SENATE—*Thursday, August 19, 1982*

(Legislative day of Tuesday, August 17, 1982)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

Let us pray.

God of all wisdom, all power and all love, we invoke Thy presence in this place today. Our Nation was born out of struggle. Strong men with strong convictions disagreed. But they prayed, and out of controversy came a great Nation. We know Lord that when two disagree, one is not necessarily right and the other wrong. Both may be wrong—or both may be right; and agreement is most difficult when both sides in an issue are right.

Somehow Almighty God, visit the Senate with Your wisdom and Your power. Make known to us the truth which transcends sides, or positions or views. Lead us to synthesis. Show us Thy will for our Nation at this critical hour as Thou didst guide our forbearers.

And gracious Father, infuse this place with Thy love. May it never be forgotten that we are one in purpose seeking the best for our Republic. In the name of Him who was Incarnate Love. 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.

SENATE SCHEDULE

Mr. STEVENS. Mr. President, the Senate should be on notice that today will be a very busy day and it could be a very busy, long night.

We have special orders and routine morning business here this morning. At 11 a.m. we will resume consideration of House Joint Resolution 520, the debt limit bill and under the previous order of yesterday the Senator from Oregon (Mr. PACKWOOD) is to be recognized.

Mr. President, the leadership is hopeful that some agreement may be reached on the controversial issues now pending before the Senate on the debt ceiling bill, and we are hopeful that a compromise or some approach to controversial issues involved in the amendment and before the Senate will be forthcoming today.

The Senate will some time today take up the supplemental appropriations bill. That is the current plan. There is a strong possibility that we will have the conference report on the tax bill before the remainder of the day is over.

What it means, Mr. President, is that the majority leader may ask us to remain in session tonight in order to complete consideration of these matters.

It is my understanding the majority leader will make a further statement on the schedule of the Senate later today.

I ask unanimous consent that when I complete my statement here the remainder of the time be reserved for his use and that a place in the RECORD at this point be reserved for his comments.

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

COMMENDATION OF SENATOR STAFFORD FOR INTER-PARLIAMENTARY UNION SERVICE

Mr. BAKER. Mr. President, I want to take this opportunity to commend my good friend and distinguished colleague from Vermont, Senator STAFFORD, for the exemplary and dedicated service which he has given to the Inter-Parliamentary Union. Senator STAFFORD will soon be completing his term as President of the U.S. delegation to the IPU, and is also finising his tenure as a member of the IPU's Executive Committee.

The Inter-Parliamentary Union is the oldest organization of unions. U.S. involvement in the Union predates the birth of the United Nations by almost an entire century. Throughout war and peace, the IPU has been a vital forum for the exchange of socioeconomic issues between political leaders, and has been a constructive force which has enhanced our relationship with our allies and the Third World.

When he first arrived in the Senate, Senator STAFFORD was appointed to the U.S. delegation and has since become one of our Nation's most devoted and able representatives. Membership in the IPU is a demanding and arduous assignment. It requires constant attention and hard work, and is a responsibility that many Senators would not be willing to accept.

But BOB STAFFORD has not only accepted this challenge, but made the most of it. Last year, he was cited by President Reagan for defending our country against a tirade by Castro in Cuba, and prior to that, was the driving force behind resolutions condemning the Soviet invasion of Afghanistan—the only condemnations of that invasion by any world body.

Mr. President, I believe that Congress and the citizens of our country owe Senator STAFFORD a debt of gratitude for his participation and leadership at the IPU. He has protected American interests, and has brought honor to our country in a most important international forum.

FEDERAL COMMUNICATIONS ACT AMENDMENTS

Mr. STEVENS. Mr. President, I understand this has been cleared with the minority.

Mr. PROXMIRE. It has indeed. There is no objection on our side.

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3239.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendments of the Senate to the bill (H.R. 3239) entitled "An Act to amend the Communications Act of 1934 to authorize appropriations for the administration of such Act, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Dingell, Mr. Wirth, and Mr. Broyhill be the managers of the conference on the part of the House.

Mr. STEVENS. Mr. President, I move that the Senate insist on its amendments and agree to a conference as requested by the House of Representatives and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Chair appointed Mr. GOLDWATER, Mr. STEVENS, and Mr. CANNON conferees on the part of the Senate.

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

RECOGNITION OF THE ACTING MINORITY LEADER

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

Mr. PROXMIRE. Mr. President, I understand that I may use a small portion of the minority leader's time and I reserve the remainder of his time for his use later.

WHO REMEMBERS THE ARMENIANS?

Mr. PROXMIRE. Mr. President, I have recently received a letter from an Armenian American who is distressed over the world's amnesia regarding the first genocide of the 20th century, that against the Armenians of the Ottoman Empire. This terrible episode has become the "forgotten genocide" of modern times. History records that it began in April of 1915, when the Empire uprooted the Armenian inhabitants and forced them to migrate on foot. The letter recounts what happened:

> The Armenian people . . . were . . . deported from every city, town, and village of Asia Minor and Turkish Armenia. In most instances during the death marches, the men were quickly separated and executed soon after leaving town. The women and children were marched for weeks into the Syrian desert; thousands were seized along the way, forcible converted to Islam, and raised in Turkish homes and harems. The majority of the deportees died of starvation and disease during the forced marches. Many others were murdered brutally. During the years 1915-1922, 1,500,000 Armenians were killed and more than 500,000 exiled from the Ottoman (Turkish) Empire. Thus, the Armenian Community of the Ottoman Empire was virtually eliminated as a result of a carefully executed government plan of genocide.

Eyewitness accounts alerted a horrified world to these massacres almost immediately. On May 24, 1915, the Triple Entente nations of Britain, France, and Russia declared that they would hold all the members of the Ottoman Government personally responsible for the fate of the Armenian people.

Yet only two decades later, the slaughter of the Armenians had faded from the memory of the world. Adolph Hitler scoffed at the notion that he would go down in infamy for perpetrating the Holocaust. He would ask: "Who remembers the Armenians?" Just as popular wisdom has it, history forgotten is history repeated. How many times must me vow, "never again?" We can never stop learning the lessons from the "final solutions" of the past.

We should never let anyone ask of the Armenians, or of the Jews, or of any others, "Who remembers?" Nor should anyone ask, "Who cares?" or "Who would bring me to justice?" If only the U.S. Senate would ratify the Genocide Convention, we could announce with conviction that we will remember, we will care, and we will bring the guilty to justice. Let us insure that the horror of genocide stays alive in our collective conscience, that those who may consider such a crime will be shamed and deterred, and that no future Hitler shall shrug off the prospect of a judgment day.

BIOLOGICAL WARFARE BY U.S.S.R. RAISES ARMS CONTROL QUESTIONS

Mr. PROXMIRE. Mr. President, those who believe strongly in the prospects and promises of arms control, and I count myself among that group, are faced with a critical problem. How do we interpret the meaning of the apparent violation of the Biological Warfare Convention by the U.S.S.R.?

This issue tests our dogma that the Soviets will keep any treaties entered into and that while they may press treaty restrictions to the limit they will not willfully disregard them.

Arms controllers also have long believed that the step-by-step process of reinforcing relationships creates the climate for successful arms control.

But now there is growing evidence that the Soviets have experimented with biological warfare in Southeast Asia through their allies the Vietnamese.

If the Soviets have violated the Biological Warfare Convention, then what does that mean for the SALT or START process? Will they violate nuclear arms control agreements if conditions favor such action? Is a paper signature security enough against cheating?

Mr. President, I think it is time that the arms control community address these issues head on. I believe there are answers—answers that revolve around verification and compliance procedures which are lacking in the Biological Warfare Convention.

But if nothing else, the Soviet activity in biological warfare should give us pause for it signals the need for the toughest kind of verification procedures in subsequent arms control agreements.

Mr. President, I ask unanimous consent that two articles from the Washington Post discussing some of these issues be printed in the RECORD.

