONAL DISABLED VETERANS WEEK

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Senate Joint Resolution 123.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the resolution by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 123) authorizing and requesting the President to proclaim "National Disabled Veterans Week".

The Senate proceeded to consider the joint resolution.

Mr. HAYAKAWA. Mr. President, on November 10 I introduced Senate Joint Resolution 123 along with 31 of my colleagues requesting the President to proclaim the week of November 7 through 13, 1982, as "National Disabled Veterans Week." This resolution was reported out of the Judiciary Committee on December 3 without amendment and I would like to express my appreciation to Senator THURMOND for the speedy consideration by him and his colleagues on that committee.

The purpose of this resolution is to attest to the sacrifices that disabled veterans have made for the continued freedom and security of our country. Often these sacrifices are known only to the veteran and will never be acknowledged or fully repaid. These brave soldiers paid a very high price for our freedom—a freedom often taken for granted, and frequently buried beneath daily routine to be resurrected only when convenient. We must not let ourselves become victims of ingratitude through neglectful behavior.

And I think of the disabled veterans, not only of World War II and the Korean War but of the disabled veterans of the Vietnam war, who are especially the victims of ingratitude, because that has been the most unpopular war in our history. But they are just as much disabled, just as much crippled, and just as much injured by that war as were the wars which were supported more enthusiastically and more fully by the entire public.

"National Disabled Veterans Week" can be a time of commemoration and celebration—a time to publicly recognize the bravery and loyalty of some of America's finest. As a nation we can acknowl-

edge the heroic behavior of our citizens during times of crisis and conflict. We owe much to our disabled veterans who did their duty and fought to support our Government and its policies. We must reassure them that their loyalty has not gone unnoticed or unappreciated.

Congress has the ability to provide for the financial welfare of disabled veterans and has the moral responsibility to provide for their emotional welfare as well. We can legislate away some problems—others, we cannot. Passage of Senate Joint Resolution 123 can be the first step in focusing America's attention on all honorably discharged veterans who have incurred disabilities. They came through for us when asked. Let us come through for them today. Let us show them that America loves, respects and will not forget its disabled veterans.

UP AMENDMENT NO. 785

(Purpose: To make certain corrections and clarifications regarding the number, problems, and contributions of service-connected disabled veterans)

Mr. HAYAKAWA. Mr. President, my colleague from California, Senator CRANSTON introduced an amendment on December 1 which would have made some clarifying changes to the resolution. I think these changes are worthwhile. Therefore, Mr. President, I am sending an amendment to the desk, which has been cleared by both sides, derived from the amendment of my colleague from California, on behalf of myself, and Senators CRANSTON, SIMPSON, RANDOLPH, MATSUNAGA, DECONCINI, and MITCHELL, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. HAYAKAWA), for himself, Mr. CRANSTON, Mr. SIMPSON, Mr. RANDOLPH, Mr. MATSUNAGA, Mr. DECONCINI, and Mr. MITCHELL, proposes an unprinted amendment numbered 785.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike out all on lines 6 through 8 and insert in lieu thereof the following: "contributions that veterans with service-connected disabilities have made to the national security and welfare of the United States and calling upon Government agencies at the Federal, State, and local levels and the people of the United States to observe the week"

Amend the preamble to read as follows:

"Whereas there are two million three hundred thousand veterans with disabilities resulting from their service in the United States Armed Forces;

"Whereas these disabled veterans have sacrificed their well-being in the service of their country;

"Whereas many of these disabled veterans endure severe disabilities, such as loss of limb, paralysis, blindness, deafness, and delayed-stress syndrome and other mental disorders;

"Whereas these disabled veterans consistently experience inordinately high rates of joblessness; and

"Whereas these disabled veterans have made vital contributions to the national security and welfare by helping our Nation preserve its freedom, strength, and prosperity: Now, therefore, be it".

Mr. HAYAKAWA. Mr. President, I am prepared to vote on the amendment, if there is no further debate.

I am prepared to vote on the joint resolution, as amended, if there is no further debate.

First, I would like to ask unanimous consent that the following Senators be added as cosponsors of Senate Joint Resolution 123: Mr. METZENBAUM, Mr. JACKSON, and Mr. WARNER.

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

The question is on agreeing to the amendment of the Senator from California (Mr. HAYAKAWA).

The amendment (UP No. 785) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S.J. RES. 123

Whereas there are two million three hundred thousand veterans with disabilities resulting from their service in the United States Armed Forces;

Whereas these disabled veterans have sacrificed their well-being in the service of their country;

Whereas many of these disabled veterans endure severe disabilities, such as loss of limb, paralysis, blindness, deafness, and delayed-stress syndrome and other mental disorders;

Whereas these disabled veterans consistently experience inordinately high rates of joblessness; and

Whereas these disabled veterans have made vital contributions to the national security and welfare by helping our Nation preserve its freedom, strength, and prosperity: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the week of November 7, 1982, as "National Disabled Veterans Week", in recognition of the contributions that veterans with service-connected disabilities have made to the national security and welfare of the United States and calling upon government agencies at the Federal, State, and local levels and the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

Mr. HAYAKAWA. Mr. President, I move to reconsider the vote by which the joint resolution, as amended, was agreed to.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LONG. 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.

PERMISSION FOR CERTAIN FARM CREDIT ADMINISTRATION REGULATIONS TO BECOME EFFECTIVE

Mr. BAKER. Mr. President, there are two items that have been cleared on this side for consideration. I ask the distinguished minority leader if he is prepared now to clear for action for immediate consideration a bill which I shall offer on behalf of Mr. HELMS and Mr. HUDDLESTON to permit to become effective certain Farm Credit Administration regulations.

Mr. ROBERT C. BYRD. Mr. President, this side is prepared to proceed.

Mr. BAKER. I thank the minority leader.

Mr. President, I send a bill to the desk for Mr. HELMS and Mr. HUDDLESTON and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated.

The legislative clerk read as follows:

A bill (S. 1948) to permit to become effective certain Farm Credit Administration regulations which expand the authority of financing institutions, other than Farm Credit System institutions, to borrow from and discount with Federal intermediate credit banks.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

● Mr. HELMS. Mr. President, last year, Congress enacted the Farm Credit Act Amendments of 1980. That law expanded the authority for financing institutions, other than Farm Credit institutions, to borrow from and discount with the Federal intermediate credit banks of the Farm Credit system. After an extensive public rulemaking process, the Farm Credit Administration adopted final regulations to implement these statutory provisions.

Basically, the new regulations governing discount authorities under the Farm Credit Act Amendments of 1980 provide increased access to additional credit to the Nation's farmers and ranchers.

This is done by providing rural banks and other commercial lenders which meet certain eligibility requirements with access to funds of Federal intermediate credit banks. Thus additional sources of credit will be made available to farmers and ranchers primarily through rural community banks and agricultural credit corporations.

The regulations, simply stated, put "other financing institutions," such as commercial banks, on more equal footing with Production Credit Associations. They do this through these two key provisions:

The regulations lower the volume of agricultural loans required to establish eligibility from 25 to 15 percent of the total loan portfolio of a commercial bank. The regulations also change the required loan-to-deposit ratio from 65 to 60 percent.

The regulations grant other financing institutions the same authority now enjoyed by Production Credit Associa-

tions in making loans for farm-related businesses, rural housing, and aquatic production.

Under these regulations, commercial banks and other financial institutions will be able to discount loans through a Federal intermediate credit bank if:

First, the institution is significantly involved in lending for agricultural purposes;

Second, the institution has a continuing need for supplementary sources of funds in order to make agricultural and aquatic loans;

Third, the institution has limited access to national or regional capital markets; and

Fourth, the funds obtained by the institution through discounting are not used to expand financing to ineligible parties.

The regulations at issue were published on October 22, 1981. An amendment clarifying the regulations was published December 8, 1981.

Current law makes the regulations subject to congressional veto. Consequently, the regulations do not become effective until the passage of 60 calendar days of continuous session of Congress if no committee of either House has reported or been discharged from further consideration of a disapproval resolution by the end of that period.

A sine die adjournment of Congress, however, breaks the continuity of session. If that happens, the review period begins running again at the beginning of the next session of Congress. That is what appears will be the case in this situation if Congress adjourns within the next few days. In that case, it is unlikely that the regulations will be effective until some time in March or April of 1982.

This bill waives the 60-day waiting period, making these regulations effective on the date of the bill's enactment. The bill would in no way alter the statutory waiting period for similar Farm Credit Administration regulations which may be issued in the future.

Our Nation's farmers and ranchers must have adequate sources of credit to assure their continued viability. These regulations will play an important role in insuring that adequate sources of credit are available. Since the comments and suggestions of the various interested parties have been adequately addressed in the agency's rulemaking process, I ask that my colleagues join me in supporting this measure, as it will insure that these regulations become effective before the peak credit season for farmers early next year.

I ask that a letter on this matter from Donald Wilkinson, Governor of the Farm Credit Administration, be printed in the RECORD.

The letter referred to follows:

FARM CREDIT ADMINISTRATION,
Washington, D.C., November 4, 1981.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is to advise you of the status of the Farm Credit Administration regulations implementing the provisions in the Farm Credit Act Amendments of 1980 regarding the authority of other financing institutions ("OFIs") to borrow from, and discount with the Federal intermediate credit banks of the Farm Credit System, and our concern as to the timing of the prospective effective date of those regulations.

Regulations implementing these provisions were transmitted to the Committee on Agriculture of the House of Representatives and Committee on Agriculture, Nutrition and Forestry of the Senate on October 5, 1981, and the regulations were published in the Federal Register of Thursday, October 22, 1981 (Vol. 46, No. 204). The effective date of these regulations is subject to section 5.18(c) of the Farm Credit Act of 1971, as amended, Pub. L. 92-181 (12 U.S.C. § 2252), which provides for a two House congressional veto. Pursuant to this provision the regulations will become effective upon the expiration of 60 calendar days of continuous session of Congress from the date of publication and transmittal to the Congress unless a Committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulations or unless such a resolution has been adopted by either House of Congress. If for one of such reasons the regulations do not become effective 60 days after the date of publication and transmittal, the regulations will become effective 90 days from such date unless both Houses of Congress adopt a concurrent resolution disapproving the regulations. Days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 60 and 90 calendar days of continuous session of Congress. Continuity of session is broken by an adjournment of Congress sine die.

We understand that Congress intends to adjourn the First Session of the 97th Congress sometime during the third week of December, possibly December 18. We also understand that Congress intends to adjourn for Thanksgiving during the week of November 23rd. Since the days during which Congress adjourns for Thanksgiving are not computed within the 60 and 90 day time periods, and in light of the currently projected adjournment date for the First Session, it appears unlikely that these OFI regulations can become effective during the First Session of this Congress; in which event the 60 and 90 day congressional review periods will commence anew when Congress reconvenes sometime toward the end of January. It is therefore possible that these regulations will not become effective until the end of March or early April, 1982.

It is our understanding that in the event Congress determines that these regulations should become effective during this session, Congress may enact a Joint Resolution or other provision of law which overrides the provisions of section 5.18 of the Farm Credit Act of 1971. Such provision could provide for the OFI regulations to become effective upon the adjournment of Congress at the end of the First Session of the 97th Congress or at any other time Congress deems appropriate.

We believe it would be in the interest of the Farm Credit System, OFIs and agricultural borrowers if the subject regulations could be made effective by the end of the First Session of the 97th Congress and strongly urge congressional action to resolve this problem.

Sincerely,

DONALD E. WILKINSON,
Governor.

● Mr. HUDDLESTON. Mr. President, this bill provides a one-time exemption to a statutory requirement that certain farm credit administration regulations can become effective only after the passage of a review period during which Congress is given the opportunity to consider the proposed regulations. The review period ends after 60 calendar days of continuous session of Congress.

This bill would apply to regulations promulgated on October 22, 1981, allowing certain financing institutions to borrow from the Federal intermediate credit banks of the farm credit system.

Without the one-time exemption provided in this bill, the review period for these regulations would not be completed before Congress adjourns sine die this year; and the regulations would be subject to a new review period beginning when Congress reconvenes in January 1982.

The lenders who receive these funds use them to make farm operating loans.

In order to be of benefit to farmers, these discounted operating loan funds need to be available immediately so farmers, once assured of financing, can begin ordering seed, fertilizer, and other items needed for spring planting. Therefore, these regulations should be made effective at the earliest possible date.

Fifty days of the 60-day review period have already expired. To my knowledge, no resolution disapproving the regulations has been introduced or will be introduced in the time remaining in this year's session of Congress.

Congress should not permit these regulations, which will be of substantial assistance to our Nation's farmers, to fail to become effective immediately because of what amounts to a technicality.

I urge the Senate to approve the bill.●

The PRESIDING OFFICER. Without objection, the bill will be considered as having been read twice and the Senate will proceed to its immediate consideration.

The bill is open to amendment. If there be no amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1948) was ordered to be engrossed for a third reading, read the third time and passed, as follows:

S. 1948

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, the final regulations issued by the Farm Credit Administration amending subpart P, part 614, title 12 of the Code of Federal Regulations, published in the Federal Register of October 22, 1981 (46 F.R. 51886-51889), together with an amendment thereto published in the Federal Register of December 8, 1981 (46 F.R. 59959), which implement the provisions of section 2.3 of the Farm Credit Act of 1971, as amended by the Farm Credit Act Amendments of 1980, shall become effective on the date of enactment of this Act.

SEC. 2. The provisions of the first section of this Act shall not be deemed an expression of congressional approval of such regulations and the amendment thereto.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill 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 OF APPROPRIATIONS FOR THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1003.

The PRESIDING OFFICER laid befor the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1003) entitled "An Act to amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, to authorize appropriations for such title for fiscal years 1982 and 1983", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434) is amended—

(1) by striking out "and" immediately after "fiscal year 1978" and inserting a comma; and

(2) by adding immediately after "fiscal year 1981" the following: ", not to exceed $2,235,000 for fiscal year 1982, and such sums as may be necessary for fiscal year 1983,".

Amend the title so as to read: "An Act to amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, to authorize appropriations for such title for fiscal years 1982 and 1983, and for other purposes.".

Mr. BAKER. Mr. President, I move that the Senate concur in the amendment of the House with a further Senate amendment which I send to the desk on behalf of the Senator from Oregon (Mr. PACKWOOD).

UP AMENDMENT NO. 786

(Purpose: Make amendment specifying authorization for appropriations for fiscal year 1983)

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for the Senator from Oregon (Mr. PACKWOOD), proposes an unprinted amendment numbered 786.

In section 1(2), by striking "such sums as may be necessary" and inserting in lieu thereof "not to exceed $2,235,000".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 786) was agreed to.

Mr. BAKER. Mr. President, I move that the Senate concur in the House amendment with the Senate amendment just agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

The motion was agreed to.

Mr. BAKER. I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

POSITIVE PROGRAMS FOR INCREASED PRODUCTION AND USE OF COAL ARE NEEDED NOW

Mr. RANDOLPH. Mr. President, under the current administration, coal is being reduced to a "second class" energy resource. Despite the assurances that regulatory programs will be reduced, State and local groups and the industry in my opinion, will be required to fill the Federal void in coal development, and to aid in solving the problems of increased coal production.

It is abundantly clear that Federal support for coal is being lessened. It is my belief that the Senate coal caucus assume a more active role in addressing the difficulties that are resulting from fewer coal initiatives and the administration's pronuclear bias.

It is imperative the caucus initiate coal-related activities in concert with groups such as the West Virginia Coal Commission. The caucus can well act as a catalyst with the States for increased coal production. Perhaps the coal caucus should convene, at least monthly, to review industry and labor problems which continue impediments to coal production.

The November meeting of the West Virginia Coal Commission constructively focused on the Department of Natural Resources revised spoil removal guidelines. There was a need for this reexamination where mountaintop removal mining techniques are employed. Our State must also reexamine the permitting process for new mines. This is a major coal constraint at present.

Coal production must increase in the years ahead. At this time I doubt whether existing policy will permit a rate of increase equal to the industry's potential for growth. I have advocated for years that we must develop an environmental framework which permits our coal industry to flourish.

If America's expectation of energy independence is to be realized through use of our coal resource, we must give the industry the permitting and regulatory mechanism and the research and development support which will allow planning for the development of new reserves. If we do not do this our national expectations for coal use are unrealistic.

INTERSTATE EXCHANGE OF CRIMINAL DATA

Mr. DOLE. Mr. President, on November 12, the distinguished senior Senator from South Carolina (Mr. THURMOND) offered an unprinted amendment No. 612 to H.R. 4169, on my behalf.

This amendment would direct the Justice Department to submit recommendations to the House and Senate Judiciary Committees with respect to whether the Federal Government should provide communications systems, networks, and data bases for the exchange of criminal records. This amendment was adopted by the Senate with the concurrence of the floor managers of the bill. Senator THURMOND at that time, also inserted into the CONGRESSIONAL RECORD, a statement on my behalf. That statement, which appears on page S13290 of the daily version of the Senate proceedings of the CONGRESSIONAL RECORD, contains the following paragraph:

The FBI has already commenced a pilot program to test the interstate exchange of criminal data using a centralized index. This Senator believes that any such program should be delayed until we have had sufficient time to review the practical and ethical questions which have been raised and to avail ourselves of expert advice in this area.

The statement is factually correct when it indicated that the FBI has already commenced a pilot program to test the interstate exchange of criminal data using a centralized index, however, it was incorrect to the extent that it expressed my belief that the demonstration effort should be delayed.

What I meant to say and should have said, is that the implementation of the operational system should be delayed until the study called for in my amendment has been completed. It was not my intent that the pilot program now is progress should be deferred or delayed until the study was completed.

I am advised, Mr. President, that my original statement caused substantial concern at the FBI and in State and local law enforcement circles. I regret that this occurred and I am pleased to correct the RECORD at this point to express what my actual intent was and is.

Thank you, Mr. President.

SUPPORT FOR THE SPECIAL OLYMPICS

Mr. CRANSTON. Mr. President, last month I received a letter from Eunice Kennedy Shriver who, in her capacity as president of Special Olympics, Inc., informed me of the exciting new fundraising project that Procter & Gamble has developed in cooperation with the Special Olympics. In connection with this mail and in-store promotional campaign, Procter & Gamble will contribute 5 cents for each "cents-off-coupon" that is redeemed, up to $500,000, and will match every personal contribution that is made with its "matching donation certificates," up to $250,000.

Mr. President, I want to take this opportunity to congratulate both the Special Olympics and Procter & Gamble for undertaking this important project to help alert the American public to—and solicit their support for—the significant, truly inspiring work being done by the Special Olympics for mentally retarded persons.

In addition, Mrs. Shriver's letter also mentions an NBC television movie, "The Kid From Nowhere," to be aired on January 4, 1982, starring a real-life Special Olympian, Ricky Wittman, as well as Beau Bridges, Susan Saint James, and Loretta Swit. This movie, together with the Procter & Gamble fundraising project, promises to help increase our awareness and understanding of the special talents of America's 6 million mentally retarded citizens, the difficulties that they and their families face, and their courage and hope for the future.

Mr. President, I ask unanimous consent that Mrs. Shriver's letter to me be printed in the RECORD.

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

SPECIAL OLYMPICS, INC.,
Washington, D.C., November 16, 1981.

DEAR SENATOR CRANSTON: Special Olympics is involved in a new, exciting project I want

to share with you. It's the largest fund-raising project of its kind and is sure to make a major contribution to the lives of our nation's 6 million mentally retarded citizens. I'm asking that you join us in this unique effort.

Special Olympics has joined forces with Procter & Gamble in a nationwide mailing to 45 million homes. Each of these households will receive almost $4 worth of cents-off coupons for popular Procter & Gamble products. Procter & Gamble will contribute 5 cents for each coupon redeemed up to $500,000.

This fine corporation has also developed "in-store displays" through which customers will be urged to make personal contributions to Special Olympics using "matching donation certificates". Here again, Procter & Gamble will match every contribution accompanied by a certificate up to $250,000.

On January 4, 1982, from 9:00 to 11:00 p.m. EST, the NBC–TV Network will premiere a two-hour made for television movie, "The Kid From Nowhere", a story about a Special Olympian. You will love this heartwarming story of a young, divorced mother who experiences the problems and joys of raising a mentally retarded child and a coach who introduces the mother and son to Special Olympics and a new way of life.

We're particularly excited about this movie because it stars real-life Special Olympian, Ricky Wittman, along with Beau Bridges, Susan Saint James and Loretta Swit. It has everything a national audience can ask for—a dramatic story of courage, a sensitive love story, information about mentally retarded individuals—all the elements for good family entertainment.

Also on the evening of January 4th, friends of Special Olympics throughout the country will be giving informal movie parties to watch "The Kid From Nowhere" in homes, places of business, club houses and church basements for friends, neighbors, business associates and club and church members. We would like to have many thousands of movie parties that night.

This is how you can help.

Watch "The Kid From Nowhere" on NBC Network from 9:00 to 11:00 p.m., EST.

Inform constituents and organizations in your district about "The Kid From Nowhere". Special Olympics will be happy to supply you with more brochures like the one enclosed.

Give your own T.V. movie party. Invite friends, neighbors and colleagues for an informal gathering to watch, enjoy and learn from "The Kid From Nowhere".

Encourage your friends, constituents and colleagues to host their own T.V. movie party on January 4, 1982.

Please consider using the enclosed public service radio announcements in your district.

These T.V. movie parties will benefit Special Olympics by attracting more volunteers, helping recruit new Special Olympians and generating funds for the Special Olympics program nationally and locally.

Please join us!

Sincerely,

EUNICE KENNEDY SHRIVER.

JOE STEWART

Mr. PELL. Mr. President, I am pleased to join my colleagues in wishing the very best to Joe Stewart as he leaves the position of secretary for the minority in the Senate for work in the private sector.

Joe Stewart has contributed immensely to the work of the entire Senate through his intimate knowledge of this body, and through his diligent, highly capable and efficient performance of his duties. He will be greatly missed by all who have benefited from his good counsel and advice and who have enjoyed his friendship. And here I speak not only for myself as one who enjoys and benefits from his friendship, but for my wife who is his friend also.

I extend to him every good wish as he embarks on a new career in private industry.

JOE STEWART

Mr. DIXON. Mr. President, I rise to join my colleagues in extending best wishes to Joe Stewart as he leaves the position of secretary for the minority of the Senate.

Joe has impressed me as being a very able, competent, efficient and experienced individual as he carried out his duties as secretary for the minority.

More than that, he has been—and contines to be—a good friend to all of the Democrats—and Republicans, as well, here in the Senate.

Joe has my very best wishes as he embarks on his new career in the private sector.

SENATOR BILL BRADLEY'S ECONOMIC LEADERSHIP

Mr. ROBERT C. BYRD. Mr. President, the Wall Street Journal has displayed eminent good sense in prominently displaying the economic talents and thoughtfulness of my good friend, the Senator from New Jersey (Mr. BRADLEY). Senator BRADLEY has been a vital part of Democratic thinking about the economy since he first took his seat in 1978. He serves as chairman of the Senate Democratic Economic Task Force, which I appointed at the beginning of this year.

Senator BRADLEY's thoughts on industry-Government cooperation, and the impact of international competition on domestic businesses reflect the cutting edge of economic concerns in these areas. All Members on this side of the aisle share the Senator's strong convictions that partisan squabbles are of no value to this economy or to the long-term political prospects of the Democrats. If this country is to recover from its long bout with economic stagnation, we must look to the basic structure of our economy and to the job training and education programs that are the lifeblood of a skilled work force for relief.

I commend Senator BRADLEY on his economic work in the Senate, and urge all of my colleagues, from both sides of the aisle, to read this Wall Street Journal article about the junior Senator from New Jersey.

I ask unanimous consent that a copy of the Wall Street Journal article be printed in the RECORD.

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

[From the Wall Street Journal, Dec. 10, 1981]

BILL BRADLEY ON THE DEMOCRATS AND THE ECONOMY

(By Robert W. Merry)

WASHINGTON.—In these times on Democratic Party frustration and combativeness, New Jersey's Sen. Bill Bradley displays a partisan edge as finely honed as any Democrat's. But that doesn't keep him from seeing at least a little value in the supply-side concepts that are the foundation of President Reagan's economic program.

"There are good points," he says, "to be made by the people who are viewed as supply-side, very good points."

Of course, that's only a thin slice of Sen. Bradley's overall critique, as he makes clear when he adds: "I have serious doubts that the level of economic growth that we need is going to come from (Mr. Reagan's) program. I think that some elements of it are necessary. I don't think they're sufficient."

Bill Bradley, the former basketball hotshot for Princeton and the New York Knicks, is emerging in the U.S. Senate as one of his party's most adept economic thinkers. He's chairman of an informal economic-policy group of Senate Democrats, and he was a major Democratic combatant in the Finance Committee and on the floor during debate on the President's big tax bill last summer. In the end, he voted against the bill.

So it isn't insignificant when he nods with respect toward the supply-siders' "very good points," however inadequate he considers them. A rambling conversation with the Senator in his office recently indicates that the respectful nod reflects an acknowledgment that Mr. Reagan and his supply-side advisers have captured, for now at least, the idiom of economic growth. The discussion also made clear that Sen. Bradley is bent on recapturing the idiom of growth for his Democratic Party.

That's a new endeavor for Democrats. For decades, public-opinion polls showed that most Americans placed more trust in Democrats than in Republicans as cutodians of prosperity. Republicans too often seemed to be the party of austerity—tight money and tight budgets to control inflation. A robust economy seemed more likely under Democrats.

That changed during Jimmy Carter's presidency, when the dual curse of persistent inflation and high interest rates started battering the economy with greater force than ever before. Also around that time, many Democrats were themselves abandoning the idiom of growth on the theory that limited resources spelled the end of the era of widespread prosperity; for them, redistribution of wealth became the day's great economic imperative.

Thus, events and the clash of ideas served to destroy the Democratic Party's consensus that the government could stimulate economic growth through the management of consumer demand.

Into that vacuum a year ago strode Ronald Reagan with his supply-side idea that economic growth could be restored by removing from the people the weight of burdensome taxation, thus spurring the productive sectors of the economy. He also set about to curtail those demand-side spending programs as part of an effort to shrink the government's role in the economy.

Will the strategy work? As the current recession deepens, giving the Reagan program an appearance of standard Republican austerity, many Democrats take heart in the view that it will fail. Sen. Bradley also suspects it will fail. But like his more thoughtful Democratic colleagues, he knows that Republican failure alone won't restore Democrats to their former dominance.

"I don't think," he says, "that the Democratic Party should premise its return to power upon the failure of the Reagan program." What's needed, he adds, are new ideas.

Sen. Bradley's new agenda is geared to economic growth, and it embraces some important features of the Reagan program. He applauds the provision in Mr. Reagan's tax bill that trims the top tax rate on investment income to 50% from 70%. He endorsed cutting the top tax rate on capital gains and actually wanted capital-gains taxes cut more

sharply. He supported—unsuccessfully—an approach to reducing taxation of savings income that was more bold than what the administration was willing to support.

In fact, Sen. Bradley is so comfortable with the rhetoric of economic growth that he sounds at times almost like a supply-sider. "I think that in order to get economic growth levels we have to premise our activity on . . . successful competition in a growing world economy. . . . That means you reward innovation . . . so that you increase the reward out there for the person who invents the new mousetrap, the new energy source, the new grain strain, the new medicine."

But Sen. Bradley sees serious problems with the Reagan program. First, he thinks the deep tax cuts amount to a highly stimulative fiscal policy that is on a "collision course" with the Federal Reserve's tight monetary policy. Ultimately, he says, the government's borrowing needs born of the huge tax cuts will drive up interest rates and stagnate the economy.

Beyond that—and here's where Sen. Bradley really parts company with the Republicans—he believes the Reagan program will prove inadequate to the growing economic challenge posed to the U.S. by its foreign trading competitors. That inadequacy, he says, stems from the traditional—and, in his view, obsolete—U.S. view of the economy, in which the economy is delineated into two discrete sectors.

"You see a private sector, and you see a public sector," he says. "And from the public sector you see regulation and taxes, and from the private sector you supposedly see incentives and . . . the bottom line. . . . What neither party saw was that the atmosphere in which both of those ideas had become vaguely focused was now changing dramatically, and that required a new view of how to assure prosperity."

This delineation of the public and private sectors doesn't exist, Sen. Bradley points out, in Japan or France or West Germany. There, private corporations often are assisted by government in their pursuit of foreign markets. America, he says, must operate more like those countries to compete in the world economy.

"If you're operating in a world where you have government entities joined with the private sector in competition for third markets around the world," the Senator says, "then you have to look at your national perspective . . . America wins by getting the third markets. . . . You either curtail the other countries aiding their industries in competition or you find some way to do that for your industries. I think it's more practical to do the latter."

This faith in public-private cooperation marks a profound departure from the Reagan philosophy, which holds that the key to economic growth is to curtail sharply the government's role in the economy. Mr. Reagan believes the U.S. has lost some of its competitive edge in the world because of governmental meddling in the private sector; Mr. Bradley believes the government must do more to foster economic development by the private sector.

For example, the Senator criticizes the U.S. bias against concentration. "What if the three automobile companies were able to share their effort on pollution control instead of each one having its own pollution-control division? In my mind, if they were allowed to do that, it would maximize the social end, which is a cleaner environment. It would reduce costs for the firms, probably make them more competitive. And you might end up with a better pollution-control device. What prevents it is this kind of rigid adherence to antitrust legislation per se. Bigness per se is suspect."

Another example: "Take the whole issue of worker retraining. Maybe the price of certain mergers (should be) a greater responsibility for making sure that workers (laid off in dying industries) are retrained into other industries."

As Sen. Bradley sees it, his concept of a partnership between the private and public sectors provides a framework for policies that could help restore America's competitive edge. But he doesn't minimize the political opposition. Many Republicans believe that any government in a position to help the private sector also is in a position to meddle with it. And many Democrats recoil at the thought of giving the private sector as much public help as Sen. Bradley, envisions.

But the Senator remains patient as he contemplates the Democratic challenge of producing a growth-oriented formula to fill the party's economic-policy vacuum. The emergence of such a formula obviously will take a long time.

"The problem," he says, "is very complex in the sense that there are no bills that I introduce tomorrow that solve this problem. This is a growing—has to be a growing—perception on the part of a lot of people. You nudge it here, you nudge it there."

FARM BILL CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I opposed the conference report on the Food and Agriculture Act of 1981. There are some features of the agreement worked out by the conferees that I support, particularly the establishment of a workfare system for food stamp recipients and improvements in our soil conservation programs.

I could not support the conference report, however, based on the language contained in the dairy title. That title divorces the concept of parity from the dairy program and replaces it with what are, in effect, target prices.

The net result of the system established by the dairy title is to put small milk producers at risk. Larger producers have a greater margin to work with in order to recover their costs of production. Small producers do not have such a margin, and they will be in jeopardy in future marketing years under the new system. If a small producer has bought new milking stock in the past 2 to 3 years, he will have to keep his milk production high in order to maintain his cash flow and get a return on his investment in the new cows. The abandonment of parity for the dairy program leaves the small producer in the lurch.

TRIBUTE TO JERRY WURF

Mr. RIEGLE. Mr. President, it is with great personal sadness that I learned of the death of our good friend Jerry Wurf, president of the American Federation of State, County, and Municipal Employees.

Jerry Wurf was a fighter for equality and justice for all people. His energy, his vision, and his driving commitment on behalf of working people were of legendary proportions. He drove himself relentlessly in his efforts to help public employees and others, and I am certain that he shortened his own life as a result.

People like Jerry Wurf are a rare and precious part of our national life. His accomplishments stand today as a living tribute to his tremendous leadership, and the enourmous force of his personal talent. His passing leaves with all of us who remain a greater personal responsibility to carry forward the work Jerry Wurf devoted his life to accomplishing.

I shall always feel a part of his fighting instinct in my own motivations and efforts. He has inspired many of us, and it is now our task to carry forward the vital human purposes that were at the very center of Jerry Wurf's life.

We shall all miss him very much.

LOW-INCOME ENERGY ASSISTANCE

Mr. PELL. Mr. President, I would like to commend the House of Representatives for acting today to maintain the present level of funding for the low-income energy assistance program.

Double digit annual increases in the cost of home heating have reached levels that the average American can no longer bear. Last year, $1.85 billion was appropriated for this program and 50 million people, predominately seniors were served. This year even more families will need protection to brace themselves against the economic effect of oil decontrol and the possible deregulation of natural gas.

According to the CBO, it would take approximately $2.3 billion in real terms to maintain the current level of assistance that this program provides to beneficiaries.

The administration, however, has recommended that funding for this program be reduced by $400 million. This would be a full 25-percent reduction from last year's level and coupled with the annual increase in the price of home energy, this cut would have the effect of reducing the purchasing power of beneficiaries by 50 percent.

In some areas, Mr. President, the American people can cut back their expenditures. With regard to the basic necessities, where spending is not discretionary, there quickly comes a point when enough is enough and further conservation is impossible.

It is evident that our colleagues in the House have put their philosophical differences aside and recognized the imprudence of reducing the funding for the heating assistance program where consumer power has been so drastically reduced due to inflation.

This will avoid the situation where State officials would have to deny help to seniors, and other economically underprivileged citizens who are already bearing a major part of the burden of rising energy costs.

I am relieved that such a cruel and heartless choice will not have to be made and cannot think of a better Christmas present for our citizens who have, in many cases, already lost food stamps, and health care services this year.

1982: NATIONAL YEAR OF DISABLED PERSONS

Mr. RIEGLE. Mr. President, I rise today to join Senator ARMSTRONG in sponsoring Senate Joint Resolution 134 to designate 1982 as the National Year of Disabled Persons. The United Nations

proclaimed 1981 as the International Year of Disabled Persons. Our country has developed an outstanding program designed to increase participation of disabled persons in the activities of their local communities and to heighten public awareness to the needs of our handicapped citizens.

The International Year of Disabled Persons will officially end on December 31. The resolution we are introducing today would designate 1982 as the National Year of Disabled Persons. We share a commitment to continuing the Year of Disabled Persons on a national level and focusing this country's energies for another year on the problems facing the 35-million disabled Americans each day. It is my personal hope that this national focus will allow us to develop new answers and new initiatives to improve the lives of our handicapped citizens.

Our resolution will continue the principle objectives originally set forth by the General Assembly of the United Nations. I feel these objectives are of the greatest importance to our country's disabled and handicapped citizens. These five goals are:

Helping disabled persons in their physical and psychological adjustment to society:

Promoting all national and international efforts to provide disabled persons with proper assistance, training, care, and guidance, to make available opportunities for suitable work and to insure their full integration in society;

Encouraging study and research projects designed to facilitate the practical participation of disabled persons in daily life, for example, by improving their access to public buildings and transportation systems;

Educating and informing the public of the rights of disabled persons to participate in and contribute to various aspects of economic, social, and political life; and

Promoting effective measures for the prevention of disability and for the rehabilitation of disabled persons.

I wish to make clear that the resolution we are introducing today does not authorize the expenditure of any Federal funds to support the National Year of Disabled Persons. It is our intention that no Federal funds be used for this purpose. Instead, I am introducing this resolution with the anticipation that the U.S. Council will build on the momentum they have established in 1981 and find alternative sources of private funding for their activities.

I would hope that the U.S. Council will direct their efforts toward community action on behalf of disabled citizens. A person with a disability has not one, but two handicaps: His or her disability itself, and the attitudes of others. We know that narrow and prejudicial attitudes are often the product of lack of information and limited experience. We have much to learn and to offer to one another, which necessitates that we touch each other's lives—a process which must begin at the community level. I see this resolution, and the work which must go on to offer it meaning for this Nation's handicapped citizens, as an exercise to enrich and improve the lives of all our people.

REACTION TO HOUSING COMMISSION REPORT

Mr. DODD. Mr. President, I recently received a statement from the National Housing Conference concerning the first interim report of the President's Commission on Housing. It is one of the most comprehensive reviews of the report that I have seen—and the most critical.

The Conference finds the Commission's report flawed and its recommendations far short of constituting a housing policy for the eighties.

The NHC urges the President's Commission to review and revise its interim report in order to insure that the final report, due next April, will present a sound and balanced housing policy for the Nation.

The NHC, an organization founded in the 1930's, has a membership that represents all sides of housing—people in need of housing, people who produce housing, and people who are responsible for assuring that all Americans can find decent shelter.

The statement of the National Housing Conference will, I am sure, be of interest to Members of the Senate when they consider the Report of the President's Commission. I therefore request unanimous consent that it be printed in the RECORD.

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

[National Housing Conference]

ANALYSIS OF THE PRESIDENT'S COMMISSION ON HOUSING

(First Interim Report)

The First Report of the President's Commission on Housing should not receive a passing grade from any body who has a concern about housing Americans. The people who need decent housing, the people who build housing, and the people who administer housing programs on our communities—the groups who participate in the National Housing Conference—have found that the Report is badly flawed and its recommendations fall far short of providing the Nation with a Housing Policy for the 1980's.

Local elected officials and the Congress, who answer directly to citizens, should find the Report unresponsive to the realities of our changing housing conditions. The White House should fail the Commission for proposing a demand-side economic policy, while ignoring or deferring recommendations to increase the supply of housing.

Even OMB Director Stockman should find the Report unsatisfactory, although the Commission followed his lead in recommending that the Nation adopt, as its housing policy an "old Trickle-Down Theory in new disguise".

The President's budget cutter has made it clear that he wants to eliminate totally all housing assistance programs.

The National Housing Conference is saddened that the President's Commission has found it necessary to come up with an interim report that says that the U.S. has enough housing for its people, and that it should terminate all Federal programs that support housing construction and rehabilitation, and replace them with an expanded program of rent vouchers.

It is distressing that the Commission, despite its respected membership, has succumbed to the current affliction of looking backward instead of forward, of doing nothing rather than taking action, and has, as a consequence, recommended that the Government adopt a discredited Trickle-Down Policy for Housing.

The Conference is disappointed that the President's Commission, instead of presenting policy options, has adopted specific recommendations which appear to be almost identical to proposals now being made by the Administration. As a result the Interim Report has raised questions about whether the Commission is guiding the Administration, or following it.

When considered with the HUD Secretary Pierce's recent declarations that the Administration hopes to end all of its basic housing assistance programs in a few years, the Commission's "Trickle-Down" recommendations look to be the beginning of a planned washout of all Federal programs to improve the Nation's housing.

The Housing Conference is convinced that Trickle-Down is as inadequate policy for housing, as it is for formulating Federal Budget and Tax policies. The Nation cannot afford a do-nothing housing policy when its housing needs are growing rapidly, and when its housing industry, so vital to the economy, is dying.

The Housing Conference was the first organization to urge the Administration to establish a Commission on Housing. It applauded the President when, in announcing his intention to establish the Commission, he said, ". . . all that is needed is a clear vision of where we need to go, and a determination to act . . ."

The Housing Conference is dismayed that the Commission, in its First Report, has not provided a clear vision of a decently-housed America, nor spelled out the actions that should be taken to assure that decent, affordable shelter will be available for those who are ill-housed, are rent-poor, or simply cannot find or buy suitable quarters in housing-short communities across the country.

It gives the Commission report less than a satisfactory grade because:

Its analysis of the housing issues facing the country is deficient. Nowhere, for example, will the reader find the basic housing statistic that more than 2 million additional units will be required yearly during the rest of this decade to house our expanding population.

Nor does the report reveal that the Nation is losing more housing units from its inventory each year than it did in the 1950s or 1960s. Instead of working from basic facts the Commission appears to have worked from a set of basic slogans.

These "principles"; e.g. " . . . achieve fiscal responsibility . . . promote enlightened Federalism . . . rely on the private sector . . .", while appropriate planks for a political platform, provide little foundation for analyzing housing problems, or for formulating a sound national housing policy.

Its conclusion that the Nation's housing problem is an income problem suggests that there is already enough housing for everyone, and that the future will take care of itself.

This ignores the everyday experience of homeseekers all across the Country who report that finding suitable housing is a serious, and growing problem. It ignores evidence that more families are doubling up and that waiting lists for assisted housing are growing. It doesn't adequately take account of the shifting housing needs of a mobile and changing population.

It almost certainly understates the need for substantially renewing the older housing stock. The finding that there is no problem that requires Federal support for housing production denies the petition of special groups, such as the elderly and handicapped, families with several dependents, and rural

families, that have for years demonstrated to the Congress that Federal action is essential for solving their particular housing problems.

The conclusion that we have no problem of housing supply, but only a problem of high housing prices and rents, appears to defy economic laws which tell us that the price of everything is related to the supply that is available, as well as to the desire and ability to buy it. While the Administration has stressed that inflation can be cured by increasing supply, the Commission has concluded that housing inflation is different. The housing affordability problem of poor people, they assert has little to do with the supply of housing. It can be solved, simply, by giving individuals a small contribution toward their rent.

Its recommendation that the Federal Government should free the market to produce housing, and confine itself to helping the poor with rent grants could be disastrous for those who receive aid, as well as those who don't both now and in the future.

The Commission bases its recommendations on an experimental study which found that a program of rent grants did not increase rents in the communities studied. The communities that provided the primary data for the study were Green Bay, Wisconsin, and South Bend, Indiana. To conclude that a limited experiment in these two communities represents what would happen if a full-scale program were implemented throughout the Nation is clearly unwarranted.

Accepting a Trickle-Down policy for housing would mean that housing would be constructed by those who can afford it, while others would have to find shelter in older structures. Eventually, even the poorest family would find a place, it is said. But, when all housing-short market, "Trickle-Down" clearly doesn't work. The poor are forced to rent but the well-off are, today, priced-out of a inadequate housing, or double up, or get lost.

While "Trickle-Down" plays a role in housing Americans, it has not been the basis for Federal policy since Herbert Hoover and Franklin Roosevelt took steps to improve and expand the Nation's housing supply. Every President since then has affirmed this U.S. commitment. It would be a mistake, despite our current economic problems, to turn our backs on this commitment.

The recommendation that Federal Housing Policy adopt a rent-grant approach is not a new idea. It is, in fact, intended by the Commission to be a revision of a program which now aids more than one million families each year. Though not new, rent-grants have an important part in our national housing policy. They can efficiently serve certain groups in areas where there is an adequate supply of housing. What is new, and radical, is the Commission's recommendation that all the other approaches be abandoned.

The Commission recommends that we put aside everything we've learned about housing Americans in the past 5 decades, and place our faith in a simple program of rent vouchers. Rent vouchers, however, do not guarantee communities an increased supply of rental housing, or individuals a place to live. Without Federal support for construction and rehabilitation of rental housing, a program of rent vouchers will fail, almost certainly, to meet the housing needs of groups such as the elderly, who have traditionally been poorly housed.

We cannot as a Nation simply adopt a demand side approach to housing, and ignore the need to assure an adequate supply. Fifty years of experience has shown that we need Federal programs to support new construction and substantial rehabilitation as well as a rent assistance program.

The President's Commission on Housing should recognize this. It should revise and expand its Interim Report and Recommendations to produce a sound and balanced housing policy for the Nation in the 1980s. The National Housing Conference believes it owes the President and the Nation that effort.

TWO-YEAR BUDGET?

Mr. DODD. Mr. President, it would be difficult to say which is more complex: The Federal budget itself or the procedures which Congress tries to follow in designing and adopting it. Indeed the experience of recent months has raised serious questions about whether those procedures can provide Congress the best method for dealing with its important responsibilities in this area.

One perceptive student of this issue is our colleague from Kentucky (WENDELL FORD). Senator FORD has recently introduced legislation aimed at simplifying and rationalizing the process by moving to a 2-year budget cycle. Whether that will prove to be the best answer remains to be seen, of course, but Senator FORD is to be commended for the characteristic leadership and initiative and thoughtfulness which his action embodies.

This week's edition of U.S. News & World Report contains an editorial by Marvin Stone which argues persuasively for a close look at the Ford bill. I ask unanimous consent that it be printed in the RECORD.

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

WHY NOT A TWO-YEAR BUDGET?

(By Marvin Stone)

In the midst of their struggle to keep the federal government funded for the immediate present, a few farsighted lawmakers have been searching for a way to prevent still more scary scenes like that of late November, when federal offices started closing down for lack of money.

Appropriations had been held up interminably in the Congress, and Mr. Reagan had vetoed Congress's second continuing resolution of the year, aimed at letting government operate at about the current level. The President and Congress eventually reached an accord, but only for a three-week cease-fire that ends December 15.

Incredible complexities of the budget underlie recurrent troubles. The detailed federal budget for the fiscal year that started last October 1, as sent to Congress last January, ran to more than 1,800 pages.

It is hard for us ordinary Americans to remember that this cold, mysterious document affects every individual just as much as the old town meetings where citizens once argued over spending their cash to build a road behind the general store—more so, in fact, because by merging the functions of the town councils into national economics, it determines not only the road behind the store but the state of the nation, too. That means the price you pay for bread, whether you'll have a job, whether your business will go on or go under, and a thousand elements of personal survival.

But hardly anybody understands the nation's budget—more than 700 billion dollars this year—and members of Congress who have to vote on it state freely that they cannot get a grasp on it in the time accorded them.

In any year, the President's budget plan comes to Congress in January. On October 1, the new fiscal year begins and an approved budget is supposed to be in place complete with appropriations. Into that period Congress must cram the procedures of the Budget and Impoundment Act of 1974, written originally to give Congress control of what it is doing.

The process, with exact days or hours allotted for every stage of hearings, study or debate, involves an intricate dance back and forth among President, Congressional Budget Office, House and Senate Budget Committees and individual committees of the two houses, and over again before the "reconciliation" that makes last minute repairs.

It is, as Democratic Senator Wendell Ford describes it, "frenetic." Senator William Roth, Republican, adds: "While the Budget Act of 1974 was an important step forward . . . the process is not working." And he is right.

What these Senators propose is a two-year budget. Once fully installed, the new system would give each new Congress nearly two years to enact the next national funding.

Senator Ford, joined by colleagues Dale Bumpers, Claiborne Pell and John Danforth, is already in the starting gate with a bill. Representative Leon with Panetta, with 35 cosponsors, has introduced a similar measure in the House. Roth is coming in with a slightly different proposal of his own.

If offering his bill, Ford quotes the highly regarded Alice Rivlin, director of the CBO, at length. Not only does she recognize that "the procedures of the budget process today force members of Congress to make so many budgetary decisions each year that they cannot possibly . . . make them in the light of thorough review and informed debate," but she also recites other reasons for shifting to the two-year budget: "Transfer payments need to be predictable, so that people's lives are not disrupted. Military capability suffers if signals change too often. Procurement costs can go up. . . . In grant programs, frequent changes and uncertainty are costly and disruptive. . . ."

The idea of a two-year budget should gain wide and powerful support. It may not turn out to be the best answer or the whole answer, and objections may be heard from some quarters. But it deserves a long and thoughtful look.

HAROLD V. HUGHSTON

Mr. HEFLIN. Mr. President, it is with a great deal of sadness that I note the death of Judge Harold Hughston of Tuscumbia, Ala. Judge Harold Hughston was one of Alabama's truly great citizens as well as one of its most outstanding lawyers. Judge Hughston was a devout churchman, a concerned civic leader, a progressive community builder, a believer in excellence in education, and a dedicated public servant.

Few Alabamians have devoted as much time and energy as he did to good and great causes. In addition, he was a devoted family man and a dear and trusted friend.

Harold attended the University of Alabama where he received his law degree in 1940. Harold also served in the U.S. Army during World War II, where he was promoted from a private to a captain in the Judge Advocate General's Department. He served with honor and distinction as judge of the Colbert Law and Equity Court, circuit judge of the 11th judicial circuit which included Colbert, Lauderdale, and Franklin Counties. He served as the first circuit judge of the 31st judicial circuit, Colbert County.

Harold also dedicated himself to civic and educational affairs. In 1955, he served as governor of the Alabama district of Kiwanis International. He served as president of the University of Alabama Alumni Association and as president of the University of Alabama Law School Foundation. He received the University of Alabama's Distinguished Alumnus Award, the Bench and Bar Legal Honor Society's Most Outstanding Alumnus Award, and the Tutwiler Award for service to the University of Alabama.

Harold will be remembered for his unselfish dedication to the Colbert County legal profession and to the Alabama State Bar Association. He served as president of the Colbert County Bar Association. In July 1981, he was elected to serve as the 105th president of the Alabama State Bar Association. Prior to being elected president, he had served as a member of the State Board of Bar Commissioners and its executive committee, as well as numerous other State bar committees.

Harold Hughston was an outstanding citizen in every respect. His uncompromising dedication was reflected in his service to his community, to his church, to his profession and by his unyielding devotion to his family.

I wish to extend my sincerest sympathies to Harold's lovely wife Lucy Allison Hughston and their children; Caroline Maddox, Lucy Ann Nichols, Harold Vaughn Hughston, Jr., and James Dowlen Hughston. I would also like to express my sympathies to Harold's brother Hubert Holmes Hughston, and his two sisters, Mrs. D. D. Cox and Mrs. James M. Norwood as well as the other members of his family.

I request unanimous consent that articles concerning Harold V. Hughston be printed in the RECORD.

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

[From the Florence (S.C.) Times—Tri-Cities Daily, Nov. 24, 1981]

HAROLD V. HUGHSTON

The death of a beloved member of a community creates a void that can never quite be filled. So is the case with Harold V. Hughston.

Hughston's death last week after a long and courageous fight with cancer brought sadness and words of praise from his colleagues in the legal profession, his friends at the University of Alabama, members of his community and countless other people throughout the state.

"I am deeply saddened by the death of Harold Hughston," said Joab L. Thomas, president of the University of Alabama. "The University of Alabama has lost a loyal and close friend who has stood second to none in his support for our university. We have had no stronger advocate. The legal profession, the state of Alabama and everyone who worked with Harold Hughston is surely in his debt."

U.S. Sen. Howell Heflin, a Tuscumbia resident and longtime friend of Hughston, said, "Harold Hughston was one of Alabama's truly great citizens as well as one of its most outstanding lawyers. Judge Hughston was a devout church man, a concerned civic leader, a progressive community builder, a believer in the excellence of education and a dedicated public servant.

"Few Alabamians have devoted as much time and energy as he has to good and great causes. On top of all of this, he was a devoted family man and a dear and trusted friend."

Hughston, who was serving as president of the Alabama State Bar Association at the time of his death, was a former circuit court judge. He was affectionately known as "Judge Hughston." He practiced law in Tuscumbia from 1940 until his death except for a four-year stint with the U.S. Army during World War II.

In 1979, Hughston was offered the opportunity to serve as judge on the federal bench in Alabama's Northern District. Yet, in a letter to Sen. Heflin. Hughston declined the offer and explained that he did not want to move to the federal court offices in Birmingham and leave "his home, church, friends and clients in Tuscumbia."

In the letter, Hughston's devotion to his family became apparent when he said that his two sons, Harold V. Hughston, Jr., and James D. Hughston, were planning to join his law practice. "I am looking forward in great anticipation of that date as I can think of nothing that would give me more pleasure."

From the people he served in Tuscumbia to members of the bar, all agree that Hughston demanded detail from himself as well as those he served.

Dorrine Blackburn, a secretary for the Colbert County Commission and longtime friend of the Hughston family, explained that "Harold always took time for the little things."

One of the countless "little things" that Hughston did was to send boxes of candy to the secretaries in the courthouse and Tuscumbia City Hall each Christmas.

Others agree that Hughston helped countless people he encountered in his law practice with "little things." "There's nobody else like him, and he's going to be missed," said Bruce Gargis, chairman of the Colbert County Commission.

From his colleagues in the legal profession, Hughston's death brings about an even greater appreciation for a man that gave almost 40 years of service to his profession.

Broox Garrett, who will succeed Hughston as president of the bar, said, "The death of Harold Hughston brings sorrow and regret to all members of the Alabama State Bar which Harold served so ably and successfully during his long and fruitful years of service."

Reginald Hamner, executive director of the bar association, described Hughston as "a giant in the legal profession."

"He was the most effective leader of people, but his real measure of success was that he cared very deeply about people."

Hamner said Hughston's concern for people existed in every facet of his life and, above all, in his concern for his family, his church and community.

"Harold gave 110 percent all the time," Hamner said. "He did good work in everything he did."

[From the Birmingham (Ala.) News, Nov. 21, 1981]

BAR PRESIDENT HUGHSTON DIES

TUSCUMBIA.—The funeral for Harold V. Hughston, president of the Alabama Bar Association, is scheduled at 2 p.m. Sunday at the First Presbyterian Church.

Hughston, 66, died Friday at his home following a lengthy illness.

Hughston was admitted to the Alabama Bar in 1940 and served as a circuit judge until 1955. He most recently had practiced law in Tucsumbia with his sons, Harold V. Hughston Jr. and James D. Hughston.

A graduate of the University of Alabama, Hughston had served as president of the university's National Alumni Association and Law School Foundation. He had received the university's Distinguished Alumnus Award and Tutwiler Award.

Hughston was elected president of the Alabama Bar Association last July. The association's vice president, Broox G. Garrett, Sr. of Brewton, will fill Hughston's unexpired term, which ends next July, an association spokesman said.

[From the Florence (S.C.) Times—Tri-Cities Daily, Nov. 21, 1981]

HUGHSTON SERVICES SLATED FOR SUNDAY

The service for Harold Vaughan Hughston, 66, Tuscumbia, president of the Alabama State Bar Association, will be at 3 p.m. Sunday at First Presbyterian Church, Tuscumbia, where he served for many years as elder and trustee. Ron Siegenthaler and Jim Patterson will officiate. Burial will be in Tuscumbia Oakwood Cemetery, Morrison-Elkins Funeral Home, Tuscumbia, directing.

The family will receive friends at the funeral home from 4 to 9 tonight and prior to the service on Sunday. The body will be placed in the church one hour before the service.

Hughston, a lifelong resident of Tuscumbia, died at his residence Friday morning.

He attended the University of Alabama where he received his law degree in 1940. He practiced law in Tuscumbia from 1940 until his death except for a four-year stint with the U.S. Army during World War II. Hughston rose from a private to a captain in the Judge Advocate General's Department. He was a judge of the 11th and 31st Judicial Districts, which included Colbert, Lauderdale and Franklin counties, for eight years. He was affectionally known by his friends as "Judge Hughston" for his years of service on the bench.

In 1955 Hughston served as governor of Kiwanis International, Alabama District.

Hughston was a dedicated alumnus of the University of Alabama. He served as president of the university's alumni association, as president of the University of Alabama Law School Foundation and as president of Farrah Law Society. For his service in these and many other capacities, he was the recipient of the University of Alabama's Distinguished Alumnus award, the Bench and Bar Legal Honor Society's Most Outstanding Alumnus Award and the prestigious Tutwiler Award for service to the University of Alabama.

He was also an active member of both the Colbert County and Alabama State Bar Associations. He served as president of the Colbert County Bar Association and took office as president of the state bar association in July of this year. Prior to being elected president, Hughston had been a member of the State Board of Bar Commissioners and its executive committee, as well as numerous other state bar committees.

In 1979, Hughston turned down an opportunity to serve as judge on the federal bench in Alabama's Northern District because he did not want to move to the federal court offices in Birmingham and leave his "home, church, friends and clients" in Tuscumbia. Furthermore, Hughston desired to remain in Tuscumbia to practice law with his two sons, Harold Vaughan Hughston Jr. and James Dowlen Hughston.

Survivors include his wife, Lucy Allison Hughston, Tuscumbia; children, Caroline Maddox, Birmingham, Lucy Ann Nichols, Charlotte, N.C., Harold Vaughan Hughston Jr., James Dowlen Hughston, both of Tuscumbia; four grandchildren; a brother, Hubert Holmes Hughston, Lubbock, Texas; sisters, Mrs. D. D. Cox, Sheffield, Mrs. James M. Worwood, Emmaus, Pa.; nieces and nephews.

Memorials may be made to First Presbyterian Church in Tuscumbia or the University of Alabama Law School Foundation.

Bearers will be Joe Calvin, Ernest Williams, George W. Williams, Gene Crump, Jim Underwood, Dr. John Mims, Dr. Harold Rogers, Jimmy Waddell, E. H. Darby and Goodloe Rutland.

Honorary bearers will be elders of First Presbyterian Church and members of the Colbert Council Bar Association.

[From the Birmingham (Ala.) Post Herald]

STATE BAR PRESIDENT, H. V. HUGHSTON DIES

TUSCUMBIA.—Harold V. Hughston, the 105th president of the Alabama State Bar, died yesterday at his home after a lengthy illness. He was 66.

The former circuit court judge, who was in private practice in Tuscumbia with his two sons, was elected president of the State Bar in July.

Reginald Hamner, the bar association's executive director, said Broox G. Garrett of Brewton will succeed Hughston.

Hughston, who was admitted to the bar in 1940, was former president of the University of Alabama National Alumni Association and the UA Law School Foundation.

Garrett will serve as bar president until July 1982.

Funeral for Hughston will be 3 p.m. tomorrow at the First Presbyterian Church in Tuscumbia with burial in Oakwood Cemetery, Morrison-Elkins Funeral Home directing. Survivors include his wife, Mrs. Lucy Allison Hughston; two daughters, Mrs. Caroline Maddox, Birmingham, and Mrs. Lucyann Nichols, Charlotte, N.C.; two sons, Harold Vaughan Hughston Jr. and James Dowlen Hughston, both of Tuscumbia.

The family requests memorial donations to the University of Alabama Law School Foundation or the First Presbyterian Church of Tuscumbia.

BARRETT C. SHELTON, TENNESSEE VALLEY DISTINGUISHED CITIZEN

Mr. HEFLIN. Mr. President, last month—specifically, on November 2—I was privileged to be the featured speaker at the 1981 Tennessee Valley Distinguished Citizen Award banquet in Huntsville, Ala. This award is presented annually by the board of directors of the Tennessee Valley Authority to the person who has made significant contributions to the growth and development of the Tennessee Valley and to the economic well-being of the citizens of the area. The recipient of the award this year was appropriately given to Mr. Barrett C. Shelton of Decatur, Ala.

Barrett Shelton is indeed one of the outstanding citizens of our Nation. He is well known to many in the Congress for his dedicated work both as a private citizen and as editor and publisher of the Decatur Daily. For more than a half century, Barrett Shelton has toiled in the vineyard for his community, his State, and the Tennessee Valley. His efforts have been a labor of love. It can in truth be said that almost all of Barrett's waking hours have been devoted to the betterment of his fellow man and to the love of his family. I admire and respect Barrett Shelton's christian character and his sense of conviction. I am proud to claim the friendship of Barrett Shelton.

The high esteem in which Barrett Shelton is held by all who know him can in part be measured by those who attended the award banquet on November 2; and among those paying tribute to Barrett were former Alabama Governors George C. Wallace, and Albert P. Brewer, former Alabama Congressman Robert E. Jones, Mayor William Duke of Decatur, and Mayor Joe Davis of Huntsville. Congressman TOM BEVILL and Congressman RONNIE FLIPPO also sent messages of congratulations to Barrett on the occasion of his receiving the Tennessee Valley Distinguished Citizen Award. It was indeed an auspicious occasion.

Through the years Barrett Shelton has earned the most profound respect, admiration, and affection of the citizens of the Tennessee Valley. Because of Barrett's outstanding work and his longtime devotion to the betterment of his people, I should like to share with the Senate the proceedings of the Citizen Award banquet. I ask unanimous consent that they be printed in the RECORD.

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

General Manager W. F. WILLIS. We are pleased that so many folks have turned out this evening to honor their neighbor, friend, and colleague, Barrett Shelton. There are in fact a number of Barrett Shelton's friends here this evening who would like to say a few words about his many accomplishments. One of those friends is Congressman Ronnie Flippo who, due to a change in the obligations of the House Science and Technology Subcommittee which he chairs, was unable to be with us. He is, however, here in spirit and has recorded a videotaped greeting to Barrett which we will show to begin this evening's festivities.

Congressman RONNIE FLIPPO. Mr. Shelton, distinguished guests, ladies and gentlemen. I want you to know I would truly like to be there in person to pay tribute to Barrett Shelton, Sr., and all that he has meant to Decatur, the Tennessee Valley, the State of Alabama, and, indeed the Nation; but my duties in the Congress require me to be elsewhere at this time in regard to the space program, but I would rather be with you.

You know the older heads around the Decatur Daily refer to Mr. Shelton as the "Old Man." You would sorta have to be an institution around the Daily yourself like Maynard Layman or Billy Smith before you earn the right to do that. While it's an endearing term, I've just never been able to bring myself to do that. I just have too much respect, too much admiration, too much awe for the man and his accomplishments to call him the "Old Man" to his face.

Mr. Shelton, I feel like apologizing to you for even doing it on TV, but I'm doing it to make a point. If you ever hear someone close to Mr. Shelton call him the "Old Man," they don't say "the old man" they say "the old man." I can buy that, but maybe it's more appropriate to just say "the man." He has certainly been the man behind so many vital and worthwhile projects that touch and enrich our daily lives. There are those who probably believe that Barrett Shelton founded Decatur on December 2, 1826. While he's a bit young to have founded it, can anyone doubt that he, more than any other, is the one who has built Decatur, Alabama. His loving hands have helped to form so many things around us.

Show me something worthwhile and chances are his imprint will be on the foundation: the Decatur Chamber of Commerce, the North Alabama Industrial Development Association, the Tennessee River Valley Association, Tennessee-Tombigbee Waterway, Lurleen B. Wallace Retardation Center, the Salvation Army headquarters, the Wheeler Basin Regional Library. Just look around at the hospitals and alcoholism clinics, high school stadiums, highways and bridges, and perhaps your downtown job or jobs on the Decatur waterfront; the man's handiwork is everywhere. He has really forgotten more honors and tributes than time permits us to list. I left out a couple that I believe need elaboration. The Decatur Daily is the main one. He left college in his junior year to come home and become editor and publisher of the Daily when his father died. How many 22-year-old newspaper publishers do you know?

It goes without saying in this day of huge newspaper chains and conglomerates that Barrett Shelton could have sold the Decatur Daily many years ago for a fat profit and retired to live off his bonanza and rest on his laurels. To his everlasting credit he has chosen to keep it as a family operation and a truly hometown newspaper. The Alabama newspaper hall of fame will one day be graced with a plaque honoring Barrett Shelton.

I know Mr. Shelton was happy to see his good friend and mine, the late Mr. Lewis Eckl of Florence enshrined in this great institution just a few weeks ago. I've left the best for last. The Tennessee Valley Authority. Mr. Shelton's support for TVA has not wavered in 48 years. Mr. Shelton, let me assure you that my support for TVA as an institution has never wavered either, even though I have been critical of some recent actions by the Board.

This year in a statement to the Senate Environment and Public Works Committee Mr. Shelton said, "I'm proud of the Tennessee Valley Authority. TVA is perhaps the greatest example in the whole world of people working with their government for the purpose of improving the economy." I subscribe to that and I agree with that 100 percent. Just as you have worked for almost 50 years to make TVA all that it can be, I pledge to you that I will do everything in my power in the United States Congress to help TVA not only be all that it could be, but all that it should be as well.

TVA is to be commended for many, many things. I appreciate it's wisdom in selecting you as Alabama's first recipient of the Tennessee Valley Distinguished Citizen Award. In the annals of TVA, several giants of public service who demonstrated love for their fellow man will be included. George Morris, John Sparkman, Bob Jones, Lester Hill, Lewis Eckl, and there may be a listing that just says "The Old Man." Everyone will know who it is. Thank you.

General Manager W. F. WILLIS. Unfortunately, Congressman Tom Bevill's schedule did not permit him to attend this evening; however, he has also sent a greeting which I would like to read to Barrett.

Dear BARRETT. It is an honor to join with your many friends in saluting you as the Tennessee Valley's Most Distinguished Citizen for 1981. The hard work, devotion, and major accomplishments which have made you truly deserving of this award have spanned a half-century. You have been a major force in bringing about the development of North Alabama and the entire Tennessee Valley. Your foresight in seeking to bring industrial growth to this section of the country has paid great dividends to our people. I especially want to commend you for the early leadership of the Tennessee-Tombigbee Waterway Development Authority, and the continued interest you have shown in this important project. Please accept my most sincere congratulations on this well-deserved honor. You truly are one of the Tennessee Valley's most distinguished citizens.

General Manager W. F. WILLIS. I would like to call on some people here at the head table this evening to, if they would, present some remarks about our guest tonight. I'd like to start off first with former Governor George Wallace. If you would, Governor.

Former Governor GEORGE WALLACE. Thank you, Mr. Willis. I'd like to say to you, Senator

Heflin and members of the Tennessee Valley Authority and the Barrett Shelton family, that, of course, even before I became the governor of Alabama, I knew his reputation for his interest in TVA and also for projects of this great state and region; and I can say that after I became the governor, I knew very well. I know he is not only interested in TVA but in the entire State of Alabama. I am certainly glad there was a man like Barrett Shelton and still is a man like Barrett Shelton in front of me. I am sure that had we had 35 or 40 or just a few Barrett Shelton's, that some governors might have wound up in the lunatic asylum.

I can assure you that Barrett Shelton, in coming to my office over the many years I was governor, never asked for a single thing for himself personally or for his family or for anyone. He was always wanting something done in the interest of all the Tennessee Valley Authority and the Tennessee Valley area and the entire State of Alabama; and I want to say I'm very happy to be with you, Barrett, and your lovely family here tonight; and I have appreciated your friendship. And it has been, of course, a great moment when I say that you and I are personal friends along with members of your family. You have been a great contributor and still will be a great contributor to the problems of this great section of this great State of this great region of the country. Thank you very much.

General Manager W. F. WILLIS. Thank you so very much, Governor. And now I would like to introduce former Governor Albert Brewer.

Former Governor ALBERT BREWER. Some times the power is off, but TVA gets it back on again. Thank you, Mr. Willis, distinguished guests, and ladies and gentlemen. If we all make a talk tonight, we're going to be here a while. I'm going to be very brief. Barrett, you've meant a great deal to a great many people and to a great many people who aren't even born yet. We are going to benefit from the great roots and seeds that you've planted and developed here in the Tennessee Valley. I think two things about Barrett Shelton stand out in my mind, and I grew up in Decatur, and from the time when I was just a lad, I thought he was an old man then. But now we've more nearly reached the same age, and I respect his leadership in that community, and I respect his giving of himself and his willingness to believe in the free enterprise system. He tells a story, and some of you have heard it, and you're just going to have to listen to it again. Barrett was violently, desperately opposed to this thing called the Tennessee Valley Authority. It was socialistic, it was wrong, it just wouldn't work. It was the worst thing anybody ever suggested for the people of this Valley. One day there came to his office in Decatur, the Chairman of the Board of Directors of the TVA, the Honorable David Lilienthal, a great pioneer in this business. He came in and Barrett leaned back in his chair and folded his arms and said, "All right, tell us what you're going to do for us." Mr. Lilienthal said, "Not a damn thing. I'm going to let you do it for yourself." And he did and Barrett did, and he led all of us in seeing the development and growth of this great Tennessee Valley. Barrett, we're all indebted to you, and the recognition that you receive tonight is, if anything, overdue. It is so very richly deserved. Thank you very much.

General Manager W. F. WILLIS. Thank you very much, Governor. It is a very special favor to me to introduce the next gentleman to say some words tonight—former Congressman Bob Jones—who has meant a lot to TVA. It is now my pleasure to ask you to come forward, Congressman.

Former Congressman BOB JONES. Thank you very much, Mr. Willis. If you were a member of the House of Representatives, you would know that we have a five-minute rule. If I'm to talk about Barrett Shelton, we'll be here for the rest of the night, and the five-minute rule will be abandoned. I got a call once from Barrett Shelton, and the House had been in a big debate that week, and I had been on the floor all week long making speeches and I was worn out. And Barrett said, "I'd like for you to go to Huntsville and make a speech. I said, "Barrett, I don't want to do that. I am worn out, and that would be 40 speeches this week." He looked at me and said, "Bob, you haven't made 40 speeches. You made the same speech 40 times."

Of course, it is a great honor for me, Barrett, to be in the company of the people who enjoy your thoughts and your objectives. You have meant so much, not only to this community, but you have led us on the high road to good principles, dedicated to many purposes and projects for which we all aspire, want, and need. Above all else, above all your accomplishments, we appreciate you as a man, because you have always dedicated yourself to an upward movement that has meant so much to all of us. Above all, for those of us here tonight, we thank you for letting us be your friend.

General Manager W. F. WILLIS. Thank you. I would like to call on Mayor Dukes of Decatur, Mayor of Barrett's hometown.

Mayor DUKES of Decatur. Thank you. Let me say, you know, that I'm comparatively a newcomer to Alabama and to Decatur. I've only lived there for 25 years. You know, I stand before a group of people and say how proud I am to say that I'm the Mayor of the great city of Decatur. Of course, what makes that so—and I really truly say that in all sincerity—is the help that I received and the inspiration that I have received from Mr. Barrett Shelton, Sr. There has never been anything that has happened really good to Decatur that Mr. Shelton was not the driving force behind it. It is still that way. I see him in church on Sunday. We're working on a project now at the Princess Theater, and I tell you I look up and here comes Mr. Shelton and Maynard Layman in my office, and I see him and he says, "Mayor, have you heard anything from those people in Birmingham on the problems we're having." We've talked to just about everyone and Congressman Flippo about this.

And you know the first thing he asked me when I walked up here just a few minutes ago, "Mayor, have you heard anything from them yet?" And that's just the way that he is. He stays with you and he keeps prodding you until something good happens; and I know something good is going to happen from that. But you know I would not say that I was proud to be the Mayor of the city of Decatur if it were not for the help and the inspiration that I spoke of earlier. I talked to my God earlier this evening, and I'm really sincere in saying what a great man, what a great inspiration Mr. Barrett Shelton has been to Bill Dukes, not only as Mayor but also as a citizen of the city of Decatur, Alabama. Thank you, Mr. Shelton.

General Manager W. F. WILLIS. Mayor Davis, we are very honored to be here in your city tonight. And we would like for you to come forward at this time with some remarks.

Mayor DAVIS of Huntsville. Thank you, Mr. Willis. The city of Huntsville, on many occasions, has had many distinguished people here, but I don't believe I have ever had the opportunity to see so many distinguished Alabamians here on this occasion, and certainly I thank Barrett Shelton and his family, and that is enough said for how the people all over the State of Alabama feel about what he has done for the State of Alabama and for the Tennessee Valley. The Board of Directors for the Tennessee Valley Authority, we are honored that you chose Huntsville to honor Barrett Shelton, and to Mr. Shelton, I think a lot has been said, probably a lot more will be said, but I think to me you simplify a great, dedicated Alabamian, and a great American. We are honored to know you. We are honored to have you here. Thank you.

General Manager W. F. WILLIS. Thank you, Mayor. I imagine there are a lot of people here tonight, in fact, everyone in this audience, who could and would like to say a lot of fine things about our honoree tonight. And I was really concerned about how to handle that and I talked to Maynard a little bit about it; and I said, "Now we are just unfortunately not going to be able to let everyone that we wish come up and say things about our honoree. But maybe to help settle it, you could just give me a few stories I could tell about Barrett; and I could get by with maybe not recognizing everyone." And he gave me some things, but he was worried about some of the things he told me. So I consulted with Barrett about it and Barrett said, "Now you just better leave that alone!"