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

[From the Washington Post, Aug. 17, 1982]

IS IT WORTH NEGOTIATING WITH THE U.S.?—CONSIDER THE CASE OF THE NUCLEAR TEST BAN TREATY

(By Bruce A. Bishop)

A most interesting aspect of the current debate on nuclear arms control is the lack of comment on the Reagan administration's foreclosure of further negotiations on a Comprehensive Test Ban Treaty (CTB). There were news stories reporting President Reagan's decision to stop negotiations for a treaty, but I've seen no follow-ups of any substance anywhere in the media or on Capitol Hill.

Reagan's sincerity on nuclear arms control and eventual disarmament is once again in question.

The president's excuse for ceasing efforts to obtain a CTB is that his administration will instead seek to upgrade, or perfect, the Threshold Test Ban (TTB) and the Peaceful Nuclear Explosions (PNE) treaties, with respect to the means of verification of those instruments.

"Verification" is the question raised consistently by those who have time after time opposed any ban on the testing of nuclear explosives. Arms designers and some in the military have raised this scarecrow every time it appeared likely that any administration was going forward with a test ban treaty, and they have propagandized Congress and the nation with it.

Now Reagan has abandoned an effort started during the Eisenhower administration and carried forward by every president since, on which considerable progress has been made.

The whole idea of a Comprehensive Test Ban Treaty is to make verification unnecessary. With a CTB in force, the world could simply watch its seismographs, and any suspicious "earthquake" would be subject to immediate question. "National Technical Means" of observation—a euphemism for spy satellite—insure observation of any atmospheric tests.

It is generally agreed among arms control specialists that the provisions for verification of nuclear explosions already included in the TTB, the PNE and in SALT II could render Russian cheating almost immediately observable. Experts from a variety of public and private agencies here generally agree that if the provisions already accepted by the Soviet and American negotiators were ratified and therefore functional, a nuclear explosion of 0.5 kilotons could be verified almost immediately anywhere in the world. Yet the Reagan administration continues to allege that an explosion of 150 kilotons, or 300 times as large as 0.5 kilotons, would be unverifiable.

The Russians have a justified reputation for being tough negotiators. The Standing Consultative Commission (SCC), a supersecret joint American-Soviet body established under the provisions of the SALT I Treaty, which became effective in 1972, provides part of the record on Soviet capacity to live up to agreements. A former U.S. representative on the SCC, Sidney N. Graybeal, told the Senate Foreign Relations Committee in 1979: "I do not believe that the Soviets would enter into any agreement which required them to cheat in order to attain their military objectives, or on which they planned to cheat."

Graybeal pointed out to the committee that the Russians have lived up to the letter of any nuclear arms treaty they have signed. "This is not to say that they will not press the agreement to its limit . . . " Graybeal said. However, with respect to the Soviet propensity to cheat, Graybeal also concluded that "the risk of being caught is always greater than zero."

The Soviets, in fact, have agreed to verification methods for the three treaties in question that would have been unthinkable in the political climate 25, or perhaps even 10 years ago. These methods include the use of tamper-proof instrumentation for on-site installation and on-site seismic devices. The Soviets have even agreed to allow on-site inspection by specialists in case of ambiguous

events. This is an unprecedented political concession by the Soviets and, if acted upon by the United States could have lasting effects on the ability of the two superpowers to control nuclear arms.

It is this last fact that scares the pants off the weapons designers and the military. As one analyst here in Washington has said, the Joint Chiefs "turn pasty white at the idea" of Soviet specialists running around the testing sites of Nevada and New Mexico. The military and the weapons designers want to conduct a whole new series of tests of a new generation of weapons, and that is their reason for being unenthusiastic about the appearance of Russian technicians at American test sites. They have been talking for years about the need for verification and now, with verification nearly at hand, they are backing away.

The cries about verification, in the context of the new Russian willingness to verify, also lends credence to the general belief among arms specialists that the Reagan administration wishes to depend on nuclear weapons for our security, instead of negotiating arms control or limitations on arms.

With a CTB, we could—or perhaps will—establish the principle that the United States is committed to arms control. We will have gotten major concessions from the Soviet Union. However, a CTB is not the be-all and end-all. It will represent, if we can attain it, only one more step down the road to the control and possible banning of the use of nuclear weapons.

Arms control specialists are disturbed that the Reagan decision to end efforts for a CTB is evidence that the administration is caving in to the demands of the weapons designers and the military—the whole bureaucracy at the Department of Defense, the Department of Energy, which manufactures the bombs, and other elements that oppose nuclear arms control.

Some officials at the Arms Control and Disarmament Agency are concerned that the White House staff, some at the Department of State and many at the Pentagon seem to believe that the nuclear freeze movement here and abroad will wither away. If this is so, they and Reagan must be depending on the silence of the press and the preoccupation of Congress for help in preventing examination of the record.

AN INTERVIEW WITH FRED IKLE—THERE'S REASON FOR OUR CAUTION ABOUT DEALING WITH THE SOVIETS

Q: There is quite a history, not just in this administration, but generally in American governments lately, of either participating heavily in negotiations or actually going so far as to sign agreements and then somehow walking away from them. We think of SALT II, Law of the Sea, Threshold Test Ban and Peaceful Nuclear Explosion, a couple of fishing treaties with Canada. There is a record of this. What accounts for it?

A: I don't know whether other governments have a better record in ratifying the treaties that they sign, other governments that have a democratic ratification process. But you're right: it's happened before, from the League of Nations onward and probably backward, too. The Geneva Protocol of 1925, prohibiting the first use of chemical weapons, was negotiated with a lot of U.S. inspiration, and it was not ratified until 1975. I was myself involved in taking it to the Senate for ratification.

That incidentally is one of the agreements that the Soviet Union violated by using chemical weapons in Afghanistan. Then, there's been a long hassle about the genocide convention.

What accounts for these difficulties of ratification? Maybe our constitutional structure: the Senate's two-thirds requirement, and the fact that in a change of administrations there's almost always a certain change in foreign policy.

Q: But is there no feeling of the sanctity of the contract, the gravity of the treaty? Would it not be desirable to have such feelings come to be the political norm?

A: Well, we shouldn't walk away lightly from any international agreement that has been signed by the president. But there are two steps—signature and ratification—and this is understood by other governments that negotiate with the United States.

Q: Let us take the threshold test ban and the peaceful nuclear explosion agreement, which were signed in '76. You were involved in both. What is the American ratification problem? What is the hangup?

A: There are three hangups. First, at the end of the Ford administration we had to package together the Threshold Test Ban Treaty and the Peaceful Nuclear Explosion Treaty because they are legally linked. But it was too late in the administration to get ratification.

Early in 1977, the Carter administration decided to submit these twin treaties to the Senate for ratification, and I remember myself testifying in behalf of ratification together with Paul Warnke. The Senate Foreign Relations Committee was about to vote out favorably the recommendation for ratification when the Carter administration pulled the package back because they felt it would divert from the effort to get a comprehensive test ban treaty, banning all tests, regardless of size.

After that the Carter administration did not want to submit it throughout the four years. Once they'd pulled it back, they just left it lying there.

In the Reagan administration, we do not have the concern that these twin treaties would interfere with a comprehensive test ban. But we have deeper concerns about their verifiability. That is because we have had some additional experience with the Soviet test program. That program was supposedly under the limits negotiated in the threshold treaty. We had an agreement worked out between the Soviet Union and us to temporarily observe these limits, even without ratification. But for many tests, it was impossible for us to know enough.

Q: Why? Was some evidence developed in the intervening five years that gave you grounds for reservations about the verifiability?

A: Right. Facts that were not that clear in '74 when we negotiated that treaty came to light. We saw these seismic signals coming in from Soviet tests, and in several instances throughout the late '70s, we really were unable to determine whether the test wasn't substantially at a larger yield than the agreement allowed.

Q: That's a statement with some heavy implications—an argument for those who will say, "Well, you can't *ever* be sure. Something might turn up. We'd better wait." It makes it very hard to call positively for the ratification of anything.

A: Well, there are two things that happened that made us more concerned. One, we learned somewhat more about how difficult this seismic analysis would turn out to be. Two, as a backdrop to this uncertainty, we had had the experience of the violation of the biological weapons convention, which had been signed in 1972 and ratified in 1975.

In the early '70s, we had the view that the Soviet Union would probably not violate a treaty if doing so was of marginal military value—even if verification would be rather difficult. We felt if there was at least a chance of detection, the Soviet Union would not want to run the risk of the reaction that would occur in event of such discovery. Now, after what has happened on the biological weapons convention, we no longer have this comforting expectation.

Q: What you're talking about then is not so much the result of new scientific techniques of monitoring. It is a new or different *political* interpretation—a difference in judgment not about science but about Soviet intentions and reliability. Whether or not it is justified, it does mean we will change our terms in mid-negotiation. So is there any way we can establish some consistency in our negotiation? What guarantee can we give anyone, not just in terms of ratifying a treaty that's been signed but of the continuity of the thinking of our negotiators, that they are not wasting their time?

A: I think the issue is more narrow here. It's not a general problem of American unreliability. There's not a broad overall revision of American views on the Soviet Union. There's one particular revision: our view of the reliability of arms control agreements for which verification is inadequate or marginal.

In earlier years, we felt since all the arms control agreements in some sense hang together and since there seemed to be a Soviet interest in arms control, the Soviet government would not want to incur the risk of undermining this entire edifice by violating a few agreements here and there, where they might get away with it because they were hard to verify. After what we have learned of the "yellow rain"—the Soviet use of prohibited biological weapons—we can no longer think that way. That doesn't mean that we don't want to negotiate. Obviously, we are negotiating.

Q: Then you don't think this changeability reflects something distinct or characteristic of this country as a negotiator?

A: No. Just recall the nuclear nonproliferation treaty. There was a long list of countries that had signed, but it took years and years to get the ratification, in some cases 10 years. I don't think American habits are particularly bad in this respect.

Q: Earlier in the '70s there was a common feeling that negotiations with, especially with, the Soviet Union were very difficult but were a necessary instrument for achieving American security interests. This administration does not put so much reliance on serving our security by means of negotiating agreements with the Soviet Union but rather by steps that we take on our own. What are the implications of this?

A: I believe it would be fair to say that the Reagan administration takes a more pragmatic view toward negotiating with the Soviet Union, that it thinks this is just one process among many processes of dealing with the Soviet Union. In particular that the approach of the Carter administration of considering the SALT negotiations almost the be-all and end-all of our relationship with the Soviet Union, that approach was mistaken.

Under the best of circumstances strategic arms limitation agreements could only cover a small sector of our military relationship and a smaller sector even of our overall rela-

tionship, but the Carter administration seemed to feel that really the entire U.S.-Soviet relationship hinged on SALT.

Q: So that even if this administration had to deal in our political arena with the charge that it backed off from an agreement negotiated by three presidents, not just Carter, and had thus incurred some suggestion of unrealiability, you think that this is a lesser charge, that this is a lesser price to pay considering the gains that come about by virtue of adopting a firmer security policy?

A: Well, if you're talking about the SALT II agreement, first of all, it's two presidents, Presidents Ford and Carter. The treaty was submitted by the Carter administration to the Senate and encountered a lot of criticism, mixed reaction without coming to a vote in the Senate, a negative reaction in the Senate Armed Services Committee, and in the end the treaty was pulled back from ratification by the Carter administration. So the president, who was instrumental in negotiating the greater part of that very treaty, himself didn't push it.

Q: We have a situation now where a particular MX basing option, Dense Pack, is being studied and the question arises as to whether that would be consistent with the ABM treaty on one side and perhaps with some provisions of SALT I on the other. Are those considerations that are real, that are troubling at all?

A: Well, they are important considerations. If and when there is a concrete proposal, we would obviously have to review it and see whether it would require a change in the ABM treaty. At this time, we do not have any proposal for an ABM system to protect the MX deployment that is sufficiently advanced to make this judgment. Likewise, once the particular way of basing the MX is developed in final form, we have to see whether our temporary policy of not undercutting the SALT provisions can be continued or has to be discontinued.

The ABM treaty is a valid treaty; there is no question about undercutting or not undercutting. If there was a conflict between an important way of protecting the MX and the ABM treaty, that would then raise the question of whether or not we want to try to renegotiate the treaty. But it's clear that we are legally bound to abide by the ABM treaty.

Q: So if matters come to that, it's not a question of violating that treaty, it's a question of attempting to change the terms of it?

A: Correct.

Q: Could public confidence and public interest in arms control negotiation as a method of serving our security survive the reopening of the ABM treaty? The ABM treaty and SALT are popularly regarded as the bedrock, the scripture, what negotiations are all about. Once you start going into those, what do you have left?

A: I beg to disagree. The opinion polls went quite strongly against SALT II, particularly when the issue of ratification was a prominent issue in the Senate, and in opinion polls support for SALT II often fell below a majority of the public. On the other hand, the ABM treaty, among the people who focused on it, is probably regarded as a more solid treaty.

But in a way, the belief in arms control, I think, is surprisingly sturdy, maybe almost too sturdy. And one might wonder whether the belief should not be shaken more by the fact that the very party with which we are currently negotiating treaties has been caught violating a treaty.

Well, here's a partner with whom you are dealing in a particular area and in this very area where you are trying to make additional contracts he has violated an important contract, yet you continue to negotiate contracts with him.

Q: You're saying then that, in effect, our changeability in negotiating is a lesser problem, a lesser offense than the fact that our principal negotiating partner negotiates a law and then cheats?

A: Oh, indeed, an immensely lesser offense.

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

S. 2857—NATIONAL PORT DEVELOPMENT AND CUSTOMS REVENUE SHARING ACT OF 1982

Mr. ROBERT C. BYRD. Mr. President, I am today introducing legislation designed to address the need to develop and improve America's commercial ports so that we can take full advantage of the opportunities in the world market for American coal.

The bill I have introduced carries with it the following cosponsors: Senators RANDOLPH, FORD, HUDDLESTON, BRADLEY, and HEINZ. I anticipate that other Senators on both sides of the aisle—and I invite Senators on both sides of the aisle—will join my effort to improve our Nation's ports.

The world is looking to coal as a major alternative to OPEC oil. It is estimated that there will be an expanding long-term world demand for U.S. steam coal through the rest of this century. U.S. steam coal exports could be as high as 79 million tons by 1990, as compared to about 16 million tons in 1980. U.S. metallurgical coal exports could be as high as 55 million tons. By the year 2000, U.S. steam coal exports could improve our international balance of trade by $6 billion in 1990 and $14 billion by the year 2000.

In 1980 the United States experienced a dramatic upsurge in demand from Europe and the Pacific rim nations. Overseas demand for U.S. coal was 72.8 million tons, including steam and metallurgical coal. Overseas demand for our steam coal was more than 16 million tons, a sixfold increase over 1979. The value of all U.S. coal exports was about $4.5 billion in 1980, which should be considered against that year's trade deficit of $24 billion.

This bright future for U.S. coal exports is not assured. Price is one of the major factors which will play an important role in determining the extent to which the full potential for U.S. coal exports can be realized. Since ocean transportation costs represent from 20 to 30 percent of the delivered cost of the coal, there is a strong economic incentive to search for ways to lower costs. The use of large "supercolliers," ships which are 150,000 deadweight tons and over, to transport coal to overseas markets is one attractive alternative. However, these ships require channel depths of 55 feet. The deepest U.S. port has a depth of 51 feet. Consequently, American ports can only accommodate ships of 80,000 to 100,000 deadweight tons. If our ports could accommodate the larger ships to transport American coal overseas, transportation costs could be lowered by as much as 40 percent. This would be a significant reduction, since U.S. steam coal exports are currently priced about $4 per ton above the world price of steam coal.

The tragedy of this situation is that over the years our attention has been called to the problem of developing America's ports by various studies, reports, and the testimony of expert witnesses at congressional hearings. It seems that anyone with any concern for the future competitiveness of American coal in overseas markets has warned us that we may allow a golden opportunity to slip through our fingers like sand.

Mr. President, we seem no closer today to addressing the problem of improving America's port system. Given the magnitude of the opportunity which lies before us, it would be a travesty of prodigious proportions if we failed to move forward to help improve the competitive position of American coal in the world market.