Now, my task of introducing this evening's guest speaker is, by and large, an unnecessary one—particularly here in his beloved State of Alabama. Our speaker tonight is an accomplished man—a graduate of Birmingham-Southern College and the University of Alabama Law School, a widely recognized trial attorney, and former President of the Alabama State Bar Association. In 1971 he took the oath of office as Chief Justice of the Alabama Supreme Court, introducing a judicial reform package which has been hailed as a "model for the Nation."

For his First Amendment protection role, he was awarded the 1977 James Madison Award jointly with television commentator, Eric Severeid, by the National Editorial Broadcasters Association. He is a former Chairman of the National Conference of Chief Justices and was selected the Most Outstanding Appellate Judge in the United States by the American Association of Trial Lawyers in 1975.

In 1978 our speaker was elected to the United States Senate where he was named Chairman of the Senate Select Committee on Ethics, the first time in more than 70 years that a first-year freshman Senator was named Chairman of a full Senate Committee. We are very pleased that he could take time from his demanding schedule to be here tonight. Ladies and gentlemen, it gives me great pleasure to present to you, Senator Howell Heflin.

Senator HOWELL HEFLIN. Thank you. I certainly appreciate your kind remarks, and it is a great honor and delight to be here and to be here with so many distinguished guests, and I would like to say something about every one of you, to recognize you from Bob, members of TVA, and Albert. I am sitting next to former Governor Wallace, and I think, Governor, you appear to be in the best of health and vigor as I've seen you in many a year. I'm not sure of the cause, whether the new marriage, or some anticipation of an upcoming campaign, but I have to say your comb is redder than anytime I've ever seen it.

I'm delighted to participate in this great occasion for Barrett Shelton, and delighted to see so many of his friends from all over the State.

Last night I had a nightmare. I dreamed about Maynard Layman. I dreamed that Maynard and I went to heaven. We got to heaven at the same time, and Saint Peter met us at the Pearly Gates, and he looked at us and said, "Neither one of you lived very exemplary lives down on earth, therefore, we don't know whether we can let you in or not." So, we stayed outside the Pearly Gates for three days while they computerized us and went over our lives.

Finally, St. Peter let us in but said, "We realize that your wives are back on earth,

and until they join you here we have decided to provide you with feminine companionship. But don't forget that both of you are on probation." Then we got separated. Later they took me over to the heavenly hotel. As I was walking down the corridor on the way to my room, and I looked into a room and there was Maynard with Bo Derek. I said, "Wow, now this looks like everything is going to be alright here in heaven." I went to my room and there was the ugliest-looking woman that I have ever seen in my life." I turned to Saint Peter and I said, "I don't understand." He said, "You've got to realize that down on earth you didn't live an exemplary life," and he further said, "You've got to go through a period of penitence." I said, "How about my friend, Maynard? He's got Bo Derek up there in his room." St. Peter replied, "You don't understand, Bo Derek has got to go through an agonizing period of penitence, too.

I heard a story about a speaker who had been speaking for about an hour and a half, and finally somebody threw a Coca-Cola bottle at him. The Coca-Cola bottle ricocheted off of the rostrum and hit somebody down in the second row. That person hollered out when it hit him. "Hit me again. I can still hear him." Thus, I will keep my remarks short. It is my distinct honor to be with you tonight as the TVA Board of Directors pays tribute to my long-time personal friend, Barrett Shelton, by presenting him with the coveted Tennessee Valley Distinguished Citizen Award.

The story of Barrett Shelton's many outstanding contributions to his community, his people, his State, and to the Tennessee Valley is known to all of us. The range of Barrett Shelton's accomplishments is broad, for his interest spread as wide as the horizons of the State of Alabama and the Tennessee Valley. It is difficult to find in the annals of the history of this State one like him. It was natural that one of Barrett's earliest pursuits should be, the fourth estate.

His father, William Randolph Shelton, preceded Barrett as editor and publisher of the Decatur Daily. It was while young Barrett was a junior at Washington and Lee University that illness and the subsequent death of his father caused a brilliant student to leave that institution and assume the leadership and responsibilities of the Decatur Daily. This was in 1924 and since that time, 57 years ago, the Decatur Daily has served as a clarion trumpet for a bigger and better Decatur, a bigger and better Alabama, and a bigger and better Tennessee Valley.

As a newspaperman, Barrett Shelton did not merely put words on paper or just comment on local events. Rather the thrust of the Decatur Daily, has been to spur community, State, and regional action and, thereby, the Decatur Daily has been a definitive chronicle of Barrett's outstanding work through the years.

Even more than his primacy as editor and publisher of the Decatur Daily, there is a reason for Barrett's success in so many areas. It is pure and simply old-fashioned hard work, and a total commitment to a better life for his fellow man. The extent of the totality of this commitment is not fully appreciated unless you are fully aware that his closest associates are likewise imbued with this same commitment. No person has ever had stronger supporters in the pursuit of goals than Barrett has had in Barrett Shelton, Jr., and Maynard Layman.

As a charter member of the Decatur Chamber of Commerce, Barrett has been a pioneer leader in the economic and industrial development of this area and the Tennessee Valley. I could go on and list many of his accomplishments, and many of them have already been recited today. But I also want to point out just a few, maybe some that have not been mentioned, because he's also a long-time supporter of agricultural assistance that are prudent concepts. Soil conservation, crop diversification, and other programs which have given the farmer and his family security and the benefits of modern living.

Barrett Shelton has long been in the forefront of activities to bring quality medical care to his community and the State. He has devoted service in the cause of better health and has drawn praise and recognition from his fellow Alabamians, as is evidenced by his presentation of the cherished William Crawford Gorgas Award by the Medical Society of the State of Alabama in 1969.

As a citizen, Barrett Shelton has initiated or given powerful impetus to many community improvement programs. He chaired the drive for building the Wheeler Basin Regional Library at Decatur. More recently when the campaign to raise one-half million dollars for the building of the Salvation Army Headquarters in Decatur to serve a three-county area in north Alabama was launched, it was all but inevitable that the chairman of that drive would be Barrett Shelton. In 1976 in recognition of his leadership and persistence in countless community causes, Barrett was named to the Alabama Academy of Honor. The National Conference of Christians and Jews have recognized his timeless effort to foster harmonious relationships between races, religions, and faiths.

That Barrett is ever on the job for the Tennessee Valley is seen from his unceasing work to make the long awaited Tennessee Tombigbee Waterway a reality.

From our experience in the Tennessee Valley, we know that the fundamental step to the fullest use of Alabama's resources lies in the sound and wise development of her rivers and streams. This manmade link, consisting of a canal and locks will enable boats and barges to pass over the strip of high ground which separates the Tennessee River from the head waters of the Tombigbee River.

This link will produce vast improvements to commerce, industry, and agriculture, not only in Alabama or in the Tennessee Valley but in the major portions of the Midwest, the South, and the Ohio Valley. Its impact on the energy crisis and national defense would be highly beneficial. It will be necessary for me to return to Washington as soon as possible following this dinner for a major Senate battle on the Tenn-Tom that will be fought this week. In this battle, under the leadership of Senator John Stennis of Mississippi, we will draw renewed strength from Barrett Shelton and other leaders from the grassroots level. I could go on and on about Barrett's skillful leadership and untiring efforts towards the betterment of his fellow man. Barrett Shelton is a great American. The list of his extraordinary accomplishments and the awards that he has received is as impressive as it is long, but this occasion is to honor my friend for his contributions to the Tennessee Valley development. I'm quite certain that Barrett Shelton has reaped no greater satisfaction from any of his accomplishments than he has from his support of the Tennessee Valley Authority almost from its inception.

You will note that I said almost from its inception. Barrett, by his own admission, did not embrace TVA in the Agency's early stages of growth, and Albert Brewer has stolen a part of my speech. But in a speech to the United Nations Scientific Conference, in 1949, Barrett explained his reticence about TVA in these words, "In the beginning, I opposed TVA. I didn't know it intended. I knew I wanted no government control over my life, nor over the lives of my people . . . then in 1933. Economic depression settled down on the United States, more pronounced, if possible, in the Tennessee Valley and in Decatur . . . into this dismal, perplexed, economic setting, one late mid-winter afternoon came David Lilienthal, then a member of the Board of Directors of the Tennessee Valley Authority . . . We were almost frankly hostile, for he represented to us another way of thought. And another way of life . . . He went on to tell us something we never knew before. He went on to say that TVA would provide the tools of opportunity . . . He told us that the river would no longer defeat man, but would become the servant of man." Aren't those beautiful words. This is Barrett speaking at the United Nations talking about Lilienthal.

He told us that the river would no longer defeat man but would become the servant of man. "What you do with these tools," he said, 'is up to you.'" Now let us look to the writings of David Lilienthal. In his journals, David Lilienthal makes reference to this particular meeting with Barrett as well as a later meeting some years thereafter. In 1940, Mr. Lilienthal wrote: "Decatur, Alabama, where I was on Thursday, was a grand experience. Four or five years ago, I was there; in the office of the Chamber of Commerce and met and talked to a number of people, including the local editor, Barrett Shelton. They were admittedly in bad shape."

Mr. Lilienthal goes on to relate in his journal how he explains in detail that under TVA's united approach to resource development, the assets and the energies of the local government and the people would be enlisted in the promotion of a total growth program. Then speaking of his subsequent visit to Decatur, Mr. Lilienthal continues to write: "The results have been really amazing. The editor, on whom I called was simply lyric . . . and the gleam in his eye, the pride. Well, I got a great kick out of it.

Neither Barrett nor Lilienthal related how long Barrett Shelton had doubts about the TVA concept, but as we all know, Barrett is not a person to let grass grow under his feet. Early on, Barrett saw TVA as the key to extracting the Tennessee Valley from the quicksands of economic impoverishment and added his vision and energies to the concept. His support and leadership helped make TVA a strong, adaptable, and responsive Agency.

As I flew into the Tennessee Valley this afternoon, with Charles Dean, Chairman of the Tennessee Valley Authority and Chris Eckl who works with him, I thought of George Norris, Franklin D. Roosevelt, Lister Hill, John Sparkman, Bob Jones, who Sam Rayburn has always referred to as "Mr. TVA;" and other illustrious individuals, including many of the sons of Alabama who first toiled diligently to make TVA a reality and then fought unswervingly to protect and preserve it. I thought of how particularly fitting that one of those sons, Barrett Shelton, was being honored by the great enterprise which has meant so much to his beloved Tennessee River and its valley.

As we honor Barrett Shelton this evening, we also honor all of those great giants who have worked and continue to work in the cause of Alabama and the Tennessee Valley and the South. The Declaration of Independence reminds us "that Governments long-established should not be changed for light and transient causes." In similar measure is applicable to the circumstances which gave birth to the TVA.

In the spring of 1933 at the height of the Great Depression, the Tennessee Valley was a morass of poverty and shattered hopes. As low as American incomes were that year, the average income in the Tennessee Valley was less than one-half of the national average. The citizens in the Valley had lost faith in themselves, in our institutions, and in the future. (The area was in peonage to a one-crop agriculture, and lack of capital held back industrial development.)

In short, life was more harsh in the Tennessee Valley in 1933 because the area was absolutely lacking in the opportunity she offered her people for business and agricultural success, for health, education, and se-

curity. This is how Earrett Shelton described this desperate plight in his United Nations speech. "Throughout much of our lives, the progressive citizens of Decatur had tried to better conditions. And it appeared that no matter in which way they turned, the result was far from producing lasting good." It was out of this desolation that the dream of the unified development of all the resources of a great river basin for the benefit of the people was born. The entire concept at TVA was experimental, designed to try out new ideas and new methods. The changes were not "for life and transient causes." In the words of Lister Hill, "A pilot plant for progress throughout the world was created".

All here tonight know the marvelous results of the integrated and comprehensive development of the entire Tennessee River Valley. TVA opened a new gateway to progress for industrial growth and agricultural diversification in the Tennessee Valley. Rich dividends have been returned to the people of the Valley, from electric power production, flood control protection and water transportation, from industrial development along the banks of this river, from fertilizer development and sound forestry programs, from wise soil conservation practices, and from recreational development.

The advances we have seen have confirmed the faith and the measure, up to the highest expectations of those visionary statesmen who know what could be accomplished from a region's resources, are seen, are mobilized and are developed in harmonious unison. As David Lilienthal so prophetically stated to Barrett Shelton and that small group of citizens in Decatur 46 years ago, the Tennessee River has been put to work for the people. And all of this Barrett Shelton has not only played a part, but has been a major factor. He has been a wheelhorse, a leader, an inspirer, a proclaimer, and defender. Whenever TVA has been threatened, Barrett has always been there. He has stood four-square with TVA in its many battles to survive.

In the dark days of the secret Dixon-Yates scheme when foes of the TVA were pushing to destroy TVA, Barrett, along with the editor of the Florence Times, the late Lewis Eckl, whose son, Chris, is with us this evening, helped to mobilize the citizens of the region. In solid phalanx to thwart the efforts to dismember the Agency Barrett also fought for the passage of the TVA Self-Financing Act. Let me add that when the Directors of the TVA detoured off in the wrong direction, he has let them know in no uncertain words that their actions were not in the best interest of the authority of the Valley and that they should return to the main purpose.

In a compelling statement last spring to the Senate committee conducting oversight hearings on the programs and operations of TVA, Barrett Shelton reaffirmed his boundless faith in TVA with these words: I am proud of the Tennessee Valley Authority . . . Of course, TVA has made mistakes. Who hasn't? . . . We've come a long way in the last 40 years.

We (in the Tennessee Valley) are not at the top economically in our Nation, but unashamedly we want to be. That is the American spirit. That is the spirit of the Tennessee Valley Authority.

At this time when TVA is again beset with a myriad of problems and maybe at a critical juncture in its history, I think it is fitting for all of us to take a page from the resolutness of Barrett Shelton. I would hope that the achievements, the visions, and the future of TVA will not be forgotten by its people or its Directors. No river in America serves the people so completely as the Tennessee. Under the one river, one plan-concept, the prosperity of the people has been promoted, their security has been enhanced, and their happiness has multiplied. TVA has brought strength to the Nation.

It is no exaggeration to say that the stories, the outstanding works and achievements of Barrett Shelton are in large measure the story of the growth and the progress of Decatur, north Alabama, and the Tennessee Valley.

For all of his work and service, Barrett Shelton has never sought material rewards. His satisfaction came from a job well done. This occasion is but a payment of an installment of a debt to a man who has done so much for the great rank and file of the people; a debt which can never be marked "paid in full."

We cannot know and we will never know how many people have achieved success, security, and happiness because of the total commitment and involvement of this gifted and noble man. Barrett Shelton, your agenda has been very full these last five and a half decades. It goes without saying that all that you have done has been indelibly etched in the minds and the hearts of all of us present here tonight. You are already a legend in your time, but I am confident that we have not heard the last of your durable service to your fellowman.

I want to wish for you and your beloved wife, Suzanne, continued health and happiness. In closing, let me speak for everyone here by paraphrasing an old Irish prayer: "May the road rise to meet you, may the wind always be at your back, may the sun shine warm on your face, and the rains fall soft on your fields, and during the remainder of your days, may the good Lord hold you in the hollow of his hand."

General Manager W. F. WILLIS. Thank you very much, Senator Heflin. Now I'd like to turn the program over to the Chairman of the Tennessee Valley Authority, Charles Dean, to make the presentation.

Chairman CHARLES H. DEAN. You will be happy to know that there is no way that I can follow that act. I tried to tell jokes against him on the plane coming down today and he won everytime. In fact, I'd start one and he'd tell me how it ended; and so he's heard them all. I'd like to read you just a few words from a letter that Dave Freeman wrote. He couldn't be here tonight. He said:

Your quality that stands out most in my mind, Mr. Shelton, is your activism and enthusiastic interest in TVA today. There are many people in the Valley who are part of TVA's history, but I know of no one else whose support for the Agency is as enthusiastic today as it was in the thirties. And I know of no community who can match yours as evidence of TVA's partnership with the people. As I've said on many occasions, the Decatur story is a yardstick within a yardstick. Best wishes for many, many years of active public service in the future.

It is signed by Dave, who couldn't be here tonight and he sent this letter to you. Now I had some notes and I'm going to throw them away, because I just want to talk just a few minutes from my heart.

In the first place, I feel much better about being down here because of some of my friends who live around here like Ed Cobb and Tom Green from up in Nashville and Elvin Farrer who came all the way from Georgia, and then I ran into a guy named Cy Horton. Now none of you know Cy Horton, but you may know Ed Horton, a very prosperous farmer from over here around Athens. And Ed Horton was Cy Horton when I went to U.T. He was an upper classman and I was a freshman. And he pounded on me a little bit, because we were in the same fraternity. But it certainly makes you feel good to come back home and find somebody like Ed Horton has risen to the heights. So I feel very warm and friendly here tonight; and it is good to share this day with my fellow Director, Dick Freeman. I want to tell all of you, particularly Mr. Shelton, that the TVA is in good hands. Dick Freeman and I are really in what amounts to our last jobs.

Now that's not a morbid thing to say, but we are with TVA as the last public service job to try to do what we think is best for this Valley. We are following a great tradition, and we have no intention at all of messing up. We want to do what's best, but we have to do in some cases things that might not be popular at the moment. I'm not going to go into gross detail about that, but some of the projects I've been involved in lately haven't been just a whole lot of fun.

In fact, they say when you get a new job like this, there is a honeymoon period. If there was a honeymoon, it was very brief. But tonight is one of these delightful occasions when you can come down here and make an award like this to a man that's truly great. I had never met Mr. Shelton. I met his son down here a couple of weeks ago. Mr. Shelton was traveling. But the real way to tell about a man is to watch his wife. Now, when the Senator was talking about his career, Mr. Shelton's career, he was talking about his honor student stuff back at Washington and Lee, and she snickered. She told me two things.

One, he wasn't maybe quite the scholar that the Senator might have been told, and two, that after all these years she loved him a whole lot. And that's the ultimate test. You know, when you have lived together that long, she loves him, she laughs at his jokes, and she snickers when somebody says something that's maybe stretched a little bit. So what I know is, I haven't met Mr. Shelton before, but I've enjoyed being with him tonight, and I certainly enjoyed having dinner with Suzanne; and I'm in the presence of a great man, and he has been a friend of the Tennessee Valley Authority. He has been a friend to all of you and I don't think I can add much to the Senator's remarks except to say it certainly is a pleasure as Chairman of TVA to make this award to Mr. Shelton. It's the Distinguished Citizen Award and, Mr. Shelton, you come up and get this and you can say anything you want.

BARRETT SHELTON. You know, the young Shelton over there, my grandson, he told me awhile ago, "You go on home. There has been some mistake. This thing is for me!"

Members of the Board of the Tennessee Valley Authority, Senator Heflin, distinguished guests, (my dear one), to my right and left, and to all you distinguished guests who have come here this night, I thank you. The Shelton family, the Shirley family, the Jones family, the Hall family, all of us thank you for coming here to honor an old fellow—me—that the Board of Directors of the Tennessee Valley Authority saw fit to nominate as the distinguished citizen of the Tennessee Valley for 1981. So again, I thank you, all of you, and allow me to offer a few, just a few, thoughts about the present and future of the Tennessee Valley.

In the past two years, John and Lucy Caddell and Mom and I have had the great privilege of traveling around the world and we have learned a lot about the other peoples of the world and the other governments of the world. We have found the people to be warm toward Americans with very few exceptions. They have been cordial and friendly and envious of our way of life. In just the past month, we were in Nepal where the annual per capita income is $75 a year and unemployment is 40 percent. One of the cashiers at our hotel told me that he had been working there for 13 years; his salary was $100 a month and how he wished that he might have a chance to come to our great Nation. There were 193 Americans from all over our Nation on this trip and the Nepalese entertained us on a mountaintop with a luncheon, native dancers, and a little

scraggily looking 20-piece band. Then, as their final offering, struck up "Stars and Stripes Forever."

To tell the truth, the tears still come to my eyes when I think on that scene. I think the United States of America is doing alright in the eyes of foreign lands and I know we are on the way to doing alright in our own eyes. We are on the way to a greater day in the history of the United States of America. When I say such things, some of my friends say, "My goodness. You sound like a Republican." No, not so.

There is nothing wrong with the principles of the Democratic party, which I espouse. We just went too far, and the American people are putting us back on the track. We will survive. We will return, wiser and more careful, just as the Republicans returned from oblivion. Now I didn't intend to get off on politics, but I do have to tell you what's in my heart and I have never viewed the Federal Government as an entity of its own. The Federal Government is you and I. It belongs to us; it is you and I. The Tennessee Valley Authority is a partnership with our people. It is an instrument of our Federal Government. The TVA belongs to the people of the United States. It belongs to us. The gentlemen who are charged with the responsibility of running it are doing their very best for you and the United States.

And so long as I am convinced of that, I will have good words to say about the Tennessee Valley Authority. I will not expect the impossible of gentlemen who are faced with the same financial problems that all of us are, only on a much larger scale. I like this partnership with the TVA. TVA leaders are responsive, optimistic, and in there trying to do the best job they can for us and for the people of the United States. Once again I want to thank this Board for selecting me as the Distinguished Citizen of the Tennessee Valley for 1981, and let me close with this final paragraph taken from a speech I was privileged to make at the United Nations on September 5, 1949.

I said then and I say now: I would like to close with this summary. Senator William Knowland of California, who came to the Tennessee Valley to see for himself what had been accomplished since the creation of TVA, returned to tell Congress that TVA was the greatest boon to private enterprise he ever saw. Or in the words of Dr. Sen, a visitor in Decatur from the Embassy of India, who viewed TVA as an improvement in an ever-improving democracy, or in my own way of answering visitors who come into our section of the Valley and ask, "Wouldn't this all have happened without a TVA?" And my answer to one and all is, "It didn't." Thank you very much.

General Manager W. F. WILLIS. I would like to thank you all so very much for coming this evening.

NATIONAL CIRCLE K WEEK

Mr. HEFLIN. Mr. President, it is with great pleasure that I join several of my distinguished colleagues in cosponsoring the resolution introduced by Senator DOLE proclaiming the week of February 7, 1982, to be National Circle K Week.

Today, Circle K International, the college affiliate of Kiwanis International, may properly be called the world's largest collegiate service and leadership development organization. Yet, as is often the case, the true essence of the organization goes far beyond any mere definition.

Circle K now has some 13,000 members in more than 700 clubs throughout the Western Hemisphere. It has come a long way from its beginning as a service fraternity in 1936, and even since its official recognition by Kiwanis International in 1955.

Despite the growth of the organization over the years, one thing has remained steadfast, Circle K has always had, and hopefully will always continue to have, high ideals of service. This dedication to finding the needs of the community and working to satisfy those needs has led to a deep commitment to the members of Circle K and to the people they serve.

All this illustrates Circle K's dedication, above and beyond all else, to making the world a better place and tomorrow a better day. Through service to others, Circle K builds character and leadership among its own membership ranks. These college students learn to cope with people, to care for people, and, most importantly, to care about people, while trying to give these people better lives to live and a better world to live in.

Circle K has been recognized for their significant efforts on behalf of the Muscular Dystrophy Association and the Cystic Fibrosis Foundation, among others. The organization has been deeply involved with the special Olympics program and with local boys and girls clubs. They have received 10 national awards from the Freedom Foundation for improving citizenship and speaking up for America. The list of the groups they have helped goes on and on.

My home State of Alabama is very lucky in that it has long been blessed with a fine Circle K district organization. There are clubs at some 25 colleges, universities, and junior colleges in the State. Over the years, the contributions these groups have made to the welfare of Alabama have been truly phenomenal. More than 20 young Alabamians have served as members of the Circle K International board or officers, helping set the policy that has steered the organization through its years of growth. Clubs from Alabama have won 10 first-place awards for the quantity and quality of their service, with the University of Alabama Circle K Club receiving an unprecedented third consecutive first-place award at this year's international convention.

Circle K International has always been involved in volunteer service, and has structured this service through the designation of biennial administrative theme and emphasis areas. The current theme, "Together for Tomorrow," urges Circle K clubs to become more deeply involved with elderly and physically impaired persons, and to work to stimulate positive achievement by our society's teenagers.

Still, Circle K service will not be limited to those areas. These fine college students will continue working in any area that might help another person, not only through raising funds for charities, but predominantly through personal service activities, visiting nursing homes, tutoring in high schools, volunteering as a "Big Brother" or "Big Sister," and countless other ways.

Circle K means many different things to its members—service, involvement, caring. To me, and to all of us, it should mean all of these, as well as hope for a brighter and better tomorrow.

BAILEY ANDERSON

Mr. HEFLIN. Mr. President, it is with a great deal of sadness that I bring to the attention of the Senate the death of Bailey Anderson of Florence, Ala. Bailey's outstanding service, dedication and devotion to his community, State and Nation was beyond reproach.

Bailey was born in Providence, Ky., where he graduated from Providence High School in 1941. He continued his education at Murray State College in Kentucky and Mississippi State University.

Bailey's lifelong dedication to the newspaper industry began at the age of 13 when he served an apprenticeship as a printer's assistant. In his spare time, Bailey took the initiative to teach himself how to operate a linotype typesetting machine. Bailey's early career in the newspaper business took him to newspapers in Alabama, Kentucky, and Georgia. He served as general manager and held an ownership interest in the Madisonville Messenger in Madisonville, Ky., when that paper was purchased by Worrell Newspapers in 1970.

Bailey was subsequently named a vice president in the Worrell organization. He served as publisher of the Los Cruces Sun News in Los Cruces, N. Mex. Bailey moved to the Shoals area in 1972, when he assumed the duties of president and publisher of the Times-Daily.

Upon moving to the Shoals area, Bailey immediately became actively involved in both the civic and business affairs of the community. He served as executive director of the Florence Area Chamber of Commerce. He was a life member of the Rotary International, a Mason, a member of the Veterans of Foreign Wars, and the Benevolent and Protective Order of the Elks. Bailey also held memberships in the Young Men's Christian Association, the Muscle Shoals Concert Association, the Turtle Point Yacht and Country Club and numerous business and professional organizations.

Bailey Anderson was an outstanding citizen in every respect. His uncompromising dedication was reflected in his service to his community, to his church, to his profession, and by his dedication to his beloved family. I wish to extend my sincerest sympathies to Bailey's lovely wife, Mildred Ballinger Anderson, and to his children, Mrs. Ronald Chestnut, Mrs. Jere Medaris, and Edwin Anderson. I also express my sympathy to Bailey's brother, J. D. Anderson. Indeed, Bailey's memory will live in the hearts of all who knew him and serve as an inspiration to everyone.

I request unanimous consent that articles concerning Bailey Anderson be printed in the RECORD.

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

[From the Florence Times-Tri-Cities Daily, Nov. 18, 1981]

BAILEY ANDERSON, T-D CHIEF, DIES

Times-Daily publisher Bailey Anderson died today following a long bout with cancer. He was 58.

Even though his employees and associates at the newspaper were aware of his illness, the news of his death early today brought a hush to the normally fevered pace of the newsroom.

He died at 4 a.m. in Las Cruces, N.M., where he had been undergoing treatment.

Funeral arrangements are pending.

A self-made newspaperman, Anderson was born June 23, 1923, in Providence, Ky.

He attended Providence public schools and graduated from Providence High School in 1941. He also attended Murray State College in Kentucky and Mississippi State University.

His lifelong association with the newspaper business began at the age of 13 when he served an apprenticeship as a printer's assistant, or "devil," as that position was called then.

In later years, Anderson occasionally referred to the solitary late-night sessions during which he taught himself to operate a linotype typesetting machine.

His career was interrupted by World War II, during which he served in Europe as a fighter pilot with the 82nd Fighter Squadron, 78th Fighter Group, 8th Air Force.

He was shot down on his 11th combat mission and was interned for four months as a prisoner of war in Germany. He was cited for his service with the Air Medal (with Cluster), the Purple Heart and other cambat awards. He retired as captain.

Following the war, Anderson's skill in the newspaper and printing trades won him an interest in eight "job" printing shops, one daily and two weekly newspapers. His early years took him to newspapers in Alabama, Kentucky and Georgia.

He served as general manager and held an ownership interest in the Madisonville (Ky.) Messenger when Worrell Newspapers Inc., purchased that newspaper in 1970.

Named a vice president in the Worrell organization, Anderson subsequently was the publisher of the Las Cruces (N.M.) Sun-News.

He came to the Shoals area in 1972, assuming the duties of president and publisher of the Times-Daily.

In the course of his stay in the Shoals, Anderson became an active force in the community. He was an executive director of the Florence Area Chamber of Commerce and held memberships in the Young Men's Christian Association, the Muscle Shoals Concern Association, Turtle Point Yacht Country Club and numerous business and professional organizations.

A life member of Rotary International, Anderson was a Mason, a member of the Veterans of Foreign Wars and the Benevolent and Protective Order of the Elks. He also was a member of the Baptist Church.

He is survived by his wife, the former Mildred Ballinger of Florence; two daughters, Mrs. Ronald Chestnut of Greenville, Tenn., and Mrs. Jere Medaris of the home; a son, Edwin, of the home; one brother, J. D. Anderson of Macon, Ga.; and three grandchildren.

[From the Florence Times—Tri-City Daily, Nov. 11, 1981]

BAILEY ANDERSON

Bailey Anderson was a man who chose to live his life well. His death Wednesday, after a long struggle with cancer, marks an end to a remarkable individual, but not to the influence which his character will continue to exert on the lives of others.

He had integrity, that rare trait. He had strength in abundance. He had tenacity (as all who knew him can attest). He understood people.

That combination of abilities, skills and attributes served him well all his life.

Through an organic alchemy which pertains to some gifted men, Bailey Anderson shaped and, in turn, was shaped by his own existence. He was both potter and clay.

In one sense, his life was successful. From a simple beginning in the coal fields of Kentucky, he rose to commercial prosperity. He became a leader, an asset to the community, a man of substance.

On a much deeper level, however, Bailey Anderson was driven by a restless intelligence which sent his mind and spirit roving through time and across the broad plane of human experience.

At that essential core within himself, the real Bailey Anderson encountered the verities of human existence. Knowing himself so well, he was able to know others. Understanding his own truths, he was able to advise others. He was good at giving advice, and his advice was usually good.

But the lessons he had to teach, if his listeners had ears with which to hear, almost always had to do with how one should live.

Bailey Anderson had opinions, strong opinions, about nearly everything. What he wished for his employees, his friends, his associates was that they should have opinions of their own.

As a newspaperman and as the publisher of the Times-Daily, he had very specific opinions about journalism.

For one thing, he believed editorials should be short and to the point.

In this case, we can abide by his wishes.

Bailey Anderson was a beautiful man whose spirit shall continue to burn in the lives of everyone he touched.

[From the Florence Times—Tri-City Daily, Nov. 11, 1981]

MY FRIEND BAILEY

(Editor's note: The following guest editorial is from Thomas E. Worrell Jr., president of Worrell Newspapers Inc. In addition to his duties as president and publisher of the Times-Daily, Bailey Anderson also served as a vice president of Worrell Newspapers.)

To my friend Bailey Anderson, life was a supremely welcome and beautiful mystery.

One way Bailey tried to find answers to that beautiful mystery was to argue. I even heard him tell a man once that he'd come to talk, not to listen.

He and I used to argue a lot. Mostly about anything that came to mind.

Neither one of us ever won one of those arguments, but we kept on, time after time. Both loved it.

One subject that came up occasionally was the nature and existence of miracles.

I was reading a book by the poet E. E. Cummings today and realized that my friend Bailey was a miracle . . .

To quote Mr. Cummings:

"With you I leave a remembrance of miracles: they are by somebody who can love and who shall be continually reborn, a human being; somebody who said to those near him, when his fingers would not hold a brush—tie it to my hand—."

My friend Bailey is now a citizen of immortality.

I will miss him very deeply.

WHITE HOUSE CONFERENCE ON AGING

Mr. JACKSON. Mr. President, the White House Conference on Aging ended last week on a positive note, having made hundreds of useful suggestions to the President and Congress for ways in which to enrich the quality of life for America's 34 million older citizens.

It is my hope that the President, his advisers, and Members of Congress will take time—as I have—to read and consider the many recommendations that emerged from the conference.

I believe the conference was very useful and I commend the participants. I was especially pleased with the enthusiastic and diverse representatives from Washington State. Our delegation included many fine persons from all walks of life, both political parties, from former State legislators to retired blue-collar workers. Included among our distinguished representatives was Mrs. June Biggar, chairman of the board of the American Association of Retired Persons.

The conference recommendations should be viewed as a blueprint of the things we need to do in order to assist older Americans. The information will be valuable to legislators and planners at all levels of governments as well as private agencies and concerns.

Among the suggestions were ones such as these:

Social security benefits to current beneficiaries should be maintained and the minimum benefit should be restored;

No change in the early retirement option; the retirement test should be eliminated at age 65 or an actuarial adjustment should be made on benefits for delayed retirement;

SSI benefits should be raised to the poverty level and the "asset" test should be eliminated;

Medicare coverage should be expanded to include prescription drugs, eyeglasses, hearing aids, dental care, preventive and maintenance care, hospice, ambulatory services, part B lab tests, and to provide more coverage for mental health care services and home health care;

In-home care should be promoted as a viable alternative to institutionalization by such actions as expanding benefits for long-term care, tax incentives and expanded home health care;

A comprehensive national health plan should be adopted which includes a long-term care, community-based health system;

Mental health services should be part of a comprehensive long-term care, health and social service system;

Local, State and Federal officials should work together with the private sector to develop a comprehensive approach for providing and rehabilitating housing for the elderly;

Programs should be initiated so older Americans can convert their home equity into income without selling or moving from their homes;

Government at all levels should adopt programs to assist with energy-related problems; and

Crime is a major area of concern among older persons and new efforts should be made to provide increased safety and security, community awareness and to assist victims of crime.

Mr. President, these are but a few of the many recommendations adopted by the conference. They are examples of the kinds of things we need to do as a nation to improve the lives of older Americans. Obviously, we cannot enact each of the hundreds of recommendations overnight, but they should serve as guidance for many years.

The White House Conference on Aging has helped dramatize, in a construc-

tive way, the sheer vastness of the problems facing older Americans. It is important to remember that we are talking about a group of people that numbers 34 million. It is a "minority" that all of us will join if we are fortunate enough.

I think it is important also, as we consider the needs of older Americans, that we think of them as individuals with differing needs. Some men and woman may want to retire and go fishing or whatever at age 60, while others may wish—and be fully capable—of working into their 70's and beyond.

Older Americans are a great national asset and should be viewed as an enormous reservoir of talent, knowledge and experience from which we can draw. We need not only consider programs thought to benefit seniors, but also ones designed to expand opportunities.

Finally, let me commend my colleague and friend, Congressman CLAUDE PEPPER of Florida. He is doing a tremendous job in Congress working especially hard on behalf of senior citizens and I look to him for advice and counsel in this area. He is a compassionate and wise man.

Congressman PEPPER also teaches us something about the relativity of age. At 81, he is active and, in fact, "younger" than many men and women half his age.

A profile of Congressman PEPPER appeared recently in the Spokane Spokesman Review and I ask unanimous consent that the following excerpts from that article appear in the RECORD.

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

81-YEAR-OLD LAWMAKER STILL AT BAT FOR ELDERLY

(By John Egerton)

One of his most outspoken challengers is a short, combative and indefatigable elder statesman from Florida, 81-year-old Rep. Claude D. Pepper of Miami.

A New Deal Democrat and an unwavering liberal from the day he first gained a seat in the U.S. Senate in 1936, Pepper is the oldest member of either house of Congress.

He also is chairman of the House Select Committee on Aging and widely is regarded as the leading congressional authority on—and advocate of—federal assistance to the elderly.

When the third decennial White House Conference on Aging begins its four-day meeting in Washington today, the 2,200 voting delegates will be primed for a clash between the Reagan and Pepper philosophies, if not a confrontation between the two men themselves.

Pepper not only will be a featured speaker, but he also plans to attend every session of the conference, which has been authorized by Congress to develop recommendations on issues concerning the elderly.

In 14 years as a senator and 19 as a member of the House—sandwiched around a 12-year law practice—Claude Pepper almost always has spoken his mind.

His Washington career has encompassed the administrations of nine presidents.

Now he is embarked on a crusade on behalf of a class of citizens to which he himself belongs.

"Ageism is as odious as racism and sexism," he says.

And with the stamina of a man half his age, he scurries about like an octogenarian Paul Revere, calling people of advanced years to their own defense and demanding that the rest of the population recognize their rights and their worth.

Rep. Millicent Fenwick of New Jersey, a member of Pepper's committee on aging, is one Republican who lauds him as "a dear, kindly, gallant gentleman whose concern for the elderly is absolutely genuine.

"Some feel he goes too far in his zeal," she says, "but none doubt his sincerity or his influence.

"Any debate on the future of Social Security in this country has to include him.

"Others may be more expert on actuarial tables and taxes, but someone has to speak for the heart.

"Claude speaks for the heart."

Since his early years in the Senate, Pepper has practiced a style of liberalism that skillfully blends pragmatic and idealistic concerns.

In recent years, he has introduced legislation to abolish mandatory retirement, to help fight crime in housing projects for the elderly, to cut Amtrak fares for senior citizens and to make nutritious meals available to the elderly.

His committee on aging has kept up a steady schedule of widely publicized hearings.

His newspaper column—"Ask Congressman Pepper"—is circulated to more than 700 papers all over the country.

"We all look to him," says William R. Hutton, executive director of the National Council of Senior Citizens.

He typically works nine-hour days on Capitol Hill, attends numerous evening functions and returns to Miami almost every weekend to "be available" to his constituents.

For exercise, he plays 18 holes of golf every week or two, pedals a stationary bicycle in his apartment on rainy weekends and walks farther and faster than any member of his staff.

Pepper expects his job to keep him busy indefinitely.

"I hate to think I'll have to quit someday," he says.

"My goal is to see this century out—and get the next one off to a good start."

THE EXPORT-IMPORT BANK

Mr. CRANSTON. Mr. President, I rise today in support of one of the most professionally administered and beneficial programs to come before the Congress, the Export-Import Bank of the United States—and to urge that as soon as we can in a manner consistent with our need to restrain Federal spending, we find ways to increase its fundings. Last year, fiscal year 1981, direct borrowing authority was set at $5.5 billion. This has been cut for fiscal year 1982 in the Senate-passed foreign assistance appropriations bill to $4.7 billion and the House Appropriations Committee cut Exim even further—to $3.9 billion. All of this has been done even though the Budget Reconciliation Act permitted funding up to $5.065 billion for fiscal year 1982. I refer only to borrowing authority, not outlays.

By most any yardstick, our Nation's economy is in a recession. I believe Exim Bank to be an extremely valuable tool which we can use to help fight the recession and turn the economy around and make progress toward our goal of full employment.

Exim Bank was incorporated by Congress as an independent Government institution for the express purpose of encouraging foreign buyers to buy American exports. Exim has fulfilled its mission well, assisting in more than $100 billion in U.S. exports. Last year, Exim loans, guarantees, and insurance supported $18.1 billion in U.S. exports.

I think that because Exim's purpose and day-to-day transactions involve foreign purchasers of U.S. goods, we forget how important Exim is to our domestic economy. Now, more than ever, our country is not an insular entity. Exports are a vital part of our economic health at home. The Department of Commerce has estimated that each $1 billion in exports supports 40,000 jobs in the United States. Using the Department of Commerce figures, Exim Bank's 1980 operations helped support 724,000 American jobs. Exim's commitments have gone to more than 5,700 firms in all 50 States. Each Exim commitment benefits an extensive network of subcontractors and suppliers.

The alternatives to a strong Exim Bank are not pleasant. These alternatives are the transfer of jobs, business, and tax revenues to foreign countries.

Exim is one of the keys to reducing America's staggering trade deficit—which reached over $32 billion last year. At a time of great budget pressures, Exim has traditionally made money for the Treasury. A recent Wharton Business School study found that it returns 10 times the amount to the Treasury in additional revenues than the direct cost of its loan.

Exim, like any other bank, lends and is repaid. Exim's customers, foreign borrowers, repay this capital, not the U.S. Government or U.S. taxpayers. Exim does not receive appropriations from Congress. Exim seeks loan authority only, not direct outlay authority. Exim funds its programs through loan repayments, interest payments, insurance premiums, and guarantee fees. Exim omitted a dividend for the first time since its inception, in 1980, only because of extraordinarily high interest rates. Exim's total cumulative dividends paid to the Treasury for 1979 and prior years have exceeded $1 billion.

In the face of the escalating international credit war, we must find ways to support Eximbank adequately. Other countries subsidize far greater proportions of their exports than does the United States. In 1980, the General Accounting Office found that during 1978 Japan and the United Kingdom supported 35 percent of their exports, France supported 20 percent of its exports, and Germany 12 percent. Only 6 percent of American exports were supported through Eximbank financing—and this will go down to 4 percent with the cuts we have.

The technological advantages that once made American products overwhelmingly desirable have now been narrowed. We are in a vigorous competition to sell American products in world markets. Other nations have made exports a key element of their nation's policy and provided their exporters with the financial miracle to back up these commitments. The competition between products in international trade is now so vigorous and so close that the credit terms offered by some foreign nations are often the factor that makes or breaks a transaction and frequently the transactions involved run into hundreds of millions of dollars. Our companies can

compete on price, quality, and service. but without Exim assistance, they cannot compete on credit terms.

We must have a strong Eximbank to counter foreign predatory financing practices.

TRAGIC DEATH OF JERRY WURF

Mr. KENNEDY. Mr. President, last night, my friend Jerry Wurf, the president of the American Federation of State, County, and Municipal Employees, passed away after a long illness.

Jerry Wurf was a fighter whose commitment to economic and social justice in our society never weakened, whatever the odds. Never afraid of controversy, he constantly took the lead even when a cause was unpopular.

Over the years, against overwhelming odds, he built AFSCME into one of the most dynamic unions in the Nation.

A champion of public service, he sought to make our citizens understand and appreciate the vital contributions public employees make to progress in this country.

During my years on the Labor and Human Resources Committee, Jerry Wurf was my ally in struggle after struggle to provide decent health and social services to all our people.

Jerry was a tough bargainer, a man of fire, a blunt voice that could not be denied. And always his gifts of passion and compassion were in the service of others—his brothers and sisters in the trade union movement, his fellow citizens everywhere.

I shall miss Jerry personally. He stood with me in the hardest hours of my 1980 campaign. It was of Jerry as much as anyone that I spoke at the Democratic Convention when I cited the poet's words: "What golden friends I had."

I have lost a good and golden friend. Labor has lost a great and compassionate leader. America has lost a rare source of conscience and courage.

Most of all, Jerry's family feels this loss. This morning our thoughts are with his wife, Mildred and with his children. We pray for Jerry—and for them.

JERRY WURF—A GREAT AMERICAN

Mr. PELL. Mr. President, today is a very sad day for our country. We have lost a great labor leader and a great American, through the death of Jerry Wurf.

Jerry Wurf has been president of the American Federation of State, County and Municipal Employees (AFSCME) for the past 17 years. During this time the union has increased from 220,000 to over 1 million members, largely because of the power of his personality and the depth of his commitment to creating better working conditions for the men and women who work in our public sector.

Mr. Wurf has never avoided conflict and has used his position as president of AFSCME to speak out on behalf of all working people, women, and minorities. He has been a leader in Democratic politics and was one of our first public figures to recognize the importance of maintaining a social safety net for the elderly and economically disadvantaged in our society.

In 1978, Jerry Wurf established a progressive alliance of labor unions and public interest groups to fight budget cuts and protect underprivileged Americans who were becoming the unwitting victims of double-digit annual percentage increases in inflation in the basic necessities.

This organization was successful in demonstrating that the Federal Government could not be balanced on the backs of the poor and the working men and women of this country. The progressive alliance also symbolized the depth of Jerry Wurf's commitment to social justice and equity for all Americans.

Jerry Wurf will always be remembered as a man of the people. He began organizing public employees after graduation from college in the early 1940's and until his death remained totally committed to improving the working conditions for employees in the public sector.

During the 1960's and 1970's, Jerry Wurf was a key player in the civil rights movement and fought hard to combat sexual discrimination in the workplace. He was an inspiration to our young people and never lost touch with the working men and women that elected him.

We have prematurely lost an inspiring and dedicated American, Mr. President, and I would like to extend my deepest sympathy to Jerry Wurf's family, friends, and colleagues.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that on December 1, 1981, he had approved and signed the following bills:

S. 815. An act to authorize appropriations for fiscal year 1982 for the Armed Forces for procurement, for research, development, test, and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, to authorize appropriations for such fiscal year for civil defense, and for other purposes; and

S. 1133. An act to amend the National Advisory Committee on Oceans and Atmosphere Act of 1977 to authorize appropriations to carry out the provisions of such act for fiscal year 1982, and for other purposes.

MESSAGES FROM THE HOUSE

At 9:52 a.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 4 to the bill (H.R. 4035) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1982, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 50. A concurrent resolution reaffirming the congressional budget for the United States for the fiscal years 1982, 1983, and 1984.

At 12 noon, a message from the House of Representatives, delivered by Mr. Gregory, announced that the House has passed the bill (S. 1196) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize appropirations for development and security assistance programs for the fiscal year 1982, to authorize appropriations for the Peace Corps for the fiscal year 1982, and for other purposes, with amendments; it insists upon its amendments; asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. ZABLOCKI, Mr. FASCELL, Mr. HAMILTON, Mr. BINGHAM, Mr. SOLARZ, Mr. BONKER, Mr. MICA, Mr. BARNES, Mr. WOLPE, Mr. BOWEN, Mr. BROOMFIELD, Mr. DERWINSKI, Mr. FINDLEY, Mr. WINN, and Mr. LAGOMARSINO as managers of the conference on the part of the House.

ENROLLED BILLS SIGNED

At 4:30 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 4034. An act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1982, and for other purposes; and

H.R. 4035. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1982, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. THURMOND).

At 4:21 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4559. An act making appropriations for Foreign Assistance and related programs for the fiscal year ending September 30, 1982, and for other purposes.

ENROLLED JOINT RESOLUTION SIGNED

At 5:34 p.m., a message from the House of Representatives, delivered by Mr. Johnson, the Assistant Parliamentarian,

announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 370. Joint resolution making further continuing appropriations for the fiscal year 1982, and for other purposes.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary reported that on today, December 11, 1981, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 115. Joint resolution to approve the President's recommendation for a waiver of law pursuant to the Alaska Natural Gas Transportation Act of 1976.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 258. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1662; referred to the Committee on the Budget.

By Mr. JEPSEN, from the Committee on Armed Services, without amendment:

S. Res. 259. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1906; referred to the Committee on the Budget.

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1808. A bill to authorize an Under Secretary of Commerce for Economic Affairs.

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1484. A bill to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act (Rept. No. 97–294).

By Mr. COHEN, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute, and an amendment to the title:

S. 1370. A bill to authorize the Secretary of the Army to acquire, by condemnation proceedings, or otherwise, such interests in the oil, gas, coal, or other minerals owned by the Osage Tribe of Indians needed for Skiatook Lake, Osage County, Okla. (Rept. No. 97–295).

By Mr. COHEN, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute, and an amendment to the title:

S. 1890. A bill to authorize the Secretary of the Interior to disburse certain trust funds of the Lac Courte Oreilles Band of Lake Superior or Chippewa Indians of Wisconsin and for other purposes (Rept. No. 97–296).

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. SPECTER:

S. 1938. A bill to eliminate the Federal Communications Commission to regulate the franchise fee which a State, political subdivision, or other governmental entity may impose in connection with any franchise for cable television; to the Committee on Commerce, Science, and Transportation.

By Mr. BAKER (for Mr. GOLDWATER) (for himself and Mr. CRANSTON):

S. 1939. A bill to amend the Public Health Service Act to establish a National Institute on Arthritis and Musculoskeletal Diseases; to the Committee on Labor and Human Resources.

By Mr. THURMOND:

S. 1940. A bill to amend chapter 209 of title 18, United States Code, relating to extradition, and for other purposes; to the Committee on the Judiciary.

By Mr. TOWER:

S. 1941. To provide for the reinstatement and validation of U.S. oil and gas leases numbered NM 25447 and NM 25452 Act; to the Committee on Energy and Natural Resources.

By Mr. EAST:

S. 1942. A bill to provide for an expedited and coordinated process for decisions on proposed nonnuclear energy facilities, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SCHMITT:

S. 1943. To increase the penalties for smuggling quantities of marihuana exceeding 1,000 pounds; to the Committee on the Judiciary.

By Mr. LEVIN:

S. 1944. A bill to amend title II of the Social Security Act to provide that disability benefits shall not be terminated prior to an exhaustion of administrative remedies unless current medical evidence substantiates such termination; to the Committee on Finance.

By Mr. THURMOND (for himself, Mr. STEVENS, Mr. MURKOWSKI, and Mr. DENTON):

S. 1945. A bill to amend title 18, United States Code, to make a crime the willful destruction or attempts to destroy the trans-Alaska pipeline system; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself, Mr. DOLE and Mr. PERCY):

S. 1946. A bill to provide for the final settlement of certain claims against Czechoslovakia, and for other purposes; considered and passed.

By Mr. WEICKER (for himself, Mr. NUNN, Mr. BOSCHWITZ, Mr. D'AMATO, Mr. DIXON, Mr. GORTON, Mr. RUDMAN, Mr. TSONGAS, and Mr. HAYAKAWA):

S. 1947. A bill to improve Small Business access to Federal Procurement Information; to the Committee on Small Business.

By Mr. BAKER (for Mr. HELMS) (for himself and Mr. HUDDLESTON):

S. 1948. A bill to permit to become effective certain Farm Credit Administration regulations which expand the authority of financing institutions, other than Farm Credit System institutions, to borrow from and discount with Federal intermediate credit banks; considered and passed.

By Mr. GRASSLEY:

S. 1949. A bill to amend the Internal Revenue Code of 1954 to provide that any adjustment in interest rates be made on an average annual basis rather than on an average monthly basis; to the Committee on Finance.

By Mr. STEVENS:

S. 1950. A bill for the relief of Daniel Delgado and Maria Delgado; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MATTINGLY (for himself, Mr. THURMOND, Mr. HELMS, Mr. HUDDLESTON, Mr. WARNER, Mr. BOSCHWITZ, Mr. ANDREWS, Mr. KASTEN, Mr. BENTSEN, Mr. DURENBERGER, Mr. SCHMITT, Mr. ZORINSKY, Mr. DENTON, Mr. ROBERT C. BYRD, Mr. STEVENS, Mr. BAKER, and Mr. NUNN):

S. Res. 257. A resolution to express the sense of the Senate that the Secretary of Agriculture should continue Department policy in deferring the repayment of, and foreclosure proceedings on, certain outstanding loans made by the Farmers Home Administration; considered and agreed to.

By Mr. McCLURE:

S. Res. 258. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1662; from the Committee on Energy and Natural Resources; to the Committee on the Budget.

By Mr. JEPSEN:

S. Res. 259. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1906; from the Committee on Armed Services; to the Committee on the Budget.

By Mr. SPECTER (for himself, Mr. KENNEDY, Mr. METZENBAUM, Mr. WEICKER, Mr. MATHIAS, Mr. DURENBERGER, Mr. LEVIN, Mr. RIEGLE, and Mr. HEFLIN):

S. Res. 260. A resolution to disapprove Deferral D82–193; to the Committee on the Budget, the Committee on the Judiciary and the Committee on Appropriations, jointly, to be reported by the Appropriations Committee pursuant to the provisions of Senate Resolution 45 of the 94th Congress.

By Mr. CHAFEE (for himself, Mr. MITCHELL, Mr. RUDMAN, Mr. HUMPHREY, Mr. STAFFORD, Mr. PELL, Mr. MATSUNAGA, Mr. INOUYE, Mr. COHEN, Mr. D'AMATO, and Mr. DODD):

S. Res. 261. A resolution expressing the sense of the Senate that the President should not impose import fees on crude oil and refined petroleum products; to the Committee on Finance.

By Mr. BOSCHWITZ (for himself, Mr. PERCY, Mr. BAKER, Mrs. KASSEBAUM, Mr. LUGAR, Mr. PRESSLER, Mr. D'AMATO, Mr. HELMS, Mr. DURENBERGER, Mr. PELL, and Mr. HAYAKAWA):

S. Con. Res. 53. A concurrent resolution expressing the sense of the Congress with respect to the policies of the Government of the Soviet Union of anti-Semitism and discrimination against Jewish immigration; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 1938. A bill to eliminate the authority of the Federal Communications Commission to regulate the franchise fee which a State, political subdivision, or other governmental entity may impose in connection with any franchise for cable television; to the Committee on Commerce, Science, and Transportation.

(The remarks of Mr. SPECTER on this legislation appear earlier in today's RECORD).

By Mr. BAKER (for Mr. GOLDWATER) (for himself and Mr. CRANSTON):

S. 1939. A bill to amend the Public Health Service Act to establish a National Institute on Arthritis and Musculoskeletal Diseases; to the Committee on Labor and Human Resources.

NATIONAL INSTITUTE ON ARTHRITIS AND MUSCULOSKELETAL DISEASES

● Mr. GOLDWATER. Mr. President, today I am introducing legislation to bring a new national focus on the most widespread and crippling diseases—arthritis and musculoskeletal diseases. The prevalence of these diseases, especially among older Americans, and the human economic cost involved, mandate that a major research effort be undertaken to find their cause and improve treatments.

Fully one out of every seven persons in the United States suffers from some form of musculoskeletal impairment. The cost of these disorders to society, in terms of lost earnings and medical expenses, exceeds $30 billion per year.

Nearly everyone in this Chamber has a relative or a friend who suffers from the ravages of arthritic pain. I might add that my wife and I have had lifelong experiences with arthritis. We know the problems it brings. In fact, my wife is chairwoman of the Margaret Goldwater Arthritic Foundation of Arizona.

Arthritis not only afflicts a substantial number of our elderly citizens, it also afflicts over 250,000 children suffering from juvenile arthritis.

The bill I offer today will establish a separate research institute within the National Institutes of Health, known as the National Institute on Arthritis and Musculoskeletal Diseases. It is a companion bill to H.R. 5006 introduced by Congressman PEPPER on November 17. Arthritis is presently lumped into a broader institute which covers other diseases.

Mr. President, I will describe the provisions of this measure in detail, but first I wish to share with my colleagues the types of arthritic and related diseases that ravage our society.

Musculoskeletal diseases, which include arthritis, rank first among all disease groups in cost attributable to lost earnings and lost services from non-fatal illness; and they rank second only to circulatory diseases in total economic cost. Musculoskeletal diseases and disorders are a leading cause of:

Confinement to hospital, nursing home and house;

Increasing cost of workers' compensation programs;

Increasing cost of Social Security Disability Insurance; and

Deterioration in the quality of life.

More than 100 different diseases of the joints and related structures have been identified as rheumatic diseases. Other diseases and conditions which are not by definition rheumatic, but which affect bones, are addressed by researchers under the rubric of musculoskeletal disorders.

Millions of citizens are victims of these diseases. Unless dramatic progress is made in the prevention and cure of these disorders, the problem will become increasingly serious because of the fast growth of our elderly population.

In fact, the U.S. population aged 65 and over will grow from 11.1 percent in 1980 to a projected 20.4 percent during the next 50 years. By the year 2030, there will be 65 million older Americans.

But, in spite of the magnitude and economic cost of these diseases, and the likelihood of their growing impact on the Nation, inadequate attention has been given to attacking their causes and identifying treatments.

This policy is foolish, cruel and short on economic, as well as human, sense. For example, this Congress is now wrestling with the problem of how to control the ever-increasing cost of the medicare program. Well, it is obvious to me that one major solution is to keep people healthy and out of the hospital. This can be achieved to a great extent by finding the causes of the diseases I have discussed and instituting prevention programs.

The potential economic benefit to the Nation and the widespread alleviation of pain and suffering that would result from an increased focus on research in arthritis and musculoskeletal disorders is enormous. An increase in these efforts would be repaid many times over through lower job absenteeism, and a major reduction in the need for attendant care, home health care, institutionalization, medical expenses, and reduced workers' compensation payments, among others.

Also, the tendency of some arthritis sufferers to turn to quack remedies would be drastically reduced if we were able to improve treatments, cure forms of rheumatic diseases, and prevent such diseases. People with arthritis often become frustrated to the point of desperation, seeking to lessen the pain of their disease. Nearly $1 billion a year is expended by arthritics on unproven remedies. Consider the potential for research results that even a tenth of that amount could mean to millions of Americans.

Even with the limited research dollars that currently are expended, research investigators have brought us a variety of exciting developments that have increased the level of our scientific knowledge about many of the 100 forms of arthritis.

In fact, many research scientists believe they are at the threshold of identifying the causes of various forms of arthritis. With accelerated effort, answers to prevention, improved treatments, and cures are in the realm of the possible.

Mr. President, it is clear a vigorous attack should be launched against rheumatic diseases and other musculoskeletal disorders. In my view, the instrument for this attack should be the creation of a National Institute on Arthritis and Musculoskeletal Diseases, patterned on the statutory authority of other NIH research institutes. My bill would create such an Institute.

The new Institute is directed to undertake research and demonstrations relating to the cause, prevention, and treatment of arthritis and musculoskeletal diseases; to promote coordination of research programs in the public and private sector; to make grants for research; to establish an information clearinghouse; and to conduct research training.

The director is charged with developing a plan for a national program to expand, intensify, and coordinate activities of the Institute and to carry out the plan. The national program is expected to encompass research in epidemiology, etiology, and the prevention of arthritis and musculoskeletal diseases, and research on the development, trial, and evaluation of implants and prosthetic devices. Also, the program would set up monitoring of the causes of athletic injuries and seek ways to prevent such injuries.

The bill authorizes support for new and existing multipurpose arthritis and musculoskeletal disease research centers and provides a specific funding authorization for fiscal years 1983 through 1985. It also establishes an interagency coordinating committee, chaired by the Director of the Institute, to improve coordination of all research and service programs relating to arthritis and musculoskeletal diseases.

Mr. President, I am convinced that the creation of the new Institute will result in major advances in the prevention, treatment, and cure of the most widespread of diseases afflicting Americans. The increased visibility provided by a separate institute would offer the potential for great human and economic benefit to the Nation.

I welcome cosponsors of the legislation and urge my colleagues to add their support to this important proposal.●

By Mr. EAST:

S. 1942. A bill to provide for an expedited and coordinated process for decisions on proposed nonnuclear energy facilities, and for other purposes; to the Committee on Energy and Natural Resources.

ENERGY MOBILIZATION ACT OF 1981

● Mr. EAST. Mr. President, I am today introducing a bill which I feel is essential to the timely development of our great Nation's vast energy resources. The long term availability of adequate supplies of domestically produced energy continues to be one of our country's major goals. Shortages of energy can still be imposed on us against our will by nations hostile to our national objectives. Such shortages have the capability of creating devastating economic effects in addition to seriously degrading our national security posture.

We would not be faced with such an extremely serious energy problem today if we had taken the necessary steps when the warning signals first appeared nearly a decade ago.

A principal reason for our failure to do so has been the mass of redtape and cumbersome administrative and judicial procedures that have constrained our great enterprise system. Company after company has spent millions of dollars and wasted manhours trying to sponsor domestic energy production projects, only to have to abandon them. Too often these abandonments have been caused not by failure to comply with applicable laws and regulations, but rather by the economic consequences of the interminable delays in trying to negotiate the regulatory maze confronting the sponsors.

We simply cannot continue to sit idly by while essential domestic energy production projects are abandoned or avoided because of a series of time consuming obstacles created by the laws we have passed, the regulations implementing these laws, and the procedural morass surrounding judicial review of agency determinations. We have given so many lethal weapons to opponents of domestic energy projects that they can frustrate our national objectives regardless of the actual merits of specific energy production projects. It is now our duty to initiate appropriate corrective action.

I strongly support the administration's efforts to improve administratively the Federal regulatory process and believe great progress can be made, but there are some areas which can be dealt with only by legislation. A good example is the unduly time consuming judicial review process.

To initiate necessary corrective action I am today introducing a bill to be cited the "Energy Mobilization Act of 1981," which is a bipartisan approach to solving some of these time consuming problems. A similar bill, H.R. 3236, was introduced in the House earlier this year.

Under this bill a three-member Council on Energy Mobilization would be appointed by the President and confirmed by the Senate.

The heart of this legislation is the authority of the council to designate priority energy projects and set project decision schedules which would be binding on Federal agencies for domestic nonnuclear energy projects. Also important to accomplish the bill's objectives is the authority for each Federal agency to establish special procedures to govern its actions relating to priority energy projects. These would include the consolidation of proceedings among Federal agencies and among different Government jurisdictions; elimination of unnecessary duplication in the submission and evaluation of project data; utilization of legislative-type hearings and written data where possible.

Such special procedures would, of course, have to be consistent in all cases with laws from which the agency derives its authorities.

Another essential part of the bill is the provision for expedited judicial review. The bill prescribes time limits for filing appeals and grants to the temporary emergency court of appeals original and exclusive jurisdiction over petitions for review of final agency actions or decisions, and regulations and actions of the council. TECA is required to exercise its powers and prescribe rules governing its procedures in such manner as to expedite the determination of cases over which it has jurisdiction under this bill.

Further, of great importance is the requirement which mandates that the council report to Congress annually on the status of its actions under the bill and on those provisions of Federal law that significantly hinder completion of energy projects. In this regard it is important to note that the bill does not propose that the Council on Energy Mobilization have any authority whatsoever to waive any provision of existing Federal, State, or local law. In this way the bill preserves all existing rights and authorities of State and local governments. The bill encourages, but does not direct, State and local governments cooperation in the project decision schedule.

This approach eliminates those objectionable features that defeated the "fast track" proposal in the last Congress, primarily waivers of existing laws and the creation of a so-called new Federal agency. Let me stress, again, that still remaining unresolved is the tortuous and expensive course which energy projects have experienced. Unnecessary regulatory and judicial delays increase the ultimate cost of such projects as well as create a total uncertainty as to when and if the projects will be permitted to go forward.

This bill, by introducing major efficiencies in the energy project decision process, is exceptionally cost effective. It should save many times over its own modest cost within all levels of Government and for energy consumers as well.

This bill will reduce not only Federal, State, and local expenditures on energy project decision making, but ultimately reduce costs to cnsumers. In inflationary times, time is quite literally money, and the costs of current delays are all passed on to consumers in higher prices which themselves help sustain inflationary pressures. By itself this bill cannot be expected to cure either our Federal budget or inflation problems, but it is clearly consistent with and reinforcing of both those national objectives.

Finally, I seek the support of my colleagues for what I view as legislation having the clear potential to make a large and continuing positive contribution, not only to our national security and economic objectives, but—vitally important—our goal of energy independence.●

By Mr. SCHMITT:

S. 1943. A bill to increase the penalties for smuggling quantities of marihuana exceeding 1,000 pounds; to the Committee on the Judiciary.

MARIHUANA SMUGGLING CONTROL ACT OF 1981

● Mr. SCHMITT. Mr. President, today, I am introducing a bill to close a loophole in our drug enforcement laws.

Last year, Congress amended section 401 of the Controlled Substances Act (21 U.S.C. 841) to increase the criminal penalties for trafficking in large amounts of marihuana. Specifically, the statute provides that individuals convicted of manufacturing, distributing, or dispensing more than 1,000 pounds of marihuana would be subject to a 15-year prison sentence and a fine of $125,000 or both. By substantially increasing the penalties, the Congress recognized that marihuana is a harmful substance and the existing Federal penalties structure was inadequate to deter individuals from engaging in illegal drug smuggling activities.

Unfortunately, the legislation only amended half of the provisions relating to criminal penalties for marihuana violations. The other half—the Controlled Substances Import and Export Act—was not affected by the action taken by the Congress last year. Penalties under this act for importing marihuana remain ridiculously low.

My bill would correct this oversight by increasing the criminal penalties under the Import and Export Act to the same level now contained in the Controlled Substances Act. Thus, an individual convicted of importing more than 1,000 pounds of marihuana would be subject to a prison sentence of not more than 15 years or a fine of not more than $125,000, or both. The prison term and fine would double for either subsequent convictions or a conviction involving another violation of the act.

Mr. President, I urge prompt consideration of this bill. Marihuana can no longer be considered a safe or harmless drug. Studies conducted on the health effect of marihauna reveal that acute marihuana intoxication not only impairs learning, memory and intellectual performance, but daily use of the drug may damage the lungs similar to that resulting from heavy cigarette smoking. Further, clinicians report that regular use of marihuana may seriously interfere with psychological functioning and personality development, particularly in childhood and adolescence.

The penalties for importing large amounts of the drug ought to reflect just how dangerous we consider marihuana to be. This bill would put those who choose to smuggle large amounts of this harmful drug into this country on notice that they will face a harsh prison sentence if convicted.

Mr. President, I ask 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. 1943

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended—

(1) in the first sentence of subsection (b) (2) by adding "except as provided in paragraph (3) of this subsection" before "Schedule I or II"; and

(2) by adding after paragraph (2) of subsection (b) the following new paragraph:

"(3) In the case of a violation of subsection (a) involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, and in addition, may be fined not more than $125,000.".●

By Mr. LEVIN:

S. 1944. A bill to amend title II of the Social Security Act to provide that disability benefits shall not be terminated prior to an exhaustion of administrative remedies unless current medical evidence substantiates such termination; to the Committee on Finance.

TERMINATION OF BENEFITS FOR MEDICAL REASONS

● Mr. LEVIN. Mr. President, I am today introducing legislation which would amend title II of the Social Security Act to provide that disability benefits shall not be terminated prior to an exhaustion of administrative remedies unless current medical evidence substantiates such termination.

Under my proposal, if a beneficiary is removed from the disability rolls in the absence of a current medical examination attesting to a change in the medical condition of the beneficiary which would support the conclusion that the beneficiary is capable of engaging in substantial gainful activity, then benefits shall continue if the beneficiary seeks through the appeals process to reverse the determination which had removed the beneficiary from the rolls.

Mr. President, my proposal parallels

the right of continuing benefits presently afforded SSI Disability recipients. Many title II disability insurance beneficiaries are also living at subsistence level and the loss of benefits during appeal has proven to be devastating. What financial security these people have come to realize is virtually destroyed during the appeal period between termination and restoration of benefits. The restored benefits, in over 70 percent of appealed cases—many times 6 to 12 months later, come too late to stop a foreclosure or eviction, or lessen the emotional trauma which has driven some to such a severe and chronic state of nervous anxiety that they have taken their own lives.

Mr. President, it is the results of a 2½-month staff study which revealed some startling and shocking facts about the manner in which the rapid increase in CDI reviews and subsequent termination of disability beneficiaries is being handled which has prompted me to introduce this legislation. The increased reviews—160,000 in fiscal year 1979 and fiscal year 1980 to 351,000 in fiscal year 1981—is due in large part to the decision of the Reagan administration to accelerate the provision calling for the examination of the eligibility of persons on the disability rolls which would have been effective in January 1982 under the 1980 disability amendments.

This acceleration was begun over 10 months ago without appropriate resources with which to undertake additional reviews. The State agencies which contract to handle this work for social security were already strapped for funds for medical evidence and manpower under the previous review system. This lack of necessary tools to meet the demands mandated by the President has resulted in thousands of human tragedies.

The March 1981 final report of the National Commission of Social Security has also echoed the necessity for an increased number of adequately trained staff and a more sufficient budget in the administration of the social security disability program. The members of the Commission determined that—

> The complex nature of the disability programs requires a skilled interviewer. . . . Discussions with the staff of the State agencies and with SSA employees indicate that interviews sometimes yield inadequate information. Sometimes the interviewer, pressed by a large caseload, does not have enough time to do a thorough job. Occasionally, the claims representative is inadequately trained. The Commission recommends that the Social Security Administration train and use disability program specialists. . . . The Commission recommends that the budgetary and staffing restrictions that have been imposed on SSA be relaxed to the degree necessary to allow this.

Mr. President, the interviews conducted by my staff included State agency representatives, claimant representatives, NCSS members, treating physicians, and beneficiaries that have been terminated and are appealing the decision or have been restored benefit status.

The conclusions reached as a result of this staff survey are as follows:

First. Persons have been terminated from the disability rolls even when they meet the medical listing of the social security disability program.

Second. Hundreds of terminations were the result of staff error. Hundreds more were as a result of arbitrary decisions rendered by overworked, untrained staffers.

Third. State agency employees revealed they were instructed to meet quotas.

Fourth. Beneficiaries are being terminated from the rolls even in some cases where the findings of the consultative exam and the treating physician is that the patient cannot even perform the normal day to day functions of living. Many of these terminations were beneficiaries over the age of 55, with a good work history prior to their disabling condition and had been on the rolls 2 or 3 years.

Fifth. Beneficiaries are being terminated from the rolls without any current medical findings. Determinations are being made based on file findings—in many cases there has been no physical-medical examination of the beneficiary from 6 months to 1 year or more.

Mr. President, thousands of lives have been unduly disrupted and in many instances shattered as a result of the aforementioned actions. I hope that my colleagues will join me in my efforts to undo the wrong that has been perpetrated upon so many. We have the opportunity, in this bill, to prevent future unjustified economic distress and hardship to thousands of American citizens.

Unfortunately, this bill comes too late for Evelyn Mattson of Arizona, a 60-year-old woman with a seventh grade education that had worked up until 1978 as an assembler, packer and inspector in a plastic factory. Ms. Mattson took her life 2 days before an appeal reversal decision in the mail. In her suicide note addressed to her daughter she wrote:

> I never wanted to get old and not be able to care for myself and I can see it coming. I'm sure now I won't get my disability. . . .

This legislation comes too late for the other eight estimated disability-related suicides that have taken place in Michigan, Florida, Arizona, and other areas of the country.

Mr. President, it also comes too late for many who have survived this ordeal. One such person is the 58-year-old woman from Phenix City, Ala., with 40 years of work experience as a presser and a domestic. For many years she worked at two jobs in order to maintain comfortable living conditions. Two years ago, she was placed on disability because of uncontrolled hypertension—despite heavy medication—arthritis, heart complications, obesity, and severe asthma. Entitlement was established following the report of a SSA consultative physician verifying the severity of her medical condition. In March 1981, she was reevaluated and another consultative physician indicated that her condition continued to be serious, particularly in regard to her hypertension.

Within 3 weeks of the consultative examination, she was hospitalized for severe asthmatic bronchitis with a blood pressure reading of 230/140. Her blood pressure remained extremely high during the period of her hospitalization, and an EKG revealed that she had suffered an anterior myocardial infarction apparently during her asthmatic attack. Upon her discharge from the hospital, she received a notice from SSA that her benefits were being terminated because her medical condition had improved. She appealed her case and a reversal decision came on December 2.

However, this severely disabled woman has gone 9 months without benefits. To date, restored benefits have not been received. She has lived on a $130 a month VA pension which she receives as a result of her husband's death. There is no general assistance program in Alabama. She is too young for SSI for the aged and has no young offspring living with her—therefore, she cannot qualify for AFDC. Her struggle to survive during such economic strife has only served to worsen her condition. Her problems have been complicated by the fact that she is suffering from chronic nervous anxiety.

It comes too late, Mr. President, for the 37-year-old father of four from Lorain, Ohio, who after a steady work history was placed on disability in 1978 and terminated in June of this year. In spite of the medical reports revealing cancer of the lower colon, severe hypertension, rheumatoid arthritis in both ankles, knees, hip, spine and both hands this man was denied further benefits. The financial hardship and uncertainty has taken its toll—as of September his wife and children are no longer with him and he is now living with a sister. It is believed the separation was in order to establish eligibility for AFDC payments.