U.S. PORT DEVELOPMENT: A 200-YEAR PARTNERSHIP

The national system of 189 deep-draft commercial ports and 25,000 miles of navigable inland waterways is the result of a 200-year old partnership between the Federal Government and the States (operating through ports, municipalities, and State port authorities). The partnership has proven to be a successful demonstration of American federalism, where the Federal Government pays the cost for maintaining and improving the ports and the States pay the costs for landside and other developments.

As a result, the Federal Government has invested (since 1824) about $1 billion for improving and maintaining the navigability of deep-draft commercial ports. Local ports and the private sector have invested about $40 billion in terminals and other landside facilities.

Recently, however, there has been an effort to bring about changes in U.S. port development policy. In the Senate, the administration is supporting a legislative proposal which would dramatically change the terms of the Federal-State partnership. That proposal, sponsored by Senators ABDNOR and MOYNIHAN (S. 1692), would require that 25 percent of Federal maintenance costs for the Nation's ports be recovered by the local port authority through the imposition of user fees. New harbor construction dredging would be paid for entirely by the local port authority. These provisions are

strongly opposed by the small and medium-sized ports. User fees tend to discriminate against low-volume, high-maintenance-cost ports. In addition, under S. 1692 it is highly unlikely that any small port could afford to pay all the costs of construction dredging.

PORT DEVELOPMENT AND INTERNATIONAL TRADE

In the context of a world economy which is becoming increasingly competitive, port development is important for maintaining the competitive position of the United States. There is cause for concern. We are falling behind our most aggressive competitors in the area of port development.

Ports play a key role in international trade, and improvements in some of the 2,000 major world ports lead to pressures for improvements in others. During the seventies, at least 30 major ports undertook significant navigation improvements in order to expand trade handling capacity. This is in contrast to the United States which, by any measure, lags behind the rest of the world in this area. Indeed, there has not been a single navigation improvement project initiated in the last decade. The apparent lack of Federal support for port development in the United States is in contrast to the policy of national governments in most developed nations, where at least half the cost of construction and the entire cost of maintaining ports is financed by those governments.

NATIONAL ECONOMIC BENEFITS

The costs of port development are a good investment, for international trade represents a significant source of revenue to the United States and provides a stimulus to economic development. Customs revenues are the fourth largest source of revenue for the General Treasury. In 1981 customs revenue amounted to about $9.2 billion. According to the U.S. Bureau of Customs, customs revenues are expected to reach $13.8 billion in 1967.

In addition, it is estimated that America's ports make a direct contribution to the GNP of over $35 billion and are credited with the creation of about 1 million jobs in the domestic economy.

POTENTIAL U.S. EXPORT COAL MARKET

The world is looking to coal as a major alternative to OPEC oil. It is estimated that there will be an expanding long-term world demand for U.S. steam coal through the rest of this century. U.S. steam coal exports could be as high as 79 million tons by 1990, as compared to about 16 million tons in 1980. U.S. metallurgical coal exports could be as high as 197 million tons. At those levels, U.S. coal exports could improve our international balance of trade by $6 billion in 1990 and $14 billion by the year 2000.

In 1980 the United States experienced a dramatic upsurge in demand from Europe and the Pacific rim nations. Overseas demand for U.S. coal was 72.8 million tons, including steam and metallurgical coal. Overseas demand for U.S. steam coal was more than 16 million tons, a sixfold increase over 1979. The value of all U.S. coal exports was about $4.5 billion in 1980, which should be considered against that year's trade deficit of $24 billion. This bright future for U.S. coal exports is not assured. Price is one of the major factors which will play an important role in determining the extent to which the full potential for U.S. coal exports can be realized. Since ocean transportation costs represent about 20 to 30 percent of the delivered cost of the coal, there is a strong economic incentive to search for ways to lower costs. The use of large "supercolliers," ships which are 150,000 deadweight tons and over, to transport coal to overseas markets is one attractive alternative. However, these ships require channel depths of 55 feet. The deepest U.S. port has a depth of 51 feet. Consequently, American ports only accommodate ships of 80,000–100,000 deadweight tons. If our ports could accommodate the larger ships to transport American coal overseas, transportation costs could be lowered by as much as 40 percent. This would be a significant reduction, since U.S. steam coal exports are currently priced about $4 per ton above the world price of steam coal. It is expected that about 25 percent of the world's coal export tonnage will be carried by these supercolliers in 1985, and 44 percent by 1990.

I am today introducing legislation, the Port Development and Customs Revenue Sharing Act. First, my bill would establish a national policy based upon a recognition of the significance and importance of waterborne commerce to America's economic well-being.

Second, my bill would authorize the use of customs revenues to pay for the deep-draft channel operation, maintenance, and navigation improvements. A portion of the gross customs revenues would be put in a $750 million Customs Revenue Sharing Trust Fund. Financing for port development and maintenance would come from that trust fund.

Third, my bill would establish an orderly procedure for authorizing necessary maintenance, operation, and deep-draft navigation improvements, and would give us reasonable and fair ways to grant necessary Federal permits needed for such improvements.

Finally, my bill would continue the traditional Federal role relationship to ports which are between 14 and 45 feet in depth. However, for ports with navigation improvements deeper than 45 feet, there would be 50–50 cost sharing between the Federal Government and the local port authority. The additional operation and maintenance required by the deeper channel would also be subject to 50–50 cost sharing.

Mr. President, we must act now to put the Nation in a position to take full advantage of the opportunity which awaits the American coal industry and the American economy. I am convinced that my bill addresses that need and will help establish the future position of the United States and the American coal industry in the world coal market.

Mr. President, I ask unanimous consent that my bill be appropriately referred and that it be printed in the RECORD.

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

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

S. 2857

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 "National Port Development and Customs Revenue Sharing Act of 1982".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) it is in the national interest to maintain and develop a viable marine transportation system within the United States, including a network of commercial deep-draft seaports adequate to accommodate the needs of foreign and domestic commerce, promote economic stability and provide for the national security of the United States;

(2) development and maintenance of the national system of transportation necessary to promote and accommodate foreign and domestic waterborne commerce has been accomplished through a productive partnership of the Federal Government, States, port authorities and private commercial enterprises, in which the Federal Government has developed and maintained the navigability of deep-draft channels and harbors and facilitated maritime commerce, while States, port authorities and private commercial enterprises have provided the necessary landside port facilities and other navigation improvements necessary to accommodate foreign and domestic waterborne commerce;

(3) while each of the deep-draft ports has its own concerns, problems, and opportunities which affect the flow of international and domestic commerce, it is in the public interest to treat each port as an essential component of the national port system to facilitate the waterborne commerce of the Nation;

(4) ports in the United States are significant generators of national and regional revenue and customs revenues and are promoters of exports to improve the United States balance of trade, providing economic stability and growth; domestic and foreign shippers, producers, consumers, and receivers of international commerce have been well-served by the Nation's unified seaport system; and

(5) there have been costly delays in the authorization of, and the granting of required Federal permits for, new deep-draft navigation projects, and there is a backlog of economically justified projects which, if

implemented, would enhance the overall efficiency of the waterborne transportation system of the Nation.