I can go on and on, Mr. President—there are numerous cases in my possession that are just as tragic as those I have mentioned here. Time is of the essence. We must act now.●

By Mr. THURMOND for himself, Mr. STEVENS, Mr. MURKOWSKI, and Mr. DENTON):

S. 1945. A bill to amend title 18, United States Code, to make a crime the willful destruction or attempts to destroy the Trans-Alaska Pipeline system; to the Committee on the Judiciary.

PROTECTION OF TRANS-ALASKA PIPELINE

Mr. THURMOND. Mr. President, I am today joined by Senators STEVENS, DENTON, and MURKOWSKI in introducing legislation to protect the Trans-Alaska Pipeline from sabotage or other unlawful destruction.

The Senate, during the 95th Congress, passed legislation identical to the bill we are proposing. During the 95th Congress, the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws conducted an intensive study of the problem of protection of the pipeline and concluded that Federal legislation was needed to enhance security, even though in a strict sense the pipeline is an intrastate facility.

The national security of the United States would be affected by any long-term disruption of the flow of oil through the Trans-Alaska Pipeline and, indeed, a major interruption might have catastrophic consequences. Thus, although the proposed legislation would protect specific private property, the national need is so compelling that there is an overriding Federal interest in assuring the protection of the private property involved.

Events of the past year suggest to me that the need for legislation to protect the pipeline has not diminished since July 18, 1977, when the Senate first passed this bill.

The bill would, in my judgment, be effective. It provides that destruction or attempted destruction of the pipeline is a Federal felony punishable by up to $15,000 or imprisonment for not more than 15 years, or both.

I anticipate that the legislation would be considered promptly in the Committee on the Judiciary and, if reported favorably by the committee, I would urge the Senate, and thereafter the House of Representatives, to enact it into law.

A failure of Congress to act in this area could contribute to circumstances causing a major national energy crisis.

By Mr. MOYNIHAN (for himself, Mr. DOLE, and Mr. PERCY):

S. 1946. A bill to provide for the final settlement of certain claims against Czechoslovakia, and for other purposes; considered and passed.

(Remarks on this legislation appear elsewhere in today's RECORD.)

By Mr. WEICKER (for himself, Mr. NUNN, Mr. BOSCHWITZ, Mr. D'AMATO, Mr. DIXON, Mr. GORTON, Mr. HAYAKAWA, Mr. RUDMAN, and Mr. TSONGAS):

S. 1947. A bill to improve Small Business access to Federal Procurement Information; to the Committee on Small Business.

SMALL BUSINESS ACCESS TO FEDERAL PROCUREMENT INFORMATION

● Mr. WEICKER. Mr. President, today I am introducing legislation to improve the small business community's access to Federal procurement information. Certainly, no one would argue that small businesses are not entitled to their fair share of Government contracts. Yet, all too often, small firms are unable to compete for these contracts on an equal level with large businesses. One of the main reasons for this has been the lack of timely and adequate notice of Federal contracting opportunities. Mr. President, this is a problem that can, and should be solved.

Currently, the Small Business Act requires that Federal contracting opportunities be published in the Commerce Business Daily. Federal agencies that wish to procure a good or service must synopsize their proposed bids or solicitations for publication in this document. The purpose of this practice is to publicize all Federal purchases to the greatest extent possible. In this way, supposedly, maximum competition for Government contracts, is assured.

Unfortunately, this is not the case. Although it is administrative practice to publish procurement notices in the Commerce Business Daily 10 days before a solicitation is issued, the fact is that it is not uncommon for a procurement notice to first appear on the date a solicitation is issued. This puts small firms at a severe disadvantage since they are generally unable to afford a Washington-based representative to monitor potential contracts.

Current regulations also provide for a minimum bidding time of 20-calendar days. However, this time period need not be followed where there are "special circumstances" or where there is an urgent need for the goods or services. In other words, what should amount to a cumulative period of 30 days, for obtaining a solicitation and bidding for a contract, can be shortened arbitrarily, or even ignored, at the discretion of the procuring agency.

I think it is important to note that these minimum time periods, as they now exist, are set only in regulations. Obviously, that is not good enough—we have seen that the regulations do not work. That is why today I am proposing changes in the law to protect the rights of small contractors.

Mr. President, the bill that I am introducing today would amend the Small Business Act by establishing new minimum time periods for publication of, and bidding on, Government contracts. Specifically, the legislation would provide for two periods to enable prospective contractors to submit timely bids or proposals. The first would give interested parties 15 days, from appearance of a notice in the Commerce Business Daily, in which to request copies of a solicitation. The second time period would provide at least 30 days from the issuance of a solicitation before a bid is due.

In other words, my bill would for the first time statutorily provide prospective bidders with a total of 45 days for the same solicitation and bidding process now generally allotted 30 days; 15 days to monitor the Commerce Business Daily for interesting offers, and 30 days to prepare a bid or a proposal. I believe that this legislation is necessary if small firms—especially those not based in the Washington, D.C. area—are to get their fair share of Government contracts. I might add that small business groups such as the National Association of Aircraft and Communications Suppliers, are supportive of this bill as a good first step toward increasing contracting opportunities for small firms.

Mr. President, this bill should not result in any additional costs to the operation of the Commerce Business Daily. In fact, it may reduce the overall Government procurement budget since it will allow time for maximum competition on Federal contracts. Moreover, in these times of increased military spending, I believe that developing the capacity of small firms to do business with the Federal Government is basic not only to the economic well-being of the country, but also to the security of this Nation. Accordingly, as chairman of the Small Business Committee, I believe it is incumbent on me to simplify Government contracting procedures for small businesses, whenever possible.●

● Mr. NUNN. Mr. President, I am pleased to join the chairman of the Senate Small Business Committee, Senator WEICKER, in introducing legislation to improve the Commerce Business Daily.

Section 8(e) of the Small Business Act, adopted in 1961, requires the Secretary of Commerce to publish a listing of all proposed procurement actions over $5,000 for civilian agencies, and $10,000 for DOD. Exceptions to publication are spelled out clearly in the act.

The Commerce Department, pursuant to this mandate, publishes the Commerce Business Daily (CBD). CBD is used by small business to learn of Government contracting and subcontracting opportunities. It is also one of the primary devices to obtain competition in Federal contracts.

One common and constant complaint from small business about the CBD, however, is the poor timing of solicitation notices published in CBD. This timing frequently limits small business' ability to prepare and submit timely bids for Government procurements.

To correct this "problem," the committee has been working with small business groups, the Commerce Department, and others, to improve the usefulness of the CBD to small businesses. One suggestion, the basis for this legislation, is to establish minimum time periods for SBA notice that agencies must adhere to when they are required to utilize the CBD.

This legislation establishes two time periods for notice in the Commerce Business Daily. The first gives 15 days from the appearance of a proper notice of solicitation in which interested parties (including small business) can request copies of the solicitation. The second time period provides at least 30 days from the issuance of the solicitation before bids or proposals are due.

In my view, these time periods will have little or no effect on the agencies' procurement system, but will greatly expand the opportunities for small businesses to participate in the Federal procurement process.

Current procurement regulations already require, as a general rule, that bidding time "be not less than 20-calendar days when procuring standard commercial articles and services."

Current law, and regulations, provide that the required bidding time need not be followed where there are enumerated "special circumstances" or where there is an urgent need for the supplies or services. These exceptions would continue in effect even with the enactment of the new time periods provided for in this law.

With Federal procurements exceeding $110 billion each year, and the complexity of the Federal procurement system growing, this is a simple proposal that has the potential for significantly increasing competitive bidding for Government requirements. It may also insure greater small business participation in the procurement process.●

● Mr. BOSCHWITZ. Mr. President, I am pleased to join the distinguished chairman and ranking member of the Senate Small Business Committee as an original cosponsor of legislation to im-

prove the ability of small business to compete for Government contracts. We are all aware of the importance of small business to our national economy, and the competitive ability they can bring to producing goods and services that the Government buys.

The Federal Government is a big buyer of goods and services from the private sector. Last year, total direct Federal procurement was approximately $110 billion. About 25 percent of that went to small businesses. The primary way the Government "advertises" its procurement contracts is through a publication, the Commerce Business Daily.

The Commerce Business Daily is used extensively by both large business contractors and small business contractors. Because of their greater resources and sophistication, big businesses are better able to respond to solicitation notices in the Commerce Business Daily in a timely manner. Small businesses, on the other hand, are often unable to prepare and submit timely bids for Government procurement contracts.

This legislation will be a positive first step in allowing small business contractors to submit timely bids. First, small businesses will have 15 days to request copies of the contract bids, from the time they appear in the Commerce Business Daily. Second, small businesses would then have an additional 30 days to submit their bid on a particular contract.

This legislation will allow small businesses a better opportunity to compete for Government contracts. As a result, small businesses will benefit by improving the market for their products and services, while the Government should realize a savings through increased competition for their contracts. I join with my colleagues on the Small Business Committee in urging prompt and favorable consideration of this measure through the committee process and the full Senate.●

By Mr. BAKER (for himself, Mr. HELMS, and Mr. HUDDLESTON):

S. 1948. A bill to permit to become effective certain Farm Credit Administration regulations which expand the authority of financing institutions, to borrow from and discount with Federal intermediate credit banks; considered and passed.

(Remarks on this legislation appear elsewhere in today's RECORD.)

By Mr. GRASSLEY:

S. 1949. A bill to amend the Internal Revenue Code of 1954 to provide that any adjustment in interest rates be made on an average annual basis rather than on an average monthly basis; to the Committee on Finance.

INTEREST RATES ON LATE PAYMENTS TO INTERNAL REVENUE

● Mr. GRASSLEY. Mr. President, I rise to introduce a bill to alter the interest rate which applies to late payments to the Internal Revenue Service or from the Internal Revenue Service.

The current interest rate the Internal Revenue Service must pay a taxpayer for sending a late refund or a taxpayer must pay the Service for filing a late return is 20 percent. This interest rate is derived by taking the average prime rate for the month of September 1980. The 20 percent interest rate will apply to any late payments for 1982. In September 1982, the Service will again take the monthly average of the prime rate to determine what the interest rate will be for 1983.

Today's economy is characterized by extremely volatile interest rates. While the average prime rate in September, just 2½ months ago, was 20 percent, the prime rate today is fluctuating between 15½–15¾ percent. This week many noted economists are unveiling their predictions for next year. Some say current interest rates will rise; others predict a continued decline. The only thing we can be certain of is the fact that no economist knows next year's interest rate or can perdict it with any degree of certainty.

It is my contention that a 1 month measurement of the prime rate is not a realistic yardstock in these uncertain times. The bill I am introducing will set the interest rate at the average prime rate from December 1 to November 30. This rate will be applied to all late tax payments for that taxable year. If my provision were enacted now, the average prime rate from December 1, 1980 to November 30, 1981. In my view, this accurately reflects the cost of money for the 1981 taxable calendar year. If the Government does not refund to you the money it withheld from your paycheck during 1981, it seems fair to require the Government to pay you the average interest rate for 1981 when you were deprived the use of your money. Conversely, when a taxpayer does not pay the Government the amount of money he or she owed in 1981 on time, it seems fair that this taxpayer should pay the average rate of interest for that taxable year. After all, every taxpayer who complied with the law had to borrow money at the average prime rate—if they were lucky—if they needed additional funds. If there is a dramatic reduction in the prime rate from December 1 to April 15 when taxes are due, the taxpayer always has the option of borrowing the money from a financial institution at a lower rate to pay their tax liability on time.

Using the average prime rate for the taxable year in question eliminates many of the distortions in the current formula. Also, it accurately reflects the time-cost of money for a taxable year when either the taxpayer or the Government is erroneously denied the use of their money during the year.

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

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

S. 1949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first sentence of subsection (b) of section 6621 of the Internal Revenue Code of 1954 (relating to adjustment of interest rate) is amended to read as follows: "The Secretary shall establish an adjusted rate of interest for the purpose of subsection (a) not later than December 15 of any year if the adjusted prime rate charged by banks during the 12-month period ending on November 30 of that year, rounded to the nearest full percent, is at least a full percentage point more or less than the interest rate then in effect.".

(b) The amendment made by subsection (a) shall apply to adjustments in the interest rate under section 6621 of the Internal Revenue Code of 1954 which are to take effect after December 31, 1981.●

ADDITIONAL COSPONSORS

S. 1131

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

S. 1484

At the request of Mr. GARN, his name was added as a cosponsor of S. 1484, a bill to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act.

S. 1698

At the request of Mr. DENTON, the Senator from Alaska (Mr. STEVENS), and the Senator from Delaware (Mr. ROTH) were added as cosponsors of S. 1698, a bill to amend the Immigration and Nationality Act to provide preferential treatment in the admission of certain children of U.S. Armed Forces Personnel.

S. 1844

At the request of Mr. JOHNSTON, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 1844, a bill to facilitate the national distribution and utilization of coal.

SENATE JOINT RESOLUTION 118

At the request of Mr. JOHNSTON, the Senator from Georgia (Mr. MATTINGLY) was added as a cosponsor of Senate Joint Resolution 118, a joint resolution to authorize and request the President to designate the month of January 1982, as "National Cerebral Palsy Month."

SENATE JOINT RESOLUTION 121

At the request of Mr. MITCHELL, the Senator from Georgia (Mr. NUNN), and the Senator from New York (Mr. D'AMATO) were added as cosponsors of Senate Joint Resolution 121, a joint resolution to provide for the designation of the year 1982 as the "Bicentennial Year of the American Bald Eagle" and the designation of June 20, 1982, as "National Bald Eagle Day."

SENATE JOINT RESOLUTION 127

At the request of Mr. COCHRAN, the Senator from Maine (Mr. COHEN) and the Senator from Minnesota (Mr. BOSCHWITZ) were added as cosponsors of Senate Joint Resolution 127, a joint resolution to grant official recognition to the International Ballet Competition.

SENATE JOINT RESOLUTION 133

At the request of Mr. DECONCINI, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of Senate Joint Resolution 133, a joint resolution to authorize and request the President to designate August 14, 1982, as "National Navajo Code Talkers Day."

SENATE JOINT RESOLUTION 134

At the request of Mr. RIEGLE, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of Senate Joint Resolution 134, a joint resolution to designate 1982 as the "Year of Disabled Persons."

At the request of Mr. ARMSTRONG, the Senator from North Carolina (Mr. EAST) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of Senate Joint Resolution 134, supra.

SENATE CONCURRENT RESOLUTION 53

At the request of Mr. BOSCHWITZ, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of Senate Concurrent Resolution 53, a concurrent resolution expressing the sense of the Congress with respect to the policies of the Government of the Soviet Union of anti-Semitism and discrimination against Jewish immigration.

AMENDMENT NO. 634

At the request of Mr. WEICKER, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of amendment No. 634 proposed to H.R. 4169, a bill making appropriations for the Department of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1982, and for other purposes.

SENATE CONCURRENT RESOLUTION 53—RELATIVE TO ANTI-SEMITISM IN THE SOVIET UNION

Mr. BOSCHWITZ (for himself, Mr. PERCY, Mr. BAKER, Mrs. KASSEBAUM, Mr. LUGAR, Mr. PRESSLER, Mr. D'AMATO, Mr. HELMS, Mr. DURENBERGER, and Mr. PELL) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 53

Whereas the Government of the Union of Soviet Socialists Republics has decreased Jewish emigration significantly, thereby almost completely terminating such emigration, and such Government continues to maintain this form of discrimination based upon religion;

Whereas, under the current policy, the Government of the Union of Soviet Socialist Republics has reduced the number of Jews allowed to emigrate from a monthly high of 4,746 in October 1979, to 368 in October 1981, the lowest monthly total since mass Jewish emigration began in the late 1960's.

Whereas, 260,000 Jews have been allowed to emigrate in the last twelve years, more than one-half million Jews have filed for emigration in the same time period;

Whereas the Government of the Union of Soviet Socialist Republics is implementing a policy of exiling Hebrew teachers, banning Jewish education programs, and confiscating books, as well as sacred and religious articles;

Whereas the press of the Union of Soviet Socialist Republics is implementing a policy of disseminating anti-Semitic propaganda to the peoples of the Union of Soviet Socialist Republics which is designed to hinder Jewish heritage and terminate traditional religious practices; and

Whereas within a period of four months beginning in July 1981, more arrests of Soviet Jews have taken place than in the preceding four years, underscoring the increasingly discriminatory policy of the Soviet Government toward Soviet Jews: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That is the sense of the Congress that—

(1) the policies of the Government of the Union of Soviet Socialist Republics of anti-Semitism and discrimination against Jewish emigration are morally reprehensible; and

(2) the President, at every opportunity and in the strongest terms, should express to the Government of the Union of Socialist Republics the opposition of the United States to these reprehensible policies and should urge such Government to remove its restrictions on the emigration of Soviet Jews.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

● Mr. BOSCHWITZ. Mr. President, today I am submitting a concurrent resolution which expresses the concern of the Congress regarding the persecution of Jewish cultural and religious life in the Soviet Union as well as the catastrophically low level of Soviet Jewish emigration.

Soviet Jewry is at present facing a crisis of enormous proportions. Within a period of 4 months beginning in July 1981 more arrests of Soviet Jews have taken place than in the preceding 4 years. The Soviet press is disseminating anti-Semitic propaganda to the people of the Soviet Union at the same time that Hebrew teachers are being exiled, Jewish education programs are being banned, and Jewish books and religious articles are being confiscated. The Soviet authorities prevent the Hebrew language from being taught, and of the many nationalities in the Soviet Union only Jews have no schools or classes of any kind.

The trends in Jewish emigration are just as ominous. Emigration figures began to decline in the spring of 1980; in April 1980 Jewish emigration totaled 2,469. By December 1980 the figure had fallen to 889. The Soviet Government, in an effort to quiet its restive Jewish community, cynically increased emigration in February 1981—prior to the start of the 26th Party Congress. The February figure was 1,407, up from 850 in January. However, Mr. President, the emigration level for October 1981 was 368, the lowest number since mass Jewish emigration began in the late 1960's.

Mr. President, when it signed the Helsinki accords the Soviet Government pledged to respect the human rights of all its citizens and to ease its restrictive emigration policies. This concurrent resolution, which has been submitted in the House of Representatives by Congressman CHRIS SMITH, stresses that the Soviets have not honored these commitments and asks the President to express to the Soviet leadership the deep concern of the Congress about this matter. I urge the adoption of this concurrent resolution.●

SENATE RESOLUTION 258—ORIGINAL RESOLUTION WAIVING THE CONGRESSIONAL BUDGET ACT

Mr. McCLURE, from the Committee on Energy and Natural Resources, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 258

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1662. Such waiver is necessary because the bill, as reported, authorizes appropriations for the Department of Energy for the fisca. year 1982, and such bill was not reported on or before May 15, 1981, as required by section 402(a) of the Congressional Budget Act of 1974 for such authorization.

SENATE RESOLUTION 259—RESOLUTION WAIVING CONGRESSIONAL BUDGET ACT

Mr. JEPSEN, from the Committee on Armed Services, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 259

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1906, a bill to eliminate general and flag officer grade requirements from certain statutory positions in the Armed Forces, to delay the effective date of the ceiling on the number of general and flag officers serving on active duty, and for other purposes.

Such waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

For the foregoing reasons, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to S. 1906 as reported by the Committee on Armed Services.

SENATE RESOLUTION 261—IMPORT FEES ON OIL

Mr. CHAFEE (for himself, Mr. MITCHELL, Mr. RUDMAN, Mr. HUMPHREY, Mr. STAFFORD, Mr. PELL, Mr. MATSUNAGA, Mr. INOUYE, Mr. COHEN, Mr. D'AMATO, and Mr. DODD) submitted a resolution (S. Res. 261) expressing the sense of the Senate that the President should not impose import fees on crude oil and refined petroleum products, which was referred to the Committee on Finance:

S. RES. 261

Whereas an import fee on crude oil or refined petroleum products would have a highly inflationary, direct effect on the United States economy and would have an adverse impact throughout the United States;

Whereas such a fee, even though applied only to imports, would increase the price of all oil consumed in the United States because the price of domestically-produced crude oil and domestically-refined products would increase to the same level as imported oil;

Whereas each dollar of such a fee would increase consumer petroleum costs in the United States by approximately $6,800,000,000 per year;

Whereas such a fee would also have widespread indirect inflationary effects by raising the cost of all consumer goods;

Whereas the adverse inflationary effects of such a fee would far outweigh the marginal increase in Federal revenues; and

Whereas the authority of the President under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862) should not be used for the purpose of increasing revenues: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should not impose any import fees on the importation of any crude oil or refined petroleum products.

● Mr. CHAFEE. Mr. President, today, Senator MITCHELL and I are submitting a resolution opposing the imposition of an import fee on crude oil and refined petroleum products. The imposition of an oil import fee is on the list of revenue raising options that the President is considering to reduce the Federal budget deficit. I am concerned that an oil import fee would have a number of serious consequences.

First, an import fee would have a direct inflationary impact since it would raise the price of every barrel of oil consumed in this country. For example, each dollar of import fee imposed would raise consumer petroleum costs in the United States by approximately $6.8 billion per year; a fee of $5 would increase consumer costs by more than $34 billion per year. In New England, based on the petroleum consumption figure for 1979 of 386 million barrels, a $5 per barrel import fee would mean a staggering increase of $1.9 billion in oil prices.

Second, an import fee would raise the costs of not only petroleum based products but all consumer goods.

Finally, the imposition of an oil import fee at this time would exceed the authority granted to the President under the national security clause of the Trade Expansion Act of 1962. Section 1862 of the Trade Expansion Act authorizes the President to impose a fee or quota on oil imports if he makes a formal finding, based on an investigation by the Secretary of Commerce, that such imports are threatening to impair the national security.

The statute does not, however, authorize the President to impose a tax in order to increase Federal revenues. Since no circumstances currently exist which would support a finding that import fees are necessary to protect national security, the imposition of a fee clearly would be for revenue raising purposes only. It would, therefore, be beyond the scope of the President's authority under the Trade Expansion Act.

For these reasons, I am opposed to any attempt by the administration to increase Federal revenue through the imposition of an import fee.●

● Mr. MITCHELL. Mr. President, I am pleased to join Senator CHAFEE today in introducing a resolution expressing the opposition of the Senate to any imposition of an oil import fee.

Currently the administration is making final decisions on its fiscal year 1983 budget proposals. The massive Federal deficits projected for the next several years have led to a search, within both the administration and the Congress, for spending cuts and tax increases.

One option that is being debated in the administration is to impose an oil import fee. This has some obvious attractions for those who are exclusively concerned with reducing the deficit as the fee may, under some circumstances, be imposed administratively by the President and has the potential to raise large amounts of revenue. President Carter was led by similar reasons to propose a fee last year.

It is my hope that any fee proposed now would meet the same fate that last year's initiative met. Congress, recognizing the defects of oil import fees, overwhelmingly rejected the proposal, first by passing a special disapproval resolution and then by overriding a Presidential veto.

I believe that an oil import fee would impose serious economic costs that outweigh its contribution to reducing the deficit. Furthermore, any fee that is imposed for the purpose of raising revenue would be on highly questionable legal grounds.

An oil import fee would be highly inflationary. Because of the decontrol of domestic crude oil prices, an oil import fee would increase the price of all oil consumed in the United States, thus adding directly to the inflation rate. Each dollar of import fee could raise consumer petroleum costs by $6.8 billion per year. Also, because of the central role of oil in the economy, the fee could have a major indirect effect as its costs are passed on throughout the economy.

At the same time, the import fee would have a depressing effect on our economy. By draining purchasing power from the economy, the fee would lead to higher unemployment and lower output. This effect could be especially severe in oil-consuming States, as they would not receive the economic benefits resulting from higher oil prices that oil producing States would receive.

Our balance of payments could also be adversely affected. Although we would likely reduce our outflow of payments for imported oil, the competitiveness of many of our industries would be seriously impaired. By putting our exporters at a competitive disadvantage, our international position would deteriorate further.

What an oil import fee would accomplish is to put a serious financial burden on oil consumers. Prices for petroleum product, particularly for home heating oil, are already intolerably high, and New Englanders have made great strides in reducing their energy use. Price increases resulting from an oil import fee would not significantly increase consumers' conservation efforts, but would only be a further drain on family budgets.

Finally, the President cannot use his authority under the Trade Expansion Act to impose a tariff for the purpose of raising revenues. The act clearly limits the authority to impose import fees to situations in which national security is threatened. The courts were very clear on this point last year when President Carter's import fee was struck lown. Although reducing foreign oil imports is a high national priority, the current excess supply in world oil markets does not justify a revenue-raising action in the name of national security.

In sum, I believe that it is important to let the administration know of congressional opposition to oil import fees. An oil import fee is not sound economic or energy policy, and would be of questionable legality.●

Mr. PELL. Mr. President, recent reports indicate that the administration is seriously considering a recommendation to impose fees on imported crude oil and refined petroleum products as a means of reducing the Federal budget deficit. Some reports have indicated that such fees on crude oil and products may be as high as $2 to $5 per barrel.

I am pleased, in view of this possible action by the administration, to join Senator CHAFEE and Senator MITCHELL as an original cosponsor of a Senate resolution expressing opposition to any plan by the President to impose import fees on crude oil and refined petroleum products.

I realize, Mr. President, that one of our country's most critical priorities must be to reduce U.S. Government spending and the Federal deficit. I do not believe, however, that a reduction in the Federal deficit should be achieved by further penalizing the Northeast and particularly New England States who rely upon imported oil for almost 80 percent of the region's total energy requirements and pay the highest energy bills in the Nation.

It is important to note in this regard that New England consumers and particularly Rhode Island families have already conserved dramatically in their consumption of both critical fuels—home heating oil and gasoline. Most importantly, New England and Rhode Island families already bear a heavy and disproportionate share of the energy cost burden as shown by recent data released by the Northeast-Midwest Congressional Coalition. According to the coalition, the 1980 price tag for residential energy costs averaged $1,325 for the New England region; $1,100 for the Mid-Atlantic States; $1,150 for the Midwest; $896 for the South and $676 for the Western States. These residential energy figures, I believe, may be conservative as I have been advised by State officials in Rhode Island that the typical family using No. 2 home heating oil in Rhode Island during the 1980–81 season paid approximately $1,500 to heat their homes.

Mr. President, in my opinion, there are no strong arguments for any fee on imported crude oil or petroleum products on the grounds of national security, or as part of an effort to reduce the Federal deficit. Imports of foreign oil into the United States are already down dramatically from several years ago when close to 50 percent of domestic petroleum requirements were imported from foreign sources. At present, the United States is importing an average of 4.2 million barrels per day, according to the Department of Energy, against the domestic demand of 16 million barrels per day.

Further reductions of imports are desirable, but they could well be achieved through a vigorous residential weatherization program throughout the Nation rather than by terminating the program as proposed by the administration in fiscal year 1983.

With respect to the claim that import fees on crude oil and products are necessary to reduce the Federal deficit, there is not justification for increasing Federal revenues at the expense of further penalizing New Englanders who already are paying the highest energy rates in the Nation.

Federal revenues could be increased by eliminating several of the unfair tax breaks requested by the administration and passed by the Congress under the Economic Recovery Tax Act last summer. Elimination of the energy provisions which reduce the windfall profits tax on oil collected by the Federal Government would alone more than cover the revenues that are anticipated to be collected from any crude oil import fee.

Mr. President, enough is enough. The administration decontrolled domestic oil last January, has reduced Federal assistance for weatherization and conservation grants for schools and hospitals in fiscal year 1982, and proposes their termination in fiscal year 1983. They are considering elimination of the residential and commercial energy conservation tax credits and now may seek to impose another tax on the consumers through an import fee on crude oil and petroleum imports.

If such a fee is imposed, New Englanders alone will be forced to pay nearly one-half billion dollars in higher prices for direct fuel costs. For the typical Rhode Island family using 1,200 gallons of No. 2 home heating oil for their home annually, the added cost would amount to an additional $60 to $144 depending upon the fees requested by the administration.

In my opinion, Mr. President, any proposal by the administration to impose a fee on crude oil is harsh and cannot be justified. This is a burden that will be too great for many families. I hope my colleagues in the Senate will cosponsor and strongly support this resolution to discourage the administration from seeking to impose a fee early next year.

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF ENERGY ORGANIZATION ACT AMENDMENTS OF 1981

AMENDMENT NO. 1239

(Ordered to be printed and referred jointly to the Committee on Commerce, Science, and Transportation and the Committee on Energy and Natural Resources.)

Mr. NICKLES submitted an amendment intended to be proposed by him to the bill (S. 1626) to amend the Department of Energy Organization Act to clarify the jurisdiction of the Federal Energy Regulatory Commission, to reform and improve the regulation of oil pipelines, and for other purposes.

● Mr. NICKLES. Mr. President, on September 15, 1981, I introduced S. 1626, legislation amending the Department of Energy Organization Act to clarify the jurisdiction of the Federal Energy Regulatory Commission in relation to the regulation of oil pipelines. Hearings will be held early next year.

At those hearings, in addition to the consideration of S. 1626, I want my colleagues and interested parties to have an opportunity to review the following amendment to insure that all aspects of this issue are fully examined.

The current bill applies regulatory reform to all oil pipelines except the trans-Alaska pipeline system (TAPS). The first part of the amendment, which is a rewriting of section 4 of the bill, would provide that all oil pipelines will be treated on an equal basis.

The second part of the amendment, which adds a new section 5 to the bill, is a series of technical amendments to the Interstate Commerce Act designed to remove FERC's authority to set rates in this competitive industry and to reaffirm FERC's authority to regulate any unjust discriminatory practices. Section 6 would insure that Federal jurisdiction supersedes any State regulation of this interstate pipeline network. Section 7 provides for an enactment clause.

Therefore, Mr. President, I submit the following amendment for the RECORD, to provide all parties with adequate notice of the range of issues we will consider at those hearings.

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

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

On page 3, beginning on line 1, strike all of section 4 and insert in lieu thereof:

"SEC. 4. Those provisions of law which vested functions transferred by section 306 and 402(b) of the Department of Energy Organization Act, as those sections existed on the day before the enactment of this Act, are repealed to the extent those provisions of law vest authority to suspend, determine, or prescribe rates, or charges for the transportation of oil by pipeline.

"SEC. 5. (a) Except as otherwise expressly provided in this section, whenever in this section an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Interstate Commerce Act."

(b) Paragraph (4) of Section 1 (49 U.S.C. 1(4)) is amended to read as follows:

"DUTY TO FURNISH TRANSPORTATION AND ESTABLISH THROUGH ROUTES; DIVISION OF JOINT RATES

"(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation.".

(c) Paragraph (5)(a) of section 1 (49 U.S.C. 1(5)(a)) is repealed.

(d) Paragraph (4) of section 13 (49 U.S.C. 13(4)) is amended to read as follows:

"DUTY OF COMMISSION WHERE STATE REGULATIONS RESULT IN DISCRIMINATION

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, charge, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce one the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State), which is hereby forbidden and declared to be unlawful, it shall (a) set aside such rate, charge, regulation, or practice, and (b) in the case of a regulation or practice shall prescribe the regulation or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden. Such regulations and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or decision or order of any State authority to the contrary notwithstanding.".

(e) Paragraph 1 of section 15 (49 U.S.C. 15(1)) is amended to read as follows:

"COMMISSION EMPOWERED TO DETERMINE AND PRESCRIBE REGULATIONS AND PRACTICES

"(1) Whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any ending complaint or without any complaint whatever, the Commission shall be of opinion that—

"(a) any individual or joint rate or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of oil is or will be unjustly discriminatory or unduly preferential or prejudicial under the provisions of this part; or

"(b) any individual or joint regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part;

the Commission is authorized and empowered to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist and in the case of a regulation or practice to determine and prescribe what individual or joint regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall conform to and observe the regulation or practice so prescribed."

(f) Paragraph (3) of section 15 (49 U.S.C. 5(3)) is amended to read as follows:

"ESTABLISHMENT OF THROUGH ROUTES

"(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes applicable to transportation by carriers subject to this part and the terms and conditions under which such through routes shall be operated. If any tariff or schedule cancelling any through route without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.".

(g) Paragraph (6) of section 15 (49 U.S.C. 15(6)) is repealed.

(h) Paragraph (7) of section 15 (49 U.S.C. 15(7)) is amended to read as follows:

"HEARINGS ON NEW FILINGS; SUSPENSIONS

"(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate or charge, or any new individual or joint regulation or practice affecting any rate or charge, the Commission shall have, and it is given, authority,

either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning whether such rate or charge is unjustly discriminatory or unduly preferential or prejudicial or concerning the lawfulness of such regulation or practice; and pending a hearing concerning the lawfulness of a regulation or practice and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such regulation or practice and defer the use of such regulation or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the regulation or practice goes into effect, the Commission may make such order with respect to any new rate or charge, or new regulation or practice as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of regulation or practice shall go into effect at the end of such period. At any hearing involving a change in a rate or charge, or in a rule, regulation, or practice, the burden of proof shall be upon the complainant to show that the proposed changed rate or charge is unjustly discriminatory or unduly preferential or prejudicial or that the proposed rule, regulation, or practice is not just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.".

(i) Section 3 of chapter 573 of the Act of December 12, 1945 (49 U.S.C. 65a) is repealed.

"SEC. 6. No State or political subdivision thereof, and no interstate agency or other political agency of two or more States, shall review, prescribe, suspend, set aside, or in any manner regulate the rates or charges of any common carrier for transportation of oil by pipeline in interstate commerce or the regulations and practices pertaining to such transportation.

"SEC. 7. This Act, and the amendments made by this Act, shall take effect 60 days after the date of enactment of this Act."

TREASURY, POST OFFICE AND INDEPENDENT AGENCIES APPROPRIATION, 1982

AMENDMENT NO. 1240

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

Mr. DURENBERGER submitted an amendment intended to be proposed by him to the bill (H.R. 4121) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1982, and for other purposes.

FEDERAL EMPLOYEES HEALTH BENEFITS PLAN

● Mr. DURENBERGER. Mr. President, when the Senate considers H.R. 4121, the Treasury-Post Office appropriations bill, I will offer the following amendment. I submit the amendment for printing and also ask unanimous consent that the amendment be printed in full in the RECORD.

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

At the appropriate place in the text of HR 4121, insert the following new section:

Whereas the Federal Employees Health Benefits Plan (FEHBP) has experienced difficulties this year; and

Whereas these difficulties have their roots in long-standing policies and in the structure of the Federal Employees Health Benefits Plan itself; and

Whereas the postponement of an open season means that federal employees must wait to make changes in their health coverage; and

Whereas the FEHBP needs reform which the Senate Governmental Affairs Subcommittee on Civil Service, Post Office, and General Services intends to address this year:

And now, therefore, be it resolved that it is the sense of the Senate that—

(1) the Office of Personnel Management (OPM) should continue to do everything in its power to minimize the disruption that will occur to federal employees.

(2) a well-organized and orderly open season is in the best interests of federal employees, the Government, and the participating plans.

(3) when a final decision is reached on benefit levels, adequate time should be allowed for OPM and the participating plans to prepare and distribute informational materials.

(4) OPM should seek reasonable arrangements with the participating plans which permit them to continue underwriting.

(5) an open season should not be postponed any longer than is absolutely necessary to accomplish the foregoing.●

NOTICES OF HEARINGS

SUBCOMMITTEE ON LABOR

Mr. NICKLES. Mr. President, the Labor Subcommittee of the Labor and Human Resources Committee will hold a hearing on S. 1922, the Black Lung Benefits and Revenue Amendments of 1981, on Monday, December 14, 1981, in room 4232 of the Dirksen Senate Office Building. The hearing will begin at 10 a.m. Members of the public wishing to testify should contact the Labor Subcommittee immediately.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HELMS. Mr. President, I wish to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will meet on Monday, December 14, to consider the nomination of Kalo A. Hineman to be a Commissioner of the Commodity Futures Trading Commission.

The hearing will begin at 2:30 p.m. in room 324 Russell Building. Anyone wishing further information should contact Denise Alexander at 224–2035.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Friday, December 11, at 10 a.m., to mark up amendments to the Clean Air Act.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Monday, December 14, at 2:30 p.m., to hold a hearing on the nomination of Kalo Hineman to be a Commissioner of the Commodity Futures Trading Commission.

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

ADDITIONAL STATEMENTS

DEFICIT WOES

● Mr. PACKWOOD. Mr. President, the Wall Street Journal published an article December 7, 1981, about the latest budget deficit projections. Considering the significant and increasing budget deficits with which we are faced, I urge all my colleagues to read this insightful article.

I ask that the text of this article be printed in the RECORD.

The article follows:

ADMINISTRATION PUTS '82 DEFICIT AT $109.1 BILLION

(By Kenneth H. Bacon and Rich Jaroslovsky)

WASHINGTON—New Reagan administration calculations project budget deficits of $109.1 billion in the current fiscal year, $152.3 billion in fiscal 1983 and $162 billion in fiscal 1984, given current budget and economic trends.

These preliminary figures reflect a new economic forecast President Reagan received Friday from his advisers. Both the forecast and the budget estimates may change before the administration completes work on the new budget it must send Congress early next year. But the deficit figures, which don't include additional budget cuts Mr. Reagan hopes to achieve over the next few years, are far wider than the administration has conceded previously.

Last September, officials estimated a $43.1 billion deficit in the current year, which began Oct. 1. More recently, White House officials have said that figure could swell to $80 billion.

The new projections for this year is based on an administration forecast that nominal gross national product, the nation's output of goods and services measured in current prices, will increase 7.9 percent in the 1982 calendar year. That would be the lowest rate of nominal growth, which determines tax receipts, since 1970; the low projection reflects both the recession and an expected slowdown in the inflation rate.

ADVISERS DISAGREE

Some of Mr. Reagan's advisers complain that the forecast, produced by the Council of Economic Advisers and the Office of Management and Budget, is too pessimistic. They maintain that the forecast fails to reflect the stimulative effect on the economy of next year's tax cuts. They also charge that the whopping deficit projections are designed to force Mr. Reagan to abandon his opposition to increasing taxes or to reducing planned increases in defense spending.

Many of the President's senior advisers, including budget director David Stockman and chief of staff James Baker, believe tax increases are needed to hold down the deficit and prevent another surge in interest rates.

Mr. Reagan "has got 95 percent of the White House staff telling him he has to raise taxes," one aide said. But at his economic review meeting last Friday, the President said he still opposes increasing taxes to offset the $283 billion of personal and business tax cuts through 1984 that Congress has enacted.

Similarly, there is little evidence the President would slow his planned defense buildup. "At every Cabinet meeting, there's grumbling about Defense getting more while other agencies are cut," a top Pentagon official said. "But we see no sign the President's wavering." Top White House officials, who last summer conducted a long, unsuccessful campaign for bigger defense cuts, so far haven't indicated they have the appetite to renew the battle.

NONDEFENSE CUTS SOUGHT

Instead, the President is telling aides to concentrate on finding sweeping nondefense spending cuts. "The marching orders from the Oval Office are to produce a bare-bones budget," one adviser said of the fiscal 1983 document due next month.

White House officials acknowledge the immense political difficulties of such a strategy; even some friendly Republican legislators are becoming increasingly uncomfortable with the size and scope of the Reagan budget efforts. And many White House officials say the economy must start showing signs of improvement before the 1982 elections to avoid a major political defeat.

On that score, the administration's latest economic forecast contaihs bittersweet news. For 1982, the projection shows slow growth, rising interest rates and high unemployment. But it assumes considerable improvement in later years.

The preliminary forecast sees increases in "real," or inflation-adjusted, gross national product of 0.2 percent in the 1982 calendar year, 5.4 percent in 1983 and 5.2 percent in 1984. Growth in nominal GNP is seen rising from 7.9 percent next year to 11.1 percent in 1983 and 9.8 percent in 1984. The inflation rate, based on a GNP measure, is seen declining to 7.7 percent in 1982, 5.5 percent in 1983 and 4.4 percent in 1984.

The forecast projects that real GNP will contract at a 5-percent annual rate in the current quarter and then continue to decline at a 0.5-percent rate in the first quarter of 1982 as the economy recovers from the recession.

Real GNP growth is expected to accelerate at a 1.5-percent annual rate in the second quarter, 5.6 percent in the third period and 5.7 percent in the final quarter of 1982. But this growth won't be enough to bring down the unemployment rate, which the forecast says will stay at the current 8.4 percent or higher throughout the year.

In addition, the forecast estimates that interest rates on three-month Treasury bills will fall to an average of 10 percent in the 1982 first quarter. But the rate is expected to rise to 11.5 percent in the third quarter as the recovery spurs higher business borrowing while the Treasury is borrowing heavily to finance the national debt.

The deficit projections contained in the latest estimates reflect the $130 billion of spending cuts Congress already has enacted through 1984, but don't include the new spending cuts the administration is struggling to find. The latest projections show government receipts of $621.9 billion in the current fiscal year, $650.9 billion in fiscal 1983 and $692.3 billion in fiscal 1984. Outlays are estimated at $731 billion in 1982, $803.2 billion in 1983 and $854.3 billion in 1984.

Finding the spending cuts to cope with those bleak numbers is becoming tougher and tougher. "The easy cuts, we made a long time ago, said one White House aide. The reductions being considered currently are not only more politically painful for the administration to suggest but also less likely to win congressional support.

Recently, the White House was jolted by some cautionary words on the effect of budget cuts on state and local governments from Sen. Paul Laxalt (R., Nev.), one of the President's closest friends. "That got our attention," one aide said. "We wonder what Paul's trying to tell us."

BUDGET MEETINGS SET

Meanwhile, the White House is plunging into a series of budget-review and appeals meetings over the next few weeks that is likely to illustrate just how painful its predicament is. This week, for instance, the Labor Department will be battling a push by the Office of Management and Budget to halve the department's proposed fiscal 1983 budget for major job-training programs.

But the budget office proposal would require far deeper cutbacks and would be certain to provoke an outcry from Congress. "I question whether $1.5 billion would even attempt to solve the problem in areas with very high unemployment," one Democratic congressional aide said.●

1982—YEAR OF THE EAGLE

● Mr. PRYOR. Mr. President, yesterday I had the pleasure of visiting with a longtime friend, Jane Gulley of Little Rock, Ark., who has distinguished our State with her direction of the Arkansas eagle awareness program. Jane, accompanied by an Arkansas bald eagle, Martha One Wing, is in Washington to work with the Wildlife Federation on their "Year of the Eagle" 1982 project.

As a cosponsor of Senate Joint Resolution 121, a resolution to designate 1982 as the Bicentennial Year of the American bald eagle and June 20, 1982, as National Bald Eagle Day, I am particularly proud of Jane's achievements. I would like to bring to the attention of my colleagues an article entitled, "1982—Year of the Eagle" by Joe Mosby of the Arkansas Gazette. I ask that it be printed in the RECORD.

The article follows:

1982—YEAR OF THE EAGLE

(By Joe Mosby)

The country will get a look at Arkansas's Eagle Lady, and her eagle, this week in Washington, D.C. Jane Gulley of Little Rock, a dynamo with her Eagle Awareness Program, has been selected to help start the Year of the Eagle, 1982, a project of the National Wildlife Federation.

The Arkansas Eagle Awareness Program has attracted nationwide attention the last few years. It is an educational effort aimed at helping the public learn and appreciate more about the magnificent bald and golden eagles. The program operates under the general guidance of the United States Fish and Wildlife Service, with senior agent Andrew Pursley of Little Rock working closely with Gulley and other volunteers.

Much of Gulley's work is in making talks to schools, and she speaks to dozens of assemblies, classes and other school gatherings over the state each year.

The talks are important, but the young people are eager participants in the programs when they find Gulley has brought along Martha One Wing, the bald eagle; Digger O'Dell, the turkey vulture (that's a buzzard, Alvin); Hawkeye the hawk, an owl or two and perhaps some other live birds of prey, or raptors as the more learned like to call them.

It's Martha who is going to Washington with Gulley. Martha is a male, by the way; critters that look alike for both sexes, like eagles, rabbits and others, often get inappropriate names by well-meaning folks.

Martha is a nearly mature bald eagle who was shot in the left wing by a "slob" hunter a few years ago. The wing was irreparable, and its outer portion had to be amputated. This made the bird unable to fend for itself in the wild, so it was life in a zoo ahead for Martha, until the alternative of becoming a teaching assistant came along.

Everyday folks like you and me don't get to keep eagles and other protected animals. But in view of Gulley's flourishing program, it wasn't hard for Pursley to make some phone calls, write some letters and get a permit for Gulley to have Martha for educational use.

Martha isn't a large bird although he is nearly fully mature, with his head almost solid white now. His bulk is diminished too by part of that left wing missing.

But Martha is all eagle, from the fierce, piercing eyes to the rip-saw beak and the murderous talons. A grown eagle's feet are as big, or bigger, than a man's hand. The outer two or more inches are talons, one of nature's more efficient tools for grasping and breaking things. An eagle's firm grasp on an animal to eat, on a stick, limb or most anything else is every bit as complete as a mechanic using Vise Grips.

A top official of the National Wildlife Federation phoned Gulley several days ago and and told her she was under consideration for the role of starting the Year of the Eagle. program. Could she come to Washington if chosen? Yes, she answered.

The man called back a few days later and said, "You're it. Can you come to Washington Tuesday, December 8?" "Sure," Gulley answered. "Can you talk to a press conference for 30 minutes and answer question," he asked. "Sure," the Little Rock woman answered, before she got butterflies. "Can you bring your eagle?" he asked. "Sure," she answered, before she had a chance to think about a long plane flight with Martha. "Okay, we'll send the plane tickets."

Gulley is experienced in transporting birds of prey, including eagles, by ground transportation and by air, since she, Pursley and others working in the Arkansas programs many times have to ship injured birds to Auburn University in Alabama or other places for treatment. They use light but sturdy pet crates, and they include instructions for folks to keep their cotton-pickin' fingers out of the holes.

The flight the National Wildlife people arranged for Gulley and the eagle called for a Delta ride to Memphis, a three-hour layover, then an American ride to Washington. Gulley called Delta to ask about the certainty of her cargo being transferred properly at Memphis. "Oh, no problem," the airline agent said. "Three hours is plenty of time. But why do you want to go that route. We can route you through Atlanta on Delta all the way, so you don't transfer airlines." Fewer potential problems. "We'll take care of your dog," he added. "It's not a dog; it's an eagle," she said. "A what?" "Eagle, a grown bald eagle." A pause, then the agent said, "Oh, we'll take good care of it, too," and cleared his throat.

"But they sent me this American Airlines ticket," Gulley said, "and it's a special rate, a whole lot cheaper than Delta." She explained the purpose of the trip, that she and Martha were to be the celebrities who start the Year of the Eagle. The agent said, "Let me call you back."

He did, and he told Gulley that Delta would meet the American deal and would better it with VIP treatment for Martha all along the way.

Martha is well behaved. He is a veteran now at public appearances all over Arkansas and is used to legions of gawking school kids traipsing past, as well as hordes of adults peering at him. Usually, Martha turns that penetrating gaze on the loudmouth in the crowd who tells all within earshot that his grandma had a full-grown Hereford bull carried off by an eagle just like Martha, or that his cousin Hershel was never the same after an eagle stole him off third base in

a grade school ball game and took him 17 miles to its nest.

But Martha can sometimes get enough. He can get irritated. Like the other day when a newsman was working with Gulley to get a picture of her and Martha. The eagle jerked free from Gulley and made a dive for the newshound's face; he in turn gave a credible imitation of Reggie Jackson dodging a brush-back pitch. Gulley grabbed Martha and order was restored.

The care and feeding of eagles, along with vultures, hawks and owls, is a major undertaking for Gulley, for a zoo or for anyone else who messes with birds of prey. Fortunately, Gulley has made friends with several trappers in the area, and they many times bring her carcasses for the birds to eat.

A newly skinned beaver pelt was on a table in the driveway at the Gulley home the other day—not your usual item of decor in Pleasant Valley. But the neighbors are used to Gulley and her activities by now, and they often are supportive, even if from a slight distance.

A beaver carcass makes good eating for the big birds and the owls and the hawks.

What is needed, though, is an educational program for the eagles. They need to be taught to seek out and destroy beavers in the wild. Just think, Mr. or Mrs. Bald Eagle. Find and rub out a beaver and you've got 30 or 40 pounds of eating, not a pound or two like with a rabbit.

Wishful thinking, such educating of eagles. But with the continued energy and effectiveness of Gulley on her Eagle Awareness Program in Arkansas, perhaps future generations will do a better job of protecting and perserving them than past ones have.

Maybe the gathering dignitaries and media types in Washington this week can take a cue and help spread the gospel nationally.●

NEW FEDERALISM

● Mr. HART. Mr. President, the administration's economic program has by no means resolved the Federal fiscal crisis. And while Federal deficits continue to mount, a whole new crisis is brewing in our States and cities. The most severe cuts in the Federal budget have come in programs administered by State and local governments. Other administration actions have made it more difficult for States and cities to raise revenues or borrow money. More and more, State and local governments are having to cut back on services. That means hardship for today's citizens—and it may endanger our ability to meet our economic goals.

This administration began with a call for a new federalism, a new partnership, greater cooperation, and more shared responsibilities between the Federal Government, States, and cities.

But the new federalism has not proved to be the promised creative partnership. Rather than a serious reevaluation of responsibility at all levels of government, new federalism offers little more than a massive shift in financial responsibility from the Federal Government to the States and cities. And if States and cities must raise taxes to meet these new responsibilities, any benefits from the Federal tax cuts will be quickly wiped out.

First, the administration promised to make greater use of block grants. In the past, much Federal aid to States was earmarked for specific purposes established by the Federal Government and sometimes unresponsive to State needs. So the administration promised States and cities greater discretion in how to spend these funds.

Now, however, representatives of State and local governments report that consolidated block grants have "not lived up to the promise" of increased local flexibility. Block grants, combined with reduced funding levels, mean States must make the hard decisions about what programs to cut—and take the political heat for those decisions. Block grants were also supposed to cut administrative costs and simplify regulations. But, in reality, they have brought administrative confusion. Many State and local officials fear this confusion will result in more lawsuits and in increased administrative costs

Mr. Harley Frankel, Colorado's budget officer, expressed the frustrations of many State officials. He said:

We're being asked to implement the block grants by October 1 and to do that without knowing funding levels, having received no rules and regulations from the Federal Government, and getting bad legal advice from Washington. This seems to be contrary to the cooperation espoused under new federalism.

And Governors across the country report chaos and disarray, in their State budgets—because Federal budgets for 1982 and 1983 are still not complete.

The administration also promised to turn back various Federal revenue sources—for example, excise taxes on alcohol, tobacco, and gasoline—to the States. So far, this promise has not been kept. And there is little likelihood it will be kept soon. Overgenerous reductions in corporate and personal tax rates have bloated the Federal deficit, and Federal officials themselves are now turning to the excise taxes to enhance revenues.

Finally, the administration promised supply-side economics would bring a surging economy—one that would provide the States and cities with the same miracle of lower taxes and lower deficits promised at the Federal level. But the miracle has not materialized. And, like the rest of us, the States and cities must live with a Federal deficit that may go as high as $109 billion in fiscal year 1982. They must live with interest rates that have receded only slightly from record levels. They must live with the highest unemployment since the Great Depression. And now they must live with dramatic cutbacks in Federal support.

Although Federal grants—which account for one-fourth the revenue base of State and local governments—have declined about 10 percent in real terms over the last 3 years, the cuts passed this year are unparalleled in severity. Over 60 percent of the spending reductions recommended by the administration came in programs administered by the States. Mass transit, subsidized housing, employment and training, community development, welfare, and other essential public services—funding for all of these has been decreased. Budgeted support for State and locally administered programs has already been cut $7 billion below the fiscal year 1981 level, and $30 billion below President Carter's projected 1982 budget. In September, the administration requested a further cut—an additional 12-percent, across-the-board cut in these programs.

Our State and local governments are being squeezed. They have suffered serious reductions in Federal support, without any new means of financing these public services themselves.

Borrowing to meet new responsibilities will not be easy. States and cities in fiscal crisis are unattractive candidates for loans. Several have already had their credit ratings downgraded—meaning higher interest costs. Others have been virtually shut out of the credit market.

But even States with good credit ratings will feel the pinch. They, like the rest of us, will have to compete with the Federal Government for credit. And they will have to offer higher interest rates on their securities to attract buyers. The tax bill passed this year effectively reduced the tax benefits of tax-free municipal bonds, and the new "all savers" certificate offers a tax-free alternative to compete with State and local securities. The Congressional Budget Office estimates that these two developments will cost States and municipalities more than $2 billion next year.

So, in all likelihood, States and cities will be forced to cut back on necessary services. Such reductions will mean even greater hardships for today's citizens—especially for the poor, the disabled, and the children who depend on Government-supported programs for income, food, and medical care.

Even worse, reductions in public services may jeopardize our future. The Morgan Guaranty Bank, for example, projects that States may try to resolve their financial difficulties by abandoning new capital-spending plans and cutting back on maintenance of existing facilities. And fiscal austerity may also force cuts in programs devoted to improving human capital—for example, basic education, vocational training, and health care. If we fail to maintain our physical and human capital, the bank suggests, we will find it difficult to meet our Nation's longrun economic goals.

Clearly, we need to get our entire economy back on track if we are to meet those longrun goals. To do this, we must defer reductions in personal income taxes until the budget is under better control. We must adopt a monetary policy stimulative enough to allow economic recovery, but still restrained enough to wind down inflation. We must implement an income policy to affect wage and price behavior directly, and relieve inflation more quickly.

But we must also resist the temptation to deal with our Federal Government's fiscal problems by depositing them on the doorsteps of our States and cities.

From the start, our system of government has been a federal system, one where responsibilities are shared out among the different levels of government. The process of sorting out these responsibilities has been a continuing one. We should continue to discuss which

services can be provided most effectively by which level of government.

But any decision to shift responsibility must be made thoughtfully and responsibly, not impetuously. I have two proposals to make toward that end:

First, the Congress and the administration should carefully consider the National Governors Association's proposal for holding funding for programs administered by State and local governments at a constant level through 1984. If this is too drastic, at least we should consider limiting further cuts to no more than 5 percent of fiscal year 1981 levels. This will allow State and local governments to plan their own budgets and avoid the "disarray and chaos" now reported by State and local officials.

Second, officials from all levels of government should meet, as soon as possible, in a "domestic summit," as suggested by Governer Busbee, to clarify Federal, State, and local responsibilities for public programs.

The plight of our States and cities demands our attention. The issue of Federal, State, and local relationships and responsibilities deserves our careful thought. This Nation's citizens and this Nation's future require a new, true partnership among the various levels of government.●

SCARCITY NOT CHIEF CAUSE OF WORLD HUNGER

● Mr. DOMENICI. Mr. President, the eradication of world hunger is a goal that has been endorsed by the Senate on many occasions. All of us with children of our own are troubled that millions of other children suffer from chronic malnutrition that stunts their physical and mental development. We reluctantly recognize that these same malnourished children are likely to become parents who lack the energy and ability to put in a full days work in order to support their own children.

The cycle of hunger and malnutrition has been broken in many places, but it continues, and may be getting worse, in sub-Saharan Africa and in south and Southeast Asia. Billions of dollars have been spent on the eradication of hunger but the results in these areas are disappointing so far. If our humanitarian concerns about hunger have resulted in a broad understanding of the global problem, the specific solutions and our role as Americans in those solutions are less clear.

I am personally convinced that as individuals and as a nation we Americans have a continuing responsibility to eradicate hunger first in this country, and my record supports that conviction. In large part we have accomplished this goal in the United States. Domestic programs to alleviate hunger are not without fault, but we have come a long way in the 15 years since my friend Senator HOLLINGS and others brought this problem into national focus.

I am also convinced that we as Americans share a moral responsibility to help reduce hunger among people who are not fortunate enough to live in this country or in one of the other more prosperous nations. Individuals in my own State of New Mexico and elsewhere are working with private organizations and religious groups to alleviate world hunger. This year, despite a very tight Federal budget, as a nation we will collectively spend more than $2 billion for international food aid and for programs that are designed to increase agricultural production abroad.

Is this $2 billion well spent? What difference would substantially more or less funding for these purposes have on world hunger? Questions such as these are addressed by a recent series of articles on world hunger that have appeared in the New York Times. I welcome this series by Ann Crittenden. It should help us balance the resources devoted to global hunger against the many other pressing claims that are made by other national goals.

This series of 17 articles has reviewed the evidence on the extent of world hunger and on the solutions that have been attempted to date. It goes beyond the narrow focus on external solutions such as food aid and population control that have met with limited success and unanticipated side-effects. In her final article of December 7, Ms. Crittenden challenges us to take a new look at the effectiveness of existing programs and international institutions.

The specific solutions to the problem of hunger abroad may not be as simple as we once thought, and our role as Americans may be more limited, but the effort to eradicate world hunger must continue on all fronts.

Mr. President, I ask that the article be printed in the RECORD

The article follows:

POVERTY, NOT SCARCITY, CALLED CHIEF CAUSE OF WORLD HUNGER

Of all the ills afflicting the human race, none seems more soluble—and at the same time more intractable—than hunger.

On the one hand, enough grain is produced now to provide every man, woman and child on earth with some 3,000 calories a day. That is more than the average level of consumption in the United States and about 50 percent above what is now considered to be a minimum acceptable level of caloric consumption.

On the other hand, chronic malnutrition persists, often in countries where plenty of food is available, such as in India and Brazil.

UNCERTAINTY AS TO NUMBERS

There is widespread uncertainty as to the actual number of malnourished people. But no one challenges the fact that a minimum of 100 million to 200 million people, particularly in sub-Saharan Africa and parts of Southeast Asia, are severely malnourished, in the sense that they do not have the energy to function normally. Hundreds of millions more would eat better, and possible more, if they could, nutritionists maintain.

Why, then, does widespread caloric deprivation persist? Why has the real progress that has been made not eliminated hunger altogether?

The answer, a surprising number of international food experts agree, is that hunger is overwhelmingly the result of income inequality and poverty. Until these stubborn social and economic problems are solved, no amount of tinkering with relief programs or population control will eradicate world hunger, most of those in the field agree.

HUNDREDS OF INTERVIEWS

This view has been supported in visits to areas both rich and poor in food production and consumption and in hundreds of interviews for this series with farmers, agronomists, agricultural economists, nutritionists and policymakers in the United States and abroad.

"Highly skewed rural incomes contribute both to widespread hunger, especially among the landless and nearlandless, and also to stagnating food production," said Prof. C. P. Timmer of the Harvard Business School. "Without question, basic poverty—the lack of adequate purchasing power among consumers and food producers—is the most important cause of hunger. Eliminating poverty is the only solution to basic hunger."

Malnutrition, a confusingly imprecise term, must be distinguished from outright famine, the emergencies that are almost always the result of sudden political upheavals or natural disasters, and which are dealt with through several generally effective international emergency relief agencies, such as the United Nations Children's Fund.

A growing awareness of the distinction, and of the most systemic causes of malnutrition, has led many hunger organizations to shift their emphasis from relief efforts to attempts to reform the agricultural and social patterns within developing countries.

However, there are as many answers as to how this can and should be accomplished as there are countries and cultures. A growing number of experts argue that the ultimate solutions will involve some combination of free-market incentives for agriculture and equitable land-holding systems and social policies.

Richard Critchfield, an author who has spent more than 20 years in peasant villages in 50 countries, believes that solutions range from land reform in India and Bangladesh to better price policies and more agricultural investment and technical training in Africa.

Officials of relief organizations such as Save the Children, World Vision and Caritas, the Catholic relief organization, for example, now talk not of feeding programs but of the need to increase employment and purchasing power among landless peasants—one of the toughest economic problems facing developing countries.

STRESS ON PRODUCTION URGED

Critics of the United Nations Food and Agriculture Organization argue that the agency needs to do more to push food-deficit countries, particularly in sub-Saharan Africa, to put more emphasis on agricultural production.

The World Bank and other multinational lending institutions are now pouring almost one-third of their loans into agricultural and rural development, and commitments to those sectors have more than doubled since 1975, to almost $5 billion last year.

In the United States, which supplies a rapidly increasing share of the food consumed in developing countries, some reevaluation of the nation's food policies is beginning to be made. Increasingly vocal critics of food aid, on the right and the left, charge that the help rarely reaches those who need it the most. In Bangladesh, for example, several officials with international relief agencies have estimated that only about 25 to 30 percent of the food aid distributed there ever reaches the poorest people.

Even the wisdom of the United States' all-out grain export policies has come under challenge. The huge shipments, it is argued, help perpetuate an inherently unstable dependence of many countries on imports of basic staples.

Though there is currently an abundance of cheap grain in the world, a spate of bad weather in the 1980's could easily result in

new food shortages, price runups and a clamor for American grain. The richest importing countries, such as the Soviet Union and Mexico, could easily bid the poorest nations out of the market, exposing their populations to the danger of real famine.

IDEA NOT TAKEN SERIOUSLY

One proposal aimed at preventing such a development, put forward by United Nations food agencies, would have the major grain-exporting countries promise to sell a certain amount of food to the poorest nations, at a roughly commercial price. Thus far the Reagan Administration has not taken the idea seriously.

Soil experts also warn that all-out exports are threatening American farm productivity by encouraging the planting, year after year, of erosive crops such as corn and soybeans. Already, partly because of increased fuel costs, agricultural productivity in the United States is leveling off. From an average annual rate of increase of 2.6 percent over the last 25 years, the growth of farm productivity slowed to about 1.5 percent over the last five years.

The comparative advantage in agriculture may in fact be shifting to the developing countries, which still make relatively little use of fertilizer or the higher-yielding seeds of the Green Revolution. The potential gains from increased use of these methods are much greater than the gains that the West can expect from existing technology. Combined with the dramatic crop improvements promised by more advanced biological techniques the poorer nations are certain to raise their food production to levels unimagined only a few years ago.

ONE FARMER'S BUMPER CROP

But no amount of international assistance or technology can substitute for real change within many of the food-deficit countries themselves, nutritionists and agricultural economists agree.

Speaking of Bangladesh, but echoing what is said of much of the third world as a whole, Father R. W. Timm, a Roman Catholic priest working with Caritas in Dacca, argues that "there must be more equitable land-holding arrangements, better credit for farmers, more work in the countryside."

An example of what is possible even in Bangladesh, frequently considered the most hopeless of the hungry nations, is the performance of one farmer, who is poor, in Comilla, a relatively prosperous area in the eastern part of the country.

Last year, on his patchwork collection of 17 parcels of land, adding up to a total of three acres, Abdur Rashid turned out a bumper crop of vegetables and about three tons of rice—an output equal to the highest rice yields in the world. The bounty from those three acres, every inch of it tended like a backyard garden, was enough to support the slim, wispy-bearded 42-year-old farmer's household of 10 comfortably, and earned him a national award as the outstanding farmer in Bangladesh.

His success demonstrates that the rich delta soil of Bangladesh could easily produce enough food to support the 90 million people living in the country. Unfortunately, it is also completely atypical.

The average rice yield in Bangladesh is roughly half of what Mr. Rashid produces, thanks to a rural system characterized by absentee land lordism, sharecropping and growing landlessness. And even if more food were grown, millions of people in Bangladesh would still be malnourished because they do not have enough money to buy what they need to fill their stomachs.

"This year and next year we will have enough food," said Obiadullal Khan, who, as secretary to the Minister of Agriculture, is the man who directs Bangladesh's food policies. "But no one is looking at the purchasing power of the buyers," Mr. Khan stated in a recent interview in his spacious but shabby office in Dacca. "We don't know if anyone will be able to buy the food we are planning to produce."

In a sense, the world is in much the same predicament. In most parts of the world the food is there, and the means to produce much more is at hand. But no one is sure about how to get it to those who need it.●

OFFICER CALLS FOR SIMPLER WEAPONS

● Mr. HART. Mr. President, the military reform movement has been calling for increased attention to the need for simpler military equipment which will work in combat, is easy to maintain, and which we can afford in larger numbers.

The December 1981 issue of National Guard magazine contains a letter from an Army National Guard officer detailing the disadvantages of some of the current, overly complex equipment. He also addresses the need for a better balance between procurement and operations and maintenance funding, so as to improve training.

Mr. President, these are the views of an officer speaking from his own experience. They are worthy of the attention of my colleagues. I ask that the letter, by 1st Lt. Harold L. Spurgeon of the California Army National Guard, be printed in the Record at this point.

The letter referred to follows:

MORE, SIMPLER EQUIPMENT

I was pleased that the Reagan Administration intended to increase the defense budget until I learned what the Army wanted to spend the money for: new equipment. The Army seems to have become infested with technocrats who are more concerned with the development of increasingly sophisticated toys for their own amusement than the improvement of the fighting abilities of those who will be face to face with the enemy in the next war. Many examples from experience come to mind.

As a tank crewman in Vietnam, I served with the 3d Battalion, 5th Cavalry, which had M–551 Sheridans and the 1st Battalion, 69th Armor, which had M–48A3 tanks. The M–48 was relatively simple, rugged and with a good loader could fire 17 rounds of 90mm in 60 seconds. The Sheridan had complex electronics (that frequently failed) and fired only two rounds a minute.

More recently, as a tank platoon leader in the National Guard, my unit was originally equipped with M–48A1s. Obsolete they were, but we spent our time practicing tactical movement and shooting, and we learned what our tanks were capable of doing.

Later, we were equipped with the M–48A5 . . . and then the toys began to appear. An indoor laser range, complete with plastic scale models of Soviet tanks. An outdoor range, for use with a .22 subcalibre device. So now, instead of the thunder of a 105mm round going down range, there is the barely audible plink of a .22-calibre round, which I suppose would be great if our next enemy is an army of Lilliputians. Now the Army is fielding a newer, even more sophisticated (and more expensive) tank. It fires bigger and more costly ammunition. Since the Army is unable to allocate enough ammunition for its tank crews to achieve and maintain proficiency with the 105mm gun, how is it expected to provide enough of the more expensive rounds?

In 1978, I assumed leadership of an anti-armor platoon. We were equipped with 106mm recoilless rifles. We fired many HEAT rounds at hard targets. We were able to get used to operating with the weapon and learned it's idiosyncracies. A year later, the 106's were replaced by TOW's . . . and, of course, the inevitable toys. Where before, we could shoot live rounds at real targets, now we were restricted (even more so than the tanks) to simulated target practice. Not one gunner in that platoon ever got to fire a live TOW missile, and probably never will, barring a war.

Now, as commander of an infantry company, I see some of the same symptoms. The infantry fighting vehicle (IFV) is replacing that M–113. The 113 works, and works well; does the IFV?

Setting aside the fact that the .45-calibre pistol has more stopping power than the 9mm, requiring double action for the new pistol effectively negates (for the first shot, at least) the supposed increase in hit probability due to the lighter-recoiling 9mm cartridge. If the only compelling reason to switch to 9mm is for logistical compatibility with our allies, it would make more sense to purchase new slides and barrels in 9mm chambering. This could be done for less than half the cost of new pistols and would allow the use of most of the spare parts presently in the system.

Finally, I hear talk that the M–16 rifle has inadequate effective range for combat in Europe or desert areas. Interesting, isn't it, that a rifle with an effective range of 400 meters should need to be replaced with a rifle with an effective range of 800 or 1,000 meters, when the average rifleman is lucky if he can hit a target that is more than 300 meters distant. (INFANTRY, "Troubleshooting Rifle Marksmanship", July-August).

New equipment is nice (providing it works), but I think we would be better prepared if we spent that money on fuel and ammunition that would let us attain proficiency with the weapons we have, rather than buying new weapons that we won't be able to afford to train with.●

AN EXCEPTIONAL SCHOOL

● Mr. MATHIAS. Mr. President, the role of parents in their child's education takes on added significance when the child has a learning disability. Conviction rather than complacency made the difference for Sally Smith and her son, Gary. Ms. Smith established and developed the Lab School of the Kingsbury Center in Washington, D.C., to insure that Gary and other youngsters with learning disabilities are given the educational opportunities that all children deserve. The innovation and dedication that characterize the Lab School and its founder are a shining testament to the strength of special education. The December issue of Reader's Digest includes a moving account of Ms. Smith's struggle entitled, "The School That Sally Built." I ask to have this article printed in the RECORD.

The article follows:

THE SCHOOL THAT SALLY BUILT

(By Earl and Miriam Selby)

Gary Smith, age 7, had failed every academic subject in his first-grade class at a Washington, D.C., school. He was unable to spell cat or add 2 and 2. Yet now his hand was raised to answer a question about Indian rain dancers. Gary compared them with Greek myths, and said, "The Indians thought they could get what they wanted by doing a dance or telling a story. . . ." His teacher grabbed him and said, "If you know that, why can't you spell cat?"

To the teacher, Gary's unexpected knowledge proved he could learn, that he had been doing poorly because he was lazy. But she was wrong. Though he appeared to be a normal child, Gary had a hidden handicap—a learning disability. Despite average intelligence, he could not read, write or do arithmetic.

Sally Smith, Gary's mother, knew he was intelligent because of the information he could retain from games he played with her and his two older brothers. She also knew that Gary did not belong in a regular classroom. But when she sought alternatives, she found only schools for the retarded or the emotionally disturbed. "Absolutely unacceptable," Sally declared. "Tests show he is neither, and I won't let this happen to him."

"MY CHILD NEEDS A SCHOOL!"

In the spring of 1967 she pleaded with private schools to start a program for Gary and other learning-disabled children. (Some researchers believe the number of such children in the United States could be as high as ten million.) "It would take at least a year," the educators said.

"I don't have a year," Sally responded. "My child needs a school—now!"

She turned to Kenneth R. Oldman, then director of the Kingsbury Center, a Washington diagnostic and tutoring organization. He recognized the need, but lacked the space and money to do anything.

Then, months later, Oldman got in touch with Sally and explained that Kingsbury had been offered a nearby town house that could accommodate a small school. Was she herself interested in starting classes for learning-disabled children? Panic hit! Although Sally had a master's degree, she wasn't a professional educator. Parents will be entrusting their children to me, she thought. What will I do? But when she looked at Gary, she knew she had to try.

In a single night, Sally planned the curriculum for a school unlike any she had ever heard of. Then she rounded up volunteers to clean and paint the town house. She begged furniture donations, drummed up $7,000 from friends to pay teachers' salaries, and on September 25, 1967, Sally opened the new Lab School of the Kingsbury Center.

Learning disabilities is an umbrella term for dozens of different conditions, including minimal brain dysfunction and dyslexia, in which certain neural (nerve) pathways do not mature according to normal timetables, thus interfering with the processing of information from the senses.

Learning-disabled children are among education's toughest challenges. Each is unique, with an individual constellation of difficulties. But symptoms often include distractibility, disorganization, little sense of time, an uneven memory, garbled eye-to-brain messages and the inability to plan a project from beginning to end. In addition, many of the children are immature, uncoordinated, accident-prone or hyperactive.

Rarely, however, is actual brain damage documented, and learning-disabled children frequently have average or above intelligence. But in many schools they grow accustomed to defeat and tend to give up, thinking themselves "dumb" and beyond hope.

Sally Smith was determined to prove that any learning-disabled child with normal intelligence could be taught to learn. The goal of her school would be to give students what most of them had never had: the joy of saying, "I can do it!"

INNOVATIVE METHODS

To accomplish her goal, she recruited teachers who shared her belief that the arts—music, dance, woodworking, drama, film-making—could be central in teaching the basic skills necessary for academic learning. The woodworking shop, for instance, designed by sculptor Bert Schmutzhart, is no "artsy-craftsy" affair. Its hidden purpose is to teach eye-hand coordination, body placement, sequencing—crucial skills in learning Little children sing before they speak, draw before they print letters, dance, and act out stories before they read. Sally's newly enrolled students would spend half a day in arts programs, and the other half in carefully structured academic classrooms.

Sally Smith's curriculum provided breakthroughs for many of her students. Bart, for instance, at 9, was unable to read because he could not associate sounds with letter symbols on paper. A music teacher used his fascination with a drum to aid him in making the link. She instructed him to bang the drum when she held up a red chip, and just tap it for a yellow one. After he developed that skill, she lined up red and yellow chips in a row and had him "play" it. Repeatedly she sent him through this exercise, changing the chip patterns. Gradually Bart came to see that words commanded sounds just as the chips had. That rudimentary recognition unlocked the door to reading for him. Today Bart is in college.

Janet, 8, spread her mathematics problems all over the page. Special dance routines taught her to organize her body movements. This "motion planning" set up a pattern in her mind that eventually translated into appropriate use of space on paper.

At 12, Raymond, lacking visual concentration, couldn't distinguish pin, pen, pan. Making animated films forced him to focus on tiny details; creating story lines taught him to put scenes in sequence. These skills were important to his progress in academic learning.

Henry, at 10, did not follow directions. Feeling that this resulted from his being a poor listener, his drama teacher appointed him the astronaut in charge of a space capsule. He had to wear a helmet and sit at the head of a column of other students. The teacher was "mission control" and unless he followed her commands, the mission would "self-destruct." Henry paid close attention and obeyed orders. Similar drills bolstered his ability to listen and to heed oral instructions.

Sally noticed that children who were flunking in school often showed intelligence when they were playing games. So she introduced "academic clubs." Her idea was to take what children like to do and use this as the foundation for teaching them what they needed to know. She selected the word club to imply belonging—a welcome status for learning-disabled children who may feel like outcasts.

"CAVEMAN'S CLUB"

One day last fall, Ronald, 6, excitedly whispered "fossil" to a "cave lady" standing outside his "Caveman's Club" in the school basement. "Password correct," said the teacher, allowing him to enter. Wearing a leopard-patterned tunic over his clothes, Ronald sat down with eight other children around a "fire"—flashlights shining through red tissue paper. During the class, the children pretended to be cave dwellers, made artifacts, "hunted" for food and "guarded" against wild animals. While it seemed like play, the club technique taught them the history, art and social organization of prehistoric man.

Advancing in the clubs as they get older, Sally's students become Egyptians, Greek and Roman gods, and characters in medieval times and the Renaissance. In the New World they are Indians, frontiersmen and American revolutionaries. They learn history as they act out their roles and do the research, investigating in depth the people, customs and landmarks of various eras.

Talented librarian Antoinette Mayer developed the Lab School Media Center where students listen to tapes and records from Talking Books for the Blind and from the staff's rceordings. Sally felt it was essential for students who could not yet read to hear fine literature and the proper use of language, along with the excitement of journeying toward new horizons.

The Media Center nurtured a love of books in Sally's son Gary. After seven years in an arduous remedial program, he learned to read. Shortly thereafter, he went out to buy his first book. Gary later earned his high-school diploma.

Today Sally's school has nine full-time teachers plus many artists who work part-time, a capacity enrollment of 80, ages 6 to 16, and a long waiting list. It is housed in three adjoining town houses. In seven out of ten cases, the tuition—$6700 yearly in the elementary school, $6900 in the junior high—is paid by local school districts, which are mandated by federal law to provide appropriate instruction for handicapped students. But Sally still has to scramble for funds to raise teachers' salaries and to maintain scholarships for youngsters whose parents can't afford the tuition.

Teaching in the Lab School is exacting and frequently exhausting. In a class of nine, nine different remedial programs—each tailored for the needs of the individual student—may be used. Nevertheless, the challenges attract those who love teaching. Karen Duncan had instructed problem learners in state and private schools. She was so impressed by Sally's school that she took a salary cut in 1978 to become its head teacher.

Sally Smith offers encouragement and support to hundreds of desperate parents—many of whom are impatient for tangible evidence of improvement. She tells them that the children rarely make measurable gain until the second half of the second year. Even then they often stay on a plateau for many months before spurting ahead. What parents don't grasp is that abilities developed in the arts are instrumental for learning in the academic classrooms. One parent, zeroing in only on the arts programs, told her, "Stop Mickey-Mousing around and teach. I want my kid to read a newspaper."

"If he learns five new words this year," Sally replied, "it will be a major breakthrough. But that boy is going to be in college one day. Trust me." And the charisma of Sally is such that parents do trust her. "The most helpful thing is that I have already been where they are," she says.

Like her son Gary, nearly every one of Sally's students was failing in regular schools. But more than 90 percent of the hundreds of students who have attended the Lab School have returned to mainstream schools to earn high-school diplomas. Many have gone on to college.

SWEET SMELL OF SUCCESS

Trust in Sally has grown worldwide. In 1976 Washington's American University appointed her associate professor in charge of its learning-disabilities program. The United Nations has commissioned her to prepare a paper on learning disabilities for educators in 191 countries. Louise Bates Ames, cofounder of the noted Gesell Institute on Human Development, hailed Sally's recent Bantam Books paperback, *No Easy Answers*, as "a superb road map to learning disabilities."

In the mid-1970s, Dr. Bertram S. Brown, former U.S. Assistant Surgeon General and director of the National Institute of Mental Health, subjected Sally's school to intense analysis. "At first I was skeptical," he says. "But I found that in coping with her own problems, she rose heroically to help others with theirs. In that is the glory of this woman and the power of her school."

CANADIAN POSITION ON ACID RAIN

● Mr. HART. Mr. President, the Senate Environment and Public Works Committee is currently considering reauthorization of the Clean Air Act of 1970. One of the most important matters before the committee is the issue of acid rain. As most Senators are aware, there is a growing body of evidence demonstrating that acid rain poses a serious environmental threat to many regions of the United States and Canada, including my own State of Colorado. A number of proposals for dealing with acid rain are now pending before the Environment and Public Works Committee.

In connection with this issue, I want to call attention to a recent letter submitted to the committee by the Government of Canada. The letter acknowledges that acid rain is a problem of mutual concern to both nations, and outlines a number of steps that must be taken by both nations to deal with the problem.

Among other things, these steps include modifying existing law to deal specifically with the long-range transport of pollutants, and implementing a program of specific reductions in sulfur dioxide emissions. These actions would be consistent with the Memorandum of Intent which was negotiated by the United States and Canada in August 1980. The letter also points out that research efforts should be stepped up to improve our scientific understanding of the acid rain problem.

Mr. President, the letter from Canadian Ambassador Peter M. Towe represents a very thoughtful approach to the problem of acid rain. I ask that it be included in the RECORD, and urge all Senators to give it their careful consideration.

The letter follows:

WASHINGTON, D.C.,
October 1, 1981.

Hon. ROBERT T. STAFFORD,
Chairman, Environment and Public Works Committee Washington, D.C.

DEAR SENATOR STAFFORD: I have been asked by Members of Congress on a number of occasions to state what Canada would like to see accomplished in the current Clean Air Act Review to deal with the problem of long range transport of air pollutants, especially acid rain.

In general we very much support efforts to deal with the acid rain problem in a renewed Clean Air Act. From a Canada/United States standpoint there is no doubt that effective domestic legislation is essential to the implementation of the August 1980 Memorandum of Intent commitments. These include the commitment to negotiate a bilateral agreement and to undertake actions to deal with the problem in the interim. We also generally share the basic premises which many Americans as well as Canadians have identified, namely, that the acid rain situation is serious, that there may be some uncertainties associated with its causes and effects, but that these uncertainties are not such as to justify not beginning to take action now.

The objective the Canadian Government has in mind can be stated simply, namely, reduction in the emission of air pollutants which contributes to acid rain. It seems to me that the task could be accomplished in the United States in three ways:

(i) Through establishment of a legislative framework which would recognize acid deposition as a serious pollution problem and enable the Administration to address it effectively. An indication of the perceived limitations of the present Act to deal with this problem is provided in the attachment to this letter;

(ii) Through a direct mandate from the Congress for specific reductions in SO2 emissions;

(iii) Until a stronger Clean Air Act is passed, through the application of existing laws and regulations. The Memorandum of Intent signed by Canada and the United States on August 5, 1980 called upon both countries "to promote vigorous enforcement of existing laws and regulations as they require limitation of emissions from new, substantially modified and existing facilities in a way which is responsive to the problems of transboundary air pollution".

While more research unquestionably should be done to improve scientific understanding of the acid rain problem, there is much which is already known about its basic dimensions and the measures available to control it. For this reason we have in Canada embarked on a serious effort to begin reducing our own sources of pollutants contributing to environmental and economic damage in both countries.

I should make clear that we recognize a significant reduction of the pollutants contributing to acid rain will be a complex and time consuming process. We also attach strong importance to ensuring that the measures taken are as effective as possible from a socio-economic standpoint. However it is in our view not too soon to undertake a program of reductions extending over the next several years, which could be made more rigorous as the results of additional scientific research emerge. Our fundamental concern is that a program of further research alone would be unlikely to produce results if the Act is not itself equipped from a regulatory standpoint to enable the necessary controls to be implemented. Failure to provide this authority during the course of the current revision of the Act might well delay for some years the prospects for such controls being undertaken.

We are moreover also apprehensive that unless the long range acid rain problem is dealt with in the context of regulation at this point, the effect of various possible regulatory changes to the Act could be to weaken its capacity to control the pollutants of concern. This could permit the problem to grow worse while research continues, and frustrate any hope of controlling it effectively in the foreseeable future.

I appreciate the opportunity to provide these comments, and hope they will be helpful.

Yours sincerely,

PETER M. TOWE,
Ambassador.

CLEAN AIR ACT: CANADIAN COMMENTS

The Act should be explicitly capable of controlling problems associated with the transport of pollutants over long distances, particularly, although not exclusively, acid deposition. Appropriate domestic legislation to deal with these problems is required to effectively meet bilateral responsibilities, including the support of commitments undertaken in the agreement now under negotiation, as well as the interim control measures called for in the August 1980 Memorandum of Intent.

GENERAL CONCERNS: THE CURRENT APPROACH TO AIR POLLUTION CONTROL

The Clean Air Act was designed primarily to establish pollution control programs to deal with air quality problems due to high ambient air concentrations relatively close to sources of pollutants. This general approach reflected the understanding of air pollution at the time, which was shared in Canada as well as the United States.

The Act does not therefore directly address problems associated with long range air pollution, about which concerns have since developed in both countries as a result of increased scientific understanding about the long range transport of air pollutants, their chemical transformation in the atmosphere, and their deposition and impact remote from sources of origin. Acid deposition is a major problem of this kind; oxidants, visibility, and toxic substances are also of concern. Many of these problems are not ambient air quality related; that is, the damage is not directly related to pollutant concentrations in the air. In order to protect the natural resource base, air pollution control must now address the role of the air as a medium through which pollutants are transported and deposited, as well as a matter of maintaining an acceptable quality of the air itself.

Moreover, existing control programs are largely the responsibility of state and local jurisdictions whose boundaries bear little relationship to "air sheds", i.e., to source/receptor relationships. This approach is particularly unsuited to address long range transport problems, as they concern the interjurisdictional (international and inter-state) flow of pollutants. The situation has been exacerbated by historic and widespread use of dispersion techniques, notably tall stacks, which solve local problems by unintentionally exporting them downwind.

ISSUES

(a) Long range transport:

The ability to control emissions on a regional or aggregate basis because of the cumulative distant effect of numerous sources, which is not reflected in the current regulatory philosophy geared to local air quality problems.

(b) Total pollutant loadings:

The ability to control emissions contributing substantially to total loadings of secondary pollutants such as sulfates and nitrates and of heavy metals and toxics, which lead to long term cumulative degradation of resources.

(c) Interjurisdictional control:

The ability to provide clearly effective cooperative mechanisms to control the flow of pollutants between jurisdictions and prevent the inequities associated with the economic advantages of exporting pollution, implicit in the S.I.P. process.

(d) Enforcement:

The ability to provide the necessary capacity and incentives to reduce and maintain emission levels which respond to both local and long range/total loading problems.

(e) Current emission levels and emission trends:

The ability to take effective measures which begin to reduce emissions affecting areas of particular concern, and which respond to projected emissions increases during the next 15 to 20 years.

SPECIFIC CONCERNS

The following specific concerns arise with respect to the capacity of the Act to address Canada/U.S. pollution problems and support an agreement.

1. Can the Act control the long range transport of air borne pollutants?

While this may depend on the nature of the pollutant, the distance and number of sources involved, this is not an expressed purpose of the Act. There is no rule making guidance for addressing long range problems, in particular for allocating control requirements among and within jurisdictions.

Control requirements under the interjurisdictional provisions of Sections 115 and 126 have not yet been used to effect emission controls; in any case they depend for their implementation on other parts of the Act which in turn define pollution problems in terms of local ambient air concentrations of criteria pollutants. This suggests that if implemented the provisions may be

more applicable to short range than long range situations, and to dealing with single source rather than multiple source problems.

The focus of the Act on ambient air quality requirements suggests there may be more scope for addressing long range problems associated with criteria pollutants such as ozone, than acid deposition which is a problem of cumulative impact not directly related to local air quality.

2. Can the Act control acid deposition and similar types of problems?

An EPA ruling of June 1981 in the case of petitions by New York, Pennsylvania and Ontario declared acid deposition to be outside the purview of Section 126 of the Act.

Because acid deposition involves principally sulfates and nitrates which are not criteria pollutants it appears controls could not be designed specifically for this purpose and any reductions would be incidental to control of other problems.

While it appears possible to develop secondary sulfate and nitrate standards under Section 109 of the Act, this section also requires such standards to be related to adverse effects of such pollutants in the ambient air, rather than the indirect effects of cumulative loading. The Act also mandates of firm deadline for the attainment of secondary standards.

3. Can the Act effect a phased program involving substantial reductions in acid-causing pollutants over the next several years?

Present technological capacity exists sufficient to bring about substantial reductions in current pollutant loadings.

There is no explicit rule making authority specifically for such a reduction.

The implementation of such reductions through the current S.I.P. process (Section 110) would be lengthy and probably ineffective due to identified difficulties in the S.I.P. process (e.g., non-compliance, relaxations, atmospheric modelling, etc.). The S.I.P.s are also currently tied to criterial pollutants and local ambient air quality standards.

There is no explicit rule making guidance for allocating reductions among states or among specific sources within a state.

4. Can the Act support a bilateral agreement?

While this depends on the nature of commitments, it appears unlikely an agreement to control acid deposition could be effectively supported under existing legislation.

Agreements are traditionally supported through federal government authority; Canada recently amended its Clear Air Act to increase and clearly enunciate the federal government's ability to control transboundary air pollution.

The nature of the long range transport of air pollutants indicates that a decentralization of authority requires a corresponding federal authority to control interjurisdictional movement of pollutants.

Non-compliance has been a significant problem under the existing Act, which has been attributed in part to lack of incentive or capacity on the part of the states to carry out its provisions.

NATIONAL AIR QUALITY COMMISSION

The inadequacy of the existing Clean Air Act to address long range pollution is discussed in the recent report of the National Commission on Air Quality, which included recommendations that Congress should:

(a) require significant reductions by 1990 in the current level of emissions in the eastern United States following review of EPA and Department of Energy studies expected in mid-1981 on costs and methods;

(b) strengthen provisions of Sections 110 and 126 requiring a state to reduce emissions which affect other states, including consideration of aggregate as well as single sources:

(c) consider:

Whether to adopt a phased program requiring interim reductions by 1985;

Whether to enact a moratorium effective March 1981 on S.I.P. SO_2 relaxations;

Whether conversion of facilities to coal should be accompanied by measures to prevent a net increase in sulphur dioxide;

The need for establishment and implementation of a regional secondary standards program.

Canada commends the general direction of the Commission's recommendations as a step toward resolving problems of long range transport especially acid deposition.●

PENSION FUND PROBLEMS

● Mr. HART. Mr. President, one of the greatest economic challenges of the 1980's is to assure a decent standard of retirement for all American workers. Congress and the administration will be facing this challenge next year in the context of reforming the social security system. But the problems extend to the private pension system as well, as documented by Peter Drucker in an insightful article entitled, "Imminent Pension Fund Problems." Problems of demographic shifts and actuarial miscues have been greatly compounded by rapid inflation, and the independent pension system now faces difficulties similar to those of social security.

Various structural changes no doubt will be necessary, and Mr. Drucker has some interesting suggestions—as did the Council on Economic Development Task Force, which I brought to the attention of the Senate last October. But, as Mr. Drucker argues, the main objective is one we are all striving for: a healthy, inflation-free American economy.

I submit for the RECORD the Drucker article.

The article follows:

[From the Wall Street Journal, Dec. 9, 1981]

IMMINENT PENSION-FUND PROBLEMS

(By Peter F. Drucker)

For many pension funds, especially corporate ones, 1981 looked like a pretty good year. With interest income of 15% or more on their liquid assets and earning expectations set actuarily at 5% or 6%, funds could show a sizable surplus over earning requirements. But this rosy picture is largely an accounting delusion, and a short-lived one at that. The independent pension system faces a severe crisis within the next few years. Some very large funds, such as union-administered multi-employer funds and those of many states and cities, are in no better shape than Social Security.

Changed life expectancies affect independent pension plans as much as they do Social Security. Corporate plans—at least those of most of the larger companies—have adjusted for the increase in the proportion and number of people who reach retirement age. But few have yet adapted actuarial assumptions and pension-fund contributions to the longer life expectancy of people in retirement—a full 10 years longer in many cases than the actuaries calculated when the plans were established in the 1950s and 1960s. (Nor has Social Security.)

And, of course, pension plans will be hit just as hard as Social Security by the shrinkage of their contributions base. As a result of the "baby bust" that began 20 years ago, there is a sharp drop in the number of young people entering the work force and becoming pension-plan contributors.

Inflation is an even greater threat to the independent pension plan than to Social Security. Social Security adjusts payments to recipients to the cost-of-living index. But independent pension plans index twice First, they index payments to wages and salaries: Typically the retirement pension is figured as a percentage of the recipient's highest annual income during his last five years of service. On top of this, a large number of independent plans—practically all government plans and those of unionized industries such as autos, steel and trucking—retroactively adjust the pensions of retired employes to inflation.

Social Security has a "cap"; no matter how high a participant's income had been while employed, the maximum monthly benefit corresponds roughly to what a skilled manual worker should receive on the basis of his contributions. And this cap has been going up a good deal more slowly than average family incomes.

RISING FASTER THAN INFLATION

There is no such cap in independent pension plans, whether those of governmental units, hospitals or business. The pension obligations of these plans are thus rising a good deal faster than inflation, and faster still as a percentage of revenues and payroll.

Even the employer who has fully funded these "past service" obligations thus faces a growing deficiency in his pension plan. He now owes the difference between the contributions he actually made 10 or 20 years ago, that is before the onset of inflation, and the contributions he should have made then to account for today's wage levels; he also owes the earnings on this difference over the last 10 or 20 years.

Many employers who have not fully funded their past-service liabilities—and neither states nor cities nor multi-employer plans such as those of the building trades or of the trucking industry have done so—will within a few years face annual pension-fund charges that will be as large as their entire yearly payroll.

In addition, independent pension plans—again state and local governments are the worst cases—have been far more generous with early retirement pensions than has Social Security. Unless disabled, Social Security recipients have to wait until they are 62 before they receive any pension at all; and then they get only a sharply lower stipend. In most state and local government plans, full benefits are being paid to healthy people after 25 or 30 years of service, that is when employes are in their late 40s or early 50s.

Early retirement at full, or nearly full, pension at age 53 or 55 is also fairly common in unionized mass-production industries. Rewarding early retirement was never a particularly brilliant idea—even the most liberal of our Social Security administrators succesfully opposed it as actuarially unsound. But it could be defended 25 or 30 years ago when people reaching retirement age were outnumbered two to one by young entrants into the labor force. Now when the older group is close to outnumbering the younger one, paying people to retire early must bankrupt any conceivable pension system. It is profoundly antisocial; it feeds inflation.

Finally, most independent pension plans commit the employer to "defined benefits" rather than to "defined contributions." Under a "defined benefits" plan the employer undertakes to provide a pension equal to a stated percentage of the employe's earnings. Both the employer's obligation and the employe's claim therefore go up automatically as wages and salaries rise. Indeed, any rise in the general wage level, for example, as a result of inflation, commits the employer to retroactive contributions for the difference between past and current wages.

Under a "defined contributions" plan—which, in effect, is a traditional annuity

contract—the employer commits himself to pay each year either a fixed premium or a fixed percentage of payroll, with the employe receiving the appropriate annuity upon retirement.

Twenty-five or 30 years ago, when most of today's independent plans got going, employers—often against heavy union resistance—opted for "defined benefits" plans. No one expected inflation then—at least not for the U.S. And in those heady days of booming equity markets, employers and their pension fund advisers expected capital gains on common stocks to provide a large and constantly increasing share of pension fund income and thus to offset employer obligations and contributions.

NO FREE LUNCH

Indeed, some of the most popular pension advisers of those days virtually promised that stock market gains alone would finance a "defined benefits" plan, with the employer having little or nothing to contribute beyond the start-up capital.

But there is no free lunch. The "defined benefits" plan has by now become a deadly trap committing employers to ever-increasing contributions both to raise benefits in step with the rise in wages and salaries and to make good portfolio losses in a long-term bear market.

With all these problems—changed life expectancies and a shrinking base of young participants, inflation, early retirement, "defined benefit" commitments—there are few independent plans that are not drifting toward financial crisis. Quite a few—especially for state and city governments and multiemployer setups—are so close to the edge that a fairly minor mishap—a drop in tax revenues or another bout of "stagflation"—could push them over the cliff.

What needs to be done is reasonably clear, although, as President Reagan found out when he tried to tackle the problems of Social Security, reforming retirement systems isn't going to make anyone popular. Within a maximum of 10 years we will be forced to adjust independent pension plans to life expectancies and demographics; that is, to move full-retirement age up to 70 or 72, to move early-retirement age up to 62 or so, and to reward retirement postponement while penalizing early retirement.

We probably could not—and perhaps should not—change plans retroactively to "defined contributions" (except maybe in case of bankruptcy). But for future payments, even existing plans might be changed to a combination of defined benefits and defined contributions; some existing plans are already being renegotiated toward this goal. New employes might be put on a defined-contributions plan right away.

That we cannot go on indefinitely with defined-benefits plans even most union economists now concede, at least off the record. And only a switch to defined contributions can motivate the nation's largest single voter group, retired people and people over 55, to give priority to the fight against inflation.

Otherwise it may be impossible to restore the health of the pension plans. Their main need is beyond the power of even the largest and strongest independent employer. It is to stop inflation.●

A U.S. STRATEGIC NUCLEAR BUILDUP CAN DETER SOVIET MILITARY SUPREMACY

● Mr. BOREN. Mr. President, a few days ago, we concluded debate on the fiscal year 1982 Defense appropriations bill. It was a long and sometimes heated discussion which saw a great many amendments offered. During the course of that discussion, there were several points of view expressed for a need for a buildup of conventional forces, the need for strategic modernization and the general direction that U.S. defense spending should take for the remainder of this decade and on into the 1990's.

At the request of the International Security Review, I have written an article to appear in their January issue entitled "A U.S. Strategic Nuclear Buildup Can Deter Soviet Military Supremacy." As I have indicated, the article will appear in the January issue of the International Security Review published by the Center for International Security Studies of the American Security Council Foundation.

I shall submit the article for the RECORD at the conclusion of my remarks.

While this article dwells on U.S. strategic nuclear capability, it also mentions the urgent need to rebuild our conventional sources. That is a subject about which I feel quite strongly and may well be the topic of a future article or discussion here on the floor.

Mr. President, there is no more important issue before us than the proper defense of the American system. Therefore, I commend this article to the attention of my colleagues.

The article follows:

A U.S. STRATEGIC NUCLEAR BUILDUP CAN DETER SOVIET MILITARY SUPREMACY

U.S. strategic nuclear forces have been severely neglected since the mid-1960's in U.S. defense budgeting. We must overcome Soviet military supremacy and build up American strategic nuclear forces to regain at least parity with the Soviets. Strategic debate since the presidential campaign of 1980 has centered on the need to close the "window of vulnerability" and many—including the present Administration—have seen that need as a prerequisite of resumption of new Strategic Arms Limitation Talks (SALT) with the Soviet Union.

President Reagan said in March 1981: "[The Soviets have] sat on the other side of the table so far, knowing that we have unilaterally disarmed to a great extent. . . . maybe if we do a little building—it'll be a two-way street."

We have not made the progress in military capability many of us had hoped to make by now. In fact, there is disturbing evidence that the previous pattern of U.S. unilateral strategic deactivations is still very much in place. For example, the Defense Department plans to deactivate about 26 to 30 percent of our existing nuclear megatonnage. Moreover, there is further delay planned in our already long overdue strategic force modernizations, and the date for opening the window of vulnerability is being moved arbitrarily from the early to the mid 1980's or beyond.

Such actions are clearly contradictory to the idea of closing the window of vulnerability at the earliest possible time. No talks on limiting nuclear weapons can be fruitful for the United States if we negotiate from the weak position the window of vulnerability makes implicit—which is to say nothing of the geopolitical pressures that a perceived Soviet nuclear advantage places on the United States. So failure to chart a clear course toward nuclear parity and toleration of a continuing U.S. vulnerability a few more years instead of extracting us from it now is a policy of enormous and serious consequences.

SOVIET GEOPOLITICAL ASCENDENCY

History's most dramatic shift in the world balance of power occurred during the last 20 years almost unnoticed by most Americans. Even before the 1962 Cuban missile crisis, the Soviet Union embarked on a massive, relentless military buildup. Authoritative Soviet statements show that the buildup was intended to achieve overall military superiority over the United States. Soviet perseverance and willingness to devote huge resources to military programs, combined with United States self-delusion, has finally allowed them to achieve overall military superiority. In the 1970's Soviet defense outlays steadily increased, while those of the U.S. declined.

America can no longer fulfill a wide range of defense and foreign policy commitments which heretofore have been inextricably linked with the security of the U.S. and our allies. At no other time in American history since Pearl Harbor has there been such a critical need to adopt effective and well thought out defense policies.

During the last six years, many top level groups of Western defense and foreign policy experts have met and exhorted the West to respond to the Soviet global political and military threat. Most Western strategists believe that there is a vital need for U.S. global political leadership at this critical point in history, and that this leadership must make itself known and felt soon. It has long been clear that the Achilles heel of the West is its failure to effectively fight the political, ideological, and propaganda war with the Soviets, a war which the West had unilaterally abandoned during the period of detente.

An important result of American abdication in the ideological and political war with the USSR is the low level of U.S. defense spending over the decade of detente. In 1980, U.S. defense spending was at the lowest point since Pearl Harbor as a percentage of all government spending, and at the lowest point as a percentage of our gross national product (GNP) since just before the Korean War. The U.S. is still spending only about five percent of its GNP on defense.[1]

In contrast, the Soviets are spending from 14 to 18 percent of a smaller GNP on defense. Official U.S. estimates show that they have spent over $240 billion (more recent estimates place this figure close to $355 billion) more than the U.S. on military procurement alone since 1969, and they are devoting over $50 billion more to defense annually than the U.S. These estimates are probably low, because the CIA has historically underestimated Soviet strategic forces and defense spending. Beyond the ominous manifestations of huge, deployed military forces, physical evidence of this Soviet concentration on military power in the future is the observed fact that the Soviets have increased their military industrial floor space by 34 percent since 1970.[2] There is no reason to believe that their plant expansion and high production of military equipment will not continue at a steady pace. Since the late 1960's, the U.S. defense industrial base has drastically declined. (It is worthy of note that the average age of a toolmaker in this country is 48. We are thus running out of toolmakers.)

A senior Soviet military leader explained the growth of Soviet military forces and military industry when he made the following remarkable admission as long ago as 1969 in the classified General Staff journal:

"Strengthening of its defenses is now the foremost political function of the Soviet state . . . Never before has the internal life of the country been subordinated to a war so deeply and thoroughly as at the present time."[3]

In the face of the growing Soviet military preponderance during the 1970's resulting from steadily increasing Soviet military expenditures, the U.S. nevertheless continuously cut back defense expenditures. About

Footnotes at end of article.

$45 billion was cut from our defense budget by succeeding Congresses in the early 1970s. The American public's disillusionment with the Vietnam War made all military spending unpopular. For the first time in this century, defense expenditures after a war ended declined in 1975 to below their prewar 1964 level. Then about 38 billion more dollars were cut from President Ford's projected defense budget in the late 1970s by President Carter. Now the Administration is planning to cut at least 13 billion additional dollars from its own defense budget, and some say we should cut at least twice as much—all of this despite the huge expenditure and capability imbalance which has developed vis a vis the Soviets since 1963.

In sum, over $96 billion have been cut from the U.S. defense budget since 1970, while the Soviets opened a $240 to $355 billion spending advantage over the U.S. While spending figures alone do not measure the quality of the defense structure of either side, a disparity of this size should be sufficient to cause great alarm. Even if it is believed that the U.S. gets more "bang for the buck" than the Soviet Union, it would be stretching technological advantage very thin to believe parity exists in the face of these numbers. And as noted in the November 1981 issue of Air Force Magazine: "A force than cannot fight and win cannot be expected to deter."

The strategic framework which guided U.S. national security policy throughout the 1970s has been demonstrated by events to have been unsound. The prevailing belief was that the Soviet Union was interested primarily in domestic affairs, having abandoned its revolutionary fervor and embraced global stability. The architects of this strategy formulated their policy in an atmosphere of American self doubt and pessimism stemming from the traumas of the Vietnam War. Americans were demoralized by the war, resentful of global burdens, and opposed to both large military budgets and assertive American policies abroad.

Thus, American leaders concluded without attempting to lead the public that there were really no alternatives to the policies of detente, arms limitations, American global retrenchment, and graceful accommodation to Soviet power. In the late 1970's, American policymakers therefore re'ected an "inordinate fear of communism," and appeared to believe that weakening American military power made the world safer. They put their hopes in arms control and accommodation.

The Vietnam War was a great aid to the Soviet strategy to achieve geopolitical supremacy, because it absorbed vital financial assets (over $100 billion) that the U.S. could otherwise have devoted in whole or in part to expanding its strategic forces. Because of our failure to continue to invest adequately in our strategic forces, Soviet strategic force levels surpassed those of the U.S. in 1969. President Ford finally began to turn the U.S. defense spending curve upward in Fiscal Year 1976, and Ford planned a belated U.S. strategic buildup through 1980 to match the Soviet buildup. Unfortunately, the Ford strategic buildup was undone by President Carter, while the Soviet buildup continued unabated. During the next four years, a U.S. strategic buildup to match the Soviet threat was again turned aside, while the Soviet march moved steadily onward. Now, we seem on the verge of giving the Soviets another four year boost, by again allowing our defense budget increases to be cut back and by extending our window of vulnerability.

In sum, the U.S. is getting further and further behind the Soviet strategic buildup, a buildup planned to achieve supremacy over the U.S. even if the U.S. goes all out to catch up.

Clearly, a major and urgent change is required in U.S. defense strategy, decisionmaking, and procurement planning. A "business as usual" approach to U.S. defense programs and expenditures will not begin to solve the immediate problems of the vulnerability of U.S. strategic forces or equally as important the unreadiness of our conventional forces, to say nothing of beginning to reverse our military decline.

We must keep uppermost in our minds that the Soviets have a coherent global strategy and they are ruthlessly and effectively implementing it. They believe their victory is historically inevitable, and indeed the free world could well be defeated, unless it first formulates and executes a global strategy to respond to the Soviet challenge. New and more hardware is important, but without an American ideological counter-offensive and new strategic framework, the nation can accomplish little. In this contest, perception is just as important as reality.

RECOGNITION OF THE SOVIET THREAT

A Blue Ribbon Department of Defense Panel reported authoritatively to the President and the Secretary of Defense on the shifting balance of military power. The panel warned gravely that there is:

"Convincing evidence that the Soviet Union seeks a preemptive first strike capability . . . there is no longer any certainty that our nuclear deterrent will remain credible . . . Weakness of the U.S.—of its military capability and its will—could be the gravest threat to the peace of the world."

What is remarkable about this judgment is that it was made 11 years ago, in September 1970.[4] It may have seemed to some like alarmism then, but because it was not heeded, the warning is all too accurate today. In fact, Soviet leaders stated as early as 1971 that the strategic balance had shifted in their favor. Since then, a decade of further U.S. military decline has occurred, and the Soviets have now achieved overall military superiority. It is now going to require extraordinary efforts to restore the military balance.

After ten years of one-sided U.S. arms control and U.S. accommodation through detente, there is now overwhelming evidence that the Soviets have been exploiting detente and SALT to retard U.S. defense programs and lull the U.S. into a false sense of security, while they moved to acquire military superiority and overall geopolitical supremacy.

A West German centrist Parliamentarian leader, K. Biedenkopf, has stated:

"In retrospect, the balance sheet of the ten year policy of detente is for us [the West] a simple negative. While contributing to a weakening of our military and defense readiness, detente has paralyzed us in the ideological dispute, and, not least, had an influence on the destabilization of our democratic social system."

This statement is a commonplace assessment of detente and arms control in the West. But its favorable quotation in the Soviet press is evidence of supreme Soviet self-confidence.[5]

Even the chief architect of detente and SALT, former Secretary of State Henry Kissinger, has belatedly recognized this reality and publicly acknowledged the relentless and aggressive thrust of Soviet military and foreign policy. In 1979, Kissinger forecast extreme danger by the early 1980's:

"The 1980's could turn into a period of great instability . . . we could be heading into a period of maximum peril . . . by some time in the early 1980's the Soviet Union will have the capability to destroy with a reasonable degree of confidence most of our land-based ICBMs. In the same period of time we will not be able to destroy the Soviet ICBM force. This creates a gap in the design of the two forces that is bound to have a geopolitical consequence, especially since we are clearly inferior in forces capable of local intervention . . . the military balance is beginning to tilt ominously against the U.S. in too many significant categories of weaponry . . . To conduct business as usual is to entrust one's destiny to the will of others and to the self restraint of those whose ideology highlights the crucial role of the objective balance of forces. . . . Never in history has it happened that a nation achieved superiority in all significant weapons categories without seeking to translate it at some point into some foreign policy benefit."

In November 1978, one of Kissinger's former deputies, William Hyland grimly stated: "We are already witnessing the political consequences resulting from a shift in the overall military balance . . ."[6]

Hyland's statement came after the fall of Southeast Asia in 1975, Angola in 1976, and Ethiopia in 1977. Hyland's statement was made even before the Iranian revolution of 1978 and American hostage fiasco of 1979–1980, the belated discovery of the Soviet Combat Brigade in Cuba in 1979, the brutal Soviet invasion of Afghanistan in 1979, the Soviet military threats to intimidate Poland in 1980–1981, and the Soviet-Cuban takeover of Nicaragua in 1978 and their direct assault on El Salvador in 1980–1981.

The Soviet communist party program of as early as 1961 stated plainly:

"The chief aim of the foreign policy of the CPSU [Communist Party of the Soviet Union] is to ensure peaceful conditions for the building of a Communist society in the USSR [and] the development of a world system of socialism.[7]

Article 28 of the 1977 Soviet Constitution specifically commits the Soviet Union to support "wars of national liberation," and the Brezhnev doctrine commits the Soviets to use military force to preserve any regime once it has become Communist.

A Soviet ideological statement written for internal communist party use in the mid-1970's is consistent with Hyland's realistic 1978 assessment. Soviet communist party leaders have stated authoritatively that Soviet military superiority reliably restrains the aggressive aspirations of imperialistic reaction, blocking its efforts to export counter-revolution, and is facilitating the struggle of other peoples for social progress and revolution.

This doctrinal pronouncement clearly means that Soviet military superiority enables them to pursue their worldwide revolutionary aspirations without interference by the U.S. With the U.S. in strategic nuclear checkmate, the Soviet world revolutionary movement is on the offensive. And as a Soviet ideologue stated in 1975:

"Peaceful coexistence is a specific and highly effective form of class antagonism and historical competition between world socialism and world capitalism."[8]

THE STALLED DEFENSE BUILDUP

An apparently dramatic increase in the U.S. defense budget for FY 1982 of about 14.6 percent passed both Houses of Congress in 1981, a one-year rise unprecedented since the Korean War of 1950. The factors leading to this large increase, as reflected in non-binding Congressional Budget Resolutions, were due entirely to a renewed commitment to strengthen America's defenses and to the mustering of the national consensus about the need to restore the military balance, a consensus which seemed to wilt in the face of budgetary pressures. There is more than a little irony in the fact that the economic whipping boy was again defense spending. There are those who still do not want to admit that many well-intentioned social programs badly missed their targets and were

Footnotes at end of article.

broadly abused. Instead, we are told by some, that generous social spending is still a desired goal whose place in the sun is being squeezed out by excessive defense spending. It is an indictment of the community principally concerned with national security that it is allowing this debate to take place on such terms. That is not to say that there is not far more waste in the defense budget than should be there. However, there is a huge backlog of military deficiencies more than enough to consume what can be saved through legitimate reforms. Not always, but too often, those who present themselves as "reformers of military spending" are really masking their own unwillingness to make the economic and political commitments necessary to truly increase our strength. Unfortunately, such masquerades are common in the Congress.

The highly touted FY 1982 defense increases are largely illusory. The Administration had planned, until September 1981, to sustain annual increases of at least seven percent in the defense budget for each of the next four years through 1986.

Even at that, many noted experts agreed with former Under Secretary of the Navy, R. James Woolsey, who wrote in the Washington Post on February 17 of this year the increases then being discussed (which were in excess of the seven percent finally settled on by the Administration) would not even take care of the backlog created by underfunding and deferrals in previous years. As to the idea that such increases would buy force modernization needed to overcome the Soviet lead, Woolsey wrote:

"New capabilities—more aircraft carriers or Army divisions, for example—may be desirable, but we ought to fix the leaks in defense's roof and replace the rotting timbers before we begin adding pretty new rooms to the house."

By late 1981, substantial reductions were forecast to levels even below those Carter proposed. Despite the failure of both Houses of Congress to come to conference on defense authorizations or to appropriate defense funds for FY 1982 before the end of Fiscal Year 1981 in October, a major defense budget increase was approved by the Congress in the form of nonbinding budget resolutions. But our defense spending continued at FY 1981 Carter levels throughout calendar 1981, because of the fact that Congress had to use continuing resolutions due to the lateness of congressional action on the FY 1982 authorization and appropriation bills. Thus there was no real increase in defense spending.

A great debate is still taking shape both within the Administration and Congress on the scale and priority programs of the future defense budget. This debate intensified as the Fiscal Year 1982 Defense Authorization and Appropriations bills were finally settled and continues as the FY 1983 requests are developed. There seem to be two main impulses toward a cutback in the Defense Budget. First, "military reformers" in Congress from both the left and the right are decrying such excesses of defense programming as cost overruns, "goldplating," technological oversophistication, and the seeming obsession with quality over quantity. There is some merit in these critiques. Everyone deplores ineffective military expenditures, and our entire military procurement process needs reform. But we must guard against military reform being misused to attack defense budget increases.

Second, I agree with those economists who believe that inflation cannot be reduced if overall budget deficits on the order of next year's projected $60 to $100 billion continue. Certainly, a balanced budget is imperative. However, the method of achieving that goal must be thought out very carefully. We will not have economic and social programs to worry about if we neglect to assure our Nation's very survival.

In sum, it seems highly likely that the Five Year Defense Plan now envisioned actually could be less than President Carter's plans for defense spending through 1985.

U.S. CONVENTIONAL FORCE DEFICIENCIES

To appreciate the magnitude of our total defense funding problem, it is essential to recognize that defense deficiencies are not just those of the overall military balance. During the Presidential campaign of 1980, many official revelations appeared in the press showing that both U.S. conventional and strategic military preparedness was dangerously deficient.

On the conventional side of the ledger, during 1980 each of our armed services, in internal Defense Department memoranda and in testimony to the Congress, conceded grave shortcomings in readiness, manpower, procurement, and logistics. These defense deficiencies thus became a major issue in the 1980 campaign.

Partly for reasons related to internal politics within the uniformed services, the basics of military strength, spare parts, ammunition, basic equipment, and above all, personnel capability, have been sorely neglected. Sophisticated systems will not save us if we do not have the personnel to operate and maintain them, the fuel to move them, or the spare parts to repair them. While I have stressed the need for the right kinds of strategic systems, we must not allow the "glamour" of our new systems to cause us to embrace them when they are not cost effective. Above all, we must not allow our heads to be turned to the point that we neglect the essentials. We should apply some of the precepts of the back-to-basics movement in the field of education to our national defense area.

The urgent requirement for greatly increased American defense spending was understood clearly during 1980 by the American people. But in view of the probable reduction in the defense budget to a level below that planned by Carter, the defense deficiencies requiring a substantial defense spending increase over the long term require reiteration.

The U.S. Army's deficiencies were widely recognized:

Seven out of ten U.S. based Army divisions were rated not combat ready in 1980, when as recently as 1977 all had been combat ready. Many Army Reserve and National Guard units were also rated as not combat ready, and were even more shockingly undermannned and underequipped than the regular Army.

The Army Chief of Staff testified to Congress in 1980 that the U.S. had a "hollow army." due to severe recruiting, training, and retention difficulties.

U.S. conventional war reserves were dangerously low, with insufficient ammunition and ordnance on hand for more than 30 days of war in many theaters.

Operations and maintenance, long a low priority in budgeting, reflected severe spare parts shortages, lack of fuel, and low funding for training and readiness. The tragic failure in April 1980 of the ill-fated Iranian hostage rescue mission dramatized the poor state of readiness and efficiency of our combat forces.

As for the U.S. Navy, its deficiencies included:

Too few ships were being built and maintained. The Chief of Naval Operations testified to Congress in 1980 that the U.S. had a "3½ ocean" naval challenge to cope with, but only a one-ocean navy.

Naval personnel recruitment, retention, and training shortfalls had resulted in severe problems in readiness and ship deployability in 1980.

Naval aircraft procurement rates for several years preceding 1980 did not even replace normal attrition, and experienced pilots were leaving the navy in droves.

Operations and maintenance problems included inadequate funding for fuel, spare parts, training, and readiness.

There were dangerous shortages in naval missiles, torpedoes, and other ordance.

Deficiencies in the U.S. Marine Corps included:

A severe lack of amphibious shipping, exacerbated by an inadequate shipbuilding program. The rebuilding of amphibious cargo lift capability continued to lag far behind requirements.

An across-the-board shortage of artillery, antiair, and antiarmor firepower.

In addition, the U.S. Merchant Marine's capability to logistically support the deployment of U.S. armed forces overseas has declined drastically over the last decade, and what little capability remains would be vulnerable in wartime.

Finally, deficiencies of the U.S. Air Force included:

Aircraft procurement rates for several years were inadequate and not optimized for cost-effectiveness.

An increasing exodus of large numbers of trained pilots.

Tactical aircraft unit readiness was in some cases during 1980 found to be shockingly low, due largely to a lack of spare parts and continued maintenance problems.

Severe war reserve shortages existed in air-to-air missiles and ordance.

Another significant area receiving inadequate attention over the years was the industrial base—the backbone of the defense establishment. Deficiencies in the U.S. defense industrial base revealed during 1980 included:

The inability of defense industries to meet even the modest existing procurement goals of the armed forces;

The widespread dependence on old and inadequate technology, due to long-term underinvestment;

The loss of key subcontractors, causing inordinately long lead times for key components such as tank hulls and aircraft parts;

Contraction in the size and profitability in the U.S. metal mining and processing industry, and dangerous dependence on foreign sources of supply for critical minerals vital to defense production;

Extreme weakness in the key U.S. fighter aircraft industry, such as declining production capacity and rising costs;

A highly questionable "surge rate" capacity.

Defense spending throughout 1981 has been at the Carter-proposed FY 1981 level, which many believe to be wholly inadequate. Most of the above deficiencies will persist for at least several years, even with significantly enhanced defense spending. The process of restoring American military strength will clearly be fiscally painful and will place great demands for wisdom and especially perseverance on our national leaders. Difficult decisions will need to be reached and priorities assigned for the long task ahead. Solution of our general purpose force deficiencies will require sustaining substantially increased defense spending over at least a decade, as was done for strategic forces in the decade of the 1950's after the onset of the Korean War. It will also involve facing tough personnel questions and the need to reevaluate the status of the All Volunteer Force.

As part of the defense buildup, budgetary authority and planning has been decentralized by DOD, thereby returning major programming responsibilities to the armed services. The intent was to concentrate top-level attention on formulating overall defense policy and national security strategy. But even here we still seem to be beset with major deficiencies. One of the most serious criticisms

of the stalled defense budget increase is the failure, so far, to develop just such an overall defense strategy to bolster our foreign policy, or to articulate the needed strategic framework to justify the budgetary increases. The absence of a coherent, well thought-out defense strategy, and related set of priorities undermines American military capability at its most fundamental inner core.

In contrast, immediately after his inauguration in January 1961, President Kennedy proclaimed an emergency supplementary approriation bill to accelerate U.S. strategic programs—Polaris and Minuteman. Kennedy thus immediately fulfilled his campaign pledge to quickly and massively augment U.S. strategic capabilities. Now the same sense of urgency is nowhere to be seen, despite the vastly more dangerous Soviet threat.

U.S. STRATEGIC FORCE DEFICIENCIES

Two important strategic factors have so far been given scant attention in the defense budget debate. First, the combined $240 to $355 billion Soviet advantage and $96 billion U.S. cutback have created such a large disparity between Soviet and U.S. military spending over the last ten years that it may be impossible (and even unnecessary) for the U.S. ever to catch up in terms of the aggregate magnitude of spending. It is therefore vitally important to spend our defense funds wisely and where they will be most effective.

Second, while our overall defense budget must be substantially increased, and conventional force disparities addressed, we must also increase U.S. strategic capabilities as quickly as possible. U.S. strategic forces have been neglected and underfunded since the mid-1960's. The U.S. still has certain technological and industrial advantages over the USSR in this vital military field which enable us to achieve improved strategic forces rapidly and at lower cost than would otherwise be the case.

The idea of a U.S. strategic forces buildup runs head on into the idea of unilateral arms control. During the debate, in the Senate on the sale of AWACS airplanes to Saudi Arabia, I said:

"The rejection of this sale will not slow down the arms race in the Middle East. It will simply give the Soviet bloc more of an edge in that race. Our failure to provide equipment to Saudi Arabia will not cause the Soviets to stop pouring arms into the region any more than unilateral disarmament by the United States would immediately usher in an era of world peace."

So it is that unilateral arms control has not borne the fruit expected by its inventors and hoped for by all of us who viewed the process with suspicion while applauding the aim. This is particularly true in light of the force imbalance already reviewed and by Soviet SALT violations and circumventions.

But the idea of unilateral arms control persists. In fact, the U.S. strategic buildup required to bring us back to strategic parity with the Soviets would deter all kinds of war most effectively. U.S.-Soviet strategic parity would bring the world much more stability and peace than further U.S. unilateral restraint for the sake of arms control, and further U.S. toleration of Soviet violations of arms control treaties.

Let us now examine the by now well-recognized strategic asymmetries and U.S. strategic force deficiencies. Our top military leaders may not have been always able to influence effectively the highest councils of decision, but they have forthrightly stated their concerns about the inadequacies of our strategic forces, and those views are consistent with Kissinger's own grim view of the early 1980's. General David Jones stated in July 1979 Senate SALT testimony that the early 1980's would be the beginning of the open window of vulnerability:

"In some areas . . . the Soviets have already surpassed us, and we are concerned because their momentum will allow them to gain advantage over the United States in most of the static indicators of strategic force by the early 1980s . . . because of the lead times in modern weapons, this progressive shift in the military balance will continue into the mid-1980's, with or without SALT II."

Even more pessimistic was this 1979 Jones declaration that a U.S. response to the Soviet buildup would be futile in the early 1980's:

"The Soviets have been outspending us in strategic forces by a factor of between two and three for many years, and they may well believe they can achieve a margin of superiority over us in the early 1980's. It is now generally accepted by most defense analysts that, regardless of U.S. actions, Soviet strategic capability will increase relative to that of the U.S. through the mid-1980's, with or without a SALT agreement."

Jones evidently believed that there was little, if anything, the U.S. could do in the early 1980's to forestall or reverse the shift in either the strategic or the overall military balance.

In early 1980, General Richard Ellis, then Commander in Chief of the Strategic Air Command (SAC), echoed the alarming Jones warnings with an even more ominous revelation. Ellis testified before Congress that since 1977 the U.S. has lost strategic "essential equivalence" to the Soviet Union. The notion of essential equivalence has itself long been recognized by most experts as a euphemism for American strategic inferiority. General Ellis, too, was conceding long-standing American strategic inferiority to the Soviets and vulnerability to Soviet geopolitical nuclear blackmail.

Moreover, in a private letter to the Secretary of Defense in April 1979, Ellis reportedly stated quite unequivocally that SAC did not then have the capability to execute the national strategic objective. Ellis stated that the U.S. would have a minimum deterrence posture throughout the 1980's. It is therefore clear that when President Carter announced his "PD-50 countervailing strategy" during the 1980 campaign, we were many years away from having the force capabilities to execute it.

Also in early 1980, General Jones predicted starkly that the U.S. will not be able to restore strategic parity until the late 1980's. More gloomily, General Ellis testified to Congress that parity could not be restored even by as late as 1990, after the long-delayed MX intercontinental ballistic missile (ICBM), air-launched cruise missile (ALCM), and Trident submarine-launched ballistic missile (SLBM) programs for strategic modernization were finally approved and the weapons actually deployed. This assessment was reaffirmed by Ellis' successor General Bennie L. David in an address in November 1981, when he said that the Soviet strategic advantage "will probably endure through the 1980's."

Thus, unless urgent measures are taken, there lies ahead for the United States an open-ended period of Soviet superiority. The time during which the U.S. can still undertake new programs to offset the now observable Soviet advantage is almost gone.

Deficiencies in strategic forces are critical:

Since 1977, more than 710 U.S. strategic delivery vehicles and over 6,000 strategic nuclear warheads that were previously planned to be added to U.S. strategic forces have instead been cut.

U.S. strategic missiles on land and in submarines are increasingly vulnerable to the relentlessly growing Soviet counterforce, first-strike threat. They are also aging, as the famous exolosion during 1980 of an ancient Titan II ICBM silo in Arkansas and the 1979 Titan II silo accident in Kansas dramatically demonstrated.

The U.S. strategic bomber force is nearly obsolete, and the force is also becoming increasingly vulnerable.

U.S. strategic command and control systems are increasingly vulnerable and inadequate, as demonstrated by the several well-publicized false alarms in our strategic alert systems during 1980.

One measure of Soviet strategic superiority is the fact that the U.S. is truly facing a severe and widening 1980–1990 window of vulnerability in strategic forces. This advantage provides the Soviets with tempting opportunities for geopolitical nuclear blackmail to advance their worldwide revolutionary offensive.

Former Defense Secretary Brown, JCS Chairman General Jones and former Under Secretary of Defense Perry have all publicly conceded while in office that the U.S. ICBM force was completely vulnerable in 1980. Perry even conceded that Soviet accuracy improvements had been grossly underestimated as early as 1977. As General Ellis pointed out, the window will not be closed, even by 1990, after the U.S. modernization programs now planned are completed. Thus, the Soviets have an open-ended, clearcut strategic superiority over the U.S.

As if the above U.S. strategic force deficiencies were not enough, we are faced with an adversary who has negotiated deceptively and violated or circumvented the SALT I and SALT II agreements and other arms control treaties, if not in fact, certainly in spirit. The most militarily dangerous Soviet SALT and arms control violations or circumventions constitute "breakout" capabilities:

Widespread deployment of the counterforce-capable SS–19 heavy ICBM, in addition to the authorized Soviet monopoly of 308 very heavy SS–18 ICBMs. This deployment increased the Soviet counterforce capability by a factor of five;

The Soviet ICBM stockpile, refire, and soft-launch capability, including 100 rapidly deployable SS–16 mobile ICBMs, ICBMs being used at MR/IRBM sites, and up to 1,300 stockpiled old ICBMs, adding further to their counterforce threat;

Testing of high-yield nuclear warheads with increased counterforce potential;

Testing of air defense radars and missiles in an ABM mode, providing the breakout potential for a nationwide ABM defense;

Building new large ABM battle-management radars and a rapidly deployable new ABM system, adding further to a nationwide ABM defense breakout potential;

Maintenance of a now conclusively confirmed biological warfare and intercontinental delivery capability.[9]

Altogether, these dangerous Soviet violations give the Soviets both offensive and defensive breakout capabilities that cannot be offset by the U.S.

On May 12, 1981, a bipartisan group of 21 Senators, including myself, led by Senators Garn and Stevens, signed a letter to President Reagan accusing the Soviets of violating the SALT I ABM Treaty. We stated that the Soviets "continue with a standard practice which contradicts the very spirit of SALT." These Soviet violations are inconsistent with continued U.S. unilateral compliance with the limits in SALT I and II.

The Soviets have already gotten away with actions which we told them and the world in 1972 would result in our abrogation of the SALT I agreements. During the SALT I ratification hearings before Congress in 1972, top American leaders assured Congress that U.S. policy was that three specific Soviet SALT violations would not be tolerated. They stated that if the Soviets deployed heavy ICBMs to replace light ICBMs, produced mobile ICBMs contrary to a Brezhnev pledge,

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or constructed more than 62 strategic submarines, the U.S. would abrogate the agreements.

All the above Soviet violations and many others (reportedly 20 to 35) have nevertheless occurred. Yet, the U.S. has still not protested these violations. Our abrogation threat was forgotten. Soviet cheating has demonstrated unilateral arms control to be a dangerous idea.

Over the last decade, the Soviets have allocated over 100 billion more dollars to strategic offensive forces alone than the United States. They have been out-spending us in strategic offensive forces by about 3 to 1 each year for over ten years. They have been out-spending the U.S. in strategic defensive forces by a factor of about 10 to 1 for over a decade. Indeed, the Soviets have a clear-cut superiority in ABM, air defense, ACAT, ASW, and civil defense as well. The U.S.-Soviet asymmetry in defense will contribute to the Soviet geo-political ascendancy.

Yet, on October 20, 1980, former Defense Secretary Brown stated that: "To match the bigger Soviet force without SALT II could cost us, over the next decade, an additional 30 to 100 billion 1981 dollars." Current policy has continued to be U.S. unilateral compliance with both SALT I and SALT II. In contrast, the Soviets have authoritatively declared several times that they will not comply with SALT II until the U.S. ratifies the Treaty. The Soviets thus have all the benefits of U.S. SALT compliance while themselves accepting no obligations. Therefore, in addition to the strategic modernization programs planned for the late 1980's, the U.S. is in need of spending $30 to $100 billion more on strategic programs, but our unilateral compliance is hindering our programs.

The long Soviet concentration on strategic forces, together with U.S. unilateral cutbacks, created the U.S. window of vulnerability. The Soviet emphasis on strategic forces alone should be ample justification to greatly increase the U.S. strategic force budget. But there are other reasons as well. First, it is fortunate that the U.S. still has major techological and industrial advantages in stratgeic forces which can be exploited. Second and more important, superior U.S. strategic forces would have the advantage of deterring all levels of warfare, while conversely, strategic deficiencies make all wars more likely.

STRATEGIC FORCE PROMISES VERSUS REALITY

As noted, the 1980–1990 window of vulnerability was created by cancelling, cutting back, or delaying every single strategic program inherited from the Ford Administration. Instead, Trident submarine and SLBM deployment was slowed and ALCM deployment in the early 1980's was also slowed. MX was not planned to be operational until 1986. During 1980, Congress forced an early 1981 decision on the MX deployment mode, a new bomber for the 1980's, and an extremely low frequency (ELF) communications system deployment to enhance submarine survivability.

But if the window of vulnerability is ever to be closed quickly or at all, new and additional strategic programs for the early 1980's, the near term, must be accelerated. Nevertheless, rather than changing course or accelerating our programs, the Senate Budget Committee was told in March 1981 that no new strategic programs are planned.

The Secretary of Defense said:

"It is important to understand, in considering our supplemental request and budget amendment, that the principal shortcoming of the defense budget we inherited is not so much that it omitted critical programs entirely in order to fully fund others, but rather that it failed to provide full funding for many programs it conceded were necessary but which were considered unaffordable. To correct this defect requires, of course, that we propose corresponding increases in the *same programs*—programs that in our view, we cannot afford *not* to fund adequately." (emphasis added) [10]

Instead of timely and resolute action in strategic force initiatives, deployment decisions were delayed well beyond Congressionally mandated deadlines on the new MX ICBM, a new bomber, and on ELF communications. No increases in strategic force funding beyond those already underway and no new strategic programs to address the window of vulnerability in the short term were proposed.

THE "WINDOW" HAS NOW BECOME AN "OPEN DOOR"

All too often, the greatest stumbling block in overtaking the Soviet advantage is our own decisionmaking process. The deployment of the MX missile is a prime example. MX deployment is one of the most overstudied issues in modern military history. From a racetrack mode—to the airborne option—to the so-called "common missile" the deployment ball has bounced wildly this year alone—to say nothing of the studies and restudies done during the Ford and Carter years.

Following the six-month study of the Townes Commission a decision was made on October 2nd that ignored the Commission and by-passed most speculation. The choice was to deploy only 100 MX missiles in "superhardened" Titan II and Minuteman silos, to be operational by 1986, the old initial operational date for MX. Wisely rejected was the MX "racetrack" or "shell game" multiple protective structure (MPS). But instead of rejecting racetrack MPS on cost and timeliness grounds, it was rejected on the basis that the Soviets can already destroy all Minuteman silos and could likewise even now overwhelm any future multiple protective structures. It was an interim decision which argued that by superhardening 100 existing Titan and Minuteman silos, MX could be deployed in a mode that would be somewhat survivable during the long interval before a truly survivable air-launched, deep buried, or defended mode could be deployed.

Such a decision can only be temporary and must not be allowed to become permanent through inaction. Soviet ICBM accuracy is already so high that any silos would be in the blast crater. The principal argument used against MX multiple protective structures is thus equally valid against MX in existing silos. Secretary Weinberger himself recognized this fact, when during his January 6, 1981, confirmation hearings before the Senate Armed Services Committee he stated:

"I would feel that simply putting MX into the existing silos would not answer several concerns that I have, namely, that these are well known by the Soviets, and secondly that you can't harden them sufficiently to improve their invulnerability."

Pentagon spokesmen have themselves conceded that superhardening existing U.S. silos will not really improve their survivability, and that they have not yet decided within which silos to emplace the 100 MX missiles.

What of the MX in the future? There are reliable reports that the strategic R&D plans for FY 1983 and 1984 call for a significant effort to develop the Continuous Airborne Patrol (CAP or "Cap's CAP"). In contrast, only minimal funding is planned for developmental efforts in the other two MX options: deep silos and ABM defense of silos.

The so-called MX in Minuteman silo deployment "decision" was a decision to postpone a decision. The real MX deployment decision will not be made until 1984, a Presidential campaign year, thus entangling MX again in Presidential politics. Meanwhile, all 52 Titan II silos will be deactivated beginning in 1981, at least five years before the replacement MXs will be deployed. And no silo modification work for MX is likely to actually begin until after 1984.

So we are indeed back to "square one" on MX. As two former Defense Secretaries have stated, the MX decision is a "punt" and is "whistling in the dark," at a time of grave national danger. The main characteristic of the MX ICBM is its counterforce capability, a move toward parity with a Soviet force that already has a much greater counterforce capability in place! Moreover, we are to cut back the number of MX missiles to be deployed from a total of 200 to only 100, which still have the grave disadvantage that they will not be survivable. Originally, in 1973, the USAF proposed 400 survivable MX missiles. Thus, we have already severely reduced MX counterforce capability by 50 percent as well. The window of vulnerability has thus been opened all the wider. We will not have a survivable ICBM until at least the late 1980's, if then. The window is now an open door.

Former Secretary of Defense Brown recognized the urgent need for prompt action to correct the strategic imbalance. Brown pointed out in 1979 in his FY 1980 Defense Posture Statement:

"The strategic balance will be less favorable in the early 1980's than it is now [i.e., in 1979] ... our position will get worse between now and 1981 or 1982 ... our most serious concerns—which we need to act now to meet—are about the period of the early to mid-1980's." (emphasis added)

President Reagan agreed with former Defense Secretary Brown in August 1981 when he said: "Today there is a very dangerous window of vulnerability." [11]

And on August 26, 1981, Defense Secretary Weinberger stated that: "We're way behind," and that the U.S. needs to "do a lot very quickly to close the window of vulnerability."

But in testimony to the Senate Armed Services Committee on October 5, 1981, Weinberger stated that the: "window [of vulnerability] will be at its widest in the period 1985–1986."

There is no question that U.S. vulnerability will be worse in the mid-1980's, but it is already totally unacceptable. Even the former Administration reluctantly conceded that the window of vulnerability opened in 1980, and would last beyond 1990. The window of vulnerability cannot be arbitrarily moved from 1980 to 1985 in order to rationalize deployment of the MX in an unsurvivable mode in 1986.

A few MX missiles in Minuteman silos may be marginally better than no counterforce capability at all. But we must recognize what we are doing. To place our only counterforce capability in nonsurvivable existing silos places a higher value on those Minuteman silos, and pushes us another step closer to a launch on warning posture, a dangerous and unstable place to be.

In analyzing a survivable U.S. counterforce capability, it is important to note that there remains a great U.S.-Soviet asymmetry many observers ignore. The Soviets already have a four to one advantage over the U.S. in prompt counterforce capability, and this first-strike advantage is steadily growing. But we must also consider the different target sets that the Soviets and the U.S. face. The U.S. has substantially fewer hard targets (and our soft targets are large and concentrated). In contrast, we must target many more Soviet hard targets. The Soviets have about three times as many hard targets as the U.S. Moreover, many of these are over three times as hard as U.S. hard targets. Thus, even if the U.S. had the Soviet counterforce capability to work with, we would still

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be at a disadvantage. Restated, considering the different target sets, the U.S. requires more counterforce capability than the Soviets in order to achieve counterforce parity. While such an imbalance must be viewed in the overall parity definition, it is an element to be included in future MX decisions.

Another issue is the pledged acceleration of deployment of strategic cruise missiles on aircraft. This is a proposition to be desired, and yet DOD has proposed to cut back the air-launched cruise missile production rate from 480 a year to only 440. In addition, the deployment of ALCMs is intended to be stretched out for a few years longer, into the late 1980's. Moreover, the initial operational capability of ALCMs on B–52s has been delayed a year, to December 1982. Meanwhile, there is no announced near-term plan to increase the B–52 ALCM carrier alert rate or move them to inland bases. Nor are sufficient ALCMs planned to be deployed on B–1 bombers.

Further, we have cut our Trident submarine construction rate from one and one-half per year to only one per year. Indeed, one Trident submarine was cut from the FY 1982 budget.

REJECTION OF STRATEGIC QUICK FIXES

In both the Fiscal Year 1981 and 1982 Defense Authorization bills, Congress authorized three strategic "quick fixes." These were immediate deployment of 100 already stockpiled Minuteman III MIRVed ICBMs in existing Minuteman silos, upgrade of the entire Minuteman force by providing a survivable battery power supply and a capability for all Minuteman missiles to be launched from an airborne launch control center, a deployment of the ELF communications system to ensure SLBM survivability.

All three of these strategic quick fixes would rapidly improve the survivability of U.S. forces and very cheaply, but none was included in the Strategic Program announced on October 2, 1981.

Within a short period after a Soviet first strike, which would devastate U.S. strategic forces, the U.S. would lose a significant portion of its already meager capabilities, due to electric power and command/control outages. The surviving capability of the Minuteman force would be significantly increased with the Minuteman battery and airborne launch capability.

The need to improve the maintenance and survivability of our C^3 system cannot be overemphasized. As pointed out in an Air Force Association Policy Paper published in November 1981:

"[The] key to our nuclear deterrent strength is preservation of the chain of command through reliable survivable command, control, communications, and intelligence (C^3I) capabilities for our strategic Triad forces. Years of inattention and underfunding have resulted in a gravely weakened C^3I system while Soviet capabilities to attack and disrupt U.S. strategic networks have greatly increased. C^3I must be designed to give the National Command Authorities flexible operational control at every level of conflict. Strategic force changes resulting from deployment of new systems require innovations in command and control in order that our forces realize their full potential."

While the Administration seems to recognize the importance of enhancing our strategic C^3I capabilities, it has failed to maximize C^3I capabilities for our existing Minuteman ICBM force.

And while an ELF deployment decision was finally announced on October 8, 1981, the system will still not be operational until 1986. Thus, more than a year has gone by in deciding to deploy a command and control system which should be operational immediately so that our submarines could better endure the window of vulnerability in the near term.

Taken together, these delays, cutbacks, and cancellations in strategic decisions not only resulted in bad or late strategic force decisions, but they have already added at least another year of open danger to the window of vulnerability. Current thinking seems to be that beyond deciding to deploy the B–1 bomber variant, an old program that Congressional pressure finally revived, no new strategic programs are either prudent or necessary. Instead of accelerating existing strategic programs, we have delayed them for over a year, and raised questions about how the "open door" of our vulnerability will ever be closed.

In September 1981, the announcement was made that SALT III negotiations would begin in the spring of 1982. But last April, Secretary Weinberger stated in U.S. News and World Report that the U.S. would revive SALT negotiations only "after we have clearly demonstrated the determination to increase American strength substantially in strategic weaponry." No such demonstration to increase our strategic posture has occurred; in fact, there continues to be a significant decrease in our posture.

I do not mean to imply that we should not reopen the SALT negotiations. We have an obligation to do so and to do all that we can to prevent any drift toward military confrontation, either nuclear or conventional. I hope that our President can move with a boldness in the area of arms limitation negotiations akin to that demonstrated by the late President Sadat in going to Jerusalem. It is important to remember, however, that this kind of breakthrough and the achievement of truly deep cuts in strategic weapons can come only if we act to increase our strength and thereby our bargaining position. A nation which unilaterally disarms has no credibility at the bargaining table.

I believe that President Reagan's address on a zero-based option U.S.-Soviet Theater Nuclear Force modernization agreement on November 18, 1981, was a sound step toward achieving an enhanced U.S. arms control bargaining position. In addition, it should be noted that the aversion to unilateral disarmament is not purely American in orgin. For example, British Foreign Minister Lord Carrington said in a lecture on October 27, 1981:

"The unilateral disarmers in my country say that other states would follow suit if Britain disarmed . . . But disarmament by example does not work. The Soviet Union has explicitly rejected unilateral steps."

CONTINUED U.S. UNILATERAL DEACTIVATIONS

During the debate over SALT II, a great deal was made out of the Soviet lead in megatonnage. Yet today, strategic deactivations initiated by the Carter Administration have continued, presumbaly out of a devotion to unilateral arms control. In addition to continued U.S. compliance with SALT I and II, which Navy Secretary Lehman said was illegal, three U.S. defense actions remain inconsistent with Section 33 of the Arms Control and Disarmament Act of 1961. This law states that no action shall be taken to disarm, reduce, or limit U.S. armed forces or armaments, "except pursuant to the treaty-making power of the President under the Constitution or unless authorized by further affirmative legislation by the Congress."

One of these actions is the U.S. Navy's use of over 200 million dollars already authorized and appropriated for operations and maintenance to instead dismantle two Polaris submarines and to deactivate three other Polaris subs, in compliance with the expired SALT I Interim Agreement. Congress never affirmatively legislated or authorized this deactivation.

As noted, one Trident submarine has been cut from the FY 1982 budget. And the completion of the new Trident sub base at Kings Bay, Georgia, has been delayed until 1992.

Secondly, there is a plan to deactivate our 80 oldest B–52 bombers in order to save a few million dollars in defense expenditures. Congress has not authorized such a SALT-related cutback.

Further, there is a plan to deactivate immediately our 52 Titan II ICBMs. Again, Congress has not authorized this cutback.

Our ten Polaris submarines carry 160 SLBMs with the heaviest sea-based megatonnage—26 percent of our sea-based megatonnage. Our Polaris SLBM force is larger than either the entire British, French, or Chinese strategic forces. Our 80 B–52s can carry our heaviest bombs—19 percent of our bomber megatonnage. Our 52 Titan IIs carry a high percentage of our ICBM megatonnage—33 percent. So these deactivations in fact represent forces that carry 26 percent of our total megatonnage. Senator Sam Nunn has estimated that over 30 percent of our megatonnage is being deactivated.[12]

In a fourth case, affirmative legislation has apparently been contradicted in order to comply unilaterally with the unratified but still unilaterally binding SALT II Treaty. The Congress already authorized in both Fiscal Years 1981 and 1982 the immediate deployment of 100 stockpiled Minuteman III MIRVed ICBMs in existing silos. This deployment would cost a total of only about $44 million. A simple DOD reprogramming of already authorized and appropriated operations and maintenance funds could easily be effected to deploy these existing missiles, which would immediately increase our ICBM survivability by 10 percent and our counterforce capability by 15 percent.

But in a letter to Senator Schmitt on March 24, 1981, Secretary Weinberger said:

"Additional Minuteman IIIs would provide very limited military utility and could impact future arms control negotiations."

In regard to the above four examples, Congress has allowed its own legal power and prerogatives to be either ignored or contravened. But it is up to Congressional leaders themselves to call the Executive Branch to account.

Moreover, no attempt has been made to negotiate quid pro quo reductions in Soviet forces. Why should the Soviets engage in arms control negotiations when they can merely wait for the U.S. to continue to unilaterally deactivate its strategic forces? Continued U.S. unilateral deactivations are thus inconsistent with a rational U.S. arms control posture.

STIMULATING PERCEPTIONS OF FURTHER U.S. STRATEGIC DECLINE

Probably the most disturbing pronouncement that has been made in a decade on U.S. defense posture came out on July 28, 1981. Defense Secretary Weinberger said publicly that U.S. strategic forces might not now be powerful enough even to deter a Soviet counterforce first strike.[13] He conceded a U.S. lack of deterrent capability and said that it would require the U.S. a full decade to regain a strategic deterrent capability.

Strategic perceptions are extremely important. In Fiscal Years 1980 and 1981, the Air Force spent about $22 million in operations and maintenance funds in order to repair one single Titan II ICBM silo and missile in Kansas, which as noted, had been damaged in 1979 by a fuel leak accident. It is highly significant that the main reason for spending so much to restore only one ICBM was explicitly related to Soviet perceptions of the U.S. strategic posture. The Air Force stated in 1980 that it:

"Decided to refurbish this Titan II silo . . . because of the importance of this weapon to the SIOP [Single Integrated Operational Plan] and because failure to do so could be seen as a lack of resolve to maintain a strong

Footnotes at end of article.

nuclear posture. Negative perceptions . . . could arise from a decision not to return this weapon to alert."