(b) It is the purpose of this Act to—

(1) provide a national policy that recognizes the significant role and importance of waterborne commerce to the economic well-being of the United States;

(2) establish a procedure to facilitate the orderly authorization of necessary maintenance, operation, and construction projects for deep-draft navigation improvements and to provide consistency and predictability in the granting of required Federal permits with respect to such projects;

(3) expedite the permitting, authorization, and funding of deep-draft navigational improvements necessary for the Nation to compete effectively in export markets for coal, grain, and other commodities, and to import necessary commodities in cost-effective fashion;

(4) authorize the use of revenue from customs duties to finance necessary deep-draft channel operation, maintenance, and navigation improvements to the port system which generates these customs revenues;

(5) continue the traditional Federal role in performing operation, maintenance, and navigation improvement projects between 14 and 45 feet in depth;

(6) provide for cost-sharing between the Federal Government and public port authorities for the cost of navigation improvements for channels with depths greater than 45 feet and the operation and maintenance of such improvements; and

(7) relieve the Saint Lawrence Seaway Development Corporation of its construction debt and treat the Seaway on a fair and equitable basis as part of the overall port system of the Nation.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "deep-draft commercial port" means any port, harbor, or other place within any State that—

(A) is open to public navigation;

(B) has a federally authorized channel at least 14 feet in depth at mean low water (or mean low low water on the Pacific coast); and

(C) is subject to operation by a public port authority, or private port interests;

(2) the term "existing channel" means a channel which—

(A) is in a deep-draft commercial port having a depth of not less than 14 feet;

(B) was authorized by Congress, and its construction was completed before the date of enactment of this Act; and

(C) an agreement pursuant to section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) was executed prior to December 31, 1981;

(3) the term "access channel" means a channel associated with a particular pier, dock, or ancillary harbor facility which is not a federally maintained channel, but which is required in order to provide access from such pier, dock, or ancillary harbor facility to a federally maintained channel;

(4) the term "navigation improvement project" means a project authorized by Congress to increase the depth of any channel and modify other required features (other than an access channel) in a deep-draft commercial port;

(5) the term "maintenance project" means any dredging or other operation and maintenance, deemed necessary by the Secretary pursuant to section 5 of this Act—

(A) for a channel, regardless of whether the operation and maintenance, or any portion thereof, will be undertaken by the Secretary or by persons under contract to the Secretary; and

(B) for the access channels, and berthing areas associated with that channel, that will be undertaken by a public port authority, or by persons under contract to such an authority, or by any other entity allowed by State and Federal law to undertake such operation, maintenance, or dredging of non-Federal channels;

(6) the term "Secretary" means the Secretary of the Army, acting through the Chief of Engineers;

(7) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory of the Pacific Islands, and any other territory and possession over which the United States exercises jurisdiction;

(8) the term "public port authority" means—

(A) a State;

(B) a political subdivision of a State;

(C) an authority, established for the purpose of developing or operating a deep-draft commercial port, under an interstate compact or under a law or ordinance of, or a charter issued by, a State or political subdivision thereof; or

(D) any other entity, public or private, designated by a State, political subdivision, or authority pursuant to subparagraph (C) established to operate, maintain, or improve deep-draft channels, or to help finance such operations, maintenance and improvements; and

(9) the term "customs revenues" means any duty or penalty levied pursuant to the Tariff Act of 1930 (19 U.S.C. 1202 et seq.), including any duty or penalty levied pursuant to the Tariff Schedules of the United States, any countervailing duty, any antidumping duty, and any excise tax collected by the Customs Service pursuant to any statutory authority.

CUSTOMS REVENUE SHARING TRUST FUND

SEC. 4. (a) There is established in the Treasury of the United States a fund known as the "Customs Revenue Sharing Trust Fund" (hereafter in this Act referred to as the "Fund"). The Secretary of the Treasury shall administer the Fund and shall invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States.

(b) The Secretary of the Treasury shall pay into the Fund not later than October 31, 1983, and not later than each October 31 occurring after October 31, 1983, an amount equal to 7 per centum of all customs revenues collected during each preceding fiscal year, beginning with the fiscal year ending on September 30, 1982, until there are $750,000,000 in the Fund. The Secretary of the Treasury shall maintain the Fund at $750,000,000. In the event that all revenues and interest derived therefrom exceed $750,000,000, the amount in excess shall be applied as payments in the following order:

(1) payment on interest for any amount borrowed for the Fund;

(2) payment on the principal of any amount borrowed for the Fund; and

(3) payment into the general fund of the Treasury.

(c) The Secretary of the Treasury shall deposit $187,500,000 from the Treasury into the Fund no later than October 31, 1983. Such amount shall be repaid into the Treasury, with interest, in accordance with terms to be determined by the Secretary of the Treasury.

(d) The Secretary is authorized to expend money from the Fund as may be necessary to conduct the operation, maintenance, and navigation improvement authorized by Congress pursuant to this Act.

(e) Congress shall make an annual appropriation from the Fund in order to pay for the operation, maintenance, and navigation improvements authorized by Congress pursuant to this Act. The Secretary of the Treasury is authorized to expend the money from the Fund as may be necessary to conduct the operation, maintenance, and navigation improvement authorized by Congress pursuant to this Act.

(f) All moneys in the Fund which have not been allocated by the end of the fifth full fiscal year after the Fund begins to collect money, and at the end of each fifth fiscal year thereafter, shall revert to the Treasury.

(g) Beginning October 1, 1984, and at the end of each fiscal year thereafter, the Secretary of the Treasury shall submit to the Senate Appropriations Committee and the House Appropriations Committee a report on the status and operations of the Fund, including a specification of—

(1) all revenues accured in the Fund and the source of such revenues; and

(2) each amount expended from the Fund and the recipient of each such amount.

MAINTENANCE PROGRAM FOR COMMERCIAL PORT CHANNELS

SEC. 5. (a)(1) Within 2 years after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a comprehensive port maintenance program that specifies, with respect to each deep-draft commercial port—

(A) those non-Federal maintenance projects requiring Federal permits during the 5-year period beginning after the close of the 60th day referred to in section 6(a);

(B) existing Federal maintenance projects for existing channels required during the 5-year period in subparagraph (A) and any additions deemed necessary by the Secretary; and

(C) the alternate sites at which dredged or fill material resulting from the projects referred to in subparagraphs (A) and (B) should be disposed and the conditions of disposal.

(2) In preparing the comprehensive port maintenance program required under paragraph (1), and in preparing revisions to and reapprovals of approved maintenance projects under this Act, the Secretary shall consider, among other factors the findings, conclusions, and recommendations of the study required under section 158 of the Water Resources Development Act of 1976 (33 U.S.C. 540 note).

(b)(1) The comprehensive maintenance program required under subsection (a) shall be accompanied by a programmatic environmental impact statement prepared by the Secretary in consultation with the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, and the Fish and Wildlife Service.

(2) In preparing the comprehensive port maintenance program and the programmatic environmental impact statement, the Secretary shall publish the proposed program and an environmental impact statement

summary in the Federal Register 18 months after the date of enactment of this Act, and shall receive comments thereon for 60 days after publication. He shall consider such comments in preparing his final program.

(3) At the conclusion of the comment period, the Secretary shall conduct at least one public hearing concerning the proposed program and the accompanying environmental impact statement. The Secretary, at his discretion, may hold any further public hearings he deems necessary. No other public hearings or public comment periods shall be required after completion of the environmental impact statement.

(c) Nothing in this section shall affect the conduct of the Federal maintenance program or any non-Federal maintenance project prior to the date of completion and approval of the port maintenance program required by this section nor shall it affect the completion of any maintenance project authorized prior to such date.

PROCEDURES FOR ADOPTION AND REVISION OF MAINTENANCE PROGRAM

SEC. 6. (a) The Congress may approve the maintenance program required under section 5 by adopting a concurrent resolution approving the program. To the extent practicable, the Congress will act on such concurrent resolution before the close of the 60th day, as determined under section 14, after the date on which the program is delivered to Congress. Each such concurrent resolution introduced in the House of Representatives shall be referred to the Committee on Public Works and Transportation, and each such concurrent resolution introduced in the Senate shall be referred to the Committee on Environment and Public Works. Each project included in the program that is approved by Congress under the preceding sentence shall be treated as an approved project for purposes of subsection (b), and the Corps of Engineers shall carry out the approved projects within 5 years. Approval pursuant to this subsection shall be deemed to grant all necessary Federal approvals and permits, and to conclusively establish the adequacy of the environmental impact statement.

(b)(1) After the 60th day referred to in section 14(c), the Secretary shall periodically submit to Congress, subject to section 14, documents containing one or more of any of the following:

(A) such changes to approved non-Federal maintenance projects as he deems necessary or appropriate;

(B) any dredging or other operation and maintenance deemed necessary by the Secretary under section 12 for navigation improvement projects and for associated access channels and berthing areas; and

(C) a supplement to the programmatic environmental impact statement required by section 5(b).