If the Defense Department was willing to spend $22 million on just one ICBM for the sake of perceptions, then we should be even more willing to spend about $44 million to deploy 100 additional Minuteman III ICBMs in existing Minuteman II silos. This is about the cost of one modern fighter aircraft. Deploying these 100 Minuteman IIIs would cost only $147,000 per warhead, which is extremely cost effective. Indeed, this would be the cheapest increment of U.S. ICBM warheads ever deployed. Again, it would increase our survivable warheads by 10 percent and our hard target capability by 15 percent.

Deploying 100 Minuteman IIIs would, at $44 million, cost only twice the $22 million used to repair one Titan II silo, all for the sake of Soviet perceptions.

In sum, our approach to the closing of the dangerous window of vulnerability has thus already been demonstrated by events. We have so far seemed to extend the gap of the window in both the near and long term at least a year and probably more.

SUMMARY OF CONTINUED STRATEGIC CUTBACKS

ICBMs:

No deployment of 100 stockpiled Minuteman IIIs.

No upgrade of Minuteman power and airborne launch control.

Reduction in MX from 200 to 100 missiles, in nonsurvivable basing mode, with no ABM defense.

Premature and abrupt deactivation of 52 Titan IIs, carrying a high percentage (33 percent) of our ICBM magatonnage.

SLBMs:

Continued Polaris submarine deactivation—loss of 160 high megatonnage SLBMs—26 percent of our SLBM megatonnage.

Cutback of 1 Trident Submarine.

Reduction of Trident construction rate from 1½ to 1 per year.

Delay to 1992 completion of Kings Bay Trident sub base.

One year delay in ELF deployment decision.

Bombers and ALCMs:

Premature and abrupt deactivation of 80 B–52Ds, carrying heavy megatonnage—19 percent of our bomber megatonnage.

Reduction of ALCM yearly production rate from 480 to 440 per year, delay of B–52 ALCM initial operational capability one year to December 1982.

Cancellation of KC–10 tanker aircraft procurement.

Failure to deploy sufficient ALCMs on B–1.

No inland basing and increased alert rate for B–52 force.

Defense:

Deletion of proposed funding for space laser research and development.

Reduction of Patriot Air Defense missile system.

No acceleration of ABM R&D.

A total of 26 percent of our existing megatonnage is being unilaterally deactivated, with no quid pro quo being either asked for or gained in Soviet restraint.

As the new Commander in Chief of the Strategic Air Command, General Bennie Davis, acknowledged to the Senate Armed Services Committee on November 4, 1981, U.S. strategic capability will be decreasing rather than increasing in the next four or five years. He also acknowledged that the Administration's strategic program extended the window of vulnerability, and that he would have preferred to keep the Titan IIs, B–52Ds and Polaris Submarines.

OTHER NEGLECTED QUICK FIX OPTIONS

Beyond the useful option (as the Congress has authorized for two straight years) to deploy the 100 stockpiled Minuteman III ICBMs immediately, there are other near-term options for rapid improvements to U.S. strategic forces suggested by other experts which could be considered. These are:

1. Increasing the alert rate and rebasing inland our old B–52 bombers, to increase their survivability.

2. Retaining the ten Polaris submarines for rapid conversion into submarine-launched cruise missile (SLCM) platforms. From 800 to over 1,000 survivable SLCMs could be quickly deployed on our ten Polaris subs. This option could increase survivable sea-based nuclear firepower by about one-third, and target coverage by five-fold, at the relatively low cost of only one Trident submarine. It could be effective very rapidly.

3. Extending and accelerating the Trident I SLBM retrofit from the presently planned 12 to all 31 Poseidon submarines would greatly increase SLBM range and therefore survivability, and could be done rapidly.

4. Canisterization of stockpiled SLBMs for mobile reserve deployment. After either deactivation or retrofit to SLCM carrying configuration of the ten Polaris subs, 160 Polaris A–3 SLBMs are available for stockpile. At least 192 Poseidon C–3 missiles will be replaced when the presently planned 12 Poseidon submarines are retrofitted with the Trident C–4 SLBM. Rapid engineering could be undertaken to canisterize these 350 and other storage missiles, so that they are capable of air or surface sea-transport and launching by the "hydra" or floating technique. They would then be available for routine or crisis deployment as a survivable strategic reserve force, for either air droppage from C–141 or C–130 transports or launch from naval warships.

5. Fully exploiting the significant U.S. technological lead in modern cruise missiles. While the Soviets have had large numbers of nuclear armed cruise missiles deployed for over 20 years, the U.S. has great miniaturization, guidance, and propulsion advantages. The ALCM program should be doubled in deployment scale and accelerated by several years. This could easily be done merely by adding another shift to the ALCM plant's work force. ALCMs should be deployed as soon as possible on all B–52s, F–111s, and on U.S. NATO and naval fighter-bombers. Our SLCMs should be doubled in deployment scale and immediately placed on all Polaris and 688 class attack submarines. Moreover, long-range multipurpose SLCMs could be deployed immediately on all U.S. Navy cruisers and destroyers.

6. When the 100 MIRVed Minuteman III ICBMs were deployed in existing Minuteman II silos, 100 Minuteman II ICBMs would become excess. Instead of retiring them to warehouses, they could be redeployed in a mobile mode as a strategic reserve. As Senator Glenn has suggested, there is a need for truly mobile U.S. missiles. These ICBMs could be deployed immediately in a truck mobile, garrison-based mode at some of our existing ICBM complexes. These mobile launchers and missiles could be kept in garrison so as to be able to flush rapidly onto our interstate highway system within 12 hours of strategic warning.

The defense budget debate should fully explore all the U.S. conventional and strategic deficiencies.

We must carefully evaluate what we can do to develop survivable strategic weapons as quickly as possible and at the lowest possible cost. We must not limit our options by a slave-like devotion to any particular doctrine including that of the triad. If we find that the quickest improvements in survivability can be made through mobile air and sea systems we should be prepared to greatly accelerate those programs. Survivability must be our goal. It matters not whether we find that the most survivable systems are land, sea or air based, or which branch of the uniformed service has jurisdiction over them.

Above all, we should realize that we are far from imposing too much defense burden on our national economy. Our national survival faces an unprecedented threat. No American wants money wasted on programs that will not improve our ability to meet that threat. No thoughtful American, however, will judge it wasteful for us to increase our effective efforts to secure for our children and grandchildren the freedom which we enjoy.

FOOTNOTES

[1] Charles L. Heatherly (ed), *Mandate For Leadership* (Washington, D.C.: The Heritage Foundation, 1981), p. 109.

[2] Department of Defense, *Soviet Military Power* (Washington, D.C.: October 1981), p. 3.

[3] General Major A. Korniyenko, "The Economic Bases of the State's Military Power," *Military Thought*, Number 8, 1969.

[4] (See *Supplemental Statement to Report of Blue Ribbon Defense Panel*, September 30, 1970, pp. VII, IX, and XI.)

[5] (See *Kommunist*, July 1980, pp. 70–81.)

[6] Intelligence Digest Weekly Report (November 22, 1978), p. 3.

[7] Communist Party of the Soviet Union Draft Program, 1961, p. 40, quoted in U.S. Air Force, *Soviet Aerospace Handbook*, AF Pamphlet 200–221 (May 1978), p. 96.

[8] A. I. Sovolev, "The Problems of Strategy and Tactics of the Class struggle at the present stage of the general crisis of capitalism," *Soviet Press Selected Translations*, 75–6 (June 1975), p. 16.

[9] Senator Gordon Humphrey, "Analysis and Compliance Enforcement in SALT Verification," *International Security Review* (Spring 1980); *Defense Daily*, July 14, 1980, p. 58; *Aviation Week and Space Technology* (May 1981), p. 25; Senator Jake Garn, "The SALT II Verification Myth," *Strategic Review* (Summer 1979), pp. 19, 20.

[10] Hearings Before Committee On Budget, U.S. Senate, March 31, 1981, p. 121.

[11] Washington Star (August 5, 1981).

[12] Defense Daily (November 13, 1981), p. 68.

[13] See, *Washington Star* (July 28, 1981), p. A–1.●

EMPLOYEE BENEFIT PLANS

● Mr. D'AMATO. Mr. President, on Thursday, December 3, the administration took a significant step toward helping the beleagured housing industry and providing sound, secure investment opportunities for employee benefit plans.

In a notice of proposed rulemaking, the Department of Labor proposed a class exemption for certain employee benefit transactions involving residential mortgage arrangements. Under certain limited circumstances, pension plans now will be able to invest in owner-occupied, single-family dwelling units.

While these regulations do not precisely mirror the provisions of S. 1678, a bill introduced by Senator HATCH, myself, and nine other colleagues, they do represent a recognition that it is time to assist the housing industry and its ancillary industries which have been devasted by skyrocketing interest rates and thrift institution disintermediation.

The Employee Retirement Income Security Act (ERISA) contains prohibited transaction sections and prudent man standards. The former are designed to prevent pension plans from dealing with related parties—parties in interest—while the latter mandate that plan fiduciaries be held to a high standard of conduct in operating the affairs of the plan's funds.

The intent of both of these sections is to protect pension plans from potential abuse. In certain cases, however, these

provisions have a chilling effect on a pension plan manager's investment flexibility. Far too often, pension plans have foregone the opportunity of investing in residential mortgages for fear of violating the above provisions of ERISA. Although parties could file for exemptions, procedures to obtain these exemptions are time-consuming and costly.

The administration's proposed rules grant a class exemption to certain investments by pension plans in single-family residential dwellings if certain conditions are met. These conditions include: First, the commitment by the plan to provide mortgage financing must be in writing and must be at least as favorable as a commitment involving unrelated parties; second, the commitment must set forth appropriate requirements concerning income levels, collateral, title, et cetera; and third, the decision to issue the commitment must be made by an established financial institution, as to which neither the plan, an employer or group of employers contributing to the plan, nor an employee organization of whose members are covered by the plan, has the power to exercise a controlling influence over the plan.

The provisions of S. 1678 are more comprehensive in that they afford the pension plan more flexibility with respect to residential mortgage investments and, in addition, address the prudent man standards of ERISA, as well as the prohibited transaction sections. S. 1678 details circumstances under which neither the prohibited transaction sections, nor the prudent man provisions are violated. I will not detail here all of the provisions of S. 1678 since Senator HATCH does an excellent job in the September 29 CONGRESSIONAL RECORD.

Mr. President, I commend the administration for undertaking this positive action. The assets of the pension funds of this Nation have grown to over $600 billion. These regulations make this vast sum available to the housing market and is a most welcome sign of relief to developers, construction companies, home buyers, and workers. I am confident that each and every group associated with the housing industry applauds this action. I know that the National Association of Homebuilders have been long awaiting the proposed rules.

The National Association of Realtors will benefit from increased housing purchases due to the greater availability of mortgage money. Workers, particularly those in building and trades employment, will enjoy increased employment because of increased housing starts.

Mr. President, a key result of these regulations is that pension plans now possess an additional secure and stable area into which they can diversify their portfolios. The limiting conditions in the regulations protect the plans against those abuses envisioned by ERISA.●

CORPORATE SOCIAL RESPONSIBILITY

● Mr. DURENBERGER. Mr. President, I would like to draw the attention of my colleagues to an article from the September 1981 issue of Reponse, a magazine published by the Clearinghouse on Corporate Social Responsibility.

As Congress continues in its efforts to reduce the growth of Federal spending, we become increasingly reliant upon private charities and corporations to provide services traditionally performed by the Government. In this article, Stanley Kane, a good friend of mine and the president of Early American Life Insurance Co. in St. Paul, describes how his small company joined with other small companies in a number of community projects.

I am very proud of the business men and women of Minnesota—they have long provided an example to the rest of the Nation of what a difference corporate social responsibility can make to a community. I ask that Mr. Kane's article, "How a Company the Size of Early American Life Can Become Involved in Corporate Social Responsibility," be printed in the RECORD.

The article follows:

HOW A COMPANY THE SIZE OF EARLY AMERICAN LIFE CAN BECOME INVOLVED IN CORPORATE SOCIAL RESPONSIBILITY

In August, 1979, I joined 11 other Twin City life and health company CEO's at a meeting by John Pearson at Northwestern National Life's Home Office in Minneapolis. The meeting was called at the request of the Clearinghouse on Corporate Social Responsibility to show what companies in other parts of the country were doing under the industry's Community Initiatives Program, and to examine the range of opportunities for companies to provide leadership in their communities. Two more meetings followed in an attempt to zero in on specific areas of involvement.

While I enjoyed having the opportunity to sit down with my contemporaries in the Twin City area, I felt that there was little application in the ideas presented for a company the size of Early American Life. Many of the companies around the table were, in one form or another, already involved in individual community programs. With the size and resources of Early American Life, I felt there was little that we could do from a contribution or investment standpoint that would have much of an impact. I concluded that further attendance at these meetings would be a waste of my time.

My thinking was changed, however, during the third meeting when it was conceded that unless some type of structure or organization was formed, nothing of a concrete nature would come out of these meetings in the way of a cooperative effort. At that point the group decided to form a task force to investigate the feasibility of some type of organized program in the Twin Cities. Two people from the St. Paul area and two people from Minneapolis were asked to serve on this task force. In addition to myself, the group included Chris Finsness of Northwestern National Life, Michael Flannigan of Ministers Life and Casualty, and Mary Snitkey of Western Life. At its first meeting the task force elected Mary Snitkey as chairperson.

I must admit that in accepting the appointment I felt that a relatively easy task was before us. I suggested at our first meeting that we contact the Clearinghouse and find out what other cities in the country have done from a consortium standpoint and then copy or adapt from that. At the second meeting of the task force, we were surprised to learn that there was no insurance consortium of that nature anywhere in the United States. While this information was initially disappointing, in that it implied all the problems of breaking new ground, it quickly became a rather exciting challenge to be the first ones to structure such an effort.

The task force met on a regular basis throughout the summer and fall of 1980. We were assisted by input from several community organizations as well as lawyers and accountants of local companies. From time to time we would structure small meetings of CEO's to bounce off the ideas that we had generated up to that point. Invariably, these meetings sent us back to the drawing board.

CREATING THE CONSORTIUM

We examined the various ways that a group could work together, the accounting problems, the legal problems, the pros and cons. From all this we developed a proposal for the creation of the Twin Cities Community Initiatives Consortium. This proposal was presented to a meeting of the chief executive officers in December. The basis of the consortium was to be a "joint effort to gather together large and small Twin Cities life and health insurance companies in a unique effort to bring the resources of our industry to bear in developing solutions to agreed upon community problems."

The long range view of the consortium envisioned three areas: investments, contributions and general research and information. The structure of the consortium would include a board of directors, made up of the chief executive officer of each participating company.

It would also include an investment committee made up of an investment officer of each participating company, and it was proposed that we begin the consortium effort by focusing on the investment area. This was in recognition of the fact that this area of expertise was common to all life and health insurance companies. The consortium approach to community investment was also a natural extension of a concept of shared risk, so well understood by the industry. Thus, a program of targeted investments could be expected to become operational quickly, with a relatively high expectation of success, once the basic structure was in place.

It was also proposed that several community organizations be utilized to provide input relative to the needs of the community. We would conduct an annual meeting, at which time the outside sources would help us identify the needs of the community and where the consortium might direct its resources.

THE OBJECTIVES

The timetable that was laid out at the December meeting included (1) obtaining commitment of funds, (2) establishing a consortium board and investment committee and (3) conducting the annual meeting to assess community needs and establish objectives for 1981. Our first year objectives included involving a minimum of 12 Twin City-based life and health companies and establishing a pool for the year 1981 of $1,400,000. We felt that the program was an opportunity for all of us to work together to solve community problems, regardless of size. It would also demonstrate to the general public, as well as to our own employees, that we are concerned about our community and willing to pitch in and help solve some of its problems.

We attempted to develop a schedule for suggested contributions to the pool based on the asset size of the companies involved. A minimum contribution was set at $25,000. By mid-January, 1981, we had succeeded in obtaining letters of commitment from 11 of the 16 prospective companies and had commitments for $1,200,000.

Having accomplished that, we then structured our first annual meeting on March 3, 1981. With assistance from The Minneapolis Foundation and the Community Planning Organization, we focused on our priorities for 1981 as "investment in economically disadvantaged businesses, including but not lim-

ited to, minority businesses." This decision then triggered the investment committee to begin examining possible areas for investments. The committee organized itself under the chairmanship of Steve Wishart of Northwestern National Life of Minneapolis. The investment committee has before it 17 applications that are being examined as potential investments.

While there is a great deal of enthusiasm for the potential of this venture, I'm not in a position to indicate its degree of success. The general feeling is that it the consortium is able to make the investments that are within the perimeters laid out, and if an administrative procedure can be worked out to handle these investments, then the consortium concept will be considered successful. The pool of funds committed are for the year 1981. If we are to obtain a 1982 commitment from the companies involved, it will have to be after demonstration that the basic concept makes sense and that the funds can be put out in line with our objectives.

I may have more reason for wanting this concept to work than some of the other members of the consortium. As I stated earlier, it provides a small company like Early American Life an opportunity to become involved in a much larger project and also to demonstrate not only to the general public, but to our own employees, our interest in becoming involved in our own community. I hope that in 1982 I can report back to the readers of Response that the Twin Cities Community Initiatives Consortium has completed its first successful year of operation and is looking at new and bigger areas of involvement.●

MELCHER SCHOOL LUNCH RESOLUTION

● Mr. DURENBERGER. Mr. President, yesterday afternoon the Senate considered Senate Resolution 218 sponsored by our colleague from Montana, Senator MELCHER. At the time of the vote on Senate Resolution 218 I was chairing a meeting away from the Chamber on the subject of private sector delivery of public services. I was not reached by a page until the vote was announced. If I had been present for the vote my vote would have been cast in the affirmative.

Mr. President, I support the goal of the school lunch program providing one-third of the recommended daily allowance (RDA) of nutrients for children.

Lunches that contain one-third RDA have been the goal of the school program since the program's inception in 1946 and should continue to be the goal as long as we have a federally supported school lunch program. We cannot in good conscience try to serve less than one-third of the basic nutrients at one-third of the day's meals. This is especially important in the case of children from low-income families whose food budgets are hard to stretch over a month of feeding growing boys and girls.

This resolution arises out of the uproar caused by regulations issued in September to provide schools with more flexibility in meeting the goals of the lunch program. The motivating force of greater flexibility was laudable, but some of the specifics chosen were ill-advised. Fortunately, after the outcry from myself and other Senators, the Department recognized this and withdrew the regulations.

Mr. President, as I have often said, additional savings can and should be made in the Federal budget. But some goals simply cannot be ignored, and insuring that children have a filling and nutritious school lunch certainly falls in this category. This is not to say that local school districts should not have increased flexibility to meet oftentimes conflicting financial and nutritional realities. But the education of our children—and the nutrition needed to benefit from that education—are areas where we must continue to strive for excellence, not just adequacy.●

CRIME AND (NON) PUNISHMENT, U.S.A.

● Mr. McCLURE. Mr. President, at this moment, a desperate war is being waged in the cities, towns, and rural areas of the United States. By the end of this year, some 21,000 lives will be lost.

Street hoodlums, professional thugs, and other violent criminals are winning their war against law-abiding Americans. They are winning because too many permissive judges, apathetic parole officials, and misguided reformers have joined forces—not with law enforcement officers and honest citizens—but with the armies of criminals now controlling our streets.

The deadly seriousness of this problem is summed up well in the November 1981, issue of Reader's Digest which, I commend to the attention of my colleagues:

The article follows:

CRIME AND (NON) PUNISHMENT, U.S.A.

MOORESVILLE, IND.—An Indianapolis man who has a history of vicious attacks on women has been charged with the slayings of Mrs. Terry Chasteen and her three small children.

Only days before the murders, Stephen T. Judy, 22, had been released on bond following an arrest for armed robbery. At the time he was free on parole from the Illinois State Penitentiary. He has a long criminal record, including convictions in Indiana and Illinois for offenses similar to the abduction of Mrs. Chasteen and her children.

Police say Mrs. Chasteen's auto was stopped on an interstate highway near Indianapolis. Her bound, nude body and those of her children were later discovered in a creek near the highway.

Marion County prosecutors had opposed the reduction of Judy's bond to $7500 at a recent hearing, but Indiana law prevented them from introducing evidence of previous criminal convictions.

"It's nonsense that he was released," declared prosecutor Stephen Goldsmith. "This is sad testimony of how our criminal justice system has failed." [Some 16 months after this tragedy, the bond law was changed.]—Indianapolis Star.

MIAMI.—One man charged with the killing of off-duty policeman Sgt. Alfred Terrinoni had been set free on probation the previous day despite the plea of a police officer who urged that he be jailed.

Tommie Jerome Hicks, 18, a suspect in at least three similar armed robberies, is charged with murder in connection with the death of Terrinoni as he carried night deposits from a restaurant.

Metro Dade Officer Larry Gary had arrested Hicks three months earlier for petty theft. In Hicks's car police found three knives, a pellet gun, and credit cards bearing various names. Gray says he warned the prosecutors that Hicks was a suspect in several armed robberies of restaurants and was dangerous. "Terrinoni's dead because nobody listened," Gray believes.—Miami Herald.

CHICAGO.—For many years, on the corner of Rockwell Street and Potomac Avenue, there was a drive-in drug business.

It was no secret. No business that makes $20,000 a day could be a secret. But so brazen were the drug dealers that nothing, not even police raids, slowed them down. If arrested, they had the money—from the sales of heroin, cocaine, PCP and LSD—to post bail and return to the corner.

The police department's narcotics unit and the federal Drug Enforcement Administration filmed the operation and made buys. They spent almost $60,000 on the investigation and then arrested 23 people for selling drugs to undercover police.

That was over a year ago. Now the five leaders of the drive-in drug business have been to court. According to police, all five had previous histories of drug arrests. All five pleaded guilty to the drug-selling charges. All five were put on probation by Criminal Court Judge Robert Massey.

At Roberto Clemente High School, the students know the corner of Rockwell and Potomac well. After reading that nothing happened to the operators of the drive-in, students in two English classes wrote letters to the judge.

"Your Honor," began one student, "the pushers are destroying our community. They sell drugs to young kids. If they already had criminal records, why shouldn't they be kept in jail?"

A police investigator said simply, "You wonder why drugs are our No. 1 problem?"—Column by Anne Keegan in Chicago Tribune.

BALTIMORE.—There were photographs on the desk. "Anybody want to look?" asked Bill Swisher, State's Attorney for Baltimore.

They were baby pictures, only the baby was dead. In a courtroom across the hall, James McClain, the man convicted of killing the child, had just been released.

The baby belonged to McClain's girlfriend. She was out when a friend came to the high-rise apartment and showed McClain a picture of his girl with another man.

In his confession, McClain said, "I carried [the baby] to the garbage opening, [laid] him in [it] and just let him go." McClain was convicted of killing the child and sentenced to life behind bars.

Almost 18 months after that confession, the Court of Appeals, Maryland's highest court, ruled in another case that a defendant had to be taken before a court commissioner within 24 hours of arrest, or the state could not use any subsequent confession. McClain was not taken before a commissioner until he had given his confession—24 hours and 12 minutes after arrest.

The Court of Appeals decided to make its ruling retroactive.

So James McClain is a free man.—Column by Michael Olesker in Baltimore Sun.

ESSEX JUNCTION, VT.—Her small body, bound and gagged, was found hidden under an abandoned mattress. Melissa Walbridge, 12, had been tortured and stabbed to death. Authorities say the assailants took "calculated actions intended to cause as much pain as possible." A companion, also 12, was sexually assaulted and stabbed in the chest. Miraculously, that child survived.

Police arrested two local youths—ages 16 and 15—for aggravated sexual assault and murder.

The 16-year-old is expected to be tried as an adult this fall. At the time of the murder, he was free on a one year's suspended sentence for threatening a woman with a knife.

His 15-year-old partner, however, can be charged only with delinquency for his alleged role in the sexual asault and murder. He may be sentenced to a juvenile institution, but at age 18, he will be freed.

A Vermont law—which State Attorney General John Easton called a "license to kill"—prevented prosecuting juveniles under age 16 as adults no matter how serious the crime. It also mandated that juvenile criminals be freed with a clean record upon reaching age 18.

That's what happened in July to a young man who was 15 when he shot and killed his 63-year-old aunt and stole her car. The shooting took place less than three years ago.

He still is regarded as a danger to society by psychiatrists and prosecutors familiar with the case. But there was no legal way to hold him in custody after his 18th birthday. And he is free.

[Outrage over the Essex Junction case forced the Vermont legislature to change the law last summer so that juveniles 10 and older can be prosecuted as adults for violent crimes. But juvenile offenders already in the system will be released in accordance with the previous statute.]—Boston Globe.

SAN FRANCISCO.—The former court-appointed attorney for a California man who confessed repeatedly to a multiple murder has written the U.S. Supreme Court to protest a state Supreme Court decision that invalidated his client's confessions.

Asserted respected defense attorney James Leonard Crew, "It is difficult to understand how a system of laws conceived to protect innocent people can become twisted to give freedom to a person who deliberately kills three innocent human being, and then confesses repeatedly to the killings."

Crew's letter involved the case of Barry Floyd Braeseke, convicted of the murders of his mother, father and grandfather. The state Supreme Court threw out the confessions and reversed Braeseke's conviction. Earlier this year the U.S. Supreme Court refused to reinstate the conviction.

The ruling attracted widespread attention, in part because, following his conviction, he again confessed to the murders. Braeseke described the slayings on the CBS program "60 Minutes"—a confession which the high court has yet to consider. He contended that the drug "angel dust" made him commit the crimes. Braeseke is now scheduled to be retried. Michael Cardoza, prosecutor in the case, concedes he may have difficulty obtaining a second conviction if the courts forbid use of the confession.

The attorney's letter drew praise from Cardoza, who said, "In effect, Crew is saying to the court, 'As an attorney, I did what I was supposed to do. But your function is to do justice, not to buy spurious arguments'."
—Los Angeles Times.

WASHINGTON, D.C.—It is hard to comprehend that a man accused of shooting you is back on the streets.

Just ask one victim, an attorney who requests his name be withheld because he fears reprisal. "I am outraged and disgusted," he declares. His anger is directed at the criminal-justice system.

It was "the system" that permitted the attorney's caused assailant, 23-year-old Allen Graves, to make bond and disappear just before his scheduled trial. Graves was free on bond from another case the night the attorney was shot during a robbery. Less than a month before, Graves had been arrested for the kidnapping and robbery of one Washington woman and kidnapping and assault of another.

It was "the system" that had enabled Graves to be on the streets at the time the women were kidnapped, too. Before that attack, a jury had convicted Graves for armed robbery and assault with intent to kill. But that conviction was overturned on a technicality, and Graves was allowed to plead guilty to robbery only, and was freed on bond pending sentencing.

[He was apprehended and again permitted to plea bargain for conviction on lesser charges. Finally, he was sentenced to prison.]
—Washington Star

MIAMI.—Within hours of arrest and arrangement, suspected drug smugglers post huge bonds and return to South America, beyond the reach of U.S. law, according to complaints by the authorities trying to stop drug trafficking here.

Documenting the need to toughen bond standards, officials cite the case of Alfredo Guterrez, whose arrest they called the biggest cocaine bust in the nation's history.

Gutierrez was arrested in Miami when undercover agents offered him $9 million in cash for 854 pounds of coca base, which is refined into cocaine. He was charged with conspiracy to import cocaine. Bond, first set at $3 million, was reduced to $1 million. Within hours the money was delivered to the court. Needless to say, Gutierrez did not appear for trial.

Authorities insist there should be no bonds for suspected major drug smugglers, especially repeat offenders. But a bill to toughen bond standards for drug offenders has yet to be enacted by Congress.—AP.

NEW YORK.—Manhattan Supreme Court justice Arthur Blyn has sentenced a convicted killer to five years' supervised probation because a prison sentence would have no "constructive result." Blyn—in effect—ruled that the killer's life is more important than the victim's.

We don't know of any prison sentences that produce constructive results for convicts. The purpose of a sentence is to protect society and to punish people for violating the rules of civilization. And the taking of a human life, under any circumstances, demands a severe punishment.

Sure, there were special circumstances in this case. The killer, Richard Schreiner, claimed he blacked out from too much beer and marijuana and doesn't remember trying up, then stabbing and strangling his 22-year-old victim.

By treating homicide as a venial sin, the result of a "personality disorder," Blyn—and other judges—are encouraging the current epidemic of murder and violence that is claiming a record number of our citizens. Blyn's sentence is just one of countless examples of denied justice in our criminal courts.

Laws aren't enforced. Serious crimes are too frequently plea-bargained away. Crime pays. Criminals rule our streets. We have to fight back by locking up the criminals.—An editorial in New York Daily News.

[Less than six months after Schreiner was freed on probation, he was arrested for attempted murder in the stabbing of a 15-year-old-boy. Charges against Schreiner are pending.] ●

FAMILY

● Mr. DURENBERGER. Mr. President, the life of a Senator's day is filled with capping, cutting, and blocking Federal spending and either condemning or changing the role of Government in the lives of the people of this Nation. One of the answers to our problems lies in an institution with which we are all too familiar as Senators and which many of us elected to nurture long before we were elected to change the institution of Government.

The family must always be the fundamental institution of our society. The family gives life. The family teaches love. The family carries our language, our customs, and our values into the future to our next generation. The family is the basic provider of human needs and would provide them even if all the other institutions of our society—the business, the voluntary association, and the Government did not exist. Each of these other institutions have their beginning in the family and what you and I do to preserve the family we do for all of our society.

Mr. President, the November 1981 issue of Columbia magazine carries a letter from Valerie Vance Dillon, a resident of Indianapolis, Ind., and the mother of four children and merits reading and understanding by all of us. I ask, therefore, that the letter be printed in full in the RECORD.

The letter follows:

FAMILY

(By Valerie Vance Dillon)

ARE CHILDREN WORTH IT?

"If you had it to do over again, would you still have kids?"

The question came several months ago from a young single woman, and her face and tone of voice told me it called for a thoughtful, not sugar-coated, reply.

I answered slowly, admitting the struggle and sacrifice, the pain and ambiguity of raising children in today's society. But especially, I tried to express the love and joy my husband and I have experienced being parents. Yes, of course we'd do it again.

But since then, the question itself has continued to rattle around in my brain. Why did this young woman have to ask it at all? And why does a generation of young people probe, perhaps doubt, the wisdom and value of bringing new life into our world? Most of us in our 40s and 50s never did.

But it's a different world now, a changed value system with a range of choices and options unknown 20 or 30 years ago.

Our children look around they see a society that posts "No Children Allowed" signs in front of their rental units, which manufactures bumperstickers proclaiming that "motherhood is unprofessional," a culture that refers to women holding outside jobs as "working women," and tells those raising children at home they must be unfulfilled.

The media focus on the slaughter of baby seals. But who in the industry is dramatizing the death of millions of unborn children through abortion?

Our society pays a million dollars to a ballplayer, but can't come up with money to educate handicapped children.

Our children live in this world and learn from it. But they also live in our homes, and that gives us a chance—many chances through the years—to let them know that yes, having kids is a worthwhile, enriching and really great way to live out one's life.

How, in the face of our culture, can we get this message across? Just for starters, I would suggest three ways:

LISTEN

Listening is a powerful way to say "I love you." Do our children have to be in trouble or have some momentous thing to say before we give them an ear?

Listening to a fourth-grade shaggy-dog story, an endless "he said, she said" dialogue or a list of gripes may not be very exciting. But it does say to the other person: "I'm interested, I care about you." If I listen intently to my child's words, be they funny, sad, angry or just dull, . . . if I ask a genuine question, share a concern, I say in a most profound way: "Your life, your interests, your worries, your joys matter to me. They matter because you do."

Listening to the mundane makes it possible for us sometime later to hear the significant

things our children need to say to us. It builds communication between us and lets our children know we are ready to listen when big issues arise.

EXPRESS APPRECIATION

We assume our children know they are important to us. After all, we had them. We feed and clothe them and go to ball games for them. But love, to enrich and enhance the other person, must be expressed in word and in non-verbal language as well as in the thousand things we do in a lifetime for someone we love.

It's possible to say I love you in so many ways: in a hug, an arm around the shoulder, in praise when a child brings us a flower—or a bug, when a teen-ager cleans his room, when a student struggles to bring up a bad grade. "Thank you," "I appreciated the phone call," "You did better this time," "That really was thoughtful of you," "You sure made me feel good"—those are the words which tell our children they are appreciated.

SPEND TIME TOGETHER

I once heard a psychiatrist speak to a group of young parents. Afterward, a man asked him: "What's the one most important thing we parents can do for our children?" The doctor's response was immediate: "Enjoy them!"

A study of 30,000 people in 11 countries revealed that the three nations with the highest divorce rates were Germany, Hungary and the United States. They also were the three which showed the least time spent together in family recreation. A few years ago, middle-class fathers in this country were asked how much time they spend with their infant children. They estimated 15 to 20 minutes a day. But the actual average time, as recorded, was 37 seconds. Apparently, this continues even as the child grows. A group of 300 junior-high-school boys were asked to keep track of time their fathers spent with them over a two-week period. The results: 7½ minutes was the average amount of time per week that fathers and sons were alone. Most boys reported they saw their fathers only at dinner time and some never saw them for days at a time!

We give time to what we value. Our time is put where our priorities are.

Years ago, my husband and I were deeply involved in volunteer work for the Cana Conference of Chicago. The marriage education programs we helped to organize took us out of the home for many evenings. One night we were quite late for a meeting and I hurriedly listened to our two oldest children's prayers. When they finished, our six-year-old asked: "Are you going to another meeting, Mommy?" "That's right," I replied, "and we're late!" "All those meetings you go to, and people talk, talk, talk. But . . . we've got hearts and we've got souls."

It's been years since Karen said those simple words. But their meaning never has stopped. When other values seem to grow more important than our children and each other—we remind ourselves what it is that really matters.●

EL SALVADOR

● Mr. DURENBERGER. Mr. President, it has been a year since we learned of the murders of the four American missionaries in El Salvador. Before that time, most Americans were only vaguely and occasionally aware of the violence visited upon what too many viewed as an insignificant little nation in Central America. Sporadic news reports and headlines told of the growing violence. But Americans only shook their heads in wonder at the deteriorating situation in a country that few could have found on the map. We all reacted with horror, however, when we learned that the bodies of three Maryknoll nuns and a lay worker were found in the early morning by the side of a road.

Since that time, six suspects have been detained and their alleged involvement in the killings is being fully explored. When President Duarte was in Washington he reassured President Reagan that the investigation into these murders will continue with the support of the highest levels of the Salvadoran Government. The American Embassy in San Salvador is devoting much time to this investigation. The FBI is cooperating with Salvadoran officials by offering technical assistance. I met with President Duarte and I am firmly convinced that he will not allow the investigation to cease.

While there is considerable concern about violence and terrorism in El Salvador, there are also political considerations that must be examined. In the past year, events have changed dramatically. The junta was reorganized. There is undeniable evidence of Cuban and Soviet links with the guerrillas. Pressures mounted for accepting a political settlement and extending a conciliatory gesture to the opposition.

Two American administrations have refused to be deterred from U.S. commitment to the goal of free and open elections in El Salvador. When President Duarte was in Washington recently, I met with him to discuss United States-Salvadoran relations. I came away from that meeting convinced that Napoleon Duarte is a compassionate, fair, and dedicated man. His personal experiences with torture and exile under the Romero dictatorship have deepened his resolve to restore democracy to his country. He will not allow pressures from the far right and far left to undermine his efforts.

Elections for a constituent assembly to write a new constitution are scheduled for March 1982. Presidential and legislative elections will follow in 1983. When Salvadorans have the opportunity to elect a constituent assembly, and to shape the direction their country is taking, there will be a substantial step toward addressing the country's problems and therefore ending the violence.

The Washington Post expressed its support last week for the election process in El Salvador. The Post rightly notes that the junta has a valuable option that the opposition lacks: the ability to hold elections. The Post concurs that the real issue is to insure free and fair elections, not to prejudge them or prophecy their failure.

Mr. President, I take heart from this observation by the Washington Post. For many months I have urged my fellow citizens in Minnesota and my colleagues in the Senate to let the Duarte government keep open the option of resolving El Salvador's problems at the ballot box. I have urged those who would dismiss this possibility to refrain from prejudging, so that the doubt that free and open elections can be held does not become a self-fulfilling prophecy. I am pleased that President Duarte and President Reagan have reassured the people of our two countries that both leaders are committed to holding the March elections. As the Post stated:

The junta's promise and partial delivery of reforms—the reforms that stole the guerrillas' thunder and led them to declare war on the junta—seem to have won it a broad measure of hesitant tolerance if not yet full-fledge support from the masses of people in the center. Its enemies are the extremists of left and, of course, right. The election process it intends to open in March can in time confer a true mandate. The best way to enter negotiations is to forge ahead with that process.

Mr. President, I ask that the Washington Post editorial be printed in the RECORD. I hope that those who share my concern about restoring democracy to El Salvador will agree that the best options is to proceed in a democratic way, with free and open elections.

The editorial follows:

TALKS IN EL SALVADOR?

There is, conceivably, good news from El Salvador. It's reported that the guerrillas are ready to negotiate an end to the war. The bid comes from their No. 2, a woman who does not tell her name. She offered to talk with the very junta the guerrillas used to disdain as a negotiating partner when they demanded to deal directly with the United States. Warning that no one should think the offer was being made "because we are weak," she stated that if talks don't come "the war will deepen."

Do the guerrillas see the Reagan policy taking hold, and do they hope to make the best political deal available now, or at least to distract the junta and its foreign friends? Can they deepen the war? It would be foolish to condition a response to the guerrillas' proposal, if it's real, on a single reading of their motives. Nothing known of the guerrilla command, which is entirely unbeholden to its civilian political front, indicates it has the slightest interest in a pluralistic democratic solution. Its program is revolutionary dictatorship. But that is merely a reason to proceed carefully. The guerrillas no doubt have their own suspicions.

Until now, nothing stirred on the negotiating front. The guerrilla proposal to negotiate over the junta's head was a non-starter. President Duarte was ready to talk with the civilian opposition alone, but it refused. Assorted international interventions foundered. Is there now a real chance for direct talks? Any party that neglects even the remotest chance to end the slaughter takes on a heavy responsibility.

The guerrillas do not indicate they will improve the atmosphere by a cease-fire, so the junta will have to fight on. But unlike the guerrillas, the junta has a second front: elections. It is necessary to ask, as we have asked, whether these will be free and fair, but the answer is not to damn them in advance. It is, as Venezuela suggests, to improve them by guarantees, observers and anything else at hand.

The guerrilla command, thanks in part to Nicaragua and Cuba, is a formidable military force. But no serious observer pretends it enjoys any substantial popular support or political legitimacy. The junta's promise and partial delivery of reforms—the reforms that stole the guerrillas' thunder and led them to declare war on the junta—seem to have won it a broad measure of hesitant tolerance if not yet full-fledged support from the masses of people in the center. Its enemies are the extremists of left and, of course, right. The election process it intends to open in March can in time confer a true mandate. The best way to enter negotiations is to forge ahead with that process.●

EXPLANATION OF CONSENSUS SUBSTITUTE AMENDMENT FOR S. 1080, THE "REGULATORY REFORM ACT"

● Mr. LAXALT. Mr. President, on November 30, I submitted for printing an amendment to S. 1080, the "Regulatory Reform Act," to be proposed by the Senator from Vermont (Mr. LEAHY), the Senator from Delaware (Mr. ROTH), the Senator from Missouri (Mr. EAGLETON), and myself. At that time, I mentioned that we would be submitting for publication in the RECORD an explanation of our proposed amendment. This explanation, with the reports of the Committee on the Judiciary and the Committee on Governmental Affairs, is intended to be the basic legislative history on S. 1080.

Accordingly, Mr. President, I ask that this "Explanation of Consensus Substitute for S. 1080" be printed in the RECORD.

The material follows:

EXPLANATION OF CONSENSUS SUBSTITUTE FOR S. 1080

INTRODUCTION

S. 1080, the "Regulatory Reform Act," was introduced on April 30 of this year and referred to the Committtees on Judiciary and on Governmental Affairs. Both Committees held hearings on this legislation and devoted substantial time and energy to refining and improving it. On July 17, the Judiciary Committee reported favorably with an amendment in the nature of a substitute to S. 1080 as introduced. On September 18, the Governmental Affairs Committee also reported favorably an amendment in the nature of a substitute to the Judiciary Committee amendment.

Though there were some significant differences in the bill as reported by each Committee, the vast majority of differences were either technical in nature or were different approaches to reach substantially similar goals. In order to expedite the legislative process and to refine the issues for debate on the Senate floor, the Committees have devoted the last months to working on a consensus version of S. 1080 designed to resolve as many differences between the bill as reported by each Committee as possible, leaving only the most significant issues open for further resolution. In large measure, that activity has been successful.

This explanation is intended to succinctly describe the consensus amendment which Senators Laxalt, Leahy, Roth, and Eagleton will offer as a substitute for the versions of S. 1080 adopted by the Judiciary and Governmental Affairs Committees. The reports filed by each of the Committees remain the fundamental source for the interpretation and application of S. 1080. Where the consensus version adopted the approach of one Committee or the other that fact will be related, and, in most instances, no further explanation will be offered here.

Where totally new statutory language was used to resolve an issue, a more detailed explanation will be set out to give clearer guidance as to the intent of the language. For ease of understanding, this explanation is organized by topic, starting at the beginning of the bill, rather than by addressing specific subsections or paragraphs.

UNRESOLVED MATTERS CONTAINED IN THE CONSENSUS

As noted, this consensus amendment does not settle some matters that await resolution during full Senate consideration. To begin with, the substitute amendment includes three provisions which were included in the Judiciary Committee amendment but were removed by the Governmental Affairs Committee during its markup. Although no agreement was reached on these provisions, the sponsors of the consensus substitute concluded, with one exception, that the fairest and most efficient way to present these issues for debate and vote by the full Senate would be to retain the unresolved provisions in the consensus vehicle. (It is expected that amendments will be offered on the floor to reflect the Governmental Affairs Committee's disposition of these matters.) The fact that one Committee's provisions are contained in this amendment is not in any way intended to give them preferred standing or to weight the Senate debate in their favor.

The first of these unresolved provisions is contained in section 4 of this legislation, setting out a new section 623(c) in title 5, United States Code. Under this provision as contained in this amendment, and as reported by the Judiciary Committee, the determination of an agency concerning whether a rule will have a $100 million impact on the economy, and is therefore a "major" rule subject to regulatory analysis, is subject to a limited form of judicial review. The Governmental Affairs Committee removed this provision, making the determination of an agency of whether a rule is "major" not subject to judicial review in any manner.

The second unresolved provision in this consensus amendment involves a modification to section 706 of title 5, United States Code, dealing with the scope of judicial review of agency actions. Under the provisions of this amentment, i) there must be substantial support in the record for agency fact finding in rulemaking; ii) a court must require that agency action is within the scope of agency jurisidiction on the basis of its enabling statute; and iii) courts may not accord any presumption in favor of or against agency action. The Governmental Affairs Committee deleted provisions (i) and (iii).

Third, both Committees felt that it was important that the President have a role in overseeing compliance with the requirements for regulatory analysis for major rules. The fundamental policies sought to be achieved by both Committees in this area are consistent and are explained in detail in the Reports of the Committees.

Accordingly, the language used here is that contained in the Judiciary Committee version. The Governmental Affairs Committee reported a version of this provision which is different in several respects from the language used here, and those differences have not been resolved. These include: a time limitation of 120 days for Presidential review of regulatory analyses from independent agencies, a provision limiting executive oversight with respect to the regulatory analysis of independent agencies to "non-binding advisory recommendations," and a provision requiring any delegation of this oversight authority be accompanied by an assurance that the delegate will respond to Congressional inquiries.

These issues were left open to ensure that there will be an adequate opportunity to explain the effect of these differences and to consider these matters on the Senate floor.

Finally, there continues to be a dispute about language which the Judiciary version would add to section 702 of title 5, United States Code. The new subsections (b) and (c) which were included by the Judiciary Committee would give the United States Court of Appeals exclusive jurisdiction of judicial review of rulemaking and to provide for venue of such review in the District of Columbia Circuit and in the circuit in which the person challenging the review resides or has his principal place of business. This venue provision would alter several existing provisions establishing exclusive venue in one circuit.

The Governmental Affairs Committee deleted these two provisions—a disposition which, unlike the posture of the previous issues in disagreement, would be more consistent with the version of S. 1080 originally introduced. For this and other reasons, the consensus substitute does not contain the Judiciary Committee language for section 702.

Beyond these issues, the sponsors of the substitute amendment recognize that the consensus language it contains may not be fully satisfactory to individual Senators whose concerns were reflected in amendments adopted in Committee, but are not reflected in this consensus. Despite this, the sponsors of this substitute believe that narrowing differences in this way not only addresses important concerns, but also lends a significant degree of order and expedition to subsequent Senate consideration.

EXPLANATION OF CONSENSUS

Structure of 5 U.S.C., section 553

The bill as reported from the Governmental Affairs Committee followed much more closely the present structure of section 553 of title 5, United States Code, governing informal rulemaking, than did the bill as reported from the Judiciary Committee. Adopting the view that the present structure of the statute should be changed only where necessary, the consensus substitute employs the structure for section 553 contained in the Governmental Affairs Committee's version, thereby remaining more faithful to the current structure of section 553.

Definition of "rule"

The Judiciary Committee version of S. 1080 set out a new definition for an "emergency rule." The Governmental Affairs Committee version did not contain this new concept, and the consensus adopts the Governmental Affairs Committee approach on this point. Both Committees provided an exemption from the definition of "rule" for statements involving the property, contracts, or general policies of the Tennessee Valley Authority. This provision is maintained in section 2 of the consensus substitute.

Rulemaking

Section 3 of the consensus substitute sets out the revisions to section 553 of title 5, United States Code, governing informal rulemaking. The consensus substitute resolves all the differences between the Committees in their approaches to revising section 553. Once again for ease of understanding, the resolution of these differences will now be discussed by topic.

Exemptions from rulemaking procedures

Four exemptions from the normal rulemaking procedures are contained in revised section 553(a). The first exempts a rulemaking to the extent "a matter pertaining to a military or foreign affairs function of the United States" is involved. The consensus adopts the Judiciary Committee version, which maintains current law. Governmental Affairs had narrowed this exemption. The second exemption, section 533(a)(2), exempts rulemaking to the extent it involves "a matter relating to the management and personnel practices of an agency." This version is a middle ground between the provisions of each Committee. The Judiciary Committee had limited the exemption to internal personnel rules and practices of an agency, not exempting general "management" matters. The original Governmental Affairs Committee version also contained an exemption for "grants, loans, or benefits." Thus, the consensus here accepts the Judiciary Committee view that a generalized exemption for grants, loans, and benefits is no longer needed nor wise, and takes the slightly broader view of the Governmental Affairs Committee that rules relating to agency management to personnel, such as directives to enforcement personnel or guidance in the

allocation of agency resources, normally should not be subject to the procedures for rulemaking. However, the consensus exempts agency management and personnel rules with the understanding that, to the extent such matters directly create or change the rights or obligations of affected persons, this exemption would not apply.

The last two exemptions, section 553(a)(3) and (4), were included in the bill as reported from both Committees and are maintained here. In addition to these four exemptions, the Judiciary Committee included an exemption for insignificant rules and emergency rules. The concerns of that Committee with respect to those exemptions have been addressed in revised section 553(b)(2) and (3) and will be explained when discussing those provisions.

Notice of proposed rulemaking

Revised section 553(b)(1) sets out the requirements for the notice which must be issued at the beginning of a rule making. Regarding the matters contained in section 553(b)(1)(A), (B), and (C), the versions of each Committee were very close and, generally speaking, directed towards requiring the agency to disclose and explain the same kind of information.

The language of section 553(b)(1)(D) reflects similarly close approaches taken by each Committee. The Committees wish to emphasize that requiring the "proposed provisions" of a rule to be included in the notice is intended to provide interested members of the public with as precise an idea of what the agency is proposing as is possible. Obviously, one main purpose of this provision is to stimulate the most helpful comment from members of the public. This provision is not intended to preclude an agency from changing its thinking with respect to a particular rule making after receiving public comment. Such a result would be contrary to the whole purpose of notice and comment rulemaking which anticipates change and improvement in a rule as the process progresses.

Revised section 553(b)(1)(E) reflects generally similar provisions in the bill as reported by both Committees. The subsection makes specific reference to the need for state and local government representatives to be involved in suggesting alternative methods by which rulemaking objectives could be achieved in a more effective or less burdensome manner. This reference is intended to carry forward the intent of a Governmental Affairs Committee provisions that state and local governments be heard in the rulemaking proceeding with respect to the cost implications which regulatory proposals will have for them. Similarly, the Judiciary Committee stressed in its Report the importance of involving state and local governments in the rule formulation process. Further, the sponsors emphasize that the failure of subsection 553(b)(1)(E) to make specific reference to "the use of performance instead of design standards," as in the Governmental Affairs Committee version, in no way detracts from the belief of both Committees that performance standards a very important source of potentially more effective or less burdensome alternatives, and that their merits should be fully considered by agencies in appropriate cases.

Revised section 553(b)(1)(F) incorporates part of a provision contained in the Judiciary Committee version. The original Judiciary Committee version also required a description of information "that pertains directly to the rule making and that the agency has considered in connection with the rulemaking." Since such information, which the agency considered but upon which it is not relying, must be placed in the public file for the rulemaking under revised section 553(f)(1)(D), it must be disclosed in any event and its description in the notice would contribute little of value. For that reason, it was deleted from the consensus substitute.

Revised section 553(b)(1)(G) reflects generally similar provisions in the bill as reported by both Committees.

The Judiciary Committee version also required that an explanation of whether a proposed rule is a major rule and a summary of any preliminary regulatory analysis be put in the notice of proposed rulemaking. This requirement was set out in section 553. In this consensus substitute, the Committees adopted the approach used in the Governmental Affairs Committee version, which sets out the requirement that this information be put in the notice in the section providing for the regulatory analysis of major rules, section 622 of title 5, United States Code. This was done to ensure that the judicial review of regulatory analysis be governed by new section 623 of title 5, United States Code, and that the recitation of such requirements in section 553 not broaden that contemplated by section 623.

Good cause delay in rulemaking

Revised section 553(b)(2) allows an agency to only partially complete the rulemaking procedures before a rule becomes effective, or allows it to delay proceedings entirely until after a rule becomes effective, in certain circumstances. The Governmental Affairs Committee allowed an agency to delay compliance with the normal rulemaking procedures of the Administrative Procedure Act where the agency for good cause finds that rulemaking procedures are "impracticable or contrary to the public interest." The Judiciary Committee permitted similar delays under a more limited definition of "emergency rules." The version in this consensus substitute is a middle position between the Committees. The consensus substitute broadens the application of this provision from strictly "emergencies" to situations where completing rulemaking before a rule is made effective is "impracticable or contrary to an important public interest." Further, the agency must comply with the public notice-and-comment procedures "to the maximum extent feasible prior to the promulgation of the final rule" and must fully comply with those procedures "as soon as reasonably practicable thereafter." Revised section 553(b)(2) will permit the agency to issue a final rule and provide full compliance with rulemaking procedures as soon as reasonably practicable thereafter. The consensus assumes, as does the Governmental Affairs Committee in its report on S. 1080, that in all but the most unusual of cases an agency should be able to comply fully with the rulemaking procedures of subsections (b), (c) and (f) within a 180 day period. Further, while the consensus does not follow the Governmental Affairs Committee's practice of requiring in the terms of the statute that the notice required by subsection (b)(1) be published within sixty days after the effective date of a rule covered by this subsection, it is the intent of the sponsors that such a time frame would generally constitute compliance "as soon as practicable." Thus, the consensus substitute provisions in this regard assume, as did both Committees, that compliance with rulemaking requirements is being dispensed with in these cases because it is not practicable or contrary to important public interests, and *not* because it is otherwise unnecessary or undesirable. Therefore, the sponsors expect agencies to make good faith efforts to comply as fully as possible both before and after promulgation of a rule covered by this section.

Exemption for insignificant rules

Revised section 553(b)(3) allows public notice-and-comment procedures to be dispensed with where the agency for good cause finds that such procedures are "unnecessary due to the insignificant impact of the rule." The consensus substitute here is similar to closely related provisions in the bill as reported by each Committee. Both Committees intend to carry forward the current law in this area.

Adequate notice provision

Revised section 553(b)(4) is essentially a provision from the Judiciary Committee version. The Governmental Affairs Committee did not include a similar provision, explaining in its Report its belief that existing case-law was adequate to achieve the purposes sought to be achieved through the Judiciary language. While the Committees therefore disagreed on the need for a statutory statement of this law, it is clear from a reading of both Committee Reports—which cite many of the same judicial opinions—that the Committees are of the same basic view as to when a change in the rulemaking is so drastic as to require subsequent notice and an opportunity for additional comment for a reasonable time.

The consensus language adopts an improved and clarified version of the Judiciary Committee language. The respective reports of the two Committees adequately explain the intent of the language. However, the sponsors wish to emphasize that the term "or of the substance of the rule" does not mean that the notice must inform the public of the ultimate resolution of the substantive issues in the rulemaking. Rather, this language is intended to cover those situations where the substance of the rule under consideration by the agency has so drastically departed from the proposal that failure to publish an updated notice would unfairly impinge in the public's right to comment.

Public comment in rulemaking

Revised section 553(c) in the main governs public comment in rulemaking both for major and non-major rules. The consensus language reconciles important differences between the Judiciary Committee and the Governmental Affairs Committee approaches to cross-examination in rulemaking, and includes other provisions about which the Committees were in relative agreement. The Governmental Affairs Committee more extensively elaborated on alternate procedures for public comment in their provisions governing major rules, while the Judiciary Committee set out its provisions for public comment in rulemaking entirely in section 553. The more centralized approach of the Judiciary Committee has been adopted here.

Both Committees agreed that several important changes were necessary to ensure that public participation in rulemaking proceedings would be more meaningful. Revised section 553(c)(1) is therefore essentially the same provision as that used in each Committee's version. Similarly revised section 553(c)(2), though superficially different from the related provisions proposed by each Committee, generally articulates requirements and is based on concerns shared by both Committees. This provision is intended to encourage agencies to use a range of procedures to broaden, and make more effective, public comment in rulemaking. The list of different procedures set out is suggestive and is not intended to be exclusive or constrain an agency in adopting procedures for rulemaking. However, this consensus provision does adopt the view of the Governmental Affairs Committee that the choice of procedures under revised section 553(c)(2) should not be subject to judicial review.

The Committees were in relatively significant disagreement over the role of direct and cross-examination in exploring factual questions in a rulemaking. The Judiciary Committee required that an opportunity for an oral presentation, including cross-examination where other procedures are inadequate for the resolution of material issues of fact, be provided in major rulemakings and

in other rulemakings where the agency determined such an opportunity was "appropriate for the resolution of significant controversies." The Governmental Affairs Committee concluded that such opportunities for oral presentations and cross-examination should be required for only major rulemakings; for all other rulemakings the agency would be free, in its own discretion, to use oral presentations or cross-examination under its authority to use "such additional procedures." The Committees also disagreed over the proper standard for judicial review of a claim that an agency erroneously failed to use a particular procedure.

Revised section 553(c)(3) follows the approach of both Committees in requiring that interested members of the public be given an opportunity to make oral comment in rulemakings for major rules. It furthers provides that the opportunity for oral comment on major rules shall include an opportunity for direct and cross-examination when other procedures are determined to be inadequate for the resolution of significant issues of fact upon which the rule is based. The provision partially follows the Governmental Affairs Committee's approach of listing examples of "other procedures" which should be considered in determining whether cross-examination is necessary; it carries forward specific enumeration of two potential alternatives to cross-examination: the convening of public meetings, conferences or panel discussions and the presentation of agency staff arguments for written comment or rebuttal.

Among those subject to direct and cross-examination are "the principal agency employees or other persons who prepared for the agency data on which the agency substantially relied in formulating the rule." Agency employees or consultants who are responsible for the development of crucial factual data which underlies the rule should be made available for direct or cross-examination when necessary for the adequate ventilation of all factual issues. This provision is directed toward those project managers, research directors, and other middle level officials who have direct managerial responsibility for the development of factual and methodological material. This provision is not intended to permit cross-examination of senior policy making officials or of lower level technicians, researchers or engineers. In addition, any persons who present documents, testimony or other information at public hearings would also be subject to cross-examination when necessary.

Revised section 553(c)(5), establishing a narrow standard for judicial review of the agency's choice of procedures in rulemakings for a major rule, was taken from S. 1080 as reported by the Judiciary Committee.

Revised section 553(c)(4) is language taken from the Governmental Affairs Committee version of S. 1080, though a similar provision was included in the Judiciary Committee version.

Statement of basis and purpose

Revised section 553(c)(6) sets out the statement of basis and purpose that an agency must publish with a final rule. Here again, the approach taken by each Committee was similar. Clauses (A), (B), and (C) all reflect a succinct compilation of provisions adopted by both the Judiciary and Governmental Affairs Committees. Several provisions from the bill as reported by the Judiciary Committee, however, were deleted. The Judiciary Committee's requirement that the agency describe in the statement of basis and purpose the data upon which it was relying was felt not to be needed in light of the requirement in the consensus substitute that the agency explain in the statement of basis and purpose "how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file," and in light of the fact that all this data must be put in the rulemaking file in any event.

Finally, the Judiciary Committee provisions for the statement of basis and purpose required that a summary of any final regulatory analysis be included in the statement of basis and purpose. The consensus substitute requires that such a summary be placed in the statement of basis and purpose of the revised section 622(d), but this requirement is not set out here in the provisions of section 553 governing the statement of basis and purpose to avoid expanding judicial review of regulatory analysis beyond that provided for in revised section 623.

Intervenor funding

Revised section 553(c)(8), a provision from the Judiciary Committee version, provides that section 553 does not provide authority for an agency to establish an intervenor funding program. The sponsors agreed that the provision was necessary to eliminate any unintended implication that intervenor funding could be an "other procedure" used to collect relevant information of elicit full and representative public comment under subsection (c)(2).

Publication of final rules

Revised section 553(d)(1) sets out the requirement included in the bill as reported by both Committees that an agency publish a final rule in the Federal Register thirty days before the rule's effective date. The Governmental Affairs Committee version allowed an agency, in addition, to make a rule effective in less than thirty days before such publication where the agency concluded there was "good cause" for doing so. This exception from the Governmental Affairs Committee version was narrowed along the lines of the similar "good cause" section set out in revised section 553(b)(2). Accordingly, under this provision of the consensus substitute an agency may make a rule effective in less than thirty days after publication in the Federal Register where for good cause it finds that "such a delay in the effective date would be contrary to an important public interest" and explains that finding in the final rule.

Public comment on centrally relevant information

Both Committees strove to codify case law prohibiting an agency from substantially relying on information on which there had not been an adequate opportunity to comment. Revised section 553(d)(2) is a new provision developed for the consensus substitute although there are closely related sections in the bill as reported by both the Judiciary Committee and the Governmental Affairs Committee. This provision sets out the general rule that an agency may not "substantially rely on any factual or methodological material that was not placed in the rulemaking file in time to afford an adequate opportunity for public comment thereon during the period for public participation in the rulemaking." The remainder of this paragraph goes on to list four exceptions to the general rule.

Clause (A) deals with factual or methodological information developed by or for the agency. If the agency plans to substantially rely on such information, it must be placed in the rulemaking file promptly upon its completion. The word "completion" was used to ensure that information being developed by persons outside the agency, but on behalf of the agency, would not be kept out of the rulemaking file, even though the agency knew it was completed, merely because it had not been "received" by the agency. The intention of the sponsors is that information on which the agency is going to substantially rely in the rulemaking should be put before the public at the earliest date possible.

Furthermore, clause (A) provides that if this material developed by or for the agency is of central relevance to the rulemaking, interested persons must have an adequate opportunity to comment on it. Such comment does not necessarily have to occur during the period for public participation in the rulemaking, but if this material is completed after the close of the period for public participation, the agency must, regardless of that fact, provide an adequate opportunity for such comment.

The sponsors felt that this requirement was reasonable in light of the fact that the timing of the rulemaking process and the public comment period, plus the completion of such material, is generally within the control of an agency. Thus, if an agency has some study which will be of central relevance to the rulemaking underway, the Committees generally would expect that, in the absence of some compelling reason to proceed otherwise, the period for public participation in that rulemaking would be scheduled so that the study was available, in the rulemaking file, and subject to full and meaningful comment.

Clause (B) deals with factual or methodological material submitted by persons outside the agency. Once again, if the agency wishes to substantially rely on such material in the rulemaking, it must place this material in the rulemaking file promptly upon its receipt by the agency. If the material is of central relevance to the rulemaking, furthermore, the agency must provide not less than an additional fifteen days for interested persons to comment on the material. With this provision, the sponsors are trying to strike a balance between the need for adequate public comment on centrally relevant material and the need to prevent outside parties from using the submission of such material for the purposes of delaying rulemaking. For that reason, this provision contemplates that an agency need not provide more than one additional comment period in the rulemaking. Neither Committee wishes to encourage endless cycles of public comment for no purpose. At some reasonable point, the rulemaking process must be concluded and the final rule promulgated.

Clause (C) allows an agency to substantially rely on material of which it may be properly take official notice without including that material in the rulemaking file. This provision was taken from S. 1080 as reported by the Governmental Affairs Committee.

Clause (D) governs material which is exempt from the mandatory disclosure requirements of the Freedom of Information Act. How such material is to be handled in rulemaking, and when and how an agency may substantially rely on such material, is governed by revised section 553(f)(2). Clause (D) merely provides that an agency may substantially rely on such material that has not been placed in the rulemaking file only according to the provisions of revised section 553(f)(2).

Petitions for interpretations or variances

Revised section 553(e) is essentially taken from S. 1080 as reported by the Judiciary Committee, with two modifications. The Judiciary Committee version originally provided for a right to petition for "advice or an interpretation regarding the application of a rule." This consensus provision deletes the reference to "advice" and inserts the word "meaning" in place of the word "application." Both of these changes are intended to confirm the Judiciary Committee's intent that these provisions be used to allow parties to request an agency's interpretation of the meaning of an ambiguous rule, but not to unduly burden agencies by giving them some general advisory function. In addition, this provision is not intended to force agencies to prematurely apply the law

to specific or hypothetical factual situations. Furthermore, the Committees wish to emphasize that this provision is not in any way intended to circumscribe the requirements of the Freedom of Information Act, 5 U.S.C. section 552(a)(2), with respect to the public availability of agency interpretations.

Secondly, this consensus version of section 553(e) qualifies the right to petition for a variance or exemption with the additional language "where the agency may grant such variance or exemption." As discussed in the Judiciary Committee Report, this qualification was intended and assumed by the Judiciary Committee. This addition, accordingly, makes the Judiciary Committee's understanding explicit.

Rulemaking file

Revised section 553(f)(1) governs what must be in the rulemaking file. Both in language and design the related provisions of the bill as reported by the Governmental Affairs and the Judiciary Committees were very close. The consensus substitute has adopted two of the Judiciary Committees provisions which expand the rule making file. First, under clause (B), copies of *all* written comments received on the proposed rule must be included in the record, regardless of who submits those comments. Secondly, under clause (D), factual and methodological material pertaining directly to the rulemaking and that the agency considered, but did not rely on, in connection with the rulemaking must be included in the file. Further, the consensus adopts the Judiciary Committee provision that the file is to be "the rulemaking record for purposes of judicial review" on the understanding that this language does not remove the inherent authority of the courts to inquire into materials beyond that contained in the file when necessary to fully address claims made by parties alleging the inadequacy of illegality of agency action.

Confidential material in rulemaking

Revised section 553(f)(2) in the consensus version is generally the provision contained in the Judiciary Committee version of S. 1080. However, the provisions of both Committees were very similar concerning how information exempt from mandatory disclosure under the Freedom of Information Act should be treated in rulemaking.

An agency may substantially rely on undisclosed confidential material if it makes the substance of such material available in such a way as to afford meaningful public comment on the aspects of that material on which the agency is substantially relying in the rulemaking. Such partial disclosure is at the same time to protect the confidential aspects of the material to the maximum extent possible. If the agency cannot do this, that is, if it cannot partially disclose the substance of the material so as to ensure adequate public comment and to protect the confidentiality of the material, it may not substantially rely on that undisclosed confidential material in formulating a rule.

Effect of rules on State and local contracts and grants

Revised section 553(g) is a modification of a provision contained in the Governmental Affairs Committee version of S. 1080. In its original form, this version prohibited a rule from changing the requirement of any contract, cooperative agreement or grant between a federal agency and a state and local government for one year from the effective date of the rule. The modification contained in the consensus substitute perfects the intent of the section to prevent "substantial" changes and provides a "good cause" exception from this prohibition which is consistent with similar "good cause" exemptions provided elsewhere, and discussed earlier, in the consensus substitute.

This modification was made in recognition of the fact that there may be unanticipated circumstances which, in the public interest, may require that such a change be made. For example, in the process of administering a construction grant program, an agency such as the Federal Highway Administration may need to issue an immediate ban on the use of a particular procedure or material in order to prevent federal funds from participating in the construction of an unsafe facility or to assure that those funds are spent in a cost-effective manner.

Definition of "major rule"

Both Committees approached the definition of "major rule" from a very similar perspective. The format of the Governmental Affairs Committee's version was slightly different from that used by the Judiciary Committee, and the Governmental Affairs Committee format was adopted. The most substantive aspect of this different format involved making rules of "particular applicability" that approve for the future rates, wages, etc., completely exempt from being classified as "major rules," as provided for in the Governmental Affairs Committee version, rather than making them exempt from such classification only under the first half of the major rule definition (i.e., the "$100 million impact test"), as provided in the Judiciary Committee version. This was accomplished by moving the exception for rules of particular applicability from its position in the Judiciary Committee version, that is, in section 621(3)(A)(ii)(a), to its position in the consensus substitute, that is, in revised section 621(2).

Another substantive change made in the definition of "major rule" concerned the type of costs to be considered in the first test for determining what is a major rule, that is, whether a rule has an "annual effect on the economy of $100 million or more." The Governmental Affairs Committee felt that the Judiciary Committee description of what costs should be included in determining this $100 million impact, "direct or indirect enforcement and compliance costs," was too speculative and would convert what was intended to be a relatively straightforward threshold evaluation into a much more detailed analysis.

The Governmental Affairs Committee was also concerned that the Judiciary Committee reference to "enforcement and compliance" costs could be interpreted to imply that only costs borne by regulated parties and governmental entities would be considered in determining whether the costs of a regulatory proposal would be $100 million or more. The Governmental Affairs Committee desired to avoid this potential interpretation so that the benefits of regulatory analysis would be given to proposals which, although not imposing substantial costs on regulated parties, might have significant costs for consumers, workers, or other important components of the national economy.

The sponsors representing the Judiciary Committee agreed generally with the Governmental Affairs Committee's approach to the definition, but felt that the language adopted by the Governmental Affairs, "direct costs," was too narrow because it would foreclose the consideration of indirect effects, such as loss of jobs or reduction of capital resources, which could reasonably be quantified. To respond to both Committees' concerns, the consensus substitute adopts the formulation, in revised section 621(3)(A)(i), that the $100 million impact is to be based on "reasonably quantifiable direct and indirect costs."

Finally, the consensus adopts the Governmental Affairs Committee's more narrow formulation of the exemption from the definition of "major rule" for products authorizing the introduction into commerce of recognizing the marketable status of a product.

Process of regulatory analysis

In describing the actual process of regulatory analysis, both Committees used almost identical formulations of statutory language. The few differences that there were, were incorporated into the consensus substitute. Accordingly, the Judiciary Committee's provision limiting the President or his designee to designating no more than 75 rules as major under the second half of the major rule definition was incorporated in revised section 622(b). Similarly, the requirement proposed by the Governmental Affairs Committee that the preliminary regulatory analysis include a description of agency action taken to verify scientific evaluations is incorporated in revised section 622(c)(4). In addition, a small modification was made to make the regulatory analysis procedure consistent with the rulemaking procedures set out earlier in the consensus substitute. Revised section 622(d) thus allows the issuance of the final regulatory analysis to be delayed when the normal rulemaking procedures are delayed under the provisions of revised section 553(b)(2).

Relationship of regulatory analysis determinations to other statutes

The bill as reported by both Committees requires an agency, in the preliminary regulatory analysis, to explain how the identified benefits of a proposed rule are likely to justify its identified costs, and to explain how the proposed rule is likely to substantially achieve the rulemaking objectives in a more cost effective manner than alternatives. In a final regulatory analysis, both versions require an agency to publish its reasonable determination that the benefits of a rule justify its costs and that the rule will substantially achieve the rulemaking objectives in a more cost-effective manner than alternatives.

Enabling statutes are the source of substantive standards for rulemaking decisions, and nothing in S. 1080 alters the authority delegated to agencies in substantive laws or the standards for rulemaking under those statutes. It is those statutes, not S. 1080 or the A.P.A., which are the sources of agency authority to initiate, complete, or terminate a rulemaking proceeding, or to promulgate, amend, or rescind a rule. S. 1080 does not change that authority in any manner. This bill does, however, impose certain additional requirements upon the regulatory decisionmaking process toward the goal of improving those decisions. Procedural regulatory reform will not disturb current agency rulemaking authority or statutory standards mandated by Congress in substantive regulatory legislation.

Statutes granting agencies regulatory authority vary widely in their purposes. Many statutory goals are primarily social rather than economic. Consequently, different enabling statutes prescribe different substantive factors and various ways in which these substantive factors are to be weighted by agencies in formulating rules. Some regulatory regimes in individual enabling statutes, furthermore, many contain their own requirements for a regulatory analysis or other detailed guidance on how costs are to be considered that may be inconsistent with the requirements of S. 1080.

S. 1080 does not change this fact; agencies must continue to abide by their statutory standards. The regulatory analysis determinations of S. 1080 do not require agencies to base their decisions on factors which are inconsistent with or precluded by those other standards. The regulatory analysis will require the agency to lay out these questions clearly, describe the assumptions made in various approaches to analyzing the problem, isolate factors of importance under a particular enabling statute, and justify the proposed action in terms of its anticipated effects.

Each Committee chose different statutory language to give effect to its mutual intent that the requirement for these determinations in regulatory analysis in S. 1080 not override an express or necessarily implied preclusion or inconsistency of such determinations with the specific provisions of an enabling statute. The reports of both Committees explain in detail the issues with which each Committee wrestled and the policy interests sought to be preserved in addressing the relationship of the regulatory analysis determinations in S. 1080 with the various enabling statutes. Those explanations will not be reiterated here. Rather, we will focus here on specific language changes made.

The Judiciary Committee version required that these determinations be made "except where the enabling statute pursuant to which the agency is acting directs otherwise." The Governmental Affairs Committee version, on the other hand, required that these determinations be made "where not inconsistent with the law pursuant to which the agency is acting." The formulation chosen for the consensus substitute requires that the regulatory analysis determinations be made "where it is not expressly or by necessary implication inconsistent with the provisions of the enabling statute pursuant to which the agency is acting." These words are used in the consensus substitute to explain how an enabling statute could be seen as conveying, as in the Judiciary Committee version, the fact that it "directs otherwise" or, as in the Government Affairs Committee version, the fact that the regulatory analysis determinations set out in S. 1080 would be "inconsistent with" it.