(2) In preparing revisions, the Secretary shall publish the proposed revision in the Federal Register, receive public comment thereon for 30 days after publication, and consider such comments in preparing any such revision proposal to Congress.

(3) If Congress approves the change, or the dredging, or operation and maintenance, as the case may be, set forth in the document, then the change, or dredging, or operation and maintenance, shall be carried out by the Corps of Engineers within 5 years of the date of approval.

(4) Approval pursuant to paragraph (3) shall be deemed to grant all necessary Federal permits, authorization, and approvals for operation and maintenance to proceed, and shall be deemed conclusively to establish the adequacy of the accompanying supplemental environmental impact statement or environmental assessment.

CONSOLIDATED PERMIT PROGRAM FOR PORT DEVELOPMENT PROJECTS

SEC. 7. (a) There is hereby established a consolidated port development permit program which shall be administered by the Secretary. A consolidated port development permit shall constitute all necessary permits, authorizations, and approvals required under Federal law in order to construct, operate, and maintain a navigation improvement project and any shoreside installations ancillary to the navigation improvement project. Upon grant of such a permit, the Secretary shall submit appropriate amendments to the maintenance program described in section 5 of this Act.

(b) A public port authority which has filed applications under otherwise applicable Federal permit requirements, shall have the option to apply for a consolidated port development permit in lieu of such other permits. Permits which the public port authority has already granted prior to the enactment of this Act, shall not be reexamined in the consolidated port development permit proceeding, but shall, at the option of the public port authority, be made part of any consolidated port development permit which the Secretary may issue to the public port authority, and may be reviewed only under the judicial review provisions of this Act.

(c) For the purposes of this section, any entity allowed by State and Federal law to undertake operation, maintenance, or improvement with respect to non-Federal channels may apply for a consolidated port development permit for such work in the same fashion as a public port authority.

(d)(1) A public port authority making an application under this section shall submit detailed plans to the Secretary. Within 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2). If the Secretary determines that such information appears to be contained in the application, the Secretary shall, not later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Secretary determines that all the required information does not appear to be contained in the application, the Secretary shall notify and advise the applicant of the necessary steps to bring the application into substantial compliance with paragraph (2).

(2) Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to—

(A) the proposed cost-sharing agreement, if any, pursuant to section 8;

(B) a request for the Secretary's engineering feasibility determination pursuant to section 8 on the basis of either (i) feasibility studies for which Congress has appropriated the necessary funds; or (ii) engineering feasibility studies prepared by an independent third-party contractor and submitted to the Secretary by the applicant; or (iii) the applicant's binding commitment to advance funds to have such a feasibility determination made by the Secretary under section 8(a)(1)(B);

(C) detailed plans concerning ancillary onshore facilities proposed to be constructed by or for the public port authority if the public port authority is seeking authorization under the consolidated port development permit to construct such facilities;

(D) the environmental impact statement or environmental assessment, to the extent required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332);

(E) such other information as may be required by the Secretary to determine the environmental impact of the proposed operation, maintenance, or navigation improvement and ancillary onshore facilities; and

(F) such additional information necessary to determine the proposed substantial compliance of the project with the standards of Federal and State law concerning health, safety, and environmental protection.

(3) The applicant may satisfy the requirement of paragraph (2)(D) by—

(A) submitting or agreeing to submit, when available, an environmental impact statement or assessment concerning the project prepared as part of a feasibility study for which Congress has appropriated the necessary funds; or

(B) making a binding commitment to advance funds to the Secretary to have such an environmental impact statement or assessment prepared either by the Secretary or an independent third-party contractor.

The applicant may submit previously completed environmental studies concerning the project in partial satisfaction of the requirement of subparagraph (B).

(4) The Secretary shall make engineering feasibility and financial responsibility determinations within 1 year of the filing of a completed application by a public port authority for a consolidated port development permit.

(e) An application filed with the Secretary shall constitute an application for all Federal permits, authorizations, and approvals required under Federal law for the conduct of operations, maintenance, and navigation improvements and the construction of ancillary onshore facilties by or for a public port authority. At the time notice of any application is published pursuant to subsection (d), the Secretary shall transmit a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such consolidated port development activities (operation, maintenance, and navigation improvement and construction and operation of ancillary onshore facilities by or for a public port authority) for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application, not later than 45 days after the last public hearing on a proposed permit for operation, maintenance, navigation improvement, and ancillary onshore facilities constructed by or for the public port authority. In any case in which the agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended to bring it into compliance with the law or regulation involved.

(f)(1) In the event an environmental impact statement or assessment has not been prepared concerning the proposed project at the time the permit application is

filed, the Secretary in cooperation with other involved Federal agencies and departments, shall pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), prepare a single, detailed environmental impact statement or assessment, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this Act to prepare an environomental impact statement or assessment.

(2) The Environmental Protection Agency, the National Park Service, the Fish and Wildlife Service, the National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, and the Department of Transportation shall be included in the agencies consulted by the Secretary under paragraph (1) and shall be transmitted copies of the application and supporting materials pursuant to subsection (d).

(3) Comments by Federal agencies pursuant to subsection (e) or (f) (1) shall conclusively discharge the statutory responsibilities of such agencies with respect to the consolidated port development permit application pursuant to Federal environmental law, including section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), section 309 of the Clean Air Act (42 U.S.C. 7609), the Endangered Species Act (16 U.S.C. 531 et seq.), the Fish and Wildlife Act of 1956 (16 U.S.C. 777 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 et seq.).

(4) The Secretary, at his discretion, may deem the failure of a Federal or State agency or department to comment on the draft environmental impact statement or assessment of a project within 90 days of its transmittal to such agency or department, to conclusively waive any objections by such department or agency to the adequacy of the environmental impact statement or assessment of such project.

(g) (1) The Secretary shall transmit the application and supporting materials to the Governor of the State in which the proposed project is to be located, as well as to the State agencies which the Governor may thereafter designate. State agencies shall have the right to comment on the permit application with regard to substantive environmental, health, and safety requirements under their jurisdiction pursuant to State law, to the same extent Federal agencies or departments may comment pursuant to subsection (e). The State or its designated agencies shall concur or object to a certification furnished pursuant to section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), within the time specified in that Act. The Secretary, at his discretion, may condition the permit to address issues raised by the State or its designated agencies.

(2) The Governor of the State in which the proposed project is to be located may, within 45 days of the conclusion of the final public hearing concerning the proposed permit, submit comments on the proposed permit. Failure to do so shall be deemed conclusively to waive any State objections to the permit.

(h) A consolidated port development permit may be issued, transferred, or renewed only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held at the port or the closest location to the proposed operation, maintenance, navigation improvement, or construction of ancillary onshore facilities is to occur. Any interested person may present relevant material at any hearing. If the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, after hearings at the port are concluded, at least one adjudicatory hearing shall be held within the District of Columbia in accordance with the provisions of section 554 of title 5, United States Code. The record developed in any such adjudicatory hearing shall be the basis for the decision of the Secretary to approve or deny a permit. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on an application for a consolidated port development permit shall be consolidated to the extent feasible and shall be concluded not later than 1 year after notice of the initial application has been published pursuant to subsection (d) (1).

(i) The Secretary shall approve or deny any application for a permit under this Act not later than 90 days after the last public hearing on a proposed permit. Failure of the Secretary to approve or deny a permit application within 16 months of its completed filing shall be deemed to constitute approval and issuance of the permit as proposed by the applicant.

(j) The Secretary may issue a consolidated port development permit if—

(1) the Secretary determines that a State port authority is capable of meeting its financial obligations under any applicable cost-sharing agreement under section 8;

(2) the Secretary determines that the applicant can and will comply with applicable law, regulations, and permit conditions;

(3) the Secretary determines that the grant of the permit will be in the national interest, and is consistent with national security, promotion of trade, and environmental quality; and

(4) the Secretary has considered any comments by the Administrator of the Environmental Protection Agency concerning the compliance of the proposed operation, maintenance, navigation improvement, and ancillary construction with the requirements of the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.) and the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) except that, the Secretary need not consider such comments, if they are submitted later than 45 days after the last public hearing on a proposed permit.