These words convey the obvious intent of the Committees that the preclusion or inconsistency of these regulatory analysis determinations with an enabling statute does not necessarily have to flow from its express language. What the provisions of any statute mean in a particular situation must often be divined from conventional sources of legislative history. Thus, the use of the words "the provision of the enabling statute" does not limit one attempting to discover whether the regulatory analysis determinations are, expressly or by necessary implication, inconsistent with the provisions of the enabling statute to the face of the statute, but allows for the traditional use of legislative history.

By the same token, these words also convey the Committees' intent that this preclusion or inconsistency cannot be found in the absence of a more affirmative policy judgment perceived in the regime set out in a particular enabling statute or its legislative history. For example, an enabling statute setting out factors to be considered in rulemaking should not be seen, without more, as inconsistent with the regulatory analysis determinations of the consensus substitute. Rather, what the language does envision is that the preclusion or inconsistency would be found in statutory terms, as informed by legislative history, which either discuss and disclaim the appropriateness of a cost-benefit justification or cost-effectiveness analysis, or which creates a statutory regime which is inconsistent with these determinations.

The sponsors of the consensus believe that it would be inappropriate to attempt to specify particular statutes which would be by necessary implication inconsistent with or preclude the regulatory analysis determinations of S. 1080. In some cases, such specification would put the sponsors in a position of appearing to make authoritative interpretations of statutes with which they are not intimately familiar. Further, a discussion which placed certain statutes in a particular category would be interpreted—wrongly—as an implied finding that other analogous statutes omitted from the discussion were not to be afforded similar treatment.

Insofar as the interpretation of a statute is the subject of legitimately conflicting opinions, or even of litigation, it would be inappropriate for one group of Senators, or one Committee, to attempt to unilaterally resolve currently disputed matters of law. The sponsors of the consensus recognize that the specific application of this provision must of necessity proceed on a case-by-case basis, in the first instance by an agency, and, upon challenge, by a reviewing court. The effort in drafting this legislation, and in explaining it both in the Committee reports and here, is to clearly set out the governing principles intended.

This qualifier is applied both to the regulatory analysis determinations in the preliminary and in the final regulatory analysis.

Use of consultants in developing regulatory analyses

Regulatory analysis is intended to be a process which shapes the decision making behind the formulation of federal regulations. Consequently, if regulatory analysis is performed by persons outside of the agency, the benefits of regulatory analysis are lost. To insure that regulatory analysis would shape the thinking of agency decision makers, both Committees provided limitations on the use of consultants in the development of a regulatory analysis. At the same time, both Committees recognized that limitations of agency resources require that agencies be allowed to rely on material prepared by persons outside of agencies at least to some extent in preparing thorough regulatory analyses.

To allow for this limited use of consultants in the regulatory analysis process, the Governmental Affairs Committee version allowed for the "gathering" of information by a source outside of the agency. The Judiciary Committee, recognizing that some preliminary explanation or analysis of raw data by a consultant might be helpful, allowed for the "gathering or analysis" of such information. The Judiciary Committee, however, did not intend that this consultant "analysis" should in any way displace the analysis to be made by the agency or to permit an agency not to engage in the close evaluation of a proposed major rule contemplated by the process of regulatory analysis.

In an attempt to address the concerns of the Governmental Affairs Committee that the language employed by the Judiciary Committee might open the door to the very abuse of consultants not intended by the Judiciary Committee, the consensus substitute uses a new formulation emphasizing that it is the agency, not an outside consultant, which must analyze gathered data or information. The substitute provides, in revised section 622(f), that the requirement that the preliminary or final regulatory analysis be performed by an officer or employee of the agency "shall not preclude a source outside of the agency from gathering data or information to be used by the agency in preparing such regulatory analyses or from providing an explanation sufficient to permit the agency to analyze such data or information."

Judicial review

The provisions for judicial review of regulatory analysis used in the consensus substitute reflect the close similarity of the provisions contained in the bill as reported by both Committees.

Section 623(a) in the consensus is identical to the versions of that subsection contained in each Committee's version and establishes a shared intent that judicial review of compliance or noncompliance with the requirements of Subchapter II be limited to the further specifications of section 623.

Subsection (b) of the consensus version of section 623 adopts the Judiciary Committee's provision, expressing the intent shared by both Committees: that there be no judicial review of presidential determinations that a rule is a major rule under subsection 621(3)(A) or of the President's designation of a rule as major under subsection 621(3)(B). The consensus language avoids mention of Presidential determinations or designations that a rule is not a major rule because the President is given no authority to make such determination or designation.

Subsection (c) contains the language of the Judiciary Committee version providing for limited review of agency determinations whether a rule is major under the $100 million test. The Governmental Affairs Committee version completely precluded judicial review of this agency's determination. As explained above, this difference has not been resolved and will be the subject of further consideration on the Senate floor.

Subsection (d) employs the wording of the Judiciary Committee to express the two Committees' basic agreement about the extent to which a regulatory analysis is subject to judicial review during review of the rule to which it relates.

Executive oversight

Both Committees felt that it was important that the President have a role in overseeing compliance with the requirements for regulatory analysis for major rules. However, as discussed previously, the Committees disagreed on several provisions which are expected to be the subject of floor consideration.

Periodic review of agency rules

S. 1080 as introduced, and as reported by both the Judiciary Committee and the Governmental Affairs Committee, includes a section requiring agencies to periodically review their major rules. There were some differences between the versions reported by each Committee, and, with some minor modification, the version as reported by the Governmental Affairs Committee has been adopted in this consensus. The policy objectives of both Committees on this issue are consistent.

The Committees found that their shared concerns about limiting judicial review of the requirements of this section could best be achieved through a formulation which only permitted judicial review under section 706(a)(1). This would permit suit to be brought against an agency for a failure to comply with the review requirements in a timely manner, but not for the inadequacy of such review. Of course, a modification to, or repeal of, a rule done in the context of periodic review must be done through the notice-and-comment procedures of section 553; and such action is subject to full section 706 review.

Regulatory agenda and calendar

The versions of S. 1080 reported by the Judiciary Committee and the Governmental Affairs Committee contained almost identical provisions for a regulatory agenda and calendar. The consensus substitute adopts the version contained in the bill as reported by the Governmental Affairs Committee.

Regulatory deadlines

The Governmental Affairs Committee version of S. 1080 contained a provision for the establishment of deadlines for completion of rule making. The Judiciary Committee version contained no similar provision. The Governmental Affairs Committee provision for such deadlines has been incorporated in the consensus substitute.

Annual report on regulatory activities

S. 1080 as reported by the Governmental Affairs Committee contained a provision requiring the President to report to the Congress annually on the regulatory activities of the government. The Judiciary Committee

did not adopt any similar provision. The consensus substitute includes the Governmental Affairs Committee proposal on this topic.

Judicial review: Scope of review

As also discussed above, the Judiciary Committee made three changes to the provisions of the Administrative Procedure Act dealing with the scope of judicial review of agency actions. Under the provisions of the Judiciary Committee version, (i) there must be substantial support in the record for agency fact-finding; (ii) a court must require that agency action is within the scope of agency jurisdiction on the basis of its enabling statute; and (iii) courts may not automatically defer to agency interpretations of the law. The Governmental Affairs Committee deleted provisions (i) and (iii). These differences have not been resolved and will be considered on the floor.

Venue: Race-to-the-courthouse

The versions of S. 1080 reported by both Committees contained almost identical provisions to deal with the "Race to the Courthouse" problem. The version contained in the bill as reported by the Judiciary Committee has been incorporated in the consensus substitute.

Federal Advisory Committee Act

Section 7 of the consensus substitute contains a modified amendment to the Federal Advisory Committee Act proposed by the Governmental Affairs Committee. The Judiciary Committee reported no similar provision. In an attempt to address concerns which were expressed by the Judiciary Committee, the consensus adds language to the FACA that it does not apply to any committee composed "wholly of . . . officials of State or local governments acting in their official capacities."

Presidential authority

Section 8 of the consensus is the Judiciary Committee version of provisions preserving Presidential and agency authority as may be set out in other laws and in the Constitution.

Conforming amendments

Section 9 of the consensus substitute contains a series of technical conforming amendments to other statutes. These amendments change cross-references to the Administration Procedure Act in other statutes where S. 1080 has changed the existing numbering or other denomination of provisions in the A.P.A.●

PHARMACY ROBBERIES

● Mr. BOREN. Mr. President, I am pleased to join my distinguished colleague from Alabama, Senator HEFLIN, in cosponsoring his bill S. 1339, which will prohibit the robbery of a controlled substance from a pharmacy.

Earlier this year, I joined with several other Senators in presenting a package of anticrime measures to the President and asked him to establish crime control as a national priority. Next to inflation and high interest rates, violent crime is the most important domestic problem facing American people today. Federal jurisdiction over pharmacy robberies was included as part of a larger package of proposals presented to the President at that time.

Now, Senator HEFLIN has introduced this proposal in a separate measure in order to focus attention on this increasing problem.

Pharmacy robberies of controlled drugs is a phenomenon we are experiencing due to the increased efforts of Federal agents in combating street sales of illegal drugs. By removing street sales as supply for controlled drugs, these criminals are turning to a relatively easy source by robbing pharmacies. This area of criminal activity, unfortunately, cannot be pursued by Federal drug agents.

Senate bill 1339 will extend Federal jurisdiction over pharmacy robberies where the value of the stolen property exceeds $100 or the individual crime is part of a series of pharmacy robberies. Extending this jurisdiction will allow Federal drug agents to pursue their efforts at controlling the activity in illegal and controlled substances.

Mr. President, we must also think of the innocent victims of these crimes, the men and women who own and operate our Nation's pharmacies. By creating a situation whereby our pharmacists are made easy targets of sometimes violent drugstore robberies, we owe a special measure of protection to these people by making it easier to investigate, arrest, and prosecute those who commit these robberies.

Senator HEFLIN's bill will make the theft from a pharmacy of any substance listed in schedules I through IV of the Controlled Substances Act a Federal crime, subject to a prison term of up to 10 years or a fine of up to $5,000, or both.

Congress needs to enact strong measures for dealing with violent crime, especially that related to illegal drug trafficking. The revenues from illicit drug traffic alone in the United States are now estimated at $64 billion a year, a figure more than twice the 1980 sales of IBM, the nation's eighth largest corporation.

There is a definite need to provide increased protection for pharmacists from these robberies. I am happy to join Senator HEFLIN in his efforts and urge my colleagues to join us.●

PROFESSOR MUNDELL ON THE GOLD STANDARD

● Mr. HELMS. Mr. President, in the ongoing debate on the gold standard, it is interesting to note the growing number of academicians who comment thoughtfully on proposals for a new gold standard.

An ironic aspect of the debate is that the gold standard is so often dismissed as a radical solution. In fact, of course, this country of ours has been without a gold standard for less than 10 percent of its existence. In the past decade, the monetary policies which have led us to the perilous state we are in today, have been, at best, a tragic experiment. It is the gold standard which is the norm for the United States—to which we should return.

The September 30 issue of the Wall Street Journal included an article by Prof. Robert Mundell of Columbia University discussing the importance of a gold standard in an international context. He pointed out that the United States is the only country that can provide a gold standard. It seems to this Senator that the United States has a major responsibility—as well as a unique opportunity—to provide a truly stable reserve currency for the world.

In his article, Professor Mundell suggests an 11-point proposal which would move toward a workable, managed gold standard. Some of his points are worthy of support; it is too bad that he "sweetened the pot" for those who want Government to take a much greater role in the economy than is necessary or prudent. For example, he suggested an incomes policy—wage and price controls. But in the next paragraph Professor Mundell recommends a flat tax rate which would tremendously spur jobs and production and lead to a growing standard of living.

I ask that the article, "Gold Would Serve Into the 21st Century," be printed in the RECORD at the conclusion of my remarks.

The article follows:

GOLD WOULD SERVE INTO THE 21ST CENTURY

(By Robert A. Mundell)

I want to begin with an enormous platitude: No country in a world community can establish a monetary policy that does not take account of the international economic system of which it is a part. No country can dissociate entirely its monetary system from that prevailing elsewhere. There is no such thing as a closed-economy monetary policy except the monetary policy of all the nations making up the world system.

It is unfortunate that two of the 20th Century's most influential monetary economists, Keynes and Friedman, wrote their major theoretical works for a closed economy with scant attention to the problem of international interdependence. Both economists generally assumed a national closed economy on an inconvertible paper standard, generally ignoring that in the 1930s as today gold represented the principal external monetary reserve. I am aware, of course, that both men wrote on international monetary arrangements, Keynes favoring a fixed, but adjustable exchange-rate peg, and Friedman a "clearly floating" exchange-rate system, but their theoretical masterpieces did not develop international interdependence into their systems of policy.

IT WAS HIS AIM TO ELUCIDATE

Keynes wrote the "General Theory" for a closed economy on an inconvertible paper-currency standard. This assumption was important for elucidating theoretical matters but it misled his followers, and Keynes himself, on matters pertinent to economic or monetary policy.

Keynes had advocated adjustable exchange rates earlier in his "1923 Tract on Monetary Reform" to preserve price stability on lines not dissimilar from his older American contemporary Irving Fisher back in 1912. In the "General Theory," Keynes attacked fixed exchange rates:

". . . the City of London gradually devised the most dangerous techniques for the maintenance of equilibrium which can possibly be imagined, namely, the technique of bank rate coupled with a rigid parity of the foreign exchanges. For this meant that the objective of maintaining a domestic rate of interest consistent with full employment was wholly ruled out. Since, in practice, it is impossible to neglect the balance of payments, a means of controlling it was evolved which, instead of protecting the domestic rate of interest, sacrificed it to the operation of blind forces. Recently, practical bankers have learned much, and one can almost hope that in Great Britain the technique of bank rate will never be used again to protect the foreign balance

in conditions in which it is likely to cause unemployment at home."

This astonishing passage is good poetry but bad economics—it is confused, illogical, inconsistent and irrelevant. It reveals how unfortunate, for Keynes and for ourselves, was his inability to incorporate the essentials of the efficient international adjustment mechanisms under fixed exchange rates between countries or between regions in the same currency area as it had been worked out by Ohlin, Viner, Pigou and Robertson in the 1920s and 1930s.

Keynes's assumption of a closed economy let him sidestep discussion of the foreign sector, the merits of fixed versus flexible exchange rates or of the degree to which international credit positions, trade imbalances, reserve losses or speculation would alter the real wage, employment and output positions which it was his aim to elucidate.

Nevertheless he recognized explicitly the need for flexible exchange rates in an open system if money was to be stabilized, as the following passage shows:

"In the light of these considerations I am now of the opinion that the maintenance of a stable general level of money-wages is, on a balance of considerations, the most advisable policy for a closed system; whilst the same conclusion will hold good for an open system, provided that equilibrium in the rest of the world can be secured by means of fluctuating exchanges."

Keynes explicitly rejected, however, the idea of fixing the quantity of money or its rate of growth:

"If, indeed, labor were always in a position to take action (and were able to do so), whenever there was less than full employment, to reduce its money demand by concerted action to whatever point was required to make money so abundant relatively to the wage-unit that the rate of interest would fall to a level compatible with full employment, we should, in effect, have monetary management by the Trade Unions, aimed at full employment, instead of by the banking system.

"Nevertheless while a flexible wage policy and a flexible money policy come, analytically, to the same thing, inasmuch as they are alternative means of changing the quantity of money in terms of wage-units, in other respects there is, of course, a world of difference between them. . . ."

Keynes's system thus takes into account the wage rate, the money supply, the price level and the exchange rate, and the need to anchor the system by choosing a "numeraire" or a "standard"; he chooses wage rates. This accounts for the support of "wage policy" by his influential disciples.

By contrast, Friedman's system, while endorsing flexible exchange rates rejects the idea of wage policy and (after an earlier flirtation with 100 percent reserve money expanding or contracting with budget deficits and surpluses) now focuses attention on fixing the rate of growth of the supply of money.

There are several arguments against the Friedman policy system. One is that money is too elusive a concept to define, measure and predict, and is therefore of little use as a guide for rational expectations of future prices and incomes, whether reserve money alone, M–1A, M–1B, M2 or other definitions are used. None of these measures takes explicit account of the liquidity of dollars created in the offshore markets despite the confirmed role these markets play in contributing to inflation.

More important, the facts have clearly demonstrated the breakdown of monetary discipline after the collapse of the gold exchange standard. Eurodollars increased from $150 billion in 1970 to more than 10 times that amount in 1981. A comparison of the weak gold discipline of the Bretton Woods period with the floating rate period is even more revealing in connection with international reserves:

Billions of U.S. Dollars

	1950	1960	1970	1980
Foreign exchange:				(est.)
	13.3	18.5	45.4	300.0
Gold ----	13.8	37.9	37.0	600.0
Total -	47.1	56.4	82.4	900.0
Eurocurrencies (est.)				
	10.0	25.0	163.0	1,600.0

Since the breakdown of the U.S. gold standard the U.S. monetary system has produced more dollars than in the entire previous history of the republic. The prices of gold, oil, silver and other commodities have risen more than tenfold and, barring a drastic change in the monetary system, prospects are for more of the same in the future.

Never before in U.S. history has the Treasury had to pay 15 percent for 30-year bonds, implying an incredibly pessimistic outlook with respect to inflation. It is these considerations that prompt a consideration of the policies needed to restore convertibility of the U.S. dollar to gold.

If there is a stable international money, there is no conflict between fixed exchange rates and the goal of internal price stability for a single nation state. Under fixed exchange rates the price level of the individual nation state has to converge to the price level of the world as a whole provided that commodity markets are sufficiently integrated internationally.

The monetary authorities of small countries have usually observed this fact and accepted its implications. Purchasing power parity areas, where the Law of One Price holds, imply a geography of inflation rates based on currency areas. Currency areas determine common inflation rates and interest rates. On a map of the world common inflation rate zones correspond to zones of fixed exchange rates.

If there is a stable external currency area a country has the convenient option of fixing its own currency to it, or scheduling its exchange rate at a pre-arranged rate of devaluation or appreciation. In the world of the 1980s countries that have historical inflation rates above that of the U.S. would benefit by fixing their currencies to the U.S. dollar and adapting their monetary policy to make that exchange rate an equilibrium one.

This assignment implies a monetary approach to the balance of payments, with the central bank allowing its purchase and sales of foreign exchange reserves to reduce automatically the high-powered money base of the banking system. The monetary approach to the balance of payments does not have much room for neutralization or sterilization operations; the idea instead is to take full account of international impulses in the formulation of domestic monetary policies.

Our experience with this kind of system is instructive, since it was precisely this kind of monetary arrangement that constituted the Bretton Woods system from 1948 to 1971. Except for the great devaluations of 1949, the quarter century of this regime was exemplary in its stability, growth and world economic development, perhaps unmatched at any time outside an imperium, such as the Roman Empire. There was never any doubt that the central tendency of the Bretton Woods era was the U.S. economy, and the dollar was the dominant currency.

The Bretton Woods system broke down for two reasons. First, the gold base of the system, at a price of $35 an ounce, had become too narrow to sustain the mounting liquidities in the U.S. and outside in the Euro-, Asian- and Caribbean-dollar markets. Gold had been artificially in surplus after 1934 because Americans had been deprived of the right to own or hold gold, but the "surplus" vanished as a result of World War II inflation.

After the Korean War inflation, gold became undervalued, and after the opening of the London gold market in 1954, dollar interest rates had to rise steadily to tempt central bankers and foreigners from holding gold and reaping the capital gains expected when the anticipated upvaluation of gold occurred. Thus interest rates, which in 1946 had been less than 4 percent rose above 10 percent by 1969.

The second reason Bretton Woods broke down was the revolt against U.S. leadership that occurred in Europe, partly because of the Vietnam war. The DeGaulle-led movement toward the gold standard in the 1960s had wider support than within France; the German objections to holding the overhang of excessive dollars, however, were suppressed by the U.S. counterthreat of troop withdrawals.

What Britain's Prime Minister Wilson described as a "monetary war" broke into the open when in the spring and summer of 1971 the Europeans stuffed excess dollars into the Eurodollar market while the U.S. gunned the U.S. money supply to inflate its economy out of the 1970–71 recession in preparation for the 1972 presidential election. President Nixon killed the limping gold standard on Aug. 15, 1971, and the price of gold shot up to $200 an ounce by 1974; after the lifting of the prohibition on gold holding by U.S. citizens in 1975, gold's price marched irregularly upward, reaching at one point in 1980 nearly $850 an ounce, 25 times its 1970 value, before dropping to the $400–$600 range.

The underlying economic conditions in 1981 and prospects for the next two decades are not as different from the 1950s and 1960s as they may appear. The U.S. is still the dominant economy, and the hegemonic superpower of the free world. The dollar is still the major currency reserve and gold is the only other major component of international reserves. A rerun of the monetary structure of the 1950s and 1960s, without the deadweight difficulties of undervalued gold would probably serve us well into the 21st Century.

AN 11-POINT PROPOSAL

The basic ingredients of a restored Equilibrium Atlanticum-Pacificum would involve the following elements:

1. Stabilization of the dollar price of gold, probably in the $300–$650 range, to be determined by the U.S. in consultation with its allies.

2. Issuance of a gold coinage (various fractions of an ounce) with a face value equal to the stabilized gold parity.

3. Stabilization of other currencies—particularly the DM to the dollar in the DM1.80 to DM2.20 range.

4. Attention to the gold "discipline" by the U.S. such that the U.S. money base is allowed to increase or decrease with gold purchases and sales.

5. Attention to the balance-of-payments discipline by the non gold-pegging countries such that the national money base rises or falls with increases and decreases in holdings of gold and foreign exchange.

6. Co-ordination of interest rates to prevent excessive disparities from developing between money market centers and gales of hot money disrupting confidence and purchasing power parity relationships of exchange rates and price levels.

7. Multilateral surveillance of the balances of payments problems and exchange rate policies of the major countries within an OECD-OPEC institutional framework, along with multilateral discussion of anti-inflation policies and unemployment-stagnation problems.

8. Programmed adjustment of dollar-gold portfolios of major reserve holders to en-

courage more expansive or restrictive monetary policies in the center reserve country or countries (initially the U.S.).

9. General budgetary policies and if necessary, incomes policies, should be employed to mitigate the business fluctuation, with tax cuts and extra government expenditures to stimulate aggregate demand, and reduce unemployment during recessions, and budgetary surpluses to restrain aggregate spending in periods of inflationary boom.

10. Reform of tax rates and structure in the U.S. and other countries to enhance incentives for more employment saving, productivity and growth of potential output, to offset distortions arbitrarily produced by past and anticipated inflation; replacement of the income tax by a 20% value added tax should be considered.

11. Balance of government budgets over the cycle at levels of deficits necessary to keep ratios at realistic proportion to GNP, thus making central bank finance of the government-sector deficits unnecessary.

These 11 policy guidelines would represent bold first steps toward a workable managed gold standard. They are not incompatible with the policy aims of the Reagan administration and they would induce, if adopted by Britain, Germany, France, Italy, and Japan improvement in their economic management on a scale not experienced since the heyday of the Bretton Woods era. I see no political barriers to their adoption if economists can overcome their present love affair with flexible exchange rates, indefinable monetary aggregates and the unemployment approach to stopping inflation.●

TRIBUTE TO MAYOR JIM McGEE

● Mr. GLENN. Mr. President, it is with great pleasure that I pay tribute to Mayor Jim McGee for his 15 years of outstanding service to Dayton, Ohio.

Mayor McGee will retire shortly and return to the practice of law. On December 10, 1981, there was a testimonial dinner honoring Jim McGee for his able and effective leadership and outstanding service to Dayton. It is a befitting occasion because the citizens of the Dayton community have benefited greatly from his talented and energetic leadership.

In 1970, Jim McGee became the first black mayor of Dayton, a major Ohio city. Since then, he has been reelected four times. Prior to becoming mayor, he served for 3 years as a city commissioner. Mayor McGee is a respected member of the U.S. Conference of Mayors and the National League of Cities Advisory Board.

Mayor McGee's economic development efforts rank high on the list of his many accomplishments. Despite the erosion of jobs and of the municipal tax base which was caused by several major business relocations and reductions, the mayor has been successful in maintaining a stable economic environment in Dayton. I am glad to have been able to assist him in some of these efforts. In addition, he established the mayor's council on economic development which has also contributed to Dayton's viable economic climate.

As a friend and a fellow Ohioan, I am proud of his record of achievement and commitment to the citizens of Dayton and Ohio, and I am sure that they will join me in extending best wishes to Mayor McGee and in saluting his outstanding career in Dayton.●

THE COURTS AND LIBERALISM

● Mr. HELMS. Mr. President, an excellent article in the October edition of Harper's magazine, entitled "Supreme Irony," addressed the issue of political ideology—the ideology that seems to dominate the American judicial system.

The article points out that many liberal activists who have lost in the polls and have been thwarted at various levels of government, now see the courts as the chief institutions of salvaging their ideology.

Stephen Markman, one of the authors of the piece, is a perceptive legal scholar on the staff of the Senate Judiciary Committee, and Mr. Peter Brimelow, presently with Barron's magazine, formerly served on the staff of Senator HATCH.

I ask that their article and the accompanying footnote be printed in the RECORD at the conclusion of my remarks.

The article follows:

SUPREME IRONY—THE COURT OF LAST RESORT

(By Peter Brimelow and Stephen J. Markman)

Within weeks of Ronald Reagan's inauguration, several lawsuits were filed challenging the legality of his retroactive hiring freeze on federal recruiting. A public-interest group called Energy Action announced a suit protesting decontrol of petroleum prices. Public Citizen, Ralph Nader's public-interest lobby, sued Health and Human Services secretary Schweiker over policy toward generic (non-brand-name) drugs. And a number of legal challenges to the proposed freeze on federal regulations were being discussed. All of which was presaged by the Washington Star directly after the election:

"Noting the three recent appointments of well-known liberal activists to the U.S. Court of Appeals—Abner Mikva, Patricia Wald and Ruth Bader Ginsburg—one public interest lawyer commented: 'The courts now loom as the most congenial branch of the federal government. We may have to return to litigation to take advantage of this asset.' "

It is important to realize what is going on here. One faction in American politics—whether or not it represents "the public interest"—has lost an election. Its policies may be reversed. It proposes to prevent that by appealing to the courts. It trusts the courts not because of the law but because of the judges. They are members of the same faction.

In Britain, Her Majesty's Loyal Opposition is to be found in the legislature. In Ronald Reagan's America, opposition is centered on the bench. It will almost certainly be neither loyal to, nor even impressed by, his mandate. And behind this opposition lurks a more ominous possibility: that our political culture is losing sight of the ideal of an impartial law.

That there has been an extraordinary invasion of every area of American life by the federal judiciary in the past twenty-five years is now undeniable. At one time, it was fashionable for supporters of this judicial activism to argue that the Supreme Court under Chief Justice Charles Evans Hughes had been equally unrestrained in 1935–36 when it ruled vital New Deal legislation unconstitutional. But there is a distinction. The Hughes Court was reviewing, perhaps overenthusiastically, the actions of a reforming legislature. Now, however, Supreme Court justices and a host of inferior judges are themselves reforming society, in the most detailed and aggressive way, not merely without the sanction of elected lawmakers, but often in a direction diametrically opposed to that in which they or their constituents might have wished to go.

It is an open secret that most major social reforms of the last generation have been accomplished by the judiciary. In what amounts to a cloverleaf of Damascus Roads, the Supreme Court has declared unconstitutional such previously accepted practices as segregation, capital punish, school prayer and has unilaterally effected one-man, one-vote state legislative apportionment, affirmative action, abortion on demand, and the abolition of residency laws for welfare eligibility.

Each of these ends had devoted advocates who were not inclined to question the means by which they were achieved. But presumably everyone would have preferred to see legislatures rewriting the necessary statutes, or amending the Constitution. As matters stands, it is only a matter of time before someone realizes that the judicial branch in general and the Supreme Court in particular are the modern equivalent of the Wizard of Oz. They have no power other than the awe inspired by the Constitution. But a fundamental organic law capable of such profound reinterpretation at the drop of a Supreme Court justice or two, and their replacement by political opponents, is no sort of law at all.

Perhaps the confusion that exists in the minds of lawyers on the point has helped postpone that awful day. In his autobiography. The Court Years, William O. Douglas claimed that when he joined the Supreme Court in 1939, Chief Justice Hughes told him that constitutional decisions were 90 percent emotional: "the rational part of us supplies the reasons for supporting our predilections." Douglas says he took this advice to heart. There is every reason to believe him. He once remarked that he was more interested in creating a precedent than finding one. Nobody did more to convince American lawyers that they should study not the Constitution but the Supreme Court. Yet there at the end of his book is the poor old U.S. Constitution, reproduced as an appendix, like an Orthodox priest drafted to sprinkle holy water on Red Army tanks.

And there can be no dispute about the degree of judicial ambition displayed in the endlessly proliferating minor cases as well. In Texas last year, U.S. District Court Judge Gabrielle McDonald ordered a public station to screen "Death of a Princess"—a controversial television film it had canceled after Saudi Arabian protests. In South Dakota, U.S. District Court Judge Donald Porter ruled that ranchers must stop using certain chemicals approved by the Environmental Protection Agency to combat a grasshopper plague. In Washington, Judge Barrington Parker ordered the army to upgrade less than honorable discharges given to some 10,000 Vietnam-era veterans found to be abusing drugs, following compulsory urinalyses that Parker said were "statements" covered by Fifth Amendment protection against self-incrimination. In Rhode Island, Judge Raymond J. Pettine forced school administrators to allow a homosexual student to take a male date to his senior prom. In Mississippi, Judge Orma Smith ordered the state to supply to high schools a textbook previously rejected because of its controversial stress on black history. The California supreme court recently held intelligence tests to be unconstitutional. In all of these cases, elected legislators and appointed officials found themselves stymied by arbitrary fiat, any challenge to which must be mounted against the forces of inertia and cost that are invariably decisive in politics. None of the rulings bore any serious relationship to the intentions of the Constitution's framers, traditionally the

standard by which legal problems are judged. Yet they explicitly contradicted political solutions.

This situation is largely the fault of our tremulous legislators. A classic illustration was provided by Washington Monthly when in 1979 it sent purported pro- and anti-abortion letters to every senator, demanding to know his or her position. No ancient Greek ever fled in more terror from the Furies than the average political hack from these two ferocious lobbies, and the result was the expected mixture of silence and mealymouthed or contradictory replies. One, however, was particularly significant. Senator Donald E. Riegle (Dem.-Mich.) replied that he preferred "to leave the issue to the courts."

And this has been the way in which a whole generation of legislators has finessed enraged constituents in an era of social upheaval.

A dim awareness of these developments lay behind last year's adoption by the Republican Party, along with Ronald Reagan, of a plank urging that no judge be appointed who favored abortion. Some lawyers and commentators claimed this was an attempt to impose a political "litmus test" on the judiciary, although it is the inexorable consequence of a system where the personal opinions of judges become law. However, it is doubtful that even the Republicans realized the extent to which their ideological opponents had become entrenched during the Carter administration.

The significance of the Carter administration in this area was a result of the 1978 Omnibus Judgeship Act, which congressional Democrats had kept on ice for six years, waiting for a Democratic president. This established 17 new federal judgeships and thirty-five additional circuit judgeships, all lifetime appointments. Making allowances for normal attrition, this meant that during his term of office Carter was able to appoint nearly half the federal bench.

Judges have to be confirmed by the Senate. But Jimmy Carter undertook that this new wave would be selected "strictly on merit." Since, in fact, his appointments constituted a court-packing scheme unparalleled in American history, it is tempting to think that this was a deliberate deception. Certainly it was incompatible with his simultaneous comment that "if I didn't have to get Senate confirmation for all my judicial appointees, I could just tell you flatly that 12 percent would be Spanish-speaking and 40 percent would be women and so forth." But Carter was sufficiently sincere to enrage the then chairman of the Senate Judiciary Committee, James Eastland (Dem.-Ala.), before he finally diluted his proposals and restored the central role of his party's senators in choosing their state's judges.

The story is quickly told. A mere 3 percent of Carter's judicial nominees identified themselves, in a 1979 survey taken by the American Judicature Society, as "conservative," although self-professed conservatives dominate similar polls in the country at large. The rest were either "very liberal," "liberal," or "moderate." A high proportion were active in Democratic Party politics.

The difficulty for any conservative administration is not merely that so many of its ideological opponents are thus immovably clamped to the public trough, nor even that proliferation of judges will shorten dockets and leave them time for mischief-making elsewhere. The difficulty is the judicial philosophy espoused by the Carter appointees. They are the children of the 1960s, not just because of their birth dates—Myron Sowell, a black appointed to the bench in Alabama, is thirty-four, seven years out of law school; Archibald Cox was eliminated as too old at sixty-eight. Unwilling to accept any restraint on their desires, they are quick to invent rationales for their actions. The Constitution is a "living law," "flexible" enough for an "evolving" society.

Sometimes even rationales were dispensed with. Henry Pregerson, asked by the committee what he would do if confronted with a conflict between his conscience and the clear letter of the law, unflinchingly replied that he would abide by the former. Nathaniel Jones denounced some recent Supreme Court decisions limiting school busing as the "culmination of a national anti-black strategy," which included congressional approval of policies that "drip with racist anticity and anti-busing features." Stuart Newblatt, when questioned by Senator Robert Dole, said that he was and would continue to be a "judicial activist."

Legislators encourage this focus on social goals rather than legal procedure. Democratic-appointed nominating commissions throughout the country routinely inquired into candidates' views on ERA, school busing, and abortion.

Republican senators have sat back and let this transformation of the judicial branch happen. No one dissented from any of the nominations mentioned. Partly this is because opposing the candidate for another senator is a serious breach of Senate etiquette. In part, Republicans were intimidated by the tendency to see the question of a nominee's "qualifications" as solely a matter of academic and professional credentials, particularly since few legislators have the Ivy League veneer of top liberaldom. And, of course, no one wanted to appear sexists or racist, especially since this was one of the few flaws for which the nominees themselves were being exhaustively examined. So strong was this last reflex, in fact, that it resulted in the confirmation of a black attorney, U. W. Clemon of Alabama, even though the American Bar Association ruled him technically "unqualified."

The only nominee to be rejected, the first in forty-three years, was Charles Winberry of North Carolina, against whom there were criminal and ethical allegations. Ironically, Winberry's judicial philosophy would probably have been relatively unobjectionable. His supporters felt strongly that he should not be penalized in the absence of criminal proof.

The Reagan administration and the Republicans now controlling the Senate campaigned on policies radically different from their liberal predecessors. Should they actually wish to implement them, public-interest groups, in cooperation with sympathetic judges, will be able to stage even more effective counterattacks, right down the line.

For example, President Reagan could revise equal-opportunity directives such as Executive Order 11246, which time and the bureaucracy have twisted into an excuse to impose racial and sexual quotas on the public service, only to have the courts announce that such orders merely implemented a statistical balance that was constitutionally required all the time. Welfare and public housing might turn out to be "rights" unassailable without an entitlement of "due process" unsuspected by the Reconstructionist Congress that invented the Fourteenth Amendment. Reduction of federal aid to education could be attacked on the grounds that it perpetuates discrimination by placing a premium on a community's willingness and ability to support local education. Or it might be challenged for impeding a child's "right" to be instructed in his mother tongue. Efforts to restructure the bureaucracy might run foul of the increasingly expressed view that federal employees enjoy certain property rights in their positions. The freedom of the executive to alter environmental or workplace safety regulations is equally vulnerable. Even foreign policy—the re-recognition of Taiwan, or the exercise of the war power—is a target for ambitious lawyers, on or off the bench. There are no limits to what can be done with such "evolving" concepts as "commerce among the several states," "general welfare," "due process," and "equal protection." *

Against this, Reagan may get the opportunity to appoint several Supreme Court justices. Five sitting judges are over seventy, and two others are in their mid-sixties; of these, Justice Stewart has already announced his retirement. But even if Reagan's choices behave as he hopes—a dubious proposition, as Eisenhower discovered with Earl Warren—it will be too late. Years would elapse before the rulings of such a court would be made and would filter down to the lower courts. And even then there would be plenty of opportunity for other kinds of judicial obstruction.

Reagan's real defense will be to use the teaching power of the presidency to focus public debate on the issue of judicial supremacy. Few human conflicts are carried to a logical conclusion; this applies even to ones involving lawyers. The courts follow the election returns, particularly when they are as devastating as those of 1980. It is possible that a full-blown crisis such as occurred in 1935–36 can be avoided, if the judiciary is sufficiently impressed to curb its ambition. The caliber of the administration's legal officers will also be vital in what will be a struggle for moral advantage.

A second part of any strategy to redress the balance between the branches of the government must be to foster cooperation between the legislature and the executive. Fortunately for Reagan, his party has a grip on the Senate that it will probably strengthen in 1982. The House remains in liberal hands, but crypto-conservatives in the Democratic ranks are crawling out of their holes to lend a hand.

One result of this may be succcessful legislation to limit venue-shopping by litigants in search of sympathetic judges, as well as the extension of venue in environmental and regulatory cases beyond the District of Columbia federal court. Additionally, Congress may take initiatives designed to curb specific examples of judicial legislation. For example, there will be serious consideration of constitutional amendments that could overturn Supreme Court decisions in the areas of school prayer, abortion, affirmative action, and school busing—the latter already forcing its way to the floor of a reluctant House in 1980. Congress also has the arcane power (under Article III, Section 2 of the Constitution) to withdraw subjects from the jurisdiction of the courts if sufficiently provoked.

An attempt to exercise this authority in the case of school prayer nearly succeeded in the House, following Senate approval, at

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*Recent developments include: a Texas court ordering the expansion of school bilingualism in the teeth of the new administration's policy or de-emphasis; the District of Columbia Appeals Court moving against the proposal that federal employees should pay for their parking; a Tennessee court refusing to allow a reduction of outpatient visits to meet federally imposed spending cuts. On the state level, a Florida court has struck down an attempt to make functional literacy tests a prerequisite for high-school grade changes and graduation; the Massachusetts supreme court has required Boston to keep its school system open although it has already exhaused its budget. There has been an attempt by four officials of the Federal Emergency Management Agency to retrieve their jobs, citing a 1980 Supreme Court decision; a suit filed by a group of congressmen (!) to preserve certain Vietnam-veteran hiring programs; a threat by the District of Columbia government to sue to prevent the reduction of its CETA grants.

the end of the 96th Congress, to general perturbation and the great interest of constitutional lawyers. Other proposed efforts would limit the tenure of federal court judges or expose their decisions to review by an even higher authority, like the "Court of the Union," made up of the chief justices of the fifty states, or by a two-thirds vote of Congress in the case of decisions overturning state or federal legislation.

But the great problem conservatives face in considering their options is that they themselves have been infected with the disease they are supposed to be fighting. The platform pledge to nominate anti-abortion judges, however understandable, was one symptom. Another is the tendency of conservatives to believe that the solution is merely to appoint conservative judges.

This is a fatal error. Academic and professional distinction may not be essential for a federal judge—witness Earl Warren or Hugo Black. Intangible "moral" questions may be pointless, which was the argument used in Winberry's defense and (successfully) during the 1970 attempt to impeach the colorful Justice Douglas.

It may even be natural and harmless that politicians should hand out judgeships—as well as every other plum they can get their hands on—to colleagues, cronies, school friends, and the husbands of mistresses. None of this would matter—if the judges enforced the law. Yet willingness to enforce the law impartially, whether it is one written by liberal lawmakers or conservatives, is precisely what is now being cast aside with a worldly, if opportunistic, shrug.

When the British established their empire and set up courts, it was common for magistrates to be approached by natives bearing gifts, hoping to encourage favorable rulings on the suits in which they were involved. This, after all, was how justice had always been done in their societies. The British had to explain that they came from a superior tradition: their law was not the whim of a despot but an objective thing, impartially administered and equal for all. The natives were naturally skeptical. But the British meant it, and in time able native lawyers became indispensable to every independence movement.

It is this Anglo-American tradition that is now in danger of being forgotten. A recent example was the Supreme Court's ruling in United Steelworkers v. Weber, which upheld the use of racial quotas in employment despite their express prohibition in the 1964 civil rights legislation. In a dissent of unprecedented bitterness, Justice Rhenquist described the majority's position as Orwellian in its reversal of the facts.

In other words, the natives were right. All the paraphernalia of carefully debated legislation and painstaking legal research is meaningless. The courts rule according to their personal values and interests. Earl Warren was doing this when he developed the habit of interrupting technical legal arguments to demand, "But is it right? Is it good?" in defiance of the first lessons of law school. Conservatives may legislate, and they may even appoint or intimidate enough judges to prevail for a while. But without the concept of an objective law to act as a keel, the ship of state will be inherently unstable. Liberal judges can send it rolling back again as soon as they regain courage. There is no source of legitimacy in a polity where laws are made and changed without the sanction of popular will, expressed through legislation.●

WATER RESOURCES

● Mr. STAFFORD. Mr. President, I have recently received a mailgram from the Interstate Conference on Water Problems (ICWP) urging early action by the Senate to pass S. 1095, amendments to the Water Resources Planning Act.

As chairman of the Committee on Environment and Public Works and a sponsor of the bill, I share the views of ICWP. I urge that the Senate take up this bill before we go home for the Christmas recess, if that is at all possible.

I must note that this bill was reported to the Senate on May 15, 1981. We almost acted on it in July, but that action was delayed to accommodate certain Senators who said they needed the August recess to analyze fully the impacts of the bill.

It is now December and we still have seen no action on the bill. I remain hopeful that we will be able to work on the bill as soon as possible.

Mr. President, I ask that the ICWP mailgram to me be printed in the RECORD.

The mailgram follows:

[Mailgram]

ST. PAUL, MINN.,
November 25, 1981.

Senator ROBERT STAFFORD,
U.S. Senate, Washington, D.C.:

The Interstate conference on Water Problems urges your immediate action on national water resources policy legislation (S. 1095) which is vital to meet the Nation's water needs.

ICWP, a national association of State, interstate, and intrastate water resource officials, strongly supports the objectives of this legislation. It would be tragic to negate the progress Congress has made on this long-awaited and necessary legislation by inaction during the remaining weeks of this congressional session.

ICWP will closely monitor this legislation upon your return from Thanksgiving, and strongly urges your prompt action on this matter. ICWP stands ready to assist if needed.

Sincerely,

JACK ACORD,
ICWP Chairman.●

ROYSTER ON THE GOLD STANDARD

● Mr. HELMS. Mr. President, my good friend and fellow Tarheel, Vermont Royster, is a distinguished American journalist who has become a legend in his own time.

Vermont may be somewhat less active than before he retired as editor of the Wall Street Journal but his column "Thinking Things Over" appears with some regularity in the Journal and is the highlight of the paper's editorial page.

His perspective with which he views the American scene is remarkable. Whether written from an ocean freighter in the South Pacific or from a political convention headquarters, Vermont provides a kind of detachment few writers can equal.

It was with much interest, obviously, that I read his October 28 column, "The Golden Glitter." While he agrees that a gold standard is a valuable and needed restraint on politicians, like some others he is yet skeptical that we will be successful in adopting a new gold standard. His career watching politicians may have convinced him that politicians are loathe to give up power—particularly the kind of power that is wielded when Washington debases the currency.

My thought on this subject is that the American people may insist on adopting this needed reform, and in fact, bring about a dollar "as good as gold."

Mr. President, I ask that Vermont Royster's column "The Golden Glitter" be printed in the RECORD at the conclusion of my remarks.

The article follows:

THE GOLDEN GLITTER

(By Vermont Royster)

Put me down as a bit of a gold bug. I'm among those who believe that any people are better served when the value of what they use for money isn't subject to the whims of their governors, be they kings of yore or the chosen officials of today. And of all the commodities used for money, none has proved more useful and dependable than gold.

Put me down also, however, as more than somewhat skeptical about all this talk of returning the country to the gold standard, whatever economic ills it might relieve.

The program with the gold standard is not what so many of its opponents allege, that is, that it "won't work." Quite the opposite. It works very well indeed, forcing a monetary discipline upon kings, dictators, parliaments and people.

And that's the real problem. When money is anchored to gold, the gold governs the governors. It limits their political power because they can't manufacture all the money they'd like to spend. It also chafes those who want money from the government, be it for education, roads, welfare, arms, subsidies or whatever. In time the restraint to these aspirations becomes intolerable and, upon one excuse or another, the gold standard is abandoned.

At least that's the way it's been since sometime in the 7th Century B.C. Many commodities, of course, can and have served as media of exchange—iron, cattle, stone disks—but the Lydians in Asia Minor seem to have been the first to coin money with a gold content and give it a "mark" as warranty it was what it said it was. Such coins proved felicitous for the conduct of commerce and their use spread. The gold standard was born.

But there was a problem right from the beginning. The limited supply of gold limited the coins available. So kings, always eager for more money, would clip the edges of the coins and use the shavings to make more coins. This worked until people realized there were more short-weighted coins circulating, thus reducing the exchange value of each. Inflation had come, if not yet the word.

Modern times, modern techniques. Those clever Chinese who invented printing also invented paper money, a thing at which Marco Polo marveled on his visit to Cathay. Each piece of paper stood surrogate for gold supposedly in the Emperor's treasury. Paper money was another improvement for commerce (easier to carry than a pocketful of coins) but also for the Emperor's treasury. He quickly discovered that paper was easier to print than gold to coin.

That's the way it's been ever since, periodically, as the printing press has made inflation rampant, prophets have preached a return to a gold standard as to some Garden of Eden. At times they have succeeded, but never for long.

The British held to it for most of the 19th Century, making the pound sterling the world's most trustworthy currency and giving Britain a prosperity the world envied. In our own country, after the greenback inflation of the Civil War, we returned to the gold standard in 1879, launching an era of industrial expansion. Except for some bending in World War I we remained on it until 1933,

when President Roosevelt abandoned it and even made it illegal for ordinary citizens to own gold except in jewelry.

Recent history is more familiar. The Bretton Woods conference created a "gold exchange standard" as between nations, hoping to anchor the relative value between currencies. This lasted until President Nixon ended the payment of gold for dollars even between countries.

That link between gold and dollars severed, people were again permitted to own gold. Whereupon to the astonishment of our governors (and most economists) this "useless" metal which once sold for $32 an ounce now sells for more than $400, a rough measure of what's happened to the value of our paper dollars anchored to nothing.

Thus history makes a solid argument for a return to a gold standard. Wherever and whenever it's been held to, the people have prospered. They're induced to save money, trusting it to retain its value. Commerce is encouraged because a price bargained today will be good tomorrow. Industry more readily expands because it can calculate today the cost of a plant to be finished five years hence. The laborer knows today's wage will suffice for tomorrow's food.

It's argued by the objectors (economists as well as politicians) that we've no need of the gold standard discipline if our monetary authorities will discipline themselves. This is doubtless true, and for the moment anyway our governors seem to be trying to do just that. But on the morrow our governors may change—or even change their minds.

However, history also reminds us how fragile this gold standard is. Even within its restrictions, it can be tampered with. Just as kings could clip their coins, modern governors can stretch the amount of currency issued against their gold holdings and it will be a time before the people know it. And there also comes a day—inexorably, it would seem—when the shackles of the gold standard become too frustrating to those restrained by it.

The excuse can be war; no nation ever fought a major one without debasing its currency. Or it can be only the desire of politicians (or the pressure on them) to do "good things" which is frustrated by a restricted money supply. Then the cry goes up that we ought not to be "enslaved" by a foolish and outmoded adherence to the "myth" of gold.

Out of such musings comes my skepticism that we will in fact return to the gold standard, however much glittering talk is heard about it. Or, should it happen, that the adoption will last. It chafes too much for either governors or the governed to long endure it.●

TO LOWER INTEREST RATES, GO BACK TO GOLD

● Mr. HELMS. Mr. President, awhile back, on November 10, the Washington Post published an article by Jude Wanniski which not only contradicted the mind-set of the Post's economic reporters, but also pointed to the fallacy in the administration's arguments concerning interest rates.

Mr. Wanniski observed that when interest rates are lowest by strangling demand it inevitably frustrates the economy. I am reminded that one administration spokesman referred to a "swimming pool" of capital in which the "Federal whale" swims. His remedy was to decrease the size of the whale and not worry about the size of the swimming pool.

Mr. Wanniski made the point that we should worry about the size of the capital pool.

Mr. President, it strikes me that anyone who would argue that the size of the pool of capital is stable needs to examine the size of the pool available for 20-year bonds. In 10 years that capital pool has shrunk to near nothing.

The way to increase the availability of capital in the economy, and to extend economic horizons beyond that offered by money market funds or short term certificates of deposit, is to make the dollar a reliable unit whose value is predictable over a period of time. The definition of money is that it is not only a medium of exchange, but a store of value. Today the dollar lacks that vital characteristic.

Mr. President, I ask that the article be printed in the RECORD at the conclusion of my remarks.

The article follows:

TO LOWER INTEREST RATES, GO BACK TO GOLD

(By Jude Wanniski)

There are only two ways to bring down interest rates: decrease the demand for credit or increase the supply of credit.

President Reagan has been struggling with record-shattering interest rates because his administration has been almost wholly occupied with the first of these two options. The Keynesian and monetarist "demand-side" economists have dominated thinking about the interest-rate dilemma. They focus on trying to reduce the demand for credit.

Budget director David Stockman, once a supply-sider, has been drawn into this demand-side exercise, hacking away at school-lunch programs, Medicaid and national defense in a desperate attempt to reduce the federal government's demand for credit.

The monetarists sprinkled through the administration likewise have no interest in the supply of credit. Indeed, they specifically argue that the Federal Reserve should pay no attention whatever to the price of credit, i.e., interest rates. They aim at control of the "money supply," as they define money. If there is less "money" people will be able to demand less in the way of wage and price increases.

For the monetarist solution to work, we are told, there must be a period of recession and unemployment in which "people" realize they can't ask for more, because there isn't enough "money" in the system.

Federal Reserve Chairman Paul Volcker is not a monetarist per se, but he is a big believer in recessions as a way of bringing down interest rates. He believes that inflation is caused by workers asking for more money and businessmen granting those demands. He thus will support any idea to induce a recession, a goal he has now achieved.

The supply-side economists put their focus on the supply of credit. If we could increase the supply of credit we could avoid using a recession as a way of lowering interest rates. If we could increase the supply of credit rapidly enough, we could even experience a rising demand for credit with falling interest rates.

The chief instrument to bring down interest rates, though, could not be fiscal policy. Supply-side economists (excepting a few supply-side fiscalists such as Treasury Undersecretary Norman Ture) have always asserted that monetary policy is the key to interest rates. Of course, they believe any assault on credit demand is doomed to failure. The recession only shrinks the economy and its tax base, setting the stage for higher interest rates next year.

The only way to break this spiral is by increasing the supply of credit, basically by making it so much more attractive to be a creditor that people will once again be happy to lend long at low interest rates.

How can this be done? The supply-siders say it can only be done with a gold standard.

Only by announcing that we are going to move toward the opening of the gold window that President Nixon closed in 1971 will people be encouraged to lend long again. Only by guaranteeing the dollar's value as a unit of account, in a specified weight of gold, can the current global liquidity crisis end without inflation. And it surely is a global crisis. It was Robert Mundell, the Canadian economist, who observed 10 years ago when the gold window was closed that it was the first time in 1,500 years that the world was without a single currency convertible into gold or silver. We are in a Greenback era, in which all governments can change the value of their currencies annually, monthly, weekly, daily, hourly.

In the past decade, the U.S. government has repeatedly defaulted on its debt to bondholders by devaluing the dollar relative to real goods. Prospective lenders to either government or the private sector demand enormous premiums in the form of interest rates. Why should anyone lend to anyone else when the banking is done in dollars or other non-convertible currencies that constantly melt in real value?

It is, after all, not only government that defaults on debt when the monetary standard shrinks, all creditors lose. The more they lose, the less they lend. For this reason, there is almost nothing better that the government can do for its people than maintain a constant value of its unit of account, its currency. People make most of the important decisions of their lives around the value of the government official unit of account. When the government alters its value, or "floats" it, as Nixon did, everyone loses. The debtors may momentarily gain, but inflation poisons the community of large in which debtors live too.

When the dollar is convertible into gold, this is impossible. There are no windfall losses or windfall gains. Debtors pay what they promised; creditors receive what was pledged. As a result, there are no inflation premiums in the interest rate. Once again, people lend long at low interest rates.

If Reagan tomorrow announced a return to convertibility, the rest of the world would rush to join the system. No nation could afford to stay on the paper standard if it wished to continue conducting international banking services. Who would bank in floating Deutschemarks, yen, sterling francs or lira if the dollar were as good as gold?

We abandoned convertibility, remember, not because we were in a credit crunch, but because Nixon was sold the Keynesian idea that a devalued U.S. dollar would make us more competitive with the Japanese. The monetarists persuaded Nixon to float the dollar altogether in 1973 so they could try another of history's periodic experiments with a paper standard.

Stockman believes convertibility would mean an initial period of illiquidity, a wave of bankruptcies. But that is what we are now experiencing. Gold ends the liquidity crisis that is endemic on a global scale because there is no international monetary standard of value. When the supply of credit expands, interest rates tumble and relieved debtors and creditors can happily refinance.

Before we get to that point, though, there must be a general awareness in Washington—in the White House and on Capitol Hill—that there is more than one way to bring down interest rates. Cutting the demand for credit, the method attempted thus far, is the wrong way. The "cure" is worse than the affliction in that it embraces poverty and unemployment as necessary side effects to lowering interest rates.

Expanding the supply of credit is the only positive solution. It can only be done by reestablishing the dollar's link with gold, reestablishing the value of the accounting

unit in real terms. Until the president moves decisively toward this positive solution, he and his administration and the world economy will continue to suffer, and it will get worse.●

THE AGRICULTURE AND FOOD ACT OF 1981

● Mr. MATTINGLY. Mr. President, I very reluctantly voted for adoption of the conference report on the Agriculture and Food Act of 1981 when it was presented to the Senate on Thursday. The conference committee version of the farm bill is seriously deficient in several respects, especially in the modifications which were made to the peanut program which I sponsored in the Senate. As it now stands, the 1981 farm bill will retain the Senate provisions regarding the distribution of farm poundage quotas for domestic edible peanuts and several important revisions dealing with marketing and contracting of peanuts. However, the amendments to the Senate version which were offered by Congressman ROSE and adopted by the committee give me a great deal of concern.

The Senate program provided almost certain protection against any losses to the Government in the operation of the peanut price support loan system. My bill insured that present growers would not be adversely affected by allowing new production in the future by persons who had not owned allotments in the past. With the Rose amendments, much of that protection has been lost and there is a real possibility that the Government will suffer significant losses in operating the loan program.

In spite of my disappointment with the changes in the peanut program and my opposition to a new subsidy program for sugar, I felt that our farmers needed to have a farm bill passed in this session so that they could begin to plan their operations for the coming year. The farm bill is already about 2 months too late and any more delay would only increase the burden for the farm operators of our Nation.

If farm legislation is not quickly finalized, all agriculture programs will revert to the 1949 farm bill which would increase taxpayers' cost by several billions of dollars.●

FEDERAL ELECTION COMMISSION

● Mr. BRADLEY. Mr. President, I am concerned about reports of an attempt to limit the Federal Election Commission's reauthorization to 6 months. Such a restriction would severely cripple the operations of a body which is necessary to maintain public confidence in the electoral process. Well-trained staff would begin to depart—new staff would be difficult to attract. In addition, midyear contract renegotiations for such items as computer services and microfilming would only place additional costs on the taxpayer.

While I would not argue that improvements cannot be made at the FEC, there is no reason proper oversight cannot be conducted within the context of a full-year reauthorization.

Lest we forget why the FEC was originally created, let me review for my colleagues some of the recent history and why I believe the FEC is important to retain.

Regulation of election practices is not new. It dates back to the adoption of the Tillman Act in 1907. Campaign finance disclosure came shortly thereafter when the publicity bill was adopted in 1910. Those laws and subsequent amendments faced many problems of enforcement. In fact, until the adoption of the Federal Election Campaign Act of 1971 and the major changes in 1974, campaign finance and disclosure legislation was enforced by the officers of the two Houses, the Clerk of the House and the Secretary of the Senate, as well as the Comptroller General. Prosecutions were the responsibility of the Department of Justice. The public had little reason to expect us to patrol ourselves and be evenhanded to challengers. And in fact the record of enforcment was pretty dismal.

A check of the records shows that after the general election of 1972, approximately 7,000 complaints lodged with the Secretary of the Senate and Clerk of the House were deemed strong enough to refer to the Department of Justice. Yet not one case was ever litigated. The Department had more important business to pursue. Between 1971 and 1974 the Comptroller General sent the Department of Justice over 100 cases of serious violations of the law, yet only a few of those referrals were ever prosecuted. The Comptroller General concluded what the public already understood, that there was no desire to enforce election laws.

The 1974 amendments emerged from the public's sense of frustration and, indeed, outrage at the cavalier way the open elections process was being enforced. Watergate only galvanized the public's determination to stop abuses and find a better enforcement mechanism. Thus, in 1974 the disclosure rules were srengthened and a professional enforcement body, the Federal Election Commission, was created.

Today the Commission handles thousands of inquiries, audits the campaigns for Federal elections, prepares advisory opinions, conciliates and when conciliation does not work, it litigates. It also enforces public financing of presidential elections. Put more simply, the FEC enforces the laws we adopt.

If there is a need for simplification of the rules, then let us consider such changes. I have heard many sensible suggestions to eliminate the subterfuges that individuals and groups go through to get around the law.

As one who tries faithfully to comply with the law, I know how difficult it frequently is to determine what the law really means.

Even given the legitimate criticism of the Commission, the answer is not to scrap the FEC. With voter participation as low as it is, we cannot afford to further erode public confidence in government.●

MEDIA BLINDNESS

● Mr. GARN. Mr. President, reading the current issue of Commentary, I came across an interesting article on the subject of Wilfred Burchett, the Australian newsman. I thought immediately of our colleague, Senator DENTON of Alabama, who has had some fairly intimate contact with Mr. Burchett, under somewhat trying circumstances. Since the article fully confirms what Senator DENTON knows first-hand—that Wilfred Burchett is an agent of a foreign ideology, and a traitor to the principles of freedom and justice—I thought my colleagues might be interested in it.

The article is called "A Scandalous Journalistic Career," but what is really scandalous is the treatment Wilfred Burchett has always received in the United States, among our intelligentsia. After all, it is not as if Burchett's background was not well known. Senator DENTON certainly knows it.

I ask that the article, by Mr. Stephen Morris, be printed in full at this point in the RECORD.

The article follows:

A SCANDALOUS JOURNALISTIC CAREER

(By Stephen J. Morris)

Wilfred Burchett is no ordinary journalist. An Australian, he has been actively involved in reporting the major confrontations between East and West for over forty years. He has also been a highly controversial figure. In 1955 the British and Australian governments refused to issue him a passport. For many years he was banned from entering the United States. The controversy which has surrounded him has centered on his own role in the various conflicts he has reported. The recent publication of Burchett's memoirs[1] with an introduction by another famous journalist, Harrison Salisbury, offers an occasion for evaluating his career.

Wilfred Burchett was born in Melbourne, Australia in 1911. His father was a Methodist lay preacher with strong radical left-wing views. Family poverty forced the young Wilfred to drop out of school at an early age, and he worked for several years on various jobs, including as farm-laborer and vacuum-cleaner salesman. During his spare time he studied languages, acquiring a skill which was later to become very useful.

In 1936 Burchett left Australia for England. His first job after arriving in England was working for the Thomas Cook travel agency. Later the same year he switched to the London office of the Soviet government travel agency, Intourist. In his memoirs, Burchett devotes only two sentences to this event: he suggests that he got "the job" (never specified) because of his rudimentary knowledge of Russian and because the assistant manager was an Australian. But according to the knowledgeable and impeccably honest Australian journalist Denis Warner, Burchett was invited to open the London office of Intourist by the then Soviet ambassador to England, Ivan Maisky.[2] In any case a diplomatic quarrel between England and the Soviet Union soon led to a closing of the office. After searching unsuccessfully for a job in Paris, Burchett returned to London, where he found a job with the travel agency Palestine Orient Lloyd, which specialized in handling emigrant traffic out of Germany to Palestine and the United States. Burchett remained at that job until 1939. Meanwhile,

[1] *At the Barricades: Forty Years on the Cutting Edge of History*, New York Times Books, 340 pp., $15.00.

[2] See Warner's "Who is Wilfred Burchett?" the Reporter, June 1, 1967. This article provides a valuable account, much of it first-hand, of Burchett's activities in Asia from World War II to 1967.

in September 1938, he married Erna Hamer, a German Jewish refugee.

Burchett finally found his niche as a journalist during World War II. In 1940 he reported the revolt against the Vichy regime on the French South Pacific colony of New Caledonia and this helped him gain accreditation with the popular London newspaper the Daily Express for which he reported the Asian battlefield throughout World War II. The war in China and Burma and the island-hopping campaign of General MacArthur's forces were the main subjects of his dispatches.

It was during those years that Burchett met a man who was later to become an important friend—Chou En Lai.

Burchett's first major journalistic coup was achieved at the end of World War II. He was the first Western correspondent to tour the remains of Hiroshima after the atomic bomb was dropped. Burchett claims that his reports of the devastation infuriated General MacArthur. But these reports did not harm his career. After three years of work for the Daily Express in Trieste, Greece, and Berlin, Burchett turned up in Eastern Europe in 1949, with access to the courtroom for the Stalinist show trials of East European Communist leaders and of Cardinal Mindszenty of Hungary. Burchett was now reporting for the most prestigious newspaper in Britain, the Times.

Though the charges against the Hungarian and Bulgarian Communists were utterly fantastic, similar to the kinds of accusations Stalin had leveled against the old Bolsheviks in the Soviet Union in the 1930's, Burchett in his reports endorsed the prosecutor's line. In the case of the Hungarian Foreign Minister, Laszlo Rajk, and his co-defendants, Burchett wrote later (in "People's Democracies," 1951) that the accused were "Titoist spies" ultimately linked to British and American intelligence:

"In the Western press, even in so-called liberal sections, an attempt was made to present Rajk, Pallfy, and Co. as a small group of nationalist-minded Communists, people who wanted Communism but independent of the Soviet Union. This is nonsense. There was not one convinced Socialist among the whole band. They were mostly cheap police spies . . . they are a miserable collection of plotters without a human ideal between the lot of them. . . . Before the court and before the Hungarian public, as all proceedings were broadcast from the court, Rajk and his gangs were disclosed as miserable, bloodthirsty adventurers. . . ."

When Stalin ordered the purge of independent-minded Communists in Bulgaria, Burchett was once again on the spot. As he wrote in "People's Democracies":

"If Laszlo Rajk could be regarded as the right arm of Tito's plans for Eastern Europe, Traicho Kostov, member of the Bulgarian politburo, 2nd Deputy Premier, was certainly his left arm. I sat in a crowded court in Sofia in December 1949, heard and watched Traicho Kostov and ten other accused and dozens of witnesses testify to a Yugoslav plan for Bulgaria every whit as diabolical and bloodthirsty as that for Hungary."

Burchett further asserted that Kostov was a British spy.

Not long after the show trials were concluded, Burchett, who had divorced his first wife in 1948 after a long separation, married Vesselina Ossikovska, a member of an old Bulgarian Communist family who at the time of their marriage was a journalist in the Bulgarian Ministry of Foreign Affairs. When Burchett left Bulgaria for Budapest in 1950, the Bulgarian authorities refused to allow his wife to accompany him. But the decision did not make Burchett bitter toward the Bulgarian regime. On the contrary, in People's Democracies he expressed great admiration for the human-rights record of all the Eastern European regimes:

If the same advance is made in the next twenty years as has been made in the past five years in bringing real liberties to the workers and peasants of the People's Democracies, and if the Western powers give up their morbid plans to destroy the People's Democracies by force of arms and the hydrogen bomb, the whole population will be enjoying liberties of a quality not yet dreamed of in the Western world.

In early 1951 Burchett returned briefly to his native Australia, where he gave lectures for the Australian Peace Council, a front organization run by the Australian Communist party. That same year he took up residence in the People's Republic of China, as a correspondent for the French Communist newspapers L'Humanité and Ce Soir. (Neither the Times nor the Daily Express was interested in Burchett's reporting at this stage.) After six months in China, Burchett managed to rush off a gushing book-length panegyric to the regime, China's Feet Unbound. The introduction to this book made its outlook and purpose clear:

"It is written as a weapon for those who fight for peace and as confirmation for those who refuse to accept the idea that their living standards must be lowered, their civil rights abolished, their late enemies rearmed because China menaces world peace. It was written against the background of American bombs landing on Chinese soil, American tanks rumbling toward China's frontier, American germ warfare launched against China's neighbor."

The last clause was significant, as it previewed Burchett's next major public act—dissemination of the story that the United States was using germ warfare against North Korea. Burchett made his way to North Korea in July 1951, along with the British Communist journalist Alan Winnington. One of his purposes was to cover the Panmunjom peace talks from the Chinese Communist side. (This is the only purpose Burchett mentions today.) Burchett also produced scathing attacks on the UN forces, complete with atrocity stories which included the myth that America had conducted germ warfare. Finally, Burchett visited Chinese-run camps where Allied POW's were being held. He wrote of one:

This camp looks like a holiday resort in Switzerland. The atmosphere is also nearer that of a luxury resort than a POW camp.[3]

At the end of the Korean war, returning Allied ex-POW's gave a different account of the camps, and alleged that Burchett had been more than a journalist reporting "from the other side." Former prisoners interviewed by the British and Australian governments maintained that Burchett had collaborated with the Chinese Communists in interrogation procedures. Because of these charges of collaboration, the British government refused to renew and the Australian government refused to issue a passport to Wilfred Burchett in 1955.

It was through China that Burchett made his first contact with the Vietnamese Communists. In fact Burchett spent most of the period between 1953 and 1956 shuttling back and forth between China and North Vietnam, Laos and Cambodia. In these countries, as previously in Korea, he reported on the supposed strength and popularity of the Communist forces and provided captioned photographs which were meant to show that French prisoners were being well treated by their Vietminh captors. Apart from those reports for the world press, Burchett produced two books as a result of his visits—*North of the 17th Parallel* and *Mekong Upstream*. Burchett also established a personal connection with Ho Chi Minh and Pham Van Dong. In 1955, when he was without a British or Australian passport, the government of North Vietnam took the unprecedented step of offering him a special travel document of its own.

In the middle of 1956 Burchett visited Hungary and Poland, where social unrest was beginning to develop in the wake of Khrushchev's de-Stalinization program. Burchett was most disturbed by the growth of liberal and nationalist ideals among some of the anti-Stalinist party leaders and intellectuals who took him into their confidence.

In 1956 Burchett arrived in Moscow with accreditation from the *National Guardian* (later renamed *Guardian*), a tiny pro-Communist American weekly. During the next six years he devoted himself to reporting the achievements of Soviet science and technology, beginning with Sputnik and continuing on through the launching of Yuri Gagarin into space. These subjects were of a kind to reestablish Burchett's connections with the mainstream British press, including the *Daily Express* and even the prestigious *Financial Times*. A book written by Burchett during this period was *Come East Young Man* (1962), which detailed the astonishing successes of the Soviet economy, especially in the areas of agricultural output, housing, and consumer goods. Burchett also reported on the innovative and humane approach to criminal justice which he saw in the USSR. All of this, combined with the party's determined campaign to eliminate bureaucracy, encouraged Burchett to write:

"A new humanism is at work in the Soviet Union which makes that peddled in the West look shoddy, for it starts right down in the grass roots of Soviet society; its all-embracing sweep leaves behind no underprivileged."

In 1962, with the conflict in Indochina heating up again, Burchett began a series of trips back to the war zones. In 1965 he set up a new residence in Phonom Penh and developed a relationship with Cambodian Prince Sihanouk which was to last for over a decade. Burchett ghosted some of the Prince's English-language publications and also served as a liaison between Sihanouk and the North Vietnamese. It was from Cambodia that Burchett made his way to the "liberated zones" of the National Liberation Front of South Vietnam, as well as to Hanoi.

At first Burchett's articles on the Vietnam war appeared only in Soviet magazines, such as New Times. But the thirst for news "from the other side" was so great in the West, and Hanoi's restrictions on foreign newsmen so severe, that by 1967 Burchett's articles were beginning to appear in the mainstream Western press—particularly Le Monde and the New York Times. The articles tended to deal with the alleged effects of the American bombing on North Vietnam. Stories of civilian suffering were combined with tales of the indomitable Vietnamese will to resist "imperialist aggression." Burchett also provided advance notice of changes in Hanoi's position on the issue of negotiations.

The "special relationship" Burchett enjoyed with the Hanoi regime manifested itself in many ways. According to Denis Warner, Burchett's intervention, or veto, could determine whether or not a Western journalist would be given a visa to North Vietnam. Many of the applicants were people whom he had known from World War II and the Korean peace talks in Panmunjom. Burchett was a wise judge of friends and enemies. The first American correspondent allowed to visit North Vietnam was an old friend, Harrison Salisbury of the New York Times, whom Burchett accompanied on part of his visit. Salisbury did nothing to embarrass Burchett. Rather, he reported to readers

[3] Quoted by Denis Warner in "Who is Wilfred Burchett?"

of the New York Times, and ultimately to the entire Western World, that the United States was deliberately bombing not military but civilian targets in North Vietnam. What Salisbury did not tell his readers was his source for this charge: not direct observation but North Vietnamese officials and one of their published propaganda booklets.[4]

Burchett also helped secure visas for other well-disposed foreigners. Among the most notable was the writer Mary McCarthy, who conducted a well-publicized visit to Hanoi in 1968. Miss McCarthy too wrote nothing that might embarrass Burchett.

When, in 1968, peace talks began among the United States, South Vietnam, North Vietnam, and the Vietcong, Burchett was in Paris to cover them. This time his personal ties with Western newsmen paid off handsomely. He had befriended Charles Collingwood many years earlier. Now Collingwood was chief foreign correspondent of CBS News, and Burchett was employed under what he himself calls "a discreet arrangement" as a consultant to the CBS News team in Paris.

Nineteen-sixty-eight was also the year in which Burchett's book on Korea appeared (*Again Korea*). In it he wrote:

"Kim Il Sung . . . has the warm human touch, the simplicity of the great, and a down-to-earth manner, rare among men in his position. This comes through in his speeches. Even dealing with such unromantic problems as heavy industry, there is always some little aside, to remind his listeners, especially if there are bureaucrats among them, that the end result of everything is to make life better and gayer for everyone."

In the same year Fidel Castro took the unprecedented step of granting Burchett a Cuban passport, to replace the now cumbersome document the North Vietnamese had provided many years earlier.

Sensing the changing climate of intellectual opinion in the West, Burchett now began a public campaign for the restoration of his Australian passport. A Burchett Passport Committee was formed in Australia, and its activities resulted in a petition to Parliament. Among the signatories were various journalistic associations around the world, the PEN Club, Bertrand Russell, Jean-Paul Sartre, Jane Fonda, Vanessa Redgrave, Norman Mailer, and Arthur Miller. The petition was presented in April 1969, but rejected by the Australian government. The Australian Journalists Association then appealed to the UN Human Rights Commission.