AUTHORIZATIONS FOR CONSTRUCTION OF NEW NAVIGATION IMPROVEMENT PROJECTS

SEC. 8. (a)(1) The Secretary shall submit a report to Congress recommending approval for any new channel improvement project within 1 year of the date of which—

(A) Congress appropriates money for an engineering feasibility determination and any necessary environmental impact statement or assessment for the project; or

(B) a public port authority first advances the Secretary funds for the purpose of preparing, or causing to have prepared, an engineering feasibility determination.

A public port authority may satisfy the requirement of subparagraph (B) by submitting completed engineering studies and a binding commitment to fund further work that the Secretary finds necessary to make a determination.

(2) Failure of the Secretary to submit his report on a project to Congress within 90 days of completion of the necessary determinations and statements shall be conclusively treated as a transmittal of a report recommending construction of the proposed project.

(b) A navigation improvement project shall not be submitted to Congress by the Secretary unless the following events first occur—

(1) to the extent required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), an environmental impact statement or assessment for the project has been prepared;

(2) the Secretary determines that the proposed project is feasible from an engineering standpoint; and

(3) the State port authority agrees to enter a cost-sharing agreement, if required by section 9.

(c) Notwithstanding any other provision of law, the Secretary may accept and expend funds advanced to him by a public port authority for the purpose of preparing or causing to be prepared any engineering studies which the Secretary, in his sole discretion, may require to determine the engineering feasibility of a proposed navigation improvement project. No engineering feasibility studies beyond those deemed necessary by the Secretary shall be required. The Secretary shall also accept and expend such funds for the purpose of preparing the necessary environmental impact statement. Any or all of the studies or statements referred to herein may be carried out, in consultation with the Secretary, by an independent third party contractor agreed upon by the Secretary and the public port authority.

(d)(1) The Secretary shall make an engineering feasibility determination and complete or cause completion of any environmental impact statement or assessment necessary under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) within 1 year of the date when—

(A) Congress appropriates funds necessary for such studies and determinations;

(B) the public port authority first advances funds to the Secretary for such studies or determinations; or

(C) the public port authority submits the necessary studies and makes a binding commitment to advance funds to the Secretary for additional work the Secretary may thereafter deem necessary to make a determination and complete the required environmental impact statement or assessment.

(e) The final environmental impact statement or assessment required by this section shall comply with section 102 of the National Environmental Policy Act of 1969.

(f) Congress shall consider the Secretary's report pursuant to the procedures of section 14 within 60 days of the submission of the report to Congress.

(g) Navigation improvement projects approved pursuant to section 14 shall be funded and constructed by the Secretary from funds in the Fund. The Secretary shall enter a binding cost-sharing agreement as may be appropriate under section 9, within 60 days of project approval by Congress.

(h) Approval pursuant to section 14 shall be deemed to grant all necessary Federal authorizations for the Secretary to construct, or cause to have constructed, the projects so approved. Such approval shall be deemed conclusively to establish the adequacy of the environmental impact statement or assessment.

CONSTRUCTION OF, OR CONSTRUCTION FINANCING ASSISTANCE FOR, ELIGIBLE NAVIGATION IMPROVEMENT PROJECTS

SEC. 9. (a)(1) The Secretary shall expedite construction of the projects authorized pursuant to section 8 and, with respect to projects subject to a cost-sharing agreement under paragraph (2), expedite such construction after the execution of a satisfactory cost-sharing ageement with the public port authority.

(2) For purposes of this Act, a cost-sharing agreement means an agreement entered into between the Secretary and the public port authority concerning an authorized navigation improvement project requiring depths in excess of 45 feet at mean low water, and that contains such terms and conditions as are necessary to protect the interest of the United States, and under which—

(A) the Secretary agrees to implement the project with funds from the Fund for the construction of the project; and

(B) the public port authority agrees to reimburse the United States through financing arrangements acceptable to the Secretary, during the life of the project (but not after the fiftieth year after the project becomes available for use) for—

(i) 50 per centum of the construction funds appropriated to the Secretary under subparagraph (A), plus interest, and

(ii) 50 per centum of the additional annual operating and maintenance costs incurred by the United States with respect to the project after construction.

(3) Reimbursement payments to the United States shall be paid into the Fund.

(b)(1) A public port authority that wishes to undertake, either on its own or through contractors or both, the construction of a navigation improvement project that is authorized for construction through financing assistance under this section may finance the construction through financing arrangements acceptable to the Secretary, if the authority enters into a cost-sharing or reimbursement agreement under paragraphs (2) and (3) for such project.

(2) For an authorized navigation improvement project, greater than 45 feet in depth at mean low water, a public port authority may enter a cost-sharing agreement whereby—

(A) the public port authority agrees to finance 100 per centum of the costs of the construction of the project; and

(B) the Secretary agrees to reimburse the public port authority from the Fund for 50 per centum of the construction and financing costs of the project.

(c) No cost-sharing or reimbursement agreement may be entered into under this section unless the public port authority agrees to such terms and conditions as the Secretary deems necessary to ensure that the construction of the project is being carried out in accordance with the project plans and specifications and is subject to such periodic inspection by the Secretary as he deems necessary to assure compliance with the plans and specifications.

(d) Payments from the Fund for a project authorized pursuant to section 8 shall be given priority according to the date the public port authority applies for a cost-sharing agreement, and, in the case of an authorized navigation improvement project less than or equal to 45 feet in depth at mean low water undertaken by the Secretary, priority shall be given according to the date that the Secretary makes a binding commitment for construction for the project.

(e) Regulations issued by the Secretary pursuant to section 20 shall include regulations pertaining to applications for cost-sharing and payments to and from the Fund, and shall provide that reimbursement to a public port authority for a project constructed pursuant to a reimbursement agreement shall be completed when the project is completed and becomes available for use or as soon thereafter as is reasonably practicable in view of the payment priority of the project pursuant to subsection (d).

APPLICABILITY TO CERTAIN OTHER NAVIGATION IMPROVEMENT PROJECTS

SEC. 10. (a) A project to increase the depth of a deep-draft commercial port channel (other than an access channel) to more than 45 feet at mean low water, if not authorized by Congress before the date of the enactment of this Act but for which a permit was approved under section 404 of the Federal Water Pollution Control Act before the date of enactment, is eligible for construction financing assistance under section 9 of this Act with respect to the construction that remains to be completed as of the date of enactment.

(b) A project to increase the depth of a deep-draft commercial port channel (other than an access channel) to more than 45 feet at mean low water, if authorized by Congress before the date of the enactment of this Act but the contruction of which was not completed before the date of enactment, is eligible for priority construction by the Secretary under section 9 (a), and for construction financing assistance under section 9 (b).

EFFECT UPON OTHER AUTHORIZED NAVIGATION IMPROVEMENT PROJECTS

SEC. 11. (a) This Act does not modify, amend, or repeal any congressional authorization for the construction of a navigation improvement project to increase the depth of any channel in a deep-draft commercial port to a depth not to exceed 45 feet, or for the United States, to the extent provided for in appropriations Acts, to pay all of the costs of constructing and maintaining any navigation improvement project other than a project approved under this Act.

(b) This Act does not modify, amend, or repeal any agreement requiring local cooperation as a condition of Federal authorization of a navigation improvement project.

FEDERAL MAINTENANCE RESPONSIBILITY

SEC. 12. (a) The Secretary, after the completion of the construction of a navigation improvement project under sections 7, 8, and 9 shall, on a continuing basis, determine—

(1) the dredging or other operation and maintenance that is necessary for the project;

(2) The dredging or other operation and maintenance that is necessary for associated access channels and berthing areas; and

(3) the sites at which dredged or spoil material resulting from the dredging or other operation and maintenance described in subparagraphs (1) and (2) should be disposed and the conditions of disposal.

For purposes of paragraph (3), disposal sites shall be selected, and conditions of disposal shall be established in accordance with section 404(b)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1344(b)(1)) and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413).

(b) The Secretary shall make appropriate revisions to the maintenance program pursuant to sections 5 and 6 in order to assure that new navigation improvement projects are properly maintained once completed.