Buoyed by the tide of international support, Burchett decided to challenge the government's ban on his reentry into Australia. With the help of Gordon Barton, a wealthy Australian businessman and publisher, Burchett was privately flown into the country in 1970 and was accorded a spectacular reception with great attendant publicity. His public challenge to the Australian government to bring charges against him was not taken up, and this helped discredit the case of the Australian conservatives and strengthened the hand of his many admirers within the Australian Labor party. Thus when the party came to power in 1972, one of its first acts was to restore the passport of Wilfred Burchett.[5]

[4] Salisbury's misleading reports about the bombing of North Vietnam are meticulously analyzed by Guenter Lewy in *America in Vietnam*, pp. 400–403; see also the important account of the former British consul general in Hanoi, John Colvin, "Hanoi in My Time," *Washington Quarterly*, Spring 1981.

[5] The reason for the unwillingness of the previous Australian government to press charges against Burchett in 1970 or earlier was that the offenses for which he had been denied a passport occurred during the Korean war. Since the war had been undeclared, actions relating to it could not be considered treasonous under the provisions of the Australian Crimes Act as originally formulated.

In the early 1970's, with American public opinion now favoring withdrawal from Vietnam, Burchett turned to other international settings. The end of the Cultural Revolution in China saw his friend Chou En Lai back in power in Peking. Burchett now began to disseminate Chou's version of the power struggle in China. In particular he publicized the story that Lin Piao had attempted to assassinate Chairman Mao and seize power, but was foiled and died while attempting to flee.

After the 1974 military coup in Portugal, Burchett reappeared on the European scene, defending the cause of the Portuguese radical Left against the Socialists and centrists. But with the victory of the democrats in Portugal, Burchett was forced to turn elsewhere. In 1975 he flew to Angola, where he provided extensive reporting favorable to the Cuban forces helping to install the MPLA government.

The Angolan civil war catalyzed Burchett's growing estrangement from the Chinese Communists. In 1976, after the death of Chou En Lai (for whom he wrote a powerful eulogy), Burchett began openly to criticize Chinese foreign policy. What forced him to take sides was not the Sino-Soviet split but rather the Sino-Vietnamese split and the broader international realignments of which it had been a part. China's abandonment of the "anti-imperialist struggle," in Angola and elsewhere, in order to develop a united front against the Soviet Union, was for Burchett totally unacceptable.

Like the North Vietnamese politburo, Burchett had not anticipated the rapid collapse of the South Vietnamese government in 1975 after the final American withdrawal. He was thus not in place for the beginning of the end. But he made up for that after the victory by producing two books on the military campaign of North Vietnam and numerous articles celebrating life after "liberation." On October 25, 1975 he wrote in the Guardian:

"The South Vietnamese people are tasting the heady wine of running their own affairs for the first time in living memory. This is the dominating factor in all spheres of public life."

In 1975 and 1976 Burchett was also ecstatic about the new regime Pol Pot had created in Cambodia. On January 14, 1976 he wrote in the Guardian:

"Cambodia became a worker-peasant-soldier state last week, with the January 5 adoption of a 21-article constitution. . . . The new constitution . . . confirms the new democratic revolutionary order built up in the countryside during the struggle. . . . It guarantees that everyone has the right to work and a fair standard of living . . . it is one of the most democratic and revolutionary constitutions in existence anywhere."

In 1975 and 1976 Burchett was also denouncing as "fabricated" a number of reports that Sihanouk had become disillusioned with the Khmer Rouge. But after the Vietnamese Communists turned against their former allies, Burchett discovered the truth of what had previously been "fabricated." Pol Pot suddenly became a Hitlerite monster whose crimes exceeded the claims of the most virulent anti-Communist propaganda. So incensed now was Burchett by the horrors of the Pol Pot regime that when his friends on the editorial board of the Guardian refused to take a position on the Vietnam-Cambodia conflict he announced he would no longer write for the newspaper. This inflexible stand was uncharacteristic of Burchett, but it corresponded to the totally uncompromising position of the Vietnamese.

Burchett is today somewhat distant from the Soviet Union, with regard to which he might be considered a "critical sympathizer." He reserves his uncritical admiration for the Soviet Union's most militant clients—Vietnam and Cuba. One of his recent concerns has been to denigrate the moral credentials of the late Marshal Tito as leader of the nonaligned world, and to promote Fidel Castro in his place. Burchett also maintains his support for Kim Il Sung's regime in North Korea, which is independent of both Moscow and Peking.

This slightly unusual pattern of allegiances within the fragmented Communist world has led some observers to conclude that Burchett's political position is an "independent" one, reflecting his own brand of idiosyncratic radicalism. What these observers do not realize is that the twists and turns in Burchett's Communist sympathies, and his current firm attachments to the regimes in Hanoi, Havana, and Pyongyang, have correlated exactly with the foreign-policy line of the Communist party of Australia.

II

What do Burchett's memoirs tell us about the man and his political record?

First they contain interesting information on Burchett's friends and patrons in the Communist world. He is anything but modest in describing his close ties with Chou En Lai, Ho Chi Minh, Pham Van Dong, and Fidel Castro. Burchett's link with Kim Il Sung seems to have been much less personal in nature, though still significant. As far as the Soviet Union is concerned, Burchett gives no indication of having made any close personal contact at the highest level.

The memoirs also list some of the people in the Western media who have befriended and promoted him. Harrison Salisbury is at the top of the list. So too is Russell Spurr, an English journalist formerly with the London Daily Express and later with the English-language Hong Kong weekly, the Far Eastern Economic Review. Charles Collingwood is mentioned as an important friend. Not only was he instrumental in having Burchett named as a consultant to the CBS News team at the Paris peace talks, but he also introduced Burchett to Averell Harriman, President Johnson's roving ambassador for peace. (Harriman sought Burchett's advice on how the U.S. might proceed in its dealing with Hanoi.)

But the memoirs are also interesting for the way Burchett attempts to explain his own past. As an illustration, let us consider Burchett's account of his reporting of the show trials in Eastern Europe during the 1940's.

The Eastern European Communist victims of Stalin, whose guilt Burchett affirmed, were rehabilitated (many posthumously) in the Khrushchev era. Today in his memoirs, Burchett explains his own role in the pseudo-judicial farce by drawing what he considers to be an important distinction between the Rajk and Kostov trials. Burchett claims that he believed at the time in the guilt of Laszlo Rajk because of the calm and unemotional nature of the confessions he made. He adds: "I had no doubt of their guilt or of the inevitability of a death sentence for Laszlo Rajk, given the gravity of the activities to which he had confessed."

But Kostov's trial, he says, was different. Kostov (like Bukharin in the Moscow show trial of 1938) stood up in court and denied his handwritten confession. This is how Burchett today describes his reaction then to Kostov's public retraction:

"In his own way Kostov had done what his old comrade Georgi Dimitrov had done sixteen years earlier at the Reichstag Fire Trial. He had knocked the stuffing out of the prosecution. . . . Kostov's honesty and courage could make no difference to the conduct of the trial or its outcome, but it posed questions in everyone's minds about the methods by which such confessions were produced and the validity of the charges against Tito. . . . I was considerably shaken by the Kostov trial."

If the Kostov trial "posed questions" in Burchett's mind about the methods of producing confessions and the "validity of the charges against Tito," and if he was "considerably shaken" by the Kostov trial, he did a

remarkable job of concealing the fact. Burchett's earlier writings provide not a shred of evidence to support his current claim. Instead, they contain sustained arguments to the contrary. Thus, he wrote in People's Democracies:

. . . If Kostov's written statement was a fraud and his oral denial correct, if he was the man of courage he depicted himself to be in 1942, no police pressure nor any threats of punishment afterward should have prevented him from crying "My statement is false. It was made under pressure. These other accused have been falsely arrested. Everything I wrote was a lie. I retract it all."

And further:

"If Kostov was the man who withstood beatings and was prepared to face the firing squad rather than betray his comrades and his party in 1942, this is what he would have done in 1949. Firstly, he would never have written a statement, secondly, if a statement had been forced out of him, he would have retracted it. But he played the double-faced role he had played in the 1930's, the role he had played in the courtroom in 1942, when he admitted everything to Geshev, the role he played in early 1949 after he was just denounced in the Politburo."

Burchett obviously counts on his readers' not checking his record, and for the most part they have not disappointed him.

Burchett adds a further revelation to explain his past "errors." He has now discovered the possibility that the false evidence which came forth during the trials was planted by the CIA! Burchett bases himself on a book by Steward Stevens, former assistant editor of the Daily Mail. According to the Stevens thesis, CIA chief Allen Dulles was worried that the emergence of "National-Communist" regimes in Eastern Europe would make Communism more attractive to the voters of Western Europe. To insure that Eastern European Communism remained Russified, Dulles, operating through the American agent Noel Field and a Polish secret-police official, planted phony evidence of "Titoist conspiracies in conjunction with Western imperialism" in the hands of Stalin's secret police chief Beria. Thus, the story concludes, in prosecuting the alleged conspirators Stalin was all along the unknowing dupe of Allen Dulles and the CIA.

Another interesting feature of Burchett's memoirs is their failure to mention at all the two most serious charges that have been leveled against him.

In November 1969, the KGB defector Yuri Krotkov swore before a United States Senate Judiciary Subcommittee that he had been approached by and later helped to recruit Wilfred Burchett to the payroll of the KBG. Krotkov claimed that at their first meeting in East Germany in 1947, "Burchett gave me all necessary hints that he is very close to the Communists, and that he wants to have a special relation with me."

But at that time, Krotkov asserted, his KGB superiors were wary of Burchett, and instructed Krotkov not to get too close. At a second meeting in Moscow in 1956, the KGB was more trustful. Krotkov met Burchett in a restaurant:

" . . . he openly told me that he is a member of the Australian Communist party, but for the benefit of the party, he is on the illegal underground position. Then he told me that he was in Korea, and then he was in China. He worked there as a freelance correspondent but he was supplied, he was paid by the Chinese Communist party all that period. Then when he came to Vietnam . . . all his expenses were paid by the Vietnamese Communist party, by Ho Chi Minh, and he mentioned that he was in very close relation with Chou En Lai . . . that he was in very close relation with Ho Chi Minh himself. He told me that he visited him many times, that he gave him a house in Hanoi, and a car, a secretary that he was "equipped" very beautifully by the Vietnamese Communist party."

And then he said that he had now a new idea . . . that he wanted to come to Moscow because now after the Khruschev speech, Moscow became the most important place in the world.

And he gave me a hint that he wants to be in Moscow in the same position as he was in China and in Vietnam. In other words to be a free lance correspondent, representingg the American newspaper, *National Guardian* . . . but money was a problem, because no one would pay him money and he asked for money from the Soviet Communist party. He told me all this directly and he said that it would be nice if I would be able to find [the] right man to discuss all this.

Krotkov testified that he reported all this back to his superiors, and that after some consideration the KGB agreed to Burchett's proposal. But Burchett had left Moscow, and when he returned a new person had been put in charge of these matters in the KGB who put difficulties in his path. Now Burchett approached visiting members of an Australian Communist party delegation in Moscow, and after intervention on his behalf the relationship was established. Thus Krotkov:

"After his meeting with them . . . everything was quite alright. The KGB gave him the good fiat and well, I guess necessary money. . . . I know that Burchett had a close relation with the boss of the KGB special department which is responsible for the whole foreign correspondents in Moscow. That's Colonel Barsegov."

Burchett's failure to mention the Krotkov testimony is consistent with his past behavior. In fact his characteristic response to anyone who dares repeat the charges has been to issue a libel suit. One of these suits, taken out in Australia in 1973, led to the publicizing of a second series of major allegations about Burchett—allegations about his behavior during the Korean war. Although there is not a sentence in his memoirs dealing with the trial testimony, it was these allegations which led the Australian and British governments to refuse to issue Burchett a passport, an act which aroused so much indignation on the part of Burchett's friends.

The famous defamation trial, held in Sydney, in October and November 1974, involved a claim of $1,000,000 damages by Burchett against Jack Kane, an Australian politician. Kane had published an article in his political newsletter which reported the Australian parliamentary debate over the Krotkov testimony. At the trial, Kane's legal counsel presented testimony by Krotkov reiterating the charges he had made in Washington in 1969. Kane's lawyers also gathered an enormous number of witnesses from around the world, all of whom had been prisoners of war in Korea.

At the trial three Australian ex-prisoners testified that they had met Burchett in a Chinese camp for Allied POW's, and that Burchett was wearing the uniform of a Chinese army officer. One of these prisoners, Thomas Hollis, said that Burchett told him he could get them better treatment "if we agreed with his ideas and went over to the Chinese more or less and collaborated with them." This was confirmed by another Australian prisoner, Robert Parker.

Even more damaging allegations about Burchett's role during the Korean war were made by American POW's. Walker Mahurin, a former colonel in the United States Air Force, met Burchett twice during his sixteen months of captivity in North Korea. On both occasions, he claimed, Burchett wore a Chinese officer's uniform. Mahurin also testified that in addressing the guards Burchett used the Chinese word for "comrade." Mahurin, who had been forced by his captors into confessing falsely that he had carried out germ warfare, said that Burchett called him an "international war criminal."

Paul Russell Kniss, an American pilot shot down over North Korea in May 1952, testified that he met Burchett five or six times in two camps in North Korea. At their second meeting, Burchett told him that it was he, Burchett, who had edited the false confession Kniss had been forced to sign. According to Kniss, Burchett made a tape-recorded interview with him for a French newspaper, and the interview was based upon specially prepared questions and answers Burchett handed to him, with the aswers identical to the text of the false confession.

Kniss also described to the court how on one occasion a Chinese interrogator dropped a piece of paper in his cell, and after the interrogator left he had picked it up. The paper, which bore the signature of W. G. Burchett on the bottom, contained questions of a military nature, which were the exact same questions asked of Kniss by the Chinese interrogator.

But the most devastating testimony against Burchett came from Derek Kinne, an Englishman who served with British units in Korea and was awarded the George Crosa. Kinne identified Burchett in court as the man he had seen twice while a prisoner of the Chinese in Korea. The second time Kinne saw Burchett he and the other prisoners were told that Burchett was coming to talk to them on the football pitch (field) in the camp:

"It was all the Americans and all the British about 1400 men. . . . They put a table on the football pitch and he came on the football pitch and he stood in front of the table and he faced us. . . . He went on to say that through the tireless efforts of the Chinese peoples' volunteers the peace talks were going on and that the Americans had sabotaged the peace talks, and he was getting booed down and the Americans started to take off their belts and put a noose in them and they would swing them and it became pretty well bedlam, so he got rather pissed off and he said: 'All right you people—you think when the peace talks break down and the Americans come this way you will be liberated. But I have got news for you. You're going that-a-way.' And he pointed to China."

Kinne continued:

I was in the front row and he turned his back and started to tidy up his papers. There was a theme there—he was always saying "our side" and "your side." I went to the front and I faced him, and I said to him "Are you biased, you son-of-a-bitch, are you biased?" He said: "No." I said, "Why do you refer to the Chinese and the North Koreans as 'our side' and the Americans as 'your side.'" I can't remember whether he said, "That was the side I correspond for" or "the side I work for." And then I said, "Well you can tell your side to get some dental treatment in here because men are having their teeth extracted with regular pliers; also 39 men went up to Boot Hill and I saw the dogs dragging the bodies out, and we ate those dogs." And I said, "We are starving to death."

His Honor: Did he say anything?

Kinne: No sir, he kept his mouth shut.

In answer to a further question from the defense counsel Kinne said:

I told him that I complained to the Chinese and they took me away and they put me in a room for 72 hours, and tied me up and told me I was in there to reflect, and I reflected. He [Burchett] got mad and he said to me, "I could have you shot." So I ran around that table and he started to move around the other way. I went around that table and I said, "You son-of-a-bitch, if you are going to have me shot I will tell you something." I pointed to Boot Hill and I told him that 600 men had died from malnutrition and atrocities and he said to me, "What can I do about it?" I said, "You can tell them

at Panmunjom," and he said. "It would be a good thing if I had you shot."

In an interview with the New York Post in 1977, Kinne also said that an hour after the meeting described above, two Chinese guards came and took him away to a small room and tortured him. According to Kinne the guards "told me I wasn't a very good student in the way I'd talked to Comrade Burchett, and that I was sick in the mind and they were going to cure me." Kinne asserted that he was kept in solitary confinement for 13 months and beaten daily while the guards tried to force him to sign a confession. "One of the parts of that confession was that I had a hostile attitude to Comrade Burchett."

At the trial Burchett denied all of these allegations, just as he denied the testimony of the KGB defector Krotkov. He lost the case on the technical grounds that the article which he had found offensive was regarded by the court as a fair rendering of the substance of a parliamentary debate, and hence protected by parliamentary privilege from liability. Thus the jury was never asked to pass judgment on the truth or falsity of Krotkov's testimony. (The testimony of the former POW's had been presented by the defense counsel as supporting evidence.)

III

One need not have been familiar with all the charges against Burchett to have concluded that he was something other than an independent left-wing journalist. Burchett's published writings of the past thirty years demonstrate by themselves his devotion to various totalitarian causes. And the publicly acknowledged fact that Burchett was granted travel documents and a passport by the North Vietnamese and Fidel Castro—privileges not normally given to the citizens of North Vietnam and Cuba—speaks for itself concerning Burchett's "independence." What is most remarkable about Burchett is not his record, but how he has managed to retain credibility and respectability in the eyes of so many Western intellectuals.

The effusive introduction to Buchett's memoirs by Harrison Salisbury provides an almost incredible example of this. A man who since 1945 has undertaken significant public-relations tasks for the brutal regimes of Joseph Stalin, Matyas Rakosi, Mao Tse-tung, Kim Il Sung, Ho Chi Minh, Fidel Castro, and Pol Pot is described by the former Moscow correspondent and associate editor of the New York Times as a "humanist" and an "iconoclast." Salisbury writes:

"In many ways Burchett reminds one more of the old-fashioned, pre-1917 radicals than those of today's highly ideological confrontations, a Lincoln Steffens or a John Reed with an Australian accent. . . . Burchett is an individualist as far as radicalism is concerned. If his sympathies have a polarization, it is toward the cause of struggling, backward emerging nationalist regimes, typified by Cambodia and Vietnam. . . . Burchett . . . can be seen as sui generis, a radical who moves through a changing milieu, lending his sympathy to one cause after another not because of some Marxist doctrine, but because he believes in the underdog, whatever the continent, whatever the color, whatever the creed."

Salisbury has not been the only collaborator in Burchett's political success. In the New York *Times Book Review* of March 22, 1981, to take a recent case, Thomas Powers describes as a man of "uncommon honesty" the same Wilfred Burchett who portrayed Communist victims of Stalinist repression as "Titoist spies on behalf of Western imperialism"; who disseminated and possibly helped fabricate the lie that the United States was conducting germ warfare in Korea; who portrayed the Chinese-run POW camps in North Korea, where Allied prisoners were being tortured, as comparable to Swiss holiday resorts; who defended the Russian invasion of Hungary; and who dismissed critics of Hanoi and Pol Pot as "CIA elements."

Burchett has been similarly praised and defended by the cream of the Western press. On March 5, 1970, during his campaign against the Australian government's refusal to issue him a passport, the *Times* of London wrote:

"Few Western journalists who have witnessed Mr. Burchett's conduct in the East would think him anything but misguided in his enthusiasms. He sympathized with China, reported the Korean war from the Pyongyang side, and in due course went to Hanoi—but his writings show him to be an advocate of détente rather than a tough committed enemy of the West."

Not only was Burchett praised (and published) in the *Times*, he appeared in Lord Beaverbrook's *Daily Express*, as well as in the elite *Financial Times*, even *after* he had shown his true colors on Eastern Europe.

And not just the British were at fault. For years, as we have seen, Burchett found friends in the editorial offices of Le Monde, at CBS News, and the New York Times. Today Burchett is being promoted not by the Communist regimes whose causes he has served, but by the Western democratic liberals whose cause he despises. And in all this he is presented to readers not as what he is, a Communist propagandist, but as what he is not, an independent, radical humanist, or, simply, an "Australian journalist."

Burchett has not always been so misidentified in the American press. During the Korean war, when he was getting enormous space on the front page of the New York Times for his report on the condition of a captured American officer, the *Times* referred to Burchett as a "Red" and as a "Communist correspondent." As late as 1967 and 1968, when the Times was publishing articles by and interviews with Burchett from North Vietnam, it usually prefaced them with a caption such as the following:

"Wilfred Burchett, an Australian writer, has frequently been a spokesman for the Communists in East Berlin, Korea, and Vietnam. . . . This articles gives a Communist view."

But by 1970 a correspondent of the New York Times referred to Burchett only as an "Australian journalist . . . who reported on the Korean and Vietnam wars from the Communist side," and by 1971 Burchett had become "the left-wing Australian journalist." This identification continued throughout the decade until 1979, when the Op-Ed page began describing him as "an Australian journalist."

The New York Times Book Review followed the same pattern. As late as 1969, Frances FitzGerald, reviewing Burchett's book on Vietnam, described him as a "Communist propagandist." But in 1973 James C. Thomson (a former official in the Johnson administration, and since the 1970's the curator of Harvard's Nieman Foundation) called Burchett a "left-wing Australian journalist." (In 1977, Burchett was given the honor of addressing the Nieman Foundation at Harvard.) By 1981 he had become a man of "uncommon honesty."

Similar trends can be seen in the weekly Far Eastern Economic Review. Its editor gave an almost accurate caption to Burchett in 1968, but by 1973, when the Review published an article by Burchett (on the Lin Piao affair) as its cover story, Chou En Lai's Australian spokesman was not even being identified at all.

Finally there is the treatment given by the Western press to Burchett's defamation trial. The allegations made in the Australian courtroom in 1974 were reported every day in Australia. The Times of London summarized the first day's testimony (by Krotkov) and then forgot the whole frightful business until the end, when it offered a tiny paragraph announcing that Burchett had lost his case. The Washington Post gave a summary of the evidence in one column, at the conclusion of the trial. The New York Times and Le Monde, the two Western newspapers which had afforded Burchett the greatest amount of space during the 1960's, when they were publishing many of his articles, failed to mention the trial at all. One might have thought that the same editors who had regarded Burchett's reporting on Vietnam as worthy of their columns would have found some interest in allegations that the writer was a Gulag bully-boy. But one would have been wrong.

Over the past thirty years Wilfred Burchett has been enormously successful in winning friends in the Western media. In part his success must be laid to his own exceptional talents as a kind of journalistic confidence man. He has been tireless in cultivating cordial relations with people of prospective influence in high places, and his polished personal manner, which reveals not a trace of fanaticism, has been extraordinarily helpful in this pursuit.

But in part Burchett's success, like that of a confidence man, has rested upon a favorable psychological predisposition in the minds of his victims. There seems to be a strand in our culture that is receptive to the message Burchett presents, the message of the benign and non-threatening nature of revolutionary Communist regimes. Though Soviet military moves in recent years have heightened popular concern about Western security, the case of Wilfred Burchett makes it clear that many of our leading intellectuals do not fully know, or do not wish to know, what the struggle is about.●

JUDICIAL INDEPENDENCE: PART II

Mr. BAUCUS. Mr. President, a couple of weeks ago, I began what I plan to be a series of statements and articles on the independence of the Federal judiciary. As the ranking minority member of the Separation of Powers Subcommittee of the Senate Committee on the Judiciary, I am particularly concerned by proposals to remove the jurisdiction of the Federal courts over specific constitutional issues.

Today, Mr. President, I wish to offer for the record an excellent speech recently delivered by former Solicitor General of the United States, Archibald Cox. I believe Mr. Cox's presentation on the question is particularly thoughtful and I offer it now for the benefit of my colleagues. I ask at this point that the speech be made a part of this RECORD. A copy of the speech follows:

CONGRESS V. SUPREME COURT

(By Archibald Cox)

In 1789, in proposing the Bill of Rights to the First Congress, James Madison explained:

"If they [the Amendments] are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive."

Today the courts, the independent tribunal of justice, are under attack not only by the radical right in Congress but by the Attorney-General of the United States.

Two weeks ago the Attorney-General marshalled his attack against "judicial activism." The courts are giving too much protection to the individual liberty and human dignity, he said; the courts are intruding not only into the operation of schools but into the management of prisons, mental health hospitals, youth facilities, and even public housing. On an occasion before his appoint-

ment to the U.S. Supreme Court, Benjamin N. Cardozo made a notable speech calling for the establishment of a Ministry of Justice. A Minister of Justice might fairly ask whether in recent years judges have not erred somewhat on the side of making too many new constitutional rights too quickly with too little attention to the body of law—erred because of the risk of eroding the legitimacy of their decisions. A Minister of Justice might also fairly suggest that court proceedings and court orders are not the best way to apportion seats in a legislature, to manage prisons and other custodial institutions, or even to correct racial or sexist discrimination. But a Minister of Justice with the slightest concern for giving the people a fair presentation of what had happened would also note that the Courts took up these tasks because of the serious breakdowns on the part of other parts of the political or governmental process. The courts had need to decide *Brown* v. *Board of Education* only because the Congress and the Executive were silent. The courts were forced to excise the cancer of malapportionment by establishing the "one person, one vote" rule because of the long decades of legislative inaction. Judges intervene in the operation of prison and mental health facilities not to build their jurisdiction, not because the judges think that they know best—I have never encountered a judge who wanted to intervene—but because the gross failures of the political branches left federal judges to resolve such unhappy dilemmas as choosing between doing what a court can do to improve prison administration and leaving convicts to torture and disease amidst conditions cruel even by the standards of the Middle Ages. A Minister of Justice, not coldly indifferent to justice and humanity yet seeking to take this burden off the backs of the judges, would surely find words in which to express his own outrage at the abominations the judges have been seeking to ameliorate, and to outline another and better remedy.

I am dismayed by Attorney General Smith's attack upon the judiciary for other reasons. He seemed to suggest that the courts should follow the election. While he refrained from endorsing the bills to deprive the courts of the jurisdiction necessary for them to be Madison's "impenetrable bulwark" of liberty, his making attack upon the courts at this time without dissociating himself from the bills gives a rhetorical boost to the pending radical and unprincipled congressional assault led by Senator Jesse Helms upon our constitutional system.

II

The anti-Court bills pending in Congress may be divided into two groups according to their theoretical constitutional underpinning.

One group, addressed to the controversy over abortion, seeks constitutional support in the power of Congress to enforce the Fourteenth Amendment's guarantee against deprivation of life, liberty or property without due process of law in order to redefine the meaning of the words used in the Constitution in such a way as to overrule the Supreme Court's interpretation of the same words in the abortion cases. Thus, Senator Helms' "right-to-life" bill declares that Congress finds that "present day scientific evidence indicates a significant likelihood that actual human life exists from conception," and then provides—

"That for the purpose of enforcing the obligation of the States under the fourteenth amendment not to deprive persons of life without due process of law, human life shall be deemed to exist from conception . . .; and for this purpose person shall include all human life as defined herein."

The other form of current attack upon the courts and the Constitution proposes to deprive the federal courts of power to interpret and protect constitutional rights in the area of school prayer, abortion and school desegregation. A second Helms bill is a good example; it would first deprive the Supreme Court of the United States of jurisdiction to review the decision of a State court in any case relating to voluntary prayers in public schools and public buildings; next it would deprive all lower federal courts of jurisdiction in such cases.

Whatever power Congress has to deprive the Supreme Court of part of its appellate jurisdiction depends upon the meaning of the words in Article III giving the Supreme Court—"appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

There is room to argue that the Helms bill does not fall within the Exceptions and Regulations Clause, or if it does, nevertheless, violates the Bill of Rights, just as there is reason to believe that Section 5 of the Fourteenth Amendment gives Congress no power to define constitutional terms in the manner attempted by the "right-to-life" bill. I leave those arguments to another occasion because I am convinced that even if the bills are technically within the power of Congress to enact, they should be opposed as radical and unprincipled departures from the fundamentals of our constitutionalism.

A law may be within the legal authority of Congress to enact in the sense that the courts must give effect to it, yet do violence to our American traditions and the fundamentals of our constitutionalism in the same way that an act of Parliament may violate the unwritten British constitution. In 1937 President Franklin D. Roosevelt proposed to overturn adverse court decisions by enlarging the Supreme Court from nine to fifteen justices and then appointing six new justices who would vote to overrule the earlier decisions. Congress had ample power to enact the legislation, but the Congress and the people rejected the plan as an attack upon the independence of the judicial branch and thus a subversion of constitutional principles.

Similarly, the anti-Court bills pending in Congress would subvert or at least compromise the principle that there are fundamental human rights beyond the reach of any government—not just beyond a king, not just beyond an elected executive, but beyond any government, including even majorities in a representative Congress or Legislature.

The bills would compromise the principle because all of them, but especially the right-to-life and school prayer bills, predicate a power in simple congressional majorities to nullify or partially frustrate constitutional rights recognized by the judiciary.

If Congress can supply a binding definition of "life" or "person," it can equally declare that the provision of "separate but equal" facilities to persons of different color is "equal protection of the law"; or that State aid to parochial schools is not an "establishment of religion"; or that the belief of any police officer that an arrest or search and seizure will be helpful to law enforcement is "probable cause."

Similarly, if Congress can deny those seeking to be free from "an establishment of religion" the usual right of access to the lower federal courts or to the Supreme Court on appeal from the highest State court, then majorities in the Senate and House can deny that access in cases seeking protection for other constitutional rights such as the right to criticize government officials, to publish materials like the Pentagon Papers embarrassing to an Administration, or to secure equal per capita representation in a malapportioned legislature.

A right is only as good as the remedy. A constitutional right is at the mercy of legislative majorities unless supported by a judicial remedy. To deprive federal courts of jurisdiction granted by the federal constitution would result in a hodge-podge of inconsistent State interpretations, not all of which could be expected to rise above local selfishness or passion.

Because the bills impliedly assert the power of congressional majorities to abolish or frustrate constitutional rights, they would disturb the historic balance of power among the three branches of government. Even if the abortion, bussing and school prayer cases were wrongly decided, it would be worse to accept the principle that simple majorities of the Senate and House of Representatives, with the approval of the President, can nullify or lessen constitutional rights.

The principle that constitutional rights should be beyond the reach of legislative majorities is deeply embedded in American history. In the seventh century the deep-seated human conviction that there are fundamental individual liberties, chiefly in the realm of the spirit, that should be beyond the reach of any government found eloquent expression in the writings of John Locke and Jean Jacques Rousseau concerning "natural law," "natural rights" and the "rights of man." No one can seriously doubt their influence upon the Founding Fathers.

From our English background came parallel legal traditions. The Magna Carta wrested from King John at Runneymede declared that no freeman should be seized or punished, or subjected to other reprisal "except by the lawful judgment of his peers and the laws of the land." Three centuries later when King James summoned the common law judges before him, led by Sir Edward Coke, in order to tell them that they must stop interfering with the King's new prerogative courts, Coke responded that the judges must follow the common law. King James wrathfully replied, "Then I am to be under the law—which is treason to affirm." Coke's answer echoed down through the years: "No sub homine sed sub Deo et Lege"—"The King ought not to be under any man, but he is under God and the law."

It was easier to assert that individuals have rights beyond the proper reach of government than it was to develop human institutions enforcing the limitation. In Britain parliamentary supremacy developed. But the colonies had revolted against Parliament no less than King George. In Massachusetts John Adams and James Otis had attacked the writs of assistance upon the ground that courts should give no effect to a law contrary to "natural equity." Gradually the idea emerged that important individual liberties ("natural rights") could be protected by three simple steps: First, let the fundamental human rights to be put beyond the reach of government be written down in a constitution. Second, treat the constitution as law to be interpreted and applied by courts in the same fashion as any other law, but also make it supreme so that in case of conflict between the constitution and any other law, the constitution will prevail. Third, make the Judiciary impartial and independent.

James Madison put it in a nutshell in proposing the Bill of Rights. Thomas Jefferson thought judicial review a virtue of the U.S. Constitution before he clashed with, and came to hate, John Marshall. Writing to a French correspondent, he spoke of—

"The laws of the land administered by upright judges which protect you from any exercise of power unauthorized by the Constitution of the United States. . . ." [Letter in 1798.]

Throughout our history there have been legislative attacks upon the power of the Judicial Branch to protect constitutional rights.

The Jeffersonian Democrats proposed to use impeachment as a vehicle for removing justices whose constitutional views were distasteful to the dominant party in Congress.

In the 1820's, following the decisions in *Martin* v. *Hunter's Lessee* and *Cohens* v. *Virginia*, the proponents of State sovereignty sought to take away the power of the U.S. Supreme Court to review decisions by State courts on constitutional questions.

After the Civil War, the radical Republicans, fearful that the Supreme Court would find the Reconstruction Acts unconstitutional, revoked the Court's authority to hear a Mississippi newspaper editor's appeal of the denial of his habeas corpus petition, and considered other methods of barring judicial review.

In 1937, President Franklin D. Roosevelt proposed legislation to pack the Supreme Court with new justices who agreed with his constitutional philosophy.

The McCarthyites of the 1950's unsuccessfully sought to persuade Congress to limit Supreme Court jurisdiction over unconstitutional federal and State programs aimed at alleged subversives.

In 1964, some Senators and Representatives attempted to deprive the federal courts of jurisdiction to give effect to the "one person, one vote rule" regarding legislative apportionment.

In each instance, despite discontent with particular decisions, the American people and the Congress have rejected the attacks as threats to constitutionalism. The repeated rejections seem to me to demonstrate the continuing conviction of the people that, in the interests of individual liberty, even legislative majorities should sometimes be subject to check.

History also contains examples of unwise, even "wrongheaded" decisions by the Supreme Court. The Dred Scott and Income Tax cases are prime examples. *Lochner* v. *New York* and like instances of the effort to prevent economic regulation are further illustrations. Perhaps the abortion and school prayer cases belong in this category. I have written critically of *Roe* v. *Wade*. The school prayer cases unsettled assumptions based upon habit, but I have come to accept them as appropriate to protect the child of conscientious non-conformists against the trauma of isolation from his peers. Most important judicial errors of the past yielded to time, debate and judicial reconsideration in the case of other important mistakes. The process of amendment furnishes a further safety valve. The argument for judicial review does not assume judicial infallability. Granting some mistakes, it invokes convincing and current as well as historical reasons to concluding that, on the average and over the years, courts will be a great deal firmer and also wiser than legislatures in interpreting constitutional guarantees protecting essential liberty.

Surely, judicial interpretation gives better protection to unpopular individuals and minorities shut out of, or inadequately represented in, the political process. It was the Court that spoke for the national conscience in *Brown* v. *Board of Education* when Congress and the President were silent.

Similarly, judicial review provides better protection for the long-range enduring values which politicians too often neglect and of which the people too often lose sight in the emotional intensity and maneuvering of political conflict. Individual liberties such as freedom of speech and guarantees of privacy are often in this character. It was the Court that excised the cancer of legislative malapportionment when the incumbent legislators perpetuated themselves by refusing to act, whereas it was a bloc of Congressmen anticipating Senator Helms who pressed for legislation depriving the federal courts of jurisdiction to apply the "one person, one vote" rule. The full impact of statutes upon individual and minority rights often comes to light only through experience. The modern tendency to rush constitutional judgments by expedited declaratory proceedings seems open to question. Judicial review is most valuable when it provides what Justice Stone called the sober second thought of the community.

There is also value in having constitutional judgments made by men and women as free as any individual can become from political or economic self-interest, from most forms of ambition, and from the obligations of loyalty to political parties or other organizations. Only judges have the necessary security and independence.

There is even greater value, I think in having the questions adjudicated according to law. Those who attack the Court today are fond of quoting Charles Evans Hughes' observation that the Constitution "means what the judges say it means," thus implying that the process of decision is unimportant, that in the end all is arbitrary fiat, and that the only question is, whose fiat shall control. There is a measure of truth in Hughes' "nifty" but there is also truth in the older aphorism asserting that judges find, but do not make, the law. Judges, unlike legislators, do not feel free simply to do what they think is right, much less to serve the interests of a political party or constituent. All judges feel bound at least to some extent by the duty to look outside themselves to the sources of law. Pursuit of the ideal of principled decision-making built upon and building a rationally coherent body of law binding upon the judges as well as the litigants is not only more likely than the political process to protect fundamental liberties; in the realm of the spirit and the building blocks of representative government, it is likely to reach both wiser and less subjective results.

I spoke a moment ago of the deep-seated desire for the protection of certain fundamental human rights against all forms of government—perhaps I should say, against the claims of society. Would you agree with me that that desire is usually accompanied by a yearning for government, not by power, whether the power of force or of votes, but by reason, moral right and justice? The words are imprecise. The yearning is for an impossible dream. Yet it seems wise and right that the aspiration find a measure of expression somewhere among our political institutions. The best place, even though imperfect, is the Judicial Branch and ultimately the Supreme Court.

There are times when the courts, especially the Supreme Court, can lead us a step towards fulfillment of the impossible dream. True, if the Justices are not mindful of the limits of their function and attentive to the constraints of law, they may overreach themselves and stir pressure for the kind of legislative and popular reprisals we have been discussing. True, also, that the roots of any great decision must lie in the will of people. Yet the constraints leave room for progress. The will can be evoked. Being is becoming. Our aspiratioins are no less part of us than our practices. Within the constraints, the Court can sometimes be the voice of the spirit, reminding of what we may be in order to make us what we are.

I phrase the point inadequately but, for me, this is one of the chief reasons for resisting the current attacks upon the Court.

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. PERCY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the record in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on December 7, 1981.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room 4229 Dirksen Building.

The notification follows:

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., December 7, 1981.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Director.●

PROPOSED ARMS SALES

Mr. PERCY. Mr. President, section 3 (b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD at this point the notification which has been received. The classified annex referred to in the covering letter is available to Senators in the office of the Foreign Relations Committee, room 4229 of the Dirksen Building.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., December 8, 1981.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding

herewith Transmittal No. 82-10 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter of Offer to Australia for defense articles and services estimated to cost $750 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERICH F. VON MARBOD,
Director.

TRANSMITTAL No. 82-10

(Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act)

(i) Prospective Purchaser: Australia.

(ii) Total Estimated Value:

	Million
Major Defense Equipment*	$685
Other	65
Total	750

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Government furnished equipment, technical services, training, spares, and follow-on support in connection with the upgrading of three DDGs.

(iv) Military Department: Navy (LXB).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Section 28 Report: Included in report for quarter ending 30 September 1981.

(viii) Date Report Delivered to Congress: December 8, 1981.

POLICY JUSTIFICATION
AUSTRALIA—DDG MODERNIZATION
PROGRAM SUPPORT

The Government of Australia has requested the purchase of government furnished equipment, technical services, training, spares, and follow-on support in connection with the upgrading of three DDG's at an estimated cost of $750 million.

As an ally under the ANZUS Treaty, Australia plays a major role in assuring the stability of Southeast Asia and the South Pacific and is strategically located with respect to the Indian Ocean. Therefore, the United States has cooperated in improving Australia's military capability through foreign military sales, logistics agreements, and combined exercises.

This sale represents a significant commitment by the Australian Government to modernize and strengthen the Royal Australian Navy (RAN) and is an integral part of the Australian DDG Modernization Program which consists of upgrading their three DDG's. This program will include equipment for the conversion of the TARTAR weapon system, surface missile systems, electronic warfare equipment, and miscellaneous equipment required to update the RAN Combat Data System Center.

The sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

THE BURDEN OF PROOF

● Mr. HEINZ. Mr. President, the President's economic recovery program has been much in the news of late. Some critics are already giving it last rites when, in fact, it has just only very recently been born.

Of course, no program is perfect, and I have some reservations and concerns about some aspects of the Reagan approach. But, overall, I believe it represents a sincere and well-thought-out effort to get at the root causes of our current economic difficulties. I also believe that most Americans have a sense of fair play and are willing to give the President's program a chance to work.

Mr. President, this latter view is also shared by Mr. Robert F. Dee, chairman of the board and chief executive officer of the Smith Kline Corp. In recent remarks distributed to the shareholders of Smith-Kline and others. Mr. Dee articulates a persuasive case for giving the President's program time to begin working. I believe that others could benefit by reviewing Mr. Dee's remarks and I, therefore, ask that Mr. Dee's comments, entitled "The Burden of Proof" be printed at this point in the RECORD.

The statement follows:

THE BURDEN OF PROOF

(By Robert F. Dee)

Many bitter tears of doubt are being shed these days over the Administration's new economic program. Even The Wall Street Journal, for example, has published a number of guest editorials lamenting its demise.

The writers cite persuasive evidence—stock and bond markets are down, interest rates are high, the Federal deficit is increasing, Social Security is in trouble, capital investment is slack and tax revenues are expected to be lower.

NO EVIDENCE

Yet I'm writing this message only 15 days after the first steps (and certainly not the last) have been taken to carry out President Reagan's plan for the country's economic recovery.

It's a maxim of American law that the burden of proof is on the plaintiff, but there hasn't been time to collect solid evidence on the success or failure of the Administration's program. It only went into effect on October 1.

Those who are already reporting the death of the President's program are greatly exaggerating.

SELECTIVE SILENCE

The fact is that beneficial changes in the economy are already visible. Virtually every major measure of economic activity shows that the economy has actually improved since President Reagan took office in January.

The inflation rate, at 12.6 percent when Mr. Reagan assumed office, has now come down to around 10 percent.

The "misery index"—the unemployment rate merged with the inflation rate—has dropped three percentage points.

The "Reagan dollar" is 13 percent stronger.

The projected 1982 budget deficit—unpleasant but temporarily necessary—is no worse than the deficits for the two years before the Administration's new economic program. And those earlier deficits were incurred during years of rising, not declining, tax rates.

There seems to be a selective silence about all these good signs. Perhaps it's only natural that those clinging to the liberal views of the past aren't liberal enough now to admit that Mr. Reagan's program is already benefitting Americans.

KEEPING PROMISES

Moreover, most of the time-tested econometric studies from reliable and politically detached organizations predict that the new program will bring solid gains to our economy in the long run.

And the long run isn't all that long. Some studies show improvement by as early as 1983—inflation slackening off, capital investment increasing, unemployment dropping, interest rates at reasonable levels and substantial upward movement in the stock and bond markets.

Best of all, the President is keeping his promises. When he said, "If not us, who? If not now, when?" he obviously wasn't indulging in political rhetoric.

On the score of taxation alone, American citizens know for certain that the stream is flowing their way. When President Reagan took office, federal taxes consumed 22 percent of the gross national product. By the time his first term is over, they'll be down to 19.5 percent.

The Administration's budget cuts have already brought a 2 percent decline in spending, measured in noninflated dollars. What's more, we Americans are getting our first glimpse of regulatory relief in decades.

SHOW ME

Why, then, are we hearing so many lamentations about the Administration's new economic recovery program—even from respected observers?

There are three reasons:

First, the program thoroughly contradicts the long unchallenged idea that better government requires bigger government.

Second, the U.S. government has operated on completely different economic premises for the past 40 years or more.

Third, when you come right down to it, every American is from Missouri.

"I doubt it," said the weeping carpenter. But in the case of the new economic program, the bitter tears are too many and too soon.●

FUNDING LEVELS FOR THE VA'S OFFICE OF PLANNING AND PROGRAM EVALUATION AND FOR THE SUPPLY SERVICE

● Mr. SIMPSON. Mr. President, there are certain provisions contained in the conference report on the HUD-Independent Agencies Appropriations Act for fiscal year 1982, H.R. 4034, which passed the Senate by voice vote on Saturday, November 21, and the House on Thursday, December 10, which caused me some concern and about which I now seek some explanation from my good friend, the very able chairman of the HUD and Independent Agencies Subcommittee of the Senate Appropriations Committee (Mr. GARN). The provisions to which I refer are contained in subsection 40 of section 501 of the act, and they read as follows:

Provided further, That in the Veterans' Administration not to exceed (1) $1.5 million shall be available for the Office of Planning and Program Evaluation and Program (2) 649 staff years shall be available for the Supply Service.

Mr. President, the inclusion of this provision was a quite startling revelation for me as chairman of the Senate Veterans' Affairs Committee. No member of the committee—neither the chairman, the ranking minority member, nor any of the membership were made aware of this provision even though the committee staff made a conscious effort during that marathon weekend session to monitor and review carefully the appropriations process as it affected appropriations for the Veterans Administration.

I would ask my good friend and respected colleague from Utah what the origin was of this provision and how it came to be included in the current version of the conference report on H.R. 4034?

Mr. GARN. Mr. President, I thank my good colleague for the opportunity to clarify this situation. As he is aware, the current version of the conference report on H.R. 4034 reflects and incorporates in full the conference agreements reached on the HUD-Independent Agencies accounts by the House and Senate conferees on the second continuing resolution, House Joint Resolution 357.

The specific provision to which he refers was not contained in the version of House Joint Resolution 357 that was approved by the Senate early in the morning of November 20. Rather, the provision originated in the House version and was brought to the House/Senate conference on the continuing resolution by the House conferees. As I understand it, the provision was first proposed in the House by the distinguished chairman of the House Appropriations Subcommittee on HUD-Independent Agencies, Congressman BOLAND of Massachusetts.

Mr. SIMPSON. I thank the Senator and I appreciate that information. But I must express my very great concern and displeasure that the program changes that would be made by this provision were at no time offered to or discussed with either the members or the staff of the Senate Veterans' Affairs Committee for review and comment. I assure you we would have been available for commentary on this issue. It is a regrettable procedure.

Mr. GARN. Mr. President, I agree with the Senator from Wyoming that provisions such as those we are discussing here certainly should be discussed with the relevant authorizing committees, and it is my intention always to work closely with the distinguished chairman of the Veterans' Committee and to keep him and his committee fully informed, whenever practicable, of all appropriations developments affecting the substantive authorizing jurisdiction of his committee.

The first continuing resolution had expired at midnight on the preceding day, and the conferees on the new continuing resolution, House Joint Resolution 357, were under considerable pressure to reach agreement quickly, not just with respect to the HUD-Independent Agencies bill, but with respect to all of the major appropriations bills. It was in this atmosphere that House language in question here was agreed to by the Senate.

Similarly, I acted quickly after the agreements were reached on the HUD-Independent Agencies bill to incorporate those agreements into the regular appropriations bill, H.R. 4034, because all parties concerned, including myself, the distinguished chairman of the Appropriations Committee, Senator HATFIELD, and of course the administration, were, as I stated in the RECORD at the time, "anxious to assure that the appropriations process acts as quickly as possible on regular fiscal year 1982 bills."

Only a few hours elapsed between the adoption of the conference agreements on House Joint Resolution 357 and their incorporation into the conference report on H.R. 4034.

The effect of this incorporation was to make approximately 40 changes in the H.R. 4034 conference report, and I do regret that time did not allow us to consult with each of the authorizing committees affected by these many changes. But I do think that the passage of this conference report by the Senate was a timely and very significant step toward the passage of our regular appropriations bill for fiscal year 1982.

Mr. SIMPSON. I do understand and appreciate the severe time limitations under which the Appropriations Committee has been operating, not only with regard to the action taken on the 21st, but throughout this entire, unusually drawn-out appropriations process for fiscal year 1982.

Nevertheless, I must express my deep concern about the wisdom of the program reductions which would be accomplished through the provision which I have discussed. The VA's Office of Planning and Program Evaluation has over the years served a vital oversight function for a variety of VA programs, well complementing the work of the Inspector General in seeking to guarantee that VA programs make the most efficient and effective practicable use of taxpayer dollars.

And the supply service, which has already suffered one major cutback this year, has responsibility for distributing medical supplies and prosthetics to all VA medical centers throughout the country, for setting medical procurement policy, and for negotiating all contracts for D.M. & S. and research services. It is quite possible that cutting back this service from 669 to 649 staff years will not result in any savings, but will simply transfer certain medical supply distribution responsibilities from the supply service to D.M. & S.

I do not believe such programs should be summarily reduced unless we have a proper, detailed explanation of justification—and certainly not until the House and Senate authorizing committees have had an opportunity to consider carefully all aspects of the proposed reductions. The action taken has all the trappings of an arbitrary and unjustified chopping away, perhaps by some overzealous House staffer rubbing his hands with glee in the waning hours of an exhausting appropriations battle.

I would inquire of the Senator from Utah what his position might be, in terms of future appropriations actions and perhaps at the supplemental appropriations stage if the authorizing committees were to conclude and recommend that such reductions should not be made?

Mr. GARN. Mr. President, I am happy to assure my colleague from Wyoming that we should give the utmost deference to any such recommendation. I do appreciate the Senator's concern on this matter, and will be happy to work with my counterparts on the House Appropriations Committee to achieve a satisfactory resolution of this situation.

Mr. SIMPSON. I thank the Senator from Utah for that assurance. I always consider it a privilege to work with him on these most important matters, and I understand fully the awesome problems confronted by the Senator from Utah and by the Senator from Oregon, in crafting the final version of the continuing resolution. It is my honest intention to assist the Senator from Utah in assuring that this does not occur again.●

BUY AMERICAN PRODUCTS

● Mr. HEINZ. Mr. President, recently I had the opportunity to benefit from the sage advice of John K. Nagy, one of my constituents who has lived under 15 Presidents, going back to William McKinley. Although each of us might disagree with some of Mr. Nagy's ideas, they are all worth noting, given the benefit of his long years of experience.

Of particular interests to me are Mr. Nagy's thoughts on the need to encourage buying of American products. In his own way Mr. Nagy has gotten to the core of one of our major trade problems today—the need for reciprocity between nations, particularly in market access. We have one of the world's most open markets. We should be working hard to get other nations to open their borders to our products. Mr. Nagy makes this point and a number of others in an open letter he recently gave me. I ask that it be printed at this point in the RECORD.

The letter follows:

I write this letter as a private citizen for the benefit of our citizens and our country, the good old U.S.A. As a man who lived under fifteen presidents from William McKinley in 1900 to Ronald Reagan, our present president, I believe I have the knowledge to see what has gone wrong and why our nation has over 8,000,000 people out of work today.

As I am 81 years of age, I have lived through four wars which our nation was involved in. I have been an elected public official as a Justice of the Peace, and, at present, Township Supervisor. I was a delegate to the 1980 Republican Convention in Detroit. The problems that caused millions of our citizens to be out of work are several. As a senior citizen I would like to make a few reasonable suggestions which are needed and would help our nation and our people who are out of work.

During the four wars I lived through, money spent to win the war was no problem to save our nation. Just one battleship cost 100 million and more, one submarine the same, and a jet plane costing millions shot down, lost, plus the lives of our men who were lost and others who came home disabled for life. God forbid that we have another war just to put millions of people back to work. Thank God we are at peace. Why not put some of the war money to do the things needed and give our unemployed a chance to work to earn money and pay taxes and take the unemployed off the relief rolls. The welfare people cannot find jobs. If that is true, let the government find jobs for them. Let them work eight hours a day for Uncle Sam; then pay them their wages, not welfare checks. My plan would put millions of people to work doing what is badly needed for the good of our nation.

There is much to do. Let us suppose we need a new battleship, a few jet planes, a few submarines, and the cost of all this

would require every able-bodied person to work eight hours a day, not sit around doing nothing but waiting for a relief check. Clean the beer and soda cans along our highways; cut dead trees; cut brush leaning out along the highways; beautify America. Put your teenagers in C.C.C. camps in our forests; put men to work on gypsy moths which are killing our trees, deteriorating our forests. This is a war I'd like to see us win now.

This would work two ways—putting people to earn their own wages, and improving our nation. All this without a war and without bloodshed. We won every war. We gave back the country we conquered. Let's spend some money for our own nation, our own people, let's be proud of our nation, let us do it now.

I put much of our unemployment problem on our American manufacturers. When advertising they should proudly add, "Made in the U.S.A. by American Unions, Labor, or just labor, or just made in the U.S.A."

Also, Congress ought to pass a law that if Americans buy say $50,000,000 foreign products, then, that country should buy the same amount of American products. If not, a very high import tax should be paid to compensate our people who are knocked out of work.

This, too, would help solve our unemployment problem. Manufacturers should pay the workers a decent hourly rate with proper inspection, rather than paying piece work rates to workers. This would produce a better made product that people would prefer to buy because it would be good.

In the past year or so we had congressmen playing ball with foreign lobbyists. At times I wonder on whose payroll they are on.

Yours truly,

JOHN K. NAGY.●

FEDERAL FIREARMS OWNERS PROTECTION ACT

● Mr. BURDICK. Mr. President, the Senate Judiciary Committee is conducting hearings this week on S. 1030, the Federal Firearms Owners Protection Act. I was a cosponsor of similar legislation in the 96th Congress and was pleased to renew my support for it when Senator MCCLURE introduced S. 1030 in April of this year.

In testimony before the Judiciary Committee on Wednesday, I emphasized the reforms necessary in the Gun Control Act of 1968 if honest, law-abiding gun owners and gun dealers are to have the same rights that our Constitution and criminal laws guarantee to other citizens. I ask that the full text of my statement before the Judiciary Committee be printed in the RECORD.

The statement follows:

STATEMENT OF SENATOR QUENTIN N. BURDICK

Mr. Chairman I am very pleased to appear before your committee this morning in support of S. 1030 the Federal Firearms Owners Protection Act. I am one of the many cosponsors of this legislation because the reforms which it writes into the Gun Control Act of 1968 are legitimate and pressing. The time has come for Congress to put an end to some of the well-documented abuses that have been committed by the Bureau of Alcohol Tobacco and Firearms in the name of gun control.

This is not a bill to dismantle the Gun Control Act of 1968. I supported that legislation at the time it became law and I still support its basic provisions including its requirement that persons dealing in firearms be federally licensed its prohibition of interstate mail-order sale of any firearms or ammunition and its establishment of minimum penalties for the use of a firearm in the commission of a federal felony. But in the haste to enact broad gun control legislation following the tragic assassinations of Martin Luther King and Robert F. Kennedy the Congress ignored some basic aspects of criminal and constitutional law. The result has been a regulatory nightmare with honest law-abiding gun owners and gun dealers the subject of oppressive bureaucratic harassment and unjustified prosecution. We must now act to correct our previous errors of omission.

For example, it is a fundamental premise of criminal law that, except in extraordinary cases, an act can only constitute a crime if both of two elements are present: the wrongful deed itself, and the intent to commit a crime. But the 1968 gun control law proscribes a number of activities without regard to whether the violation was a deliberate attempt to evade the law or an innocent mistake. As a result, the federal agency charged with enforcement of the law has brought far too many cases based on technical, inadvertent violations of the statute by totally honest, law-abiding citizens. S. 1030 will stop this practice by requiring that violations be shown to be "willful" before a person can be convicted under the Act.

Another basic premise of our system of laws is that our citizenry must be able to perceive what is lawful and what is unlawful if it is to be held accountable for illegal conduct. The Gun Control Act of 1968 sets forth detailed licensing requirements for those "engaged in the business" of dealing in firearms or ammunition, but nowhere does it define the term "engaged in business." Once again, over-zealous B.A.T.F. agents have taken advantage of this oversight by enticing gun collectors into selling a few guns from their collection and then charging them with having engaged in business without a license. In the twelve-month period preceding July 1, 1979, nearly 25 percent of all of B.A.T.F.'s firearms cases involved the charge of dealing without a license. S. 1030 will resolve this clearly misguided interpretation of the 1968 law by explicitly defining "engaged in the business" of dealing to include only those who devote time and labor to the selling of guns with the object of making a livelihood and profit.

It is also an important principle of our legal system that a person should not be penalized twice for the same action. But it happens all too frequently that even when an individual is tried and acquitted of criminal charges stemming from an unintentional violation of the Gun Control Act, the B.A.T.F. renews its harassment by initiating a civil action for forfeiture of his gun collection, or revocation of his dealer's license, based on exactly the same evidence that was rejected at the criminal trial. The toll on such individuals, in terms of attorney's fees, lost business, and emotional trauma, is horrendous. S. 1030 will rectify this situation by providing that when an individual has been acquitted of an alleged violation of the law, or his case dismissed, the same evidence may not be used to confiscate his property or revoke his license.

These are but a few examples of the worthwhile changes incorporated in this legislation. Other provisions act to stiffen the requirement of a mandatory jail sentence for use of a gun in the commission of a federal felony and to require a showing of probable cause before a gun dealer's premises may be entered and searched by government agents. It is my sincere hope that this bill will force the B.A.T.F.—or whatever federal agency in the future is charged with enforcement of the 1968 Gun Control Act—to focus its efforts where they are most needed: on the criminal element in this country, and not on hard-working, law-abiding, honest citizens. Mr. Chairman, I respectfully request your committee's quick approval of this important legislation.

Thank you.●

DOGS AND COYOTES

● Mr. SCHMITT. Mr. President, in light of recent announcements by the U.S. Fish and Wildlife Service pertaining to new measures for predator control, I should like to highlight a coyote control technique as old as Mother Nature herself: herd dogs.

Livestock guarding dogs were routinely used for centuries in Europe and Asia to protect livestock from predators, however this method is relatively new in this country. One legendary sheep-guarding dog is the Hungarian Komondor, a shaggy, intelligent and affectionate dog which nonetheless is single-mindedly protective of a flock under its care.

I commend to the attention of my colleagues an article on this subject found in the June 1, 1981, issue of Time magazine entitled, "Sheepmen Are Going to the Dogs" and ask that it be printed in the RECORD.

The article follows:

SHEEPMEN ARE GOING TO THE DOGS

Coyotes are small (about 30 lbs.), fast, clever and notably fond of mutton chops. For years U.S. sheepmen have trapped them, shot them from airplanes, and laid out wholesale poisons. But in 1972 the Nixon Administration banned the use of poison on federal grazing lands because it kills more than just coyotes. The scattered chemicals—usually a nerve drug called Compound 1080—also felled birds, including endangered species like the bald eagle, not to mention foxes, badgers, opossums, raccoons and pet dogs.

Now coyotes are blamed for killing more than a million sheep a year, and sheepmen are clamoring for resumption of open chemical warfare. The U.S. Department of the Interior, meanwhile, has been experimenting with more specific anticoyote tactics. In one method, sheep are outfitted with a poison-filled collar; if a coyote takes a bite, it soon bites the dust. Another device, the so-called M-44 involves a spring-loaded tube covered with bait and planted in the ground.

When a coyote begins tugging at the bait, the device fires a lethal dose of cyanide into its mouth. In an attempt at aversion therapy, Government-funded scientists have even scattered chunks of lamb meat dosed with an emetic. Any coyote who samples the stuff quickly becomes ill. The object: to make coyotes feel that sheep are sickening. All these things have proved too inefficient or too costly to be much help. Is there, then, any safe, cheap and humane way of containing coyotes? Perhaps, say biologists. U.S. sheepmen have traditionally allowed sheep to roam their ranges, fenced in but otherwise untended by shepherds or dogs. Now they are being urged simply to bring back the faithful sheep dogs that have been used in Europe and Asia for centuries.

Not just any sheep dog will do. Such familiar breeds as the collie and German shepherd are herding dogs. They will drive a flock from place to place and keep sheep from straying. But such dogs need constant supervision. What is required is a different kind of canine, guarding dogs that will patiently watch over a flock for weeks at a time, even in a lonely pasture. A rancher need only appear occasionally to leave food. Usually large (up to 135 lbs.) and slow to anger, the animals stir to action only when their charges are threatened. They live with the flock almost as if they were sheep themselves.

One favorite breed, the Hungarian Komondor, is a big, lovable-looking beast as shaggy as a sheep. Komondors have been protecting flocks from wolves for centuries in Hungary. Now they are standing guard over American sheep in more than two dozen states from the Rockies to New England. Other Old World breeds are beginning to appear on U.S. ranches as well: the Anatolian shepherd; the Great Pyrenees from the mountains between France and Spain; the Italian Maremma; the Yugoslavian shepherd or Shar Planinetz; and the Kuvasz, a short-haired Hungarian cousin of the Komondor.

Until a few years ago, these animals were virtually unheard of in the U.S. But thanks to new importing and breeding programs, guarding dogs, which cost $300 to $1,000 apiece, are being inexpensively leased to any sheep farmer willing to try them. Almost at once sheep losses have been sharply cut, surprising even skeptical ranchers. "Ninety percent rate the dogs as good to excellent," says Wildlife Biologist Jeffrey Green, who has been raising Komondors and Great Pyrenees at the U.S. Sheep Experiment Station at Dubois, Idaho. He adds: "These dogs are three times as big as coyotes. One on one, the dog always wins. But usually the coyote just turns tail. Many won't even approach the flock because of the dog's scent."

Not all dogs live up to expectations, say Biologists Ray and Lorna Coppinger, who have raised hundreds of animals at Hampshire College's New England Farm Center in Amherst, Mass. A couple of dogs have wandered off into the hills and disappeared. Others have been killed by traffic, electric wires or misplaced M–44s. Some dogs are naturally boisterous and need special handling; a few have turned out to be sheep killers. To work properly, guarding dogs must be introduced to sheep as pups so that by maturity they are totally at ease with the flock—and vice versa. When a predator approaches, the sheep tend to converge behind the dog. "They recognize him as a security blanket," says Zoologist Jack McGrew of Colorado State University, where Komondors have been tested for three years. Ewes in labor sometimes seek out the protection of the dog. Usually this trust is more than reciprocated. Dogs have been known to lick the newborn lambs and even cuddle them through the night to protect them from the cold.—By Frederic Golden. Reported by Joseph Pilcher, Los Angeles.●

EXTRADITION OF ZIYAD ABU EAIN

Mr. JEPSEN. Mr. President, I am a cosponsor of Senate Resolution 255, which states that it is the sense of the Senate that Ziyad Abu Eain be extradited to Israel. In support of that resolution, I submit for the RECORD a memo on the case prepared by the law firm of Fried, Frank, Harris, Shriver, and Kampelman.

The memo follows:

INTRODUCTION

The chronology of legal events in the case of Ziyad Abu Eain, a fugitive whose extradition from the United States is sought by the Government of Israel, is as follows:

December 18, 1979: United States Magistrate finds probable cause to hold Eain for extradition.

March 28, 1980: United States District Court for the Northern District of Illinois Eastern Division denies Eain's request for issuance of a writ of habeas corpus.

February 20, 1981: Seventh Circuit Court of Appeals upholds District Court decision.

April 13, 1981: Seventh Circuit Court of Appeals denies rehearing and rehearing en banc.

October 13, 1981: U.S. Supreme Court denies certiorari.

October 23, 1981: Seventh Circuit issues mandate in the case.

October 23, 1981: District Court receives mandate from Seventh Circuit Court of Appeals.

October 30, 1981: District Court receives record from Seventh Circuit Court of Appeals.

October 30, 1981: State Department receives service or notification of denial of certiorari (unclear).

THE STATUTE IN QUESTION

After a fugitive is committed for extradition under the provisions of 18 U.S.C. § 3184, 81 U.S.C. § 3188 (1976) provides that:

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

QUESTIONS PRESENTED

1. When does the two calendar month period begin to run?

2. Does the Secretary of State's power to extradite expire after two months?

3. Upon expiration of the two month period, what procedures are available to Eain to effectuate his release from custody?

4. What constitutes "sufficient cause" to keep a person in the U.S. for more than two months after his commitment for extradition?

5. What is the meaning of the exclusion of "time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States" from calculation of the two month period?

1. When does the two calendar month period begin to run?

Section 3188 provides that a person to be extradited may petition a court for release from custody if he has not been conveyed out of the United States "within two calendar months after such commitment . . ." In this case, it is necessary to determine whether the two-calendar month period runs from October 13, the date when the Supreme Court issued its order denying Eain's petition for certiorari, from October 30, the date the Secretary of State apparently was notified of that denial, or from October 23, the date the mandate of the Seventh Circuit Court of Appeals was issued.

Neither the statute nor its legislative history provides an answer to this question. Similarly, there are no regulations or precedents dealing with the issue of the specific date from which the two month period would run. While the answer, therefore, is not free from doubt, the most reasonable interpretation, in our opinion, is that the two month period would begin to run from the date of the denial of certiorari by the Supreme Court.

The leading authority on the interpretation of § 3188 is the opinion of Justice Goldberg, in chambers, in *Perez Jimenez* v. *United States District Court*, 84 S. Ct. 14 (1963). According to Justice Goldberg:

"The common-sense reading of § 3188 is that where as here, the accused has instituted and pursued review of his extradition order, the two-month period runs from the time his claims are *finally adjudicated*, ..." 84 S. Ct. at 18. [Emphasis added.]

Relying on the Goldberg construction, the Seventh Circuit in the instant case noted that the Secretary of State "has two months from the date of commitment following *final judicial action* in this case to surrender petitioner to the proper Israeli authorities. . . ." *Eain v. Wilkes*, 641 F.2d 504, 524 n.26 (7th Cir. 1981. [Emphasis added.]

While we have been able to find no cases in point specifically defining "final adjudication" or "final judicial action" for purposes of the extradition statutes, the term generally has been interpreted to designate the last substantive judicial act in a case. For example, an Illinois court held that "[f]rom the viewpoint of parties involved, judgment becomes a 'final adjudication' when rights of appeal have been exhausted." *People v. McCloskey*, 274 N.E.2d 358, 360, 2 Ill. App.3d 892 (1971). On this basis, it would appear that the date on which the Supreme Court denied Eain's petition for certiorari—the final judicial action Eain requested—would be the logical date from which the two month period would run.

Although we have discovered no cases that specifically address the question of the effect of the date of the notification of the Secretary of State, *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978) appears to support the position that the date of the Secretary's notification is not relevant for the computation of the two month period. In *Barrett*, the court computed the two month period from the date the Magistrate, signed a certificate of extradition and order of commitment, even though it was more than a month later that the Magistrate's clerk submitted certified copies of the order to the Secretary of State. *Id.* at 625. Unfortunately, for our purposes, the court did not address the issue squarely, so the decision is of uncertain value as precedent with respect to computation of the two month period.

Rule 49(c) of the Federal Rules of Criminal Procedure provides an analogy which is useful in considering the effect of a delay in providing notice of a judicial determination. Jnder that rule, the period within which a timely notice of appeal from a judgment of conviction may be filed runs from the date of conviction, not the date of receipt of notice of the conviction, unless the delay is excused pursuant to Rule 4(b) of the Federal Rules of Appelate Procedure. Similarly, Rule 77(d) of the Federal Rules of Civil Procedure provides that lack of notice of entry of an order or judgment does not affect the time to appeal. While these rules do not apply to 18 U.S.C. § 3188, they deal with similar problems and suggest that the two month period commences to run on the denial of the writ of certiorari.

This reading of section 3188 is supported also by the policy considerations which underpin the two month limitation period. The purpose of the two month limitation is to prevent detention for an indefinite length of time. Accordingly to one commentary on the precursor to section 3188, Congress' intent in enacting section 3188 was closely tied to the concerns underlying habeas corpus—that a person who has not been convicted not be held an unreasonable time. *See* Hurd, "A Treatise on the Right of Personal Liberty and on the writ of *Habeas Corpus*," at Section III. Justice Goldberg also observed that section 3188 "was intended to implement our treaty obligations 'without delay and the danger of a denial of justice' to the accused." citing the Congressional Globe of 1848, the forerunner of the United States Congressional Record.

The purpose of section 3188 was to "ensure prompt action by the extraditing government as well as by this government so that the accused would not suffer incarceration in this country or uncertainty as to his

status for long periods of time through no fault of his own." *Perez Jimenez*, 84 S. Ct. at 18. Construing the two month period to commence on the date of the judicial action, regardless of such delays as may occur in effecting notice of such action, accords with the purpose of the provision to safeguard the rights of the person under detention. This is particularly true since the Secretary is deemed to be able to inform himself in a timely fashion of a decision of a U.S. court and, as will be discussed in connection with our response to question 4, may seek to have the period of detention extended for sufficient cause.

As mentioned above, it is possible to mark the running of the two month period from October 23, the date of issuance of the mandate from the United States Court of Appeals for the Seventh Circuit. While, in some circumstances, the time within which to take certain actions may not begin until the judicial action is appropriately noted in the docket (*see, e.g., United States* v. *F&M Schaefer Brewing Co.*, 356 U.S. 227 (1958); *Edwards* v. *Doctors Hospital, Inc.*, 242 F.2d 888 (2d Cir. 1957), *cert den.*, 356 U.S. 930 (1958)), this procedure is primarily limited to entry of judgments at the trial court level. We doubt this rule would apply to subsequent recordation at a lower level of a Supreme Court action. As Justice Goldberg stated, the common sense reading of the two month provision is that it marks the period available to the Secretary, following final adjudication, to decide whether or not to extradite. The date of entry of a decision in the court docket is irrelevant to this process, since the lower court is merely carrying out a decision already reached—that the party in question may be extradited—and the lower court has no discretion to alter that outcome of the judicial process.

2. Does the Secretary of State's power to extradite expire after two months?

There is language in many cases to the effect that the decision to extradite or not is solely for the Secretary of State. *See, e.g., Eain* v. *Wilkes*, 641 F.2d, at 508 ("If the case is certified to the Secretary for completion of the extradition process, it is in the Secretary's sole discretion to determine whether or not extradition should proceed further with the issuance of a warrant of surrender."); *Escobedo* v. *United States*, 623 F.2d 1098, 1105 n.20 (5th Cir. 1980) ("The Secretary of State always has discretion to refuse to extradite, even if the Magistrate under 18 U.S.C. § 3184 concludes that the fugitive is extraditable."); *Sindona* v. *Grant*, 619 F.2d 167, 176 (2d Cir. 1980) ("Such arguments are properly addressed to the executive branch, which is empowered to make the final decision on extradition and has assumed the discretion to deny or delay extradition on humanitarian grounds.")

When these statements are considered together with the policy reasons expressed in *Perez Jimenez* for the two month rule (see discussion, *supra*), it seems unlikely that the Secretary of State would lose his power to extradite upon the expiration of the two month period. As discussed above, the two month rule is concerned with the confinement of the person to be extradited, not with the power of the executive to extradite. In addition, 18 U.S.C. § 3186, the section of the statute that gives the Secretary the authority to extradite, contains no explicit time limitation; it simply provides that the Secretary of State "may order the person committed under sections 3184 or 3185 of this title to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged" without reference to any limitation on the period within which the Secretary must take such action.

Finally, it should be noted that section 3188, on its face, refers to discharge from custody (after expiration of the two month period and upon application of the detainee), not termination of the Secretary's power of extradition. Indeed, the title of the section, "Time of commitment pending extradition," indicates that the subject matter of the section is limited to expiration of the time allowed for commitment.

We should point out, however, that there is language in *Barrett* v. *United States, supra*, which could be cited in support of the position that the power to extradite lapses upon expiration of the two month period. Specifically, the court in *Barrett* characterized 18 U.S.C. § 3188 as a statute "which establishes a two month limitation for accomplishing extradition." 590 F.2d at 626. The question of expiration of the Secretary's power was not at issue in *Barrett*, so the foregoing statement is dictum. Moreover, the court provided no reasons in support of such a reading of section 3188. In our view, this language would not be followed by a court called upon to determine whether the Secretary's power to extradite may be exercised after expiration of the two months period.

3. Upon expiration of the two month period, what procedures are available to Eain to effectuate his release from custody?

Upon expiration of the two month period, Eain can be expected to apply to a federal district court for a writ of habeas corpus to issue ordering Eain's release from custody under the provisions of section 3188. Eain would also request the court to enjoin the Secretary from ordering his extradition during the pendency of the habeas proceeding. It is likely that a judge would grant such relief.

The habeas corpus procedure would take a minimum of one month at the district court level. Whatever the result, the district court's order would be appealable to a circuit court of appeals.

4. What constitutes "sufficient cause" to keep a person in the U.S. for more than two months after his commitment for extradition?

18 U.S.C. § 3188 provides that after the two month period ends, a judge may order the person so committed "to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered." The burden to demonstrate such cause is on the government. *In Re Normano*, 7 F. Supp. 329, 332 (D. Mass. 1934).

We have found only two cases which have considered the "sufficient cause" standard for extending the two month period. In *Perez Jimenez*, 84 S. Ct. at 18, Justice Goldberg stated that since the delay was "attributable to the proceedings prosecuted by the petitioner, there certainly was 'sufficient cause' for the delay, within the intended meaning of § 3188." And, in *Barrett*, 590 F.2d at 626, the court held that the District Court had not abused its discretion in holding a detainee two days beyond two months.

In making that determination, the court took into account "the entire factual record," tning, among other factors, that there was no indication or claim of prejudice resulting from the delay of several days beyond the two calendar month limitation (the court did not even mention the fact that a person who had not yet been tried was being incarcerated); that "the record does not disclose any demand by appellant for speedy trial in the jurisdiction which seeks to try him," and (a point that is probably more relevant in our case) "the charge as to which probable cause has been found is a serious one, 'attempted murder and wounding,' " *Id.* at 626.

In short, the few cases to consider the point have had little difficulty in finding reasons to detain after the expiration of the two month period. We would expect the political considerations bearing on the timing of extradition and the nature of the alleged crimes to carry weight with a judge asked to exercise his discretion to allow detention of Eain beyond the two month period.

5. What is the importance and meaning of the clause that the two month period not include "time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States"?

There are no cases directly on this point. One case simply mentions that the precursor to section 3188 provided that a prisoner could be released if he had not been conveyed out of the U.S. "within two calendar months after he had been committed, plus whatever time was necessary to convey the prisoner from the jail to the nearest point of embarkation . . ." *In Re Normano*, 7 F. Supp. 329, 331, (D. Mass. 1934).

Language to this effect was a part of the original 1848 statute. It appears that the requirement was placed in the statute at a time when travel time to the borders was a major consideration, and that the purpose of the section was to give the authorities the leeway necessary to get the person to the border without impinging on the two month period. Consistent with this purpose, the time to effect embarkation (which could not be more than a day or so in our case) cannot be tacked on automatically to the two month period; it is available only if needed to prevent a release from custody while the subject is in the process of being extradited.●

A BIPARTISAN APPROACH TO ECONOMIC POLICY

● Mr. NUNN. Mr. President, as the evidence begins to mount that the economy is headed for some deeply troubled times, not just over the next few months but more likely over the next 6 to 9 months, it is clear that bipartisan action and a cooperative attitude are required if we are to walk the tightrope to economic recovery.

A quick review of the economic statistics illustrates the severity of the economic crisis. The total number of Americans unemployed has jumped by more than 1 million persons in the last 2 months. Conservative and liberal economists, including Murray Weidenbaum, Chairman of the President's Council of Economic Advisers, and Commerce Secretary Malcolm Baldridge now forecast that a 9-percent unemployment rate is not out of the question next year.

Industrial production plummeted 1.5 percent in October—the third monthly decline in a row and the biggest drop since a 1.7-percent decline in June 1980.

Housing is in a depression, not a recession, as starts are occurring at an anemic 857,000 annual rate—the lowest rate in 15 years.

Business inventories continue to accumulate and are now at an uncomfortably high level.

From mid-1980 to mid-1981, court-filed business bankruptcies increased 30.1 percent—the second largest year-to-year rise in the last 20 years. Reinforcing that data are the bankruptcy statistics released by Dun & Bradstreet for the first 35 weeks of 1981. Those statistics show that business bankruptcies jumped 41.8 percent compared with the same period in 1980.

The Index of Leading Economic Indicators declined 1.8 percent in October after falling 2.2 percent in September.

And finally, the Federal deficit, forecast by the Office of Management and Budget to be $42.5 billion in fiscal year

1982 only 3 months ago, is now anticipated to be nearly $110 billion.

The administration now says that "this quarter may be a real downer," and that real economic growth will be limited to 1 percent next year. It was predicted that enactment of the administration's economic program with broad-based public support would inspire great confidence on Wall Street as well as on Main Street. Unfortunately, it has not.

Certainly inflation has abated somewhat, but we all recognize that disarray in OPEC and a bountiful crop harvest have been the key ingredients in holding down the rate of inflation.

It is also true that short-term interest rates are declining, but again, we all recognize that the drop is in response to the steep decline in economic activity and the deepening recession.

There is hope that the 10 percent personal income tax cuts effective July 1, 1982, will help lead the way out of the recession. Perhaps that will happen, but I have serious doubts. Unless today's loose fiscal policy is modified, those individual tax cuts and a $110 billion deficit will crash head-on with the Federal Reserve Board's tight monetary policy. That is a prescription for a sluggish economic recovery with continuing high interest rates, hardly a satisfactory solution to what may well be the worst recession since World War II.

Mr. President, last July I joined with Senators BOREN, JOHNSTON, CHILES, and EXON, in urging the President to convene a national economic summit conference to develop consistent fiscal and monetary policies which would promote noninflationary sustained economic growth. The need for such a conference is now more acute, more imperative than ever before. The President, the Chairman of the Federal Reserve Board, the bipartisan leadership of the House and Senate, private financial market experts, and representatives from the Governors and mayors should meet until a set of mutually reinforcing fiscal and monetary policies are established.

We must adopt an overall, bipartisan economic policy that coordinates and reconciles the divergent viewpoints on spending, tax, and monetary policies. Each side must face the realities of our economic situation and must be willing to compromise and cooperate so that we can arrive at a policy which works.

The American people, who pay the tax bills and suffer the consequences of a deteriorating economy, will not tolerate a protracted political tug of war over economic policy.●

SOVIET HUMAN RIGHTS VIOLATIONS CONTINUE UNABATED

● Mr. HEINZ. Mr. President, in early October I had the oppcrtunity to listen to some very moving testimony regarding the anti-Semitic policies and tactics being applied by Soviet authorities today inside the U.S.S.R. The testimony was presented by five eloquent witnesses at a hearing chaired by me and my distinguished colleague from Rhode Island, Senator PELL. Both of us are Commissioners of the Committee on Security and Cooperation in Europe.

The National Conference on Soviet Jewry and the Jewish Community Council of Greater Washington were immensely helpful to us in preparing and organizing the meeting, which I felt was highly successful in calling attention to this very painful but important subject. I should add that the hearing was timed to commemorate the 40th anniversary of the massacre of Jews at Babi Yar by the Nazi forces then occupying the Ukraine.

Now I would like to invite your attention to another important aspect of Soviet dictatorship, the widespread use of psychiatry as a political weapon and the compulsory confinement of mentally healthy dissidents in psychiatric hospitals, where they are subjected to brutal and punitive treatment designed to correct their opposition to Soviet oppression. I am not referring to mere rumors or conjecture. Unfortunately, there is ample evidence that the Soviet authorities are now making regular use of psychiatric institutions in dealing with dissidents.

In this connection I refer to the eloquent and timely speech delivered on this subject on October 30 by our representative in the Third Committee of the United Nations General Assembly, Richard Schifter. Mr. Schifter clearly felt the subject was one which is sufficiently important and urgent to deserve special attention. The text of his speech confirms his good judgment. Drawing on information from reliable and widely available sources, such as Amnesty International, and the testimony of a Soviet psychiatrist, Mr. Schifter presents a grim and alarming picture, indeed. It is one which makes George Orwell's famous book, "1984," sound all too prophetic. If there are those who think I exaggerate, let them consider the following two paragraphs from Mr. Schifter's speech.

From available reports we can gather that today there are perhaps as many as 1,000 persons in Soviet mental institutions who are perfectly sane by generally accepted scientific norms, who most assuredly do not threaten to do bodily harm to themselves or others, but who are deprived of their liberty because they have exercised the right of free expression guaranteed them by the Universal Declaration (of Human Rights) in a manner which the Soviet Secret Police found displeasing and who might, if freed, continue to do so. In addition to these approximately 1,000 political dissenters, there are in Soviet mental institutions about three to four times that number of persons who are not dissenters but complainers, persons who have pointed out deficiencies in the Soviet bureaucratic apparatus.

There are two types of mental hospitals in the Soviet Union, ordinary psychiatric hospitals and special psychiatric hospitals. There are, reportedly, thirteen of the latter, all of them run by the Ministry of the Interior, the Ministry of the Secret Police. It is the eyewitness reports as to the way patients are treated in the special psychiatric hospitals that deserve the most careful attention. These reports are truly frightening, making one indeed wonder how fundamental a change the Soviet Union has undergone since the end of the "cult of personality". In fact, the reports of methods used in these hospitals are terrifyingly similar to those we have of the treatment of political prisoners by Hitler's SS.

I submit Mr. Schifter's entire speech for the RECORD and I commend him for his contribution to the cause of human rights.

The entire speech follows:

STATEMENT BY RICHARD SCHIFTER

Mr. Chairman, deprivations of personal liberty through acts of government can take a number of forms. One such form is the involuntary commitment of an individual to an institution for the mentally ill. As the patient in any modern mental hospital normally receives psychotherapeutic treatment, which sometimes includes the administration of drugs, and as there have been significant developments in this scientific field in recent decades, it is indeed highly appropriate for this organization to concern itself with those developments.

As we all know, Article 3 of the Universal Declaration of Human Rights proclaims everyone's right to "liberty and the security of person," which, under Article 29, Section 2 can be limited as is "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Let me also call attention to the fact that Article 5 provides that on one "shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

What the Declaration recognizes is that government has the power to deprive a person of liberty for just cause and under procedures which make it possible to establish whether or not just cause exists. Where the possible deprivation of liberty is incarceration, the question requiring prior determination is whether the accused committed certain acts in the past and whether these acts constituted violations of the country's criminal laws.

As difficult as it sometimes is to reconstruct past events beyond a reasonable doubt, let us consider how much more difficult it is to peer into the future and make predictions as to how a person will behave at some later date. Yet the act of crystalgazing is required before a person may be involuntarily committed to a mental institution.

To be sure, some involuntary commitments are the result of the ordinary criminal process, in which a determination is made as to acts committed by the accused in the past, accompanied by a finding that the accused was not of sound mind when committing those acts. But many other involuntary commitments and all decisions to have a person remain involuntarily in a mental hospital are based on an analysis of that person's state of mind and on assumptions on how that person is likely to behave if permitted to be at liberty. The formulation of the issue posed to the decision-makers is whether the prospective patient would hurt himself or others if he remained free. To be more specific, in most countries the inquiry is directed at the question of whether a person suspected of a mental disorder is likely to commit serious bodily harm to himself or against others or kill himself or others.

We can readily see the great responsibility and power vested in the decision-makers whose task it is to gaze into the future and decide on the question of an involuntary commitment. Given the fact that commitment of a person of sound mind to an institution for the mentally ill is indeed cruel, inhuman, and degrading, all possible safeguards must be provided to prevent incorrect determinations.

Mr. Chairman. In some countries, sadly, there have been cases in which private parties have sought the commitment of persons

who should not be committed, often a family member whom those seeking the commitment considered a burden. It is for that reason that in the United States, where responsibility to legislate in this area falls on the several states, major efforts have been made in recent decades to tighten the laws against possible abuse. It is indeed appropriate to engage in study of this problem with a view toward defining internationally accepted scientific norms for the involuntary commitment of persons to mental hospitals.

But we must recognize that there is a fundamental difference between the abuse of the involuntary commitment process by private individuals and such abuse by agents of the state. Tightening of procedures and insistence on the highest degree of professionalism can serve as safeguards against abuse. Where the abuse is practiced by agents of the state, what is needed is a decision at the highest level of government to stamp out such abuse. The question with which this body need concern itself is whether such abuse by agents of government, in violation of the Universal Declaration and other international human-rights instruments, does take place.

Mr. Chairman. In his famous speech to the Twentieth Congress of the Communist Party of the Soviet Union, the party's then First Secretary, Nikita Khrushchev, spoke of the many violations of human rights in the Soviet Union during the period known as that of the "Cult of Personality." Among these violations were the executions and incarcerations of many persons who had never been brought to trial. The post-Stalin leadership of the Soviet Union pledged itself not to follow that practice but to adhere to a process known as "socialist legality," that is to charge persons with violations of the law in a judicial proceeding, arrange for a trial on the charges, and then, if the defendants are found guilty, provide for sentencing by a court of law. There are aspects of this procedure which, in practice, may very well run afoul of the Universal Declaration and other international human-rights instruments, but that is not pertinent to today's discussion.

What is pertinent is that there has been increasing evidence in the last twenty years that the Soviet secret police has found a way around the concept of "socialist legality," a way that gives it the power of totally arbitrary arrest and detention, the same power which it had during the period of the "Cult of Personality." It is important, Mr. Chairman, that that evidence, evidence which alleges the most serious abuse of scientific practices, in violation of internationally recognized norms of human rights, be thoroughly examined.

What does the evidence show? Whose rights appear to be abused? In their book, entitled "Russia's Political Hospitals," published in London, in 1977, Block and Reddaway summarize their conclusions in the following words:

"The use of psychiatry as a political weapon in the Soviet Union is in many ways unique. With the development of various modes of dissent by Soviet citizens in the 1960's, reports began to emerge that substantial numbers of human-rights activists, nationalist, religious believers, and would-be emigrants, almost all mentally healthy in the eyes of their families and friends, were being declared insane by psychiatrists and thereupon confined compulsorily for indeterminate periods to psychiatric hospitals. Rather than receiving appropriate care there, the dissenters were encountering brutal and punitive 'treatment' apparently in an effort to stamp out their non-conformist behavior.

"Allegations were subsequently made, both in the Soviet Union and in the West, that psychiatrists were being employed in the battle against dissent as part of a systematic, state-directed policy, whose objective appeared to be: the avoidance of a full-scale criminal trial with all its attendant publicity, the indefinite compulsory internment of dissenters in mental hospitals and the discrediting of their convictions as those of mentally-sick people."

To the groups of victims just enumerated, those who disagree with the system under which they live, there should be added one other: those who accept that system but who complain about actions of local bureaucrats. That truly pitiful group deserves to be mentioned, too. It would seem, Mr. Chairman, that when we declare an involuntary commitment justified because a person might, if he remained at liberty, do harm to others, we do not mean doing harm to the feelings or career-opportunities of petty and not-so-petty bureaucrats. But that, according to the available evidence, is not the way the issue is viewed in the Soviet Union. Having the courage to complain about the errors and abuses of officialdom is regarded as prima facie proof of mental illness.

Mr. Chairman. From available reports we can gather that today there are perhaps as many as 1,000 persons in Soviet mental institutions who are perfectly sane by generally accepted scientific norms, who most assuredly do not threaten to do bodily harm to themselves or others, but who are deprived of their liberty because they have exercised the right of free expression guaranteed them by the Universal Declaration in a manner which the Soviet Secret Police found displeasing and who might, if freed, continue to do so. In addition to these approximately 1,000 political dissenters, there are in Soviet mental institutions about three to four times that number of persons who are not dissenters but complainers, persons who have pointed out deficiencies in the Soviet bureaucratic apparatus.

There are two types of mental hospitals in the Soviet Union, ordinary psychiatric hospitals and special psychiatric hospitals. There are, reportedly, thirteen of the latter, all of them run by the Ministry of the Interior, the ministry of the secret police. It is the eyewitness reports as to the way patients are treated in the Special Psychiatric Hospitals that deserve the most careful attention.

These reports are truly frightening, making one indeed wonder how fundamental a change the Soviet Union has undergone since the end of the "Cult of Personality." In fact, the reports of methods used in these hospitals are terrifyingly similar to those we have of the treatment of political prisoners by Hitler's S.S.

The pseudo-scientific procedure reportedly followed by the Soviet Union in committing sane persons to mental hospitals results in each case in a series of violations of the patient's human rights.

First of all, the patient, or, really, prisoner, is deprived of his liberty without just cause.

Second, political prisoners are not joined together in mental institutions. They are deliberately placed among persons who are indeed mentally ill, a procedure which is cruel and degrading.

Third, orderlies in these institutions are often hardened criminals, who apply some of the worst forms of brutality to the persons under their control.

Fourth, punishment for behavior of which the hospital authorities disapprove consists of forms of torture.

Fifth, and of the most direct relevance to our topic, drugs are administered in a manner for which there is absolutely no medical justification in a process which most clearly violates Article 5 of the Universal Declaration in that it constitutes torture as well as cruel, inhuman, and degrading treatment.

On this last point, let me quote from a document entitled "Prisoners of Conscience in the USSR: Their Treatment and Conditions," issued by Amnesty International in 1980. That document states:

"The drugs most commonly used on dissenters are the powerful tranquilizers (commonly referred to as neuroleptic drugs) aminazin, haloperidol and triftazin; insulin and sulphazin. Among other drugs which have been applied to prisoners of conscience and other inmates are tizertsin, sanapax, etaperazin, phrenolon, trisedil, mazheptil, seduksin and motiden-depo. These drugs have been administered by various means, including injections, solutions for drinking and tablets.

Each of these tranquilizers is used in many countries for treatment of a variety of psychiatric disorders. However, in accepted medical practice their use is carefully regulated. First, each is intended for treatment of specific disorders. Application of any of these drugs to people suffering from the medically-indicated symptoms causes harm.

Second, each of these drugs can cause serious negative side-effects, among them skin and blood disorders, disorders associated with pigmentation and the sensitivity of the eyes to light, gain or less in weight, dryness of the mouth, reduced blood pressure and jaundice. A characteristic negative side-effect, and the one which victims regard as the greatest threat to their sanity, is the "parkinsonism" or "extra-pyramidal derangement" often induced by these drugs. This side-effect is characterized by muscular rigidity, paucity and slowness of body movement, physical restlessness and constant desire to change the body's position.

In accepted medical practice these negative side-effects are countered by careful determination of the dosage, simultaneous administration of other drugs which counteract these side-effects, careful observation of the patient to ensure that the drugs are not contra-indicated by some characteristic of the patient's condition and cessation of treatment with the drug if it causes too much discomfort.

From numerous accounts it is plain that in Soviet psychiatric hospitals, both the ordinary and special ones, these drugs are administered indiscriminately and routinely to patients, without attention to the size of the dosage, the characteristics of the subject's physical or psychiatric condition or the harm caused by the drugs. They are often used without the accompaniment of any counteracting drugs, and they are frequently applied to persons for whose condition they are contra-indicated.

In a number of known cases dissenters have been treated with these drugs on arrival at ordinary psychiatric hospitals without even being diagnosed by a psychiatrist. Even when dissenters have been lucky enough to be released from an ordinary psychiatric hospital within a few days, they have as a rule received treatment with these drugs before their release.

In a number of cases dissenters have challenged their psychiatrists to explain why they were giving these drugs to them, and received the reply that it was necessary to justify their being treated in a psychiatric hospital. In known cases aminazin, haloperidol, triftazin, and similar drugs have been applied at the request of, or even by decision of, entirely untrained orderlies recruited from among convicted criminals.

These drugs are frequently, indeed routinely, applied as a means of punishing inmates for violations of discipline and as a form of pressure on dissenters to renounce their disapproved-of beliefs and behavior.

Another type of psychiatric treatment to which dissenters have often been subjected is insulin shock therapy. This method consists of administering increasing doses of insulin over a period of days. The dosage is increased until the subject goes into "hypoglycaemic coma" and shock. A course of insulin shock therapy in Soviet psychiatric hospitals usually consists of 25 or 30 such shocks. . . .

The drug sulfazin was at one time used in a number of countries for treating schizophrenia and other ailments in certain circumstances but has generally gone out of use long ago because it was shown not to be useful. However, sulfazin caused great physical discomfort—raging fever so intense that the patient is virtually incapacitated for up to three days after an injection. Most former inmates of Soviet psychiatric hospitals who have been in a position to give an account of their conditions of incarceration have reported that sulfazin is regularly used as a punishment for violation of discipline, with the victims sometimes being subjected to injections of it every day for several days. As with the other treatments mentioned above, the medical personnel administering this drug have often done so without proper assessment of whether the subject was physically able to stand the treatment.

To this report of Amnesty International, let me add the testimony of a Soviet psychiatrist, Dr. Anatoly Koryagin, who described his first-hand experiences in an article entitled "Involuntary Patients in Soviet Psychiatric Hospitals," published in 1980. Dr. Koryagin offered the following observations on how a person falls into the clutches of the system for the psychiatric treatment of dissidents.

"A [non-dissident] patient's first contact with a psychiatrist to a large extent determines his subsequent fate. Normally, such contact takes place at the patient's own request, or at the request of his family when they first notice abnormalities in his speech and behavior. In cases of sudden manifestation of psychological disturbance (when the patient becomes 'socially dangerous'!) the patient is taken to a psychiatric hospital from wherever he happens to be at the time, usually under police escort. Nothing of this kind happened to the people [dissidents] I examined. None of them sought medical assistance, their families did not request psychiatric help on their behalf, their speech and behavior posed no threat to anyone's life; nonetheless, they were all confined to psychiatric hospitals by force or by deception. The fate of these people depended on those who controlled their personal freedom: officials of the KGB, the Procuracy and the Ministry of Internal Affairs. Many of those I examined have said that they were initially presented with the following alternative: renunciation of their views and activities or internment in a psychiatric hospital.

"The most widespread methods of confining dissenters to psychiatric hospitals in the USSR are as follows:

"(1) The investigative organs bring charges against you under one of the 'anti-Soviet' articles of the Criminal Code. At the investigator's request, you are subjected to a forensic psychiatric examination and pronounced mentally ill. The next stage is compulsory treatment in a special or an ordinary psychiatric hospital. . . .

"(2) You are summoned to the Military Registration Office 'for examination by a military commission.' You arrive. You are escorted by a police officer to a psychiatric hospital 'for observation.' The role of the Military Registration Office is sometimes played by the Executive Committee of the District Soviet, the City Party Committee, the police, or the State Motor Vehicle Inspectorate, where you are summoned on some pretext.

"(3) Due to circumstances with which you have no connection, a brawl breaks out between you and your neighbors at home or your colleagues at work. The police are called and for some reason, only you are taken to the police station and from there to a psychiatric hospital. . . .

"(4) You are in bed, or doing something at home when a car draws up outside. Medical orderlies and KGB officials take you straight to a psychiatric hospital. . . ."

The article continues with a description of the circumstances which lead to the administration of drugs to these alleged mental patients:

"The patients' descriptions of their state of mind during their stay in psychiatric hospitals show no trace of any psychopathological symptoms. . . . Their only symptoms were those very 'anti-Soviet' attitudes, expressions and actions, the 'degree' of which directly influenced the medical staff's attitude towards them and also the treatment they were given. Not an increase in hallucinatory or confused experiences, but 'breaking the rules'—for example by sending letters and complaints bypassing the doctor's censorship, making remarks 'of an anti-Soviet nature,' circulating news from foreign radio stations, etc., not admitting that their former actions were wrong, directly accusing the doctors of persecution and complicity with the KGB—these, according to the people I examined, were the basic reasons for giving them sulfazin, inducing insulin comas, administering high doses of neuroleptic drugs, depriving them of the opportunity to work in the open air."

Dr. Koryagin concludes:

"All that has been said above concerning the group of people I examined leads to the conclusion that criteria and instructions generally accepted in Soviet psychiatry were ignored by its officials in their attitude to the admission to hospital of these people, clinical appraisal of their condition, treatment and help in social matters. Thanks to this unorthodox approach, these people found themselves treated as chronic psychiatric patients. Our observations show that the most influential factor determining the psychiatrists' attitude towards the patients was the label 'anti-Soviet,' which was commonly applied to representatives of this group.

"Leaving to the doctors' own consciences their flagrant, almost criminal disregard of their professional duty, it is legitimate to pose the following question: how does it happen and who is responsible for the fact that in a country like the USSR, where every aspect of economic, political and social life is strictly controlled by the State, perfectly healthy people are treated as though they are mentally ill?"

Mr. Chairman. In the days of Joseph Stalin, dissent was rooted out through a process which started with a knock at the door in the middle of the night and ended one morning with a bullet in the back of the neck. Are we now faced, in lieu of summary executions, with a procedure under which dissenters are terrorized or made unable to function normally in society through the use of drugs? Is it also deliberate policy to brand dissenting opinions as a form of insanity? And has this approach been adopted so as to hold dissenters up to ridicule in an effort to convince the population that no sane person could possibly subscribe to the aberrational beliefs advanced by these heretics?

Questions such as these are troubling to a great many people, including members of the psychiatrics profession. Let me quote to you from the resolution on this subject adopted by the Sixth Congress of the World Psychiatrics Association, which met in 1977:

"That the World Psychiatric Association take note of the abuse of psychiatry for political purposes and that it condemn those practices in all countries where they occur and call upon the professional organizations of psychiatrists in those countries to renounce and expunge those practices from their country and that the WPA implement this resolution in the first instance in reference to the extensive evidence of the systematic abuse of psychiatry for political purposes in the USSR."

Mr. Chairman. In my remarks I have quoted from four different sources, all of which are in public print. There are a great many additional reports now circulating which tend to substantiate the allegations of serious violations in the Soviet Union of the human rights of some of its citizens through abuse of psychiatric treatment, including the administration of drugs to persons who are mentally perfectly healthy. These reports can no longer be ignored. They must be investigated. For if they are true—and we must say that the evidence in their support is substantial—we are here dealing with one of the shocking abuses of the human person and of human dignity of the post-Hitler period.

Developments in science and technology can, as we all know, be of great benefit to humankind. But we also know that they can cause a great deal of harm. The allegations to which I have referred suggest that scientific processes are being used to do extraordinarily serious harm. We cannot, Mr. Chairman, in good conscience ignore them. We owe it to ourselves, we owe it to mankind to investigate these allegations. And if they prove to be true, we must try to persuade those who bear ultimate responsibility to stop these practices, which, if they do occur, are indeed extraordinarily grave crimes against the human person.●

SOVIET JEWRY

● Mr. LEVIN. Mr. President, I rise today to join my colleague, Senator PELL, in urging our Government to call on the Soviet Union to improve its treatment of Soviet Jewry.

A plunge in emigration coupled with a surge in repression and harassment has put a strangle hold on Jewish movement and on Jewish cultural, scientific, and educational activities.

Since late 1979, we have witnessed a steady decline in Jewish emigration. In October of 1979, 4,746 Jews emigrated; in October of this year the number had dwindled to 368. The Soviets continue to flagrantly deny the right of freedom of movement guaranteed in the Helsinki Accords.

The Russian picture grows bleaker as we look at the stepped-up repression by Soviet officials. Hebrew cultural, educational, and scientific activities are being systemmatically erradicated.

On a regular basis throughout Russia, Hebrew teachers are warned by the KGB to stop conducting classes. The warnings are followed by police surveillance, threats, apartment searches, confiscation of property, and interrogations. Confiscated material is not restricted to items directly related to the charges brought against them—although it is required by Soviet law. While searching apartments, KGB agents often take items unrelated to charges, like foreign language textbooks, records, and radios.

Protesting this kind of persecution, a group of Hebrew teachers and their students presented a letter of complaint to the Supreme Soviet. They ask, "Is there a special law that applies to us or are we covered by constitutional guarantees of all Soviet citizens?"

Members of unofficial scientific seminars are being likewise harassed. Scientists participating in the seminars have lost their jobs after applying to emigrate. Longing to remain in the mainstream of current scientific research, they organized informal discussion sessions.

One of the most important of these seminars was organized by the distinguished scientist, Dr. Viktor Brailovsky. But his seminar, like so many others, was forced to disband because of increased Soviet repression. Brailovsky was arrested in 1980 and sentenced to several years of internal exile. Persecution like this has soared in past months and portends calamity for unofficial scientific gatherings.

Concern has been mounting in the United States over the drastic decrease in emigration and the rapid escalation of repression. In September of this year, Senator RIEGLE and I wrote a letter to Secretary of State Alexander Haig urging him to include the treatment of Soviet Jews in his discussions with Foreign Minister Gromyko. I ask that copies of this letter and the State Department's response be included in the RECORD at the conclusion of my remarks.

Efforts to improve the condition of Soviet Jews must continue, and protests of harassment must ring loud and clear. I urge my colleagues to approve this resolution in a speedy manner.

The letters follow:

SEPTEMBER 16, 1981.

Hon. ALEXANDER HAIG,
The Secretary of State, Department of State, Washington, D.C.

DEAR MR. SECRETARY: It is our understanding that you will be meeting with Foreign Minister Gromyko next week to discuss a wide range of issues. We wish to express our concern regarding the treatment of Soviet Jews.

It is the fervent desire of the Jewish community in the Soviet Union to establish its own educational, cultural and religious institutions, a basic freedom denied to that community for many decades.

It is important to stress the official recognition of the Hebrew Seminars, which have been informally established in recent years.

We are certain that you will have a full agenda to discuss with Foreign Minister Gromyko at your meetings. However, it is imperative, in our opinion, that the human rights of all people be foremost on the agenda.

Thank you for your attention to our concerns. We wish you well in all your deliberations with the Soviet government.

Sincerely,

CARL LEVIN,
U.S. Senator.
DONALD W. RIEGLE, JR.,
U.S. Senator.

DEPARTMENT OF STATE,
Washington, D.C., September 30, 1981.

Hon. CARL LEVIN,
U.S. Senate,
Washington. D.C.

DEAR SENATOR LEVIN: Thank you for your letter of September 16 to the Secretary, expressing your concern for the plight of the Jewish community in the Soviet Union. Please be assured that we share your concern. The United States will maintain its commitment in support of Soviet Jewry and all those whose fundamental rights and freedoms are being abridged in the USSR.

The efforts of Soviet Jews to retain or reestablish their religious and cultural identity in the face of official harassment and persecution are indicative of the depth of their feelings for their historic traditions. In particular, the courage of those who have organized and conducted the Hebrew Seminars, many of whom have suffered arrest and imprisonment as a result, are an inspiration to all of us who are able to exercise our basic rights in a free society. The U.S. Government has consistently reiterated to the Soviet Government our strong views that religious and cultural freedoms are among those universal human rights that cannot justly be denied by any political system.

Let me assure you that, in preparation for Secretary Haig's meetings with Foreign Minister Gromyko, we have been fully cognizant of the great concern in all branches of our Government and among the American people for the right of Soviet Jews to practice their traditions without fear of official repression. The United States will continue to use every appropriate means to try to alleviate their situation.

Sincerely,

RICHARD FAIRBANKS,
Assistant Secretary for Congressional Relations.●

TALENTS OF ELDERLY WASTED IN A YOUTH-CENTERED CULTURE

● Mr. CHILES. Mr. President, I call my colleagues' attention to an article in the December 14 issue of U.S. News & World Report which I consider worthy of reprint and which I hope will be read and reflected upon by every citizen over the age of 18 in this great Nation.

The article chastises Western culture for its negative stereotype of old age and challenges the American public to recognize that although social legislation to benefit the elderly has been enacted, it does not mean that attitude of society negative toward the elderly has changed.

My State of Florida has the highest percentage of older persons in the Nation—almost 30 percent of the State's population. My State is now where the entire country will be in the year 2030. In Florida we have recognized and are attempting to come to grips with the fact that we cannot continue to waste the talents of older persons and that what older Americans want most is to continue to be productive.

I could not agree more with the writer of this article "that the elderly are an irreplaceable intellectual resource—but because of the negative stereotype society holds, they are often unappreciated."

I submit the following article for the RECORD:

TALENTS OF ELDERLY WASTED IN "A YOUTH-CENTERED CULTURE"

(A Conversation With David Van Tassel)

(David Van Tassel, a specialist in U.S. social history and gerontology, is Benton Professor at Case Western Reserve University in Cleveland. His most recent book is "Aging, Death and the Completion of Being." The following is from a conversation with an editor of U.S. News & World Report.)

TIME TO DROP "A NEGATIVE STEREOTYPE OF OLD AGE"

Western culture has always had a negative stereotype of old age. Other people have been viewed as cranky, wrinkled, ugly and unable to change their ways. This stereotype has been passed from generation to generation through literature and the schools. The image dates back to the ancient Greeks, who honored youth, not age, and to the Judeo-Christian tradition. Even in the Bible, despite the commandment to "honor thy father and thy mother," age was not really revered. Colonial New England appears to be an exception to this negativism. Senior citizens held office until they died, and they were accorded the position of honor in the church.

Some historians argue that the American Revolution undercut all the hierarchical structures that supported veneration for the aged. By the 1820s and 1830s, we were becoming a youth-centered culture, with younger people assuming offices once generally held by their elders. In the 1880s and 1890s, negative images became much stronger as a result of changes in the workplace and a revolution in the medical-biological profession. New industrialists said that older workers were less efficient and must be moved out of the work force. Retirement plans began to emerge because some factory managers thought they could gain the loyalty of younger workers by moving them into positions of responsibility more rapidly.

At the same time, the medical profession, which was making breakthroughs in the discovery of microorganisms, began to regard old age as a disease or a complex of diseases. Doctors did not have much success in curing these diseases, so they pictured old age as a grouping of incurable diseases and did not look for ways to ameliorate the chronic problems of aging. Even today, despite the efforts of the National Institute on Aging, very little is being done to keep people healthy and comfortable as they age. Instead, the emphasis is on acute care, dealing with problems only when they become critical.

OUR "AGE-SEGREGATED SOCIETY"

In this century, the U.S. has become even more of a youth-centered culture. The enactment of social legislation to benefit the elderly does not mean that attitudes have changed. Even Social Security was passed with mixed motives: Though partially humanitarian in its thrust, it was also designed to move older people out of the work force and to give jobs to younger people.

Ever since the end of World War II, we have developed an age-segregated society as developers sold off big hunks of land in Florida, Arizona and Southern California that were turned into "leisure villages" and retirement cities. It is a tragic mistake for many older people to leave their communities for these places. They often know no one in these retirement areas and have to prove themselves all over again; their identities are gone.

SALVAGING "AN IRREPLACEABLE INTELLECTUAL RESOURCE"

In the years ahead, older people face an even bleaker future unless there is a major change in the attitudes of the young. As the baby-boom group ages and moves into retirement, there will be a dramatically reduced work force to support a huge dependent population of older people. Moreover, the baby-boom generation will be far more educated and will demand more in the way of cultural and health advantages and economic security than the present group of older Americans. This could produce a sharper cleavage among generations unless we find ways to break up age segregation, with the old and the young being brought together.

For example, we can take advantage of the closing of so many schools to use some of the money saved to give older people classes in these buildings. Another possibility is to organize the elderly in more voluntary service and pay them a minimal honorarium.

The fact is older people remain intellectually vital. New tests developed by psychologists show that the intelligence of the elderly remains just as great; they just learn in a different way than young people. They don't memorize; they tie things to experience. They learn more slowly because they have to sort out their experiences and fit the new material into their lives.

The elderly are an irreplaceable intellectual resource—but because of the negative stereotype society holds, they are often unappreciated.●

EXPORT TRADING COMPANIES ACT WILL CLARIFY ANTITRUST LAWS

● Mr. HEINZ. Mr. President, a recent article in the November Mining Congress Journal by Kermit W. Almstedt is an extremely important addition to the debate over export trading companies legislation because it so clearly and thoroughly explains title II of that legislation and provides some practical examples of how to take advantage of the antitrust immunity provided in the bill. Now an attorney with Preston, Thorgrimson, Ellis and Holman in Washington, Mr. Almstedt was principally responsible for the drafting in title II when he was legislative assistant to Senator JOHN DANFORTH. More than most, Mr. Almstedt understands the need for the antitrust certification process the bill creates, and he knows how to use it.

I ask that the article be printed at this point in the RECORD.

The article follows:

EXPORTS AND THE ANTITRUST LAWS: PROBLEMS AND SOLUTIONS

(By Kermit W. Almstedt)

America's international competitiveness has, in recent years, declined. Many reasons have been given for this decline; one of them is a perception, held by the business community, that the application of American antitrust laws to foreign activities of American businesses is dangerously uncertain.

This uncertainty, coupled with the risk of possible criminal conviction and treble-damage antitrust lawsuits,[1] dissuades many businesses whose products could be internationally competitive from attempting to export.[2]

A solution to the problem, fortunately, may be near. Currently pending in Congress is legislation—The Export Trading Company Act of 1981—that would clarify precisely when American businesses operating overseas are subject to American antitrust laws. The legislation should pass in the 97th Congress.

The Export Trading Company Act encourages business cooperation to increase exports. Its passage should benefit businesses which have products to export. The mining industry, coal in particular, is on the verge of a giant export boom and can be a primary beneficiary. But the benefit will come only if mining companies themselves use the opportunity the act presents and create aggressive, inventive strategies to boost exports.

ECONOMIC STABILITY OF U.S. JUDGED TO BE ERODING

The phrase "trade deficit" is becoming, unfortunately, increasingly familiar to Americans. Once thought a phenomenon unique to other countries, a trade deficit now is as American as apple pie. Indeed, the past ten years have seen steadily accumulating deficits. The impact of the trend was aptly described by U.S. Sen. John Danforth, chairman of the Senate International Trade Subcommittee. "The economic stability of our Nation," he recently told his Senate colleagues, "is being swiftly eroded."[3]

This erosion bewilders Americans accustomed to economic dominance of the world. Why, we ask, have the tables turned? Some analysts go so far as to predict the United States' future to be that of a crippled economic power.

Such pessimism is unnecessary. The recent accumulation of trade deficits is certainly serious. But it should be viewed not as irreversible but as part of a dynamic change in the world economy, one which we can, by intelligent modifications, adjust to and overcome.

To understand the problem and its solutions, a historical perspective is necessary. Why? Because history shows the dynamism of America's economy and the constant need to adjust to change.

U.S. DOMINATED WORLD MARKETS AFTER WW II

Both before and after the Revolutionary War we were England's trading partner—a very junior partner. We exported cotton and tobacco and imported machinery; we ran huge trade deficits and borrowed to pay the difference. During its first 80 years, America was, by today's standards, an underdeveloped country.

This changed after the Civil War. That war and the Industrial Revolution that followed stimulated manufacturing. By the mid-1870s America began to export manufactured goods and frequently attained an annual trade surplus. In 1893 America suffered its last trade deficit for three-quarters of a century. Continual surpluses followed.

After World War II only the United States, of all the industrial nations, had a manufacturing base left intact by the war. Because of this we dominated world markets. From the post-War period until the 1960s, the U.S. financed the defense of the West and maintained an overvalued dollar in order to promote world economic growth. This enabled Germany, Japan and other nations to rebuild by creating modern plants and equipment. America's Marshall Plan was, by any measure, a resounding success.

But this success took its toll. As other industrialized nations became rejuvenated our relative advantage over them diminished. By the 1960s America began to show current account deficits; the surplus was shrinking. In 1971 our trade account slid into deficit. In an attempt to reverse the slide America twice devalued the dollar. Although the devaluations did not solve our trade problems, their cumulative effect, combined with the recession at home, produced an $11 billion trade surplus in 1975. That surplus was our last. When the economy recovered in 1976, the trade surplus evaporated and we suffered a $6 billion deficit. Since 1977 the country has run $20 billion-plus deficits annually (fig. 1). [Fig. 1 not reproduced in the RECORD.]

U.S. SHARE OF EXPORT MARKET DOWN

The main reason for the escalating deficits is simple: the value of our imports has increased dramatically. Two factors underlie the increase. The first is that imported oil prices have sky-rocketed. The second is that America itself, which long provided domestic businesses a safe and ample market, has become a primary target of foreign nations looking for new markets of their own. As a result, our domestic market has been invaded by foreign businesses. During the past decade the volume of imports of manufactures has increased by more than 70 percent (see fig. 2).

1970	146.8
1975	154.5
1976	194.3
1977	216.7
1978	251.8
1979	249.8
1980	252.0

FIGURE 2.—Volume of U.S. imports of manufactures (1962=100).

SOURCE: U.S. Department of Commerce, International Economic Indicators, 31 (June 1981). "Manufacturers" refers to chemicals, machinery, basic manufacturers, and other manufactures except mineral fuel products, processed food, fats, oils, firearms of war, and ammunition. Id., at 66 n. 11.

Maintenance of a balance of trade requires a corresponding increase in exports. Many nations have recognized this and made international trade, once a marginal activity, a critical aspect of their economy. But Americans have not adjusted so well. We have fallen behind even as the volume of our exports has advanced. For example, while U.S. exports increased from 4 percent of our GNP in 1970 to 8 percent today, our share of the total world export market declined from 15 percent to 12 percent.[4] Our trade rivals, in contrast, have grown significantly more export-conscious. While we exported 8 percent of our gross national product in 1980, Japan exported 12 percent, West Germany 23 percent and Canada 26 percent. (Fig. 3.)

Producing competitive products is not the problem. More than 20,000 American companies, according to a Commerce Department estimate, produce goods and services that could compete in foreign markets but do not export them. Instead, exports have grown more slowly in the U.S. than elsewhere because: (1) U.S. companies, satisfied with a seemingly safe American market, have overlooked potential export markets; (2) foreign markets have been closed to U.S. exporters; and (3) U.S. laws and regulations have discouraged exporting.

MANY LEGAL BARRIERS TO EXPORTS EXIST

The third issue—legal barriers to exporting—has significantly deterred the exportation of U.S. products. Many such legal barriers exist. They include cumbersome export licensing requirements, complex unilateral foreign bribery laws, prohibitions against bank investment in export ventures, and the confusing application of the American antitrust laws to overseas trade activities.

The overall effect of these laws is governmental enmity, or at best indifference, to the international activities of American companies. Our competitors, in contrast, have recognized that, to succeed in today's hypercompetitive world, one must aggressively sell goods and services in world markets. This, in turn, requires government policies that facilitate, not hinder, intra-industry cooperation.

The export trading company act (ETC Act) now pending on Congress embodies this cooperative concept. Although not a panacea, it constitutes an important step toward more aggressive exporting of American goods and services.

Period	U.S.	Germany	Japan	Canada
1970	4.3	18.4	9.5	19.6
1975	6.9	21.4	11.1	20.2
1976	6.6	22.8	11.9	20.1
1977	6.2	22.7	11.6	21.3
1978	6.6	22.0	10.0	23.2
1979	7.4	22.4	10.2	25.2
1980	8.2	23.3	12.5	26.4

FIGURE 3.—Ratios of exports to gross national product and production.

SOURCE: U.S. Department of Commerce, International Economic Indicators 36 (June 1981).

The ETC Act[5] addresses two obstacles that block the formation of cooperative entities which can effectively export American goods and services: barriers against bank investment in export trading companies and uncertainty about the application of American antitrust laws to cooperative foreign trade activities. Title I aims at the bank investment problem by permitting banks to obtain equity ownership of export trading companies.[6] Title II aims at the antitrust problem. Because Title II creates especially bright opportunities for mineral producers, let's confine the discussion to it, first examining the problems the antitrust laws create for businesses wishing to export, then the solutions the ETC Act offers.

APPLICATION OF ANTITRUST LAWS IS VEXING

Several federal laws, including the Sherman Act,[7] the Clayton Act,[8] and the Federal Trade Commission Act,[9] as well as many

Footnotes at end of article.

state laws, forbid anticompetitive agreements, monopolies and attempts to monopolize.

These laws are designed to insure a competitive business environment and thereby benefit American consumers. Consequently, they should not apply to foreign activities of American companies. The law of the foreign nation itself, instead, should apply. Then American companies would compete on the same level as their foreign adversaries.

This theory—that Americans should not be subject to American antitrust laws regarding their foreign activities—is accepted by businesses, academics, lawyers, and the antitrust enforcement agencies. However, the theory's practical application has been vexing.

The problem has been determining whether a foreign trade activity has an impact on domestic commerce or competitors. Given the infinite interconnection of the world economy, almost every activity has some impact, at least an indirect one, on the American economy. Never, though, have courts agreed about how great the impact must be for American antitrust laws to apply. Some have said a direct and substantial impact is necessary.[10] Others have said that the impact need not be direct and substantial but only more than "de minimu" (minimal).[11]

PRESENT LAW A MAJOR BARRIER TO EXPORTING

As a result of this confusing debate about subtle legal points, American businessmen considering entering foreign markets frequently do not know whether their contemplated activities will be subject to antitrust law or not. They face an unattractive choice. They can either comply with American law and bear a possible competitive disadvantage, or not comply and risk criminal convictions and treble damage antitrust suits.

This uncertainty is, understandably, a major barrier to exporting. An Assistant Secretary of Commerce explained that "one of the fundamental problems faced today in world trade relates to the fact that many American businesses—rightly or wrongly—perceive a threat from the U.S. government in the form of the Justice Department [questioning] their activities . . . in getting together to compete with consortia that they find in competition abroad."[12]

Businessmen themselves have eloquently described the problem they face. A chief executive officer of a paper manufacturing company told a Senate committee that the company began several years ago to investigate export opportunities. As its CEO he traveled worldwide and found attractive potential markets. But he could not, the CEO was told by his attorneys, cooperate with other manufacturers to jointly share the risk of entering new foreign markets. Even though the chance of antitrust prosecution was slight, the potential liability was enormous. "You must understand," the CEO testified, "the extent to which a small businessman who cannot afford to retain and seek constant high-priced antitrust counsel fears the antitrust laws and, therefore, is inclined to stay away as far as possible from exposure—even if it means giving up business opportunities and possible profits."[13]

Problems like that the CEO encountered, caused by uncertainty about the application of the antitrust laws to foreign trade activity, have long been recognized. In fact, as far back as 1918 the Federal Trade Commission reported that the threat of antitrust prosecution deterred American exporters from challenging foreign cartels. In response Congress passed the "Webb-Pomerene Act."[14] This act establishes a limited exemption from the antitrust statutes. Specifically, it exempts from the Sherman and Clayton antitrust laws any association established for the sole purpose of engaging in export trade, as long as that association does not restrain domestic trade, restrain the foreign trade of a domestic competitor, or affect domestic prices.

WEBB-POMERENE PROTECTION UNCERTAIN

At their high-water mark between 1930 and 1935, Webb-Pomerene associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. Today they number in the low 30s, and only a few are active. Their share of exports has dipped to less than 2 percent.

Use of the Webb-Pomerene Act has declined because courts and government antitrust enforcement agencies have rendered its protection somewhat certain. A past court decision demonstrates why. In 1919 the major producers of alkali products formed a Webb-Pomerene association to sell their goods abroad. Much later—in 1944—the Department of Justice charged the association with numerous antitrust violations. The association asserted as a defense that it had complied with the Webb-Pomerene filing requirements and that its activities did not contravene the act. Notwithstanding the association's honest belief that it had complied with the law, the court found to the contrary. Thirty-years too late and at grave cost, the association discovered that its immunity was a mirage.[15]

The alkali case shows why the Webb-Pomerene antitrust exemption is somewhat uncertain and why the Justice Department is thought to be hostile to foreign joint ventures. And the case is not unique. A counsel to a major Webb-Pomerene association recently told a Senate committee that "[a]s all who have studied the issue have recognized, uncertainty as to legality of cooperative activity, coupled with hostility to the Webb-Pomerene Act by the antitrust division of the Department of Justice, has deterred greater utilization of the Webb-Pomerene Act."[16]

So, theoretically American companies are subject to American antitrust law for overseas activity only if that activity has a direct and substantial effect on domestic competition or the export trade of domestic competitors. Court decisions applying this theory have been confusing and leave the theory's precise application uncertain. An association planning to export can obtain increased protection against antitrust liability under the Webb-Pomerene Act, because that act establishes an express, specific exemption that a judge can rely on to dismiss an antitrust suit. However, despite this express, specific exemption, many businesses still perceive the application of American antitrust laws to foreign activities to be so uncertain that they refrain from cooperating to export. The result is a diminution of American exports.

ANTITRUST IMMUNITY MORE CERTAIN WITH NEW LEGISLATION

To rectify these problems Title II of the ETC Act amends the Webb-Pomerene Act to make its antitrust immunity more certain.

Title II does several specific things. First, it establishes a prospective clearance procedure that certifies export activities, *before* they take place, as exempt from antitrust prosecution. Second, it expands the Webb-Pomerene antitrust exemption to include, besides the Sherman and Clayton Acts, all other relevant federal and state antitrust statutes; and it extends the exemption to export trading companies formed under Title I. Third, it clarifies the standard applied to determine the scope of the antitrust exemption. Fourth, it expressly applies the Webb-Pomerene Act to services; currently, the Webb Act only applies to goods. Fifth, it transfers the administration of the Webb-Pomerene Act from the Federal Trade Commission to the Department of Commerce.

The ETC Act has been acclaimed as a significant step towards the goal of restoring America's international economic stature. Last spring the Senate version, S. 746, passed by a resounding bipartisan vote of 93–0. The House version is now split among three committees and hearings are being held. When it get to the House floor, the ETC Act probably will again receive overwhelming support.

SIX STANDARDS APPLY TO GRANTING CERTIFICATION

Under Title II of the ETC Act an export trading association or company seeking to have its proposed export trade activities certified files a petition with the Department of Commerce. To determine permissibility, Commerce will apply six standards which codify existing judicial doctrines and Justice Department enforcement policies. These standards are that the activities of the association or company:

(1) Serve to preserve or promote export trade.

(2) Not result in a substantial lessening of competition or restraint of trade within the United States, or a substantial restraint of the export trade of any competitor.

(3) Not unreasonably enhance, stabilize, or depress the domestic prices of similar goods.

(4) Not constitute unfair methods of competition.

(5) Not include any act which results in the domestic resale of the exported goods and services.

(6) Not include the licensing of patents, technology, trademarks, or know-how, except as is incidental to the sale of exported goods or services.

Commerce has 90 days to make a decision. If it decides that the standards are met it issues a certificate. Any activities then carried out in conformity with the certificate are immune from antitrust liability.

Enforcement agencies will retain one means of evaluating the activities of an association. If Commerce, Justice or the Federal Trade Commission believe that the certified activities no longer meet Title II standards, a certificate may be declared invalid. This is accomplished either by an administrative proceeding before Commerce or by a court suit brought by Justice or the Federal Trade Commission. But even if invalidation occurs, the loss of immunity is prospective only; there is no liability for activities carried out pursuant to a certificate while it was in effect.

A private party, in contrast to government agencies, may not challenge activities carried out pursuant to a certificate. Instead, it may challenge only an *ultra vires* activity—one outside the scope of the certificate.

To summarize, under Title II a certified export trading association or company which acts within the scope of its certificate knows that its activities are exempt from all American antitrust laws. This certainty is lost only if the government invalidates the certificate; even then the loss of antitrust immunity is prospective—for future conduct only.

ETC ACT ENHANCES EXPORT OPPORTUNITIES

Many joint export ventures might, under existing law, be permitted. As the paper manufacturing CEO learned, however, the grim spectre of antitrust liability deters the formation of many such ventures.

Nevertheless, with the ETC Act likely to pass soon, businessmen should, at the very least, be considering strategies for innovative joint export ventures.

This is especially true for mineral producers. As America strives to increase its exports, coal and other mineral resources are expected to be a primary export growth area. Indeed, in 1980 coal exports surged; in the next decade they could surge even more as world demand for steam coal escalates. Experts predict that during the 1980s, while American exports of metallurgical coal will remain

Footnotes at end of article.

steady, exports of steam coal could increase by more than five-fold. But, as National Coal Association president Carl Bagge recently testified, "future market opportunities for United States coals are bright but not secure." To achieve maximum growth, he implored, we must, among other things, "aggressively market our coals abroad." [17]

REGIONAL PRODUCERS COULD FORM SELLERS GROUP

To stimulate thought about innovative mechanisms by which to aggressively market our mineral resources, I next want to discuss several mechanisms that come to mind. The first one is an export trading association consisting of the regional producers of a particular resource. Let us take, as an example, coal.

Recent press reports indicate that the Japanese may form a buying consortium, consisting of the largest Japanese coal consumers, to bargain jointly for western U.S. coal, bid American mining companies off against one another, and thereby depress coal prices; all to the benefit of Japanese coal users.

How could American producers best confront this buyers' cartel? One way is by themselves forming a joint venture, among most of all of the western producers, to collectively *sell* coal in Japan.

Such a venture would have to be carefully constructed in order to avoid violating the U.S. antitrust laws. Three issues would require especially close attention. First, the joint venture would have to be confined to export trade; that is, if foreign joint pricing were directly extended to domestic markets it would constitute a price fixing violation. Second, the association's prospective operations would have to be carefully evaluated to assure that they would not indirectly raise domestic prices. That could happen if the association's foreign joint selling enabled it to obtain such a high price in its foreign sales that members began to export a significant amount of coal they previously sold domestically; [18] it could also happen if the association established, with foreign producers, a world-wide territorial allocation that reduced import competition and hence increased domestic prices.[19] Third, the association would have to avoid foreclosing their American competitors from foreign markets. Such foreclosure would be possible if membership in the association became critical to obtaining foreign sales; if it did, membership might have to be open to all.[20]

Under current law an export association that was mindful of these considerations probably would be safe from antitrust liability. Such an association could, moreover, file as a Webb-Pomerene Association. That way it could invoke an express, specific exemption from the antitrust laws. Moreover, if the ETC Act passes, the association could apply for a certificate. If granted, the certificate would give the association complete immunity for activities covered by it.

BIDDING CONSORTIUM ALSO COULD BE FORMED

A second type of joint export mechanism that comes to mind is one to bid on overseas contracts for mining equipment or mining services. For example, the government of Morocco recently announced that it seeks mining companies to explore and develop what it describes as substantial deposits of cobalt, manganese, gold, silver, and other valuable minerals.[21] Let us assume that Morocco invites bids for mining contracts. A frequent response to similar invitations has been the formation of foreign bidding consortia—so that each country submits only one bid.

To stand on equal footing American firms could form a bidding consortium of their own. Such a consortium must be carefully constructed. Like a joint association of producers, it must not be a vehicle for fixing domestic bids, must not be part of an allocation system that reduces import competition, and must not unreasonably exclude the trade of domestic competitors.

A special problem affects service contracts. It is that the Webb-Pomerene Act applies to only goods, not services.[22] This problem would be eliminated by passage of the ETC Act, because one of the things it does is extend coverage to services. It also makes immunity clear and certain so that the consortium, if certified, would be completely immune from antitrust liability for activities covered by the certificate.

EXPORT TRADING COMPANY IS A THIRD MECHANISM

A third type of mechanism that comes to mind is a vertical one—an export trading company (ETC). The Japanese have used others—as the primary mechanisms for their ever-growing world trade.

To understand precisely what an ETC can accomplish, take the case of coal producers attempting to increase their exports to the Pacific Rim. This requires an array of facilitating services, including financing, inland transportation, port facilities, loading, warehousing, ocean carriage and related services (routing, consolidation), documentation (customs, licensing), insurance, and overseas marketing and distribution.

Coal producers could procure each of these services individually; the cost of doing so, however, would be high. A cheaper approach would be to share costs and risks. This could be done either by utilizing an existing ETC, or, if there were no adequate existing ETC, by establishing a new one. An ETC would provide efficient "one-stop shopping," handling the many transactions necessary to take coal from the mine to a distant foreign customer. The coal companies could either individually use the ETC, or form a collective entity like a joint venture or Webb-Pomerene association and use it together.

The creation and use of such an ETC would implicate several antitrust problems in addition to those already discussed.

The first problem relates to mergers. If the ETC is formed through mergers, issues arise under section seven of the Clayton Act, which prohibits anticompetitive mergers. The test is whether the merger may substantially lessen competition. Application of this test depends on the concentration of the market and on the size and potential competitive relationship between the merging firms.[23]

If instead of a merger the ETC enters into contracts with suppliers, shippers and others it must be wary of exclusive dealing problems. An exclusive dealing agreement is one by which the ETC conditions its purchase of a service on the seller's agreement not to offer that service to competitors. Such an agreement violates the antitrust laws if its performance would foreclose a substantial amount of competition. The test applied compares the agreement's restrictiveness with its purpose and necessity.[24]

Acquisition of foreign entities, such as a foreign coal company to distribute coal, would implicate foreign merger problems. The test applied is similar to the one of domestic mergers; the key inquiry would be whether the acquired company was an actual or potential domestic competitor.[25] If instead of acquiring a foreign distributor the ETC established an exclusive distributorship with foreign companies, it must consider whether that distributorship would impede American competitors and whether reciprocal exclusivity agreements divided up world markets in such a way as to restrain U.S. trade.[26]

Each of these problems requires close analysis. Under existing law, moreover, even the closest, most cautious analysis can only reduce, not eliminate, the risk of antitrust liability. However, upon passage of the ETC Act uncertainty could indeed be eliminated during the pre-certification process. The ETC could, in detail, explain what it planned to do. To the extent that its plan was certified the ETC could proceed without fear of antitrust prosecution.

ANTITRUST BARRIER NOT INSURMOUNTABLE

The antitrust barrier to export trading ventures is significant but not insurmountable. Even though uncertainty persists, export trading ventures can, if carefully designed, be undertaken now. Many more such ventures can be undertaken once the Export Trading Company Act, and the certainty it brings, becomes law.

Given the coming boom in coal exports and the likely passage of the Export Trading Company Act, the American mining industry should, now, be mustering its ingenuity to plan aggressive, innovative export expansion. That way the industry will be at the very fore of America's coming international economic revival.

NOTES AND REFERENCES

[1] Under the federal antitrust laws, a plaintiff who proves that he has been injured by the defendant's antitrust violation receives a damage award of three times the value of the actual damage he suffered. 15 U.S.C. § 15.

[2] During hearings before the International Finance Subcommittee of the Senate Banking, Housing and Urban Affairs Committee on the subject of export trading companies, there were many references to the assertion that the uncertain application of American antitrust law principles has dissuaded U.S. businesses from entering foreign markets. The hearings were held Sept. 17 and 18, 1979; Mar. 17 and 18, and Apr. 3, 1980; and Feb. 17 and 18, and Mar. 5. 1981.

[3] 127 Cong. Rec. page 6885 (Apr. 8, 1981).

[4] *See* 127 Cong. Rec. page 6883 (Apr. 8, 1981). (Remarks of Sen. Tsongas).

[5] The export trading company concept was originally embodied in two separate pieces of legislation introduced in the Ninety-Sixth Congress: S. 804, introduced by Sen. John C. Danforth; and S. 1663, introduced by Sen. Adlai Stevenson. Hearings on these and other bills were held before the International Finance Subcommittee of the Senate Banking Committee on Sept. 17 and 18, 1979; and Mar. 17, 18, and Apr. 3, 1980. On May 12, 1980 the Senate Banking Committee "marked-up" a committee print of a single bill incorporating the concepts embodied in the Danforth and Stevenson bills. That single bill, S. 2718, passed the Senate by a vote of 77–0 on Sept. 3, 1980. However, the congressional term ended before a House vote could be held. In the Ninety-Seventh Congress similar legislation, S. 144, was introduced by Sen. Danforth and Sen. John Heinz. Hearings were held on Feb. 17 and 18 and Mar. 5, 1981. The Senate Banking Committee reported out a "clean bill," on Mar. 12. That bill—S. 734, the "Export Trading Company Act of 1981"—passed the Senate by a vote of 93–0 on Apr. 8, 1981.

During the Senate's consideration of export trading company legislation in both the Ninety-Sixth and now the Ninety-Seventh Congress, the House of Representatives also considered export trading company bills. The House currently has before it several bills that would encourage the formation of export trading companies. Some of these bills are similar or identical to S. 734.

Throughout the article I use the phrase "ETC Act" to refer to the Senate-passed export trading company bill, S. 734, 97th Cong., 1st Sess. (1981).

[6] Title I of S. 734 permits banks to invest in export trading companies. Such investment are subject to certain limitations and regulations. The main ones are that the amount invested in ETCs may not exceed five

percent of the bank's consolidated capital and surplus; investments of more than $10 million must be approved by the appropriate federal banking agency; banks cannot extend especially favorable credit to ETCs they have invested in; and the appropriate federal banking agency may disapprove or impose conditions on a particular bank ETC investment if necessary to protect the public interest. S. 734, 97th Cong., 1st Sess. § 105 (1981).

[7] 15 U.S.C. §§ 1–7.

[8] 15 U.S.C. §§ 12–27.

[9] 15 U.S.C. §§ 41–58.

[10] *See United States v. Aluminum Company of America*, 148 F.2d 416, 441–43 (2d Cir. 1945).

[11] *See Dominicus American Bohio v. Gulf & Western Industries, Inc.*, 473 F.Supp. 680, 687 (S.D.N.Y. 1979).

[12] Testimony of Frank Weil, *Hearing Before The President's Commission on Reform of the Antitrust Laws and Procedures*, July 27, 1978, at 89–90.

[13] Testimony of Milton Schulman, *Hearings on the Export Trading Company Act of 1981 Before the International Finance & Monetary Policy Subcommittee of the Senate Banking, Housing, & Urban Affairs Committee*, 97th Cong., 1st Sess. 286 (1981).

[14] 15 U.S.C. §§ 61–5.

[15] *United States v. United States Alkali Export Ass'n*, 86 F.Supp. 59 (S.D.N.Y. 1949).

[16] *Testimony of Howard Fogt, Hearings on the Export Trading Company Act of 1981, supra*, n. 13, at 292–3.

[17] *Statement of Carl Bagge, Hearings on Port & Harbor Development, House Merchant Marine & Fisheries Committee, July 16, 1981* 11.

[18] *See U.S. v. U.S. Alkali Export Ass'n*, 86 F.Supp. 59, 77–80 (S.D.N.Y. 1949).

[19] *See Timken Roller Bearing Co. v. United States*, 341 U.S. 593 (1951).

[20] *See United States v. Terminal Railway Ass'n*, 224 U.S. 383 (1912).

[21] 347 *Export Trade Weekly* C–4 (1981).

[22] 15 U.S.C. § 61.

[23] *See Brown Shoe Co. v. United States*, 370 U.S. 294 (1962).

[24] *See Tampa Electric Co. v. Nat. Coal Co.*, 365 U.S. 320, 327 (1961).

[25] *See* U.S. Department of Justice, *Antitrust Guide for International Operations* 15–16 (1977).

[26] *See U.S. Department of Justice, supra* n. 25 at 46–9 & n. 80.●

A RACCOON PIE—IN RHODE ISLAND

● Mr. PELL. Mr. President, I would like to share with my colleagues a side of Rhode Island that they may not know about—Dovecrest—a rural restaurant, owned and operated by Narragansett Indians, with a highly rated cuisine that may even include raccoon pie.

Bryan Miller of the New York Times wrote an article about this unique restaurant for today's edition. He noted that the entrees, on a given day, may include buffalo steak, buffalo pot pie, quahog pie, venison steak and pies, johnnycakes, rabbit stew, succotash, and even, during Indian festivities, the raccoon pie.

Rhode Islanders know and prize this restaurant, run by Mr. and Mrs. Ferris Dove (Chief Roaring Bull and Pretty Flower), but I would like to share Mr. Miller's delight with my colleagues.

Mr. President, I ask that his article be printed in the RECORD.

The article follows:

[From the New York Times, Dec. 9, 1981]

CUISINE AS AMERICAN AS RACCOON PIE

(By Bryan Miller)

Roaring Bull, war chief of the Narragansett Indian tride, has not been in a particularly bellicose mood lately. Things have been relatively peaceful around this southern Rhode Island hamlet for some time. In fact, the only weapon the chief has picked up has been a shellfish knife, which he wields at the restaurant he owns with his wife, Pretty Flower.

"That's his job every Friday," his wife said, while preparing lunch recently." He does that faster than anybody I've seen." Briny fresh clam chowder is just one of the specialties at Dovecrest, one of the few restaurants in New England owned and operated by American Indians. Other entrees on a given day might include buffalo steak, buffalo pot pie, quahog pie, venison steak and pies, johnnycakes, rabbit stew, succotash and even, during Indian festivals, raccoon pie.

"Everything we serve here is native American," said Chief Roaring Bull (he also responds to the name Ferris Dove), a large, voluble man whose stentorian voice earned his sobriquet early in life. "Of course, nearly everything Americans call their own food comes from the Indians: potatoes, tomatoes, corn, clams, lobster, turkey," he said. "Most people think the tomato came from Italy or some place in Europe. Indians were eating and cooking it centuries before they even knew what it was!"

Mr. Dove and his wife, who also answers to Eleanor, are descendants of the Niantic tribe, a branch of the Narragansetts, who at one time inhabited much of New England. The Doves, both native Rhode Islanders who have been married 43 years, opened their restaurant in 1963. Neither had cooked professionally before. Mr. Dove used to be a sergeant in the Civilian Conservation Corps, and his wife was a waitress in Providence, Mr. Dove recalled. "Now we've turned things right around," he said. "She's the cook and I'm the waiter." Besides helping out in the restaurant, Mr. Dove serves as postmaster in nearby Rockville.

The restaurant began serving traditional steaks and chops, slowly introducing wild game and other Indian recipes that Mrs. Dove learned from her father, Joseph Spears, a former cook at the University Club in Providence

Mrs. Dove, a congenial woman with an easy, lingering smile, says that her customers earily overcame squeamishness about wild meats and began asking for them. Now she tries to keep at least one game dish on the menu, which isn't always easy when you're looking for buffalo.

For years the Doves had a private supplier, a ranch in western Massachusetts, but since that source dried up several years ago they have been buying from a wholesaler, the Iron Gate Products Company, at 424 West 54th Street in Manhattan. The wholesale price of buffalo these days is between $4.75 and $8.50 a pound, depending on cut, but supplies are erratic. The Doves' venison and some other game meats also come from Iron Gate. Raccoon and bear are sometimes supplied by neighbors who hunt.

To those who fancy it, wild game is considered a delicacy that is hard to find. But to the Doves and many other Rhode Island Indians, it's as American as, well, raccoon pie.

"When I was growing up in Charlestown we depended on food like venison," proffered Mr. Dove. "On cold winter evenings we would go out into an apple orchard—russet apples were the best for attracting deer—and sit quietly out there until about 10 at night. We dropped only what we needed for food. Indians don't kill just for the fun of it."

Mr. Dove added: "We would have feasts of venison steaks, oysters we pulled from the bay, johnnycakes and potatoes. This was 1930, and only the poor people were eating that stuff. Now it's a delicacy—isn't it funny how things change?"

Buffalo is leaner and more muscular than beef and usually needs to be marinated before cooking. It was excellent, flavorful and fat free, in the pot pies at Dovecrest recently. "A good cut of buffalo, the tenderloin or the hind quarter, is better than beef steaks," said Mrs. Dove.

Bear meat has good texture, Mrs. Dove said, but always needs marinating to tone down the gamey flavor. As for raccoon, the chef advises one to carefully remove all the glands under the chest to eliminate its strong odor.

While game dishes have made Dovecrest a curiosity around here, johnnycakes have elevated it to institution status. By all reliable accounts, Eleanor Dove makes the best johnnycakes in New England—which is to say, the world. Several years back a Providence newspaper bestowed the cachet, followed by a book called "America's Best," which listed superlatives in many fields. Even more reliably, native Rhode Islanders concur: If you want a first-rate johnnycake, go to the Dovecrest.

Johnnycakes are little pancakelike cornmeal patties. Rhode Islanders eat them at breakfast, with butter and syrup, or as substitutes for potatoes at other meals. The authentic recipe is equivocal, and here in South County one ought not venture strong opinions on the subject without considerable forethought and several like-minded male friends nearby for moral and physical support.

Mrs. Dove's johnnycakes are thick, golden brown, slightly sweet and buttery crisp. "I just make them with cornmeal, salt, a bit of sugar, all scalded with boiling water and finished with a little milk," she explains matter-of-factly.

In the summer months and on American Indian Heritage Day, the first Sunday in May, the Doves offer another Indian creation, the clambake, with juicy layers of clams, mussels, corn, potatoes, chicken and sausage.

With so much of what we call American food being variations on old Indian dishes, what is the major characteristic of pure Indian cooking today? While Pretty Flower mulls over the question, Roaring Bull, who suffers no shortage of opinions on any topic bellows: "The difference is that an Indian is cookin' it!"●

EXTENSION OF TIME FOR FILING REPORTS

Mr. BAKER. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs have until 6.30 p.m. this evening to file reports on S. 1890 and S. 1370.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

AUTHORITY FOR OFFICERS OF THE SENATE TO TAKE CERTAIN ACTION DURING RECESS

Mr. BAKER. Mr. President, I ask unanimous consent that during the recess of the Senate until Monday noon, the Secretary of the Senate be authorized to receive messages from the House of Representatives and the President of the United States and to refer said messages, and that the Vice President, the President pro tempore, and Acting President pro tempore be authorized to sign all duly enrolled bills and joint resolutions.

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

ORDER FOR RECESS UNTIL MONDAY, DECEMBER 14, 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 Monday.

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

PROGRAM FOR NEXT WEEK

MONDAY

Mr. BAKER. Mr. President, on Monday, after the recognition of the two leaders under the standing order, there will be a brief period for the transaction of routine morning business to be provided at that time. After that, Mr. President, I anticipate that the Senate will be asked to turn to consideration of the Treasury-Post Office appropriations bill, the Transportation appropriations conference report, the military construction appropriations conference report, and the Agriculture appropriations bill. While that sounds like an imposing list, Mr. President, I am confident that we can do all of those without asking the Senate to remain in unduly late on Monday.

TUESDAY AND BEYOND

On Tuesday next week, Mr. President, it is the intention of the leadership to ask the Senate to turn to consideration of the identities bill, to perhaps the foreign assistance appropriations bill, which might occur on Monday, but, more likely, on Tuesday; and most important of all, it is hoped that we shall then have the conference report on Department of Defense appropriations. It appears to be a good prospect for Tuesday at this time.

Mr. President, as well, we must deal with the question of social security minimum benefits. It is my understanding that a conference on that matter will resume on Monday. We shall have a further announcement to make at that time.

Mr. President, if it is necessary, we shall, of course, continue through the balance of the week, but more particularly, into Wednesday, the 16th, in order to complete these items or other items that can be cleared for action by unanimous consent or other measures that might require the attention of the Senate. It appears to me that we are near the end of the list of "must" items that the Senate will deal with. If there are no unforeseen complications and difficulties, I hope and expect that the Senate might reach the end of its business for this session on Wednesday, December 16.

RECESS UNTIL MONDAY, DECEMBER 14, 1981

Mr. BAKER. Now, Mr. President, I know of no further business to transact. I see no Senator seeking recognition. May I inquire of the distinguished minority leader if he has anything further?

Mr. ROBERT C. BYRD. There is nothing further on my side, Mr. President.

Mr. BAKER. I move, in accordance with the order previously entered, Mr. President, that the Senate stand in recess until 12 noon on Monday.

The motion was agreed to and, at 5:30 p.m., the Senate recessed until Monday, December 14, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate December 11, 1981:

DEPARTMENT OF JUSTICE

J. William Petro, of Ohio, to be United States Attorney for the northern district of Ohio for the term of 4 years vice James R. Williams.

COMMODITY FUTURES TRADING COMMISSION

Kalo A. Hineman, of Kansas, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring June 19, 1986, vice Robert L. Martin, resigned.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

William J. Bennett, of North Carolina, to be Chairman of the National Endowment for the Humanities for a term of 4 years, vice Joseph D. Duffy, term expired.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Anthony J. Calio, of Maryland, to be Deputy Administrator of the National Oceanic and Atmospheric Administration, vice James Patrick Walsh, resigned.