JUDICIAL REVIEW

SEC. 13. (a) Only the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review any issue arising from the approval of the maintenance program, a program revision, or navigation improvement project. Any such challenge shall be filed within 30 days after approval of the maintenance program, program revision, or navigation improvement project by Congress.

(b) Only the United States Court of Appeals for the circuit in which a proposed maintenance project or navigation improvement is to be located shall have jurisdiction to review any challenge to the adequacy of the environmental impact statement or assessment of the project, the issuance, denial, or conditions of any consolidated port development permit, and the compliance of any related revision to the comprehensive maintenance program with applicable law. Any such challenge shall be filed within 60 days of the decision by the Secretary to grant or deny a consolidated port development permit under section 7.

(c) In reviewing alleged procedural errors, the court may invalidate the program or permit only if errors were so serious and related to matters of such central relevance to the program or permit that there is a substantial likelihood that the program or permit would have been significantly changed if such errors had not been made.

(d) In the case of the review of any action of the Secretary to which this section applies, the court may reverse any such action found to be—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations; or

(4) without observance of procedure required by law;

if (i) such failure to observe such procedure is arbitrary or capricious, or (ii) the requirements of subsection (c) are met.

PROCEDURES FOR APPROVING NEW NAVIGATION IMPROVEMENT PROJECTS, THE MAINTENANCE PROGRAM AND MAINTENANCE PROGRAM REVISIONS, AND OTHER PROCEDURAL MATTERS

SEC. 14. (a) For purposes of this section, the term "approval resolution" means only a concurrent resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the ———— maintenance program, program revision, or navigation project specified in the document submitted to Congress on ———— pursuant to ————," with the first blank space being filled in with the name of the maintenance program, program revision, or navigation project intended to be approved, the second being filled in with the appropriate date, and the third being filled in with a reference to either section 5, 6, or 8 of this Act, as appropriate.

(b) All approval resolutions introduced in the House of Representatives shall be referred to the Committee on Public Works and Transportation, and all approval resolutions introduced in the Senate shall be referred to the Committee on Environment and Public Works.

(c)(1) For purposes of submitting a document referred to in section 5, 6, or 8 to Congress, a copy of the document must be delivered to both House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(2) In computing the 60th day for purposes of applying section 5, 6, or 8, there shall be excluded—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(B) any Saturday or Sunday not excluded under subparagraph (A).

CONGRESSIONAL CONSENT TO THE LEVYING OF DUTIES OF TONNAGES BY THE STATES

SEC. 15. (a) The Congress consents, under clauses 2 and 3 of section 10 of article I of the Constitution, to the levying by the States of duties of tonnage as provided for in this Act, but only to the extent that any such levy is consistent with the conditions of consent set forth in subsection (b).

(b) The consent of Congress under subsection (a) is granted with respect to any State, subdivision of a State, or any port authority, subject to the following conditions:

(1) The duty of tonnage may only be levied for the following purposes:

(A) The reimbursement of the United States under, and in a manner consistent with the terms and conditions of, the cost-sharing agreement entered into under section 8 with respect to a navigation improvement project. The levy may not exceed that portion of the costs of construction and maintenance that the public port authority is obligated to pay.

(B) The financing of the costs of constructing, and the reimbursement of the United States for the costs of operating and maintaining a navigation improvement project under, and in a manner consistent with the terms and conditions of, the cost-sharing agreement entered into under section 8 with respect to the project. The levy may not exceed that portion of those costs that the State port authority is obligated to pay.

(2) The duty of tonnage is computed in accordance with section 16.

(3) The public port authority may levy the duty of tonnage on vessels engaged in commerce and their cargo entering the port and cargoes loaded at the port, except that such cargoes moving in domestic commerce shall not be assessed such a duty more than once. The public port authority shall impose, compute, and collect the duty in a nondiscriminatory manner and in accordance with this Act and such limitations as may be prescribed by the Secretary under section 16.

(4) Those revenues accruing through the levy of a duty of tonnage, or moneys equal in amount of such revenues, may be expended solely for the purposes enumerated in subparagraph (1)(B).

(5) The public port authority shall provide to the Comptroller General of the United States, upon his request, such books, documents, papers, or other information as the Comptroller General considers to be necessary or appropriate to carry out the audit required under section 17.

(6) The public port authority shall designate an officer, or other authorized representative or agent of the port, to receive tonnage certificates and cargo manifests from vessels engaged in commerce; export declarations from shippers, consignors, and terminal operators; and such other documentation as may be necessary for the imposition, computation, and collection of the duty of tonnage.

(7) No duty of tonnage authorized by this section may be imposed on—

(A) a vessel owned and operated by the United States or any other nation or any political subdivision thereof and not engaged in commercial service; or

(B) a vessel used by a State or political subdivision thereof in transporting persons or property in the business of the State or political subdivision.

(c) The Congress expressly reserves the right to withdraw the consent granted by it under subsection (a) with respect to any public port authority if at any time in the view of Congress—

(1) the conditions of consent set forth in subsection (b) are not being complied with by the authority; or

(2) an impediment to compliance with any of those conditions is imposed by the authority or under State law.

COMPUTATION OF DUTIES OF TONNAGE RATES

SEC. 16. The Secretary shall establish guidelines for the use by public port authorities in computing the rates of duties of tonnage levied by them under this Act. Such guidelines shall contain, but not be limited to—

(1) a formula for allocating rates on an equitable basis between vessels and cargo;

(2) a rate ceiling with respect to cargo which shall be established by the Secretary after consultations with the Secretary of Commerce, not exceeding $1 per short ton of cargo, unless the Secretary determines that a higher rate is just and equitable and that the imposition of such a higher rate will not impose an unreasonable burden upon any commodity by virtue of its sensitivity to increased transportation costs;

(3) provisions requiring the imposition of a flat rate surcharge (which shall not be subject to the rate ceiling provided under paragraph (2)) on all vessels that draw 41 or more feet of water; and

(4) such limitations as may be necessary or appropriate to ensure that the rate of the duty for each fiscal year (or other appropriate accounting period) is established at the level necessary to ensure that the revenues resulting from the levy during that period will equal, as nearly as practicable, the expenditures to be made during that period with respect to the purposes for which the levy is made.

AUDITS BY THE COMPTROLLER GENERAL

SEC. 17. The Comptroller General of the United States shall carry out periodic audits of the operations of public port authorities that have elected duties of tonnage under this title in order to ascertain whether the port is complying with the conditions of consent provided in section 15. The Comptroller General shall submit to each House of Congress a written report containing the findings resulting from each audit and shall make such recommendations as the Comptroller deems appropriate regarding the compliance of those authorities with the requirements of this Act.

INJUNCTIVE RELIEF

SEC. 18. The United States District Court for the district in which is located a public port authority that is levying duty of tonnage under this Act shall have original and exclusive jurisdiction over any matter arising out of, or concerning, the imposition, computation, or collection of such duty of tonnage, and, upon petition by the Attorney General, may grant appropriate injunctive relief to restrain any act by such port authority that violates the conditions of consent provided in section 15(b).

ENFORCEMENT

SEC. 19. (a)(1) The master of each vessel engaged in commerce, upon the arrival of such vessel in a deep-draft commercial port that levies a duty of tonnage under this Act shall, within 48 hours after arrival and before any cargo is unloaded from such vessel, deliver to the appropriate authorized representative or agent (appointed as required under section 15(b)(6)) a tonnage certificate for the vessel and a manifest of the cargo aboard such vessel or, if the vessel is in ballast, a declaration to that effect.

(2) The shipper, consignor, or terminal operator having custody of any goods to be loaded on a vessel engaged in commerce while such vessel is in a deep-draft commercial port that levies a duty of tonnage under this Act shall, within 48 hours before departure of such vessel and before the loading of such goods on board such vessel, deliver to the authorized representative or agent a declaration specifying the goods to be loaded on such vessel.

(b) The Secretary of the Treasury, acting through the appropriate customs officer, shall withhold, at the request of an appropriate authorized representative referred to in subsection (a), the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. 91), for any vessel—

(1) if the master of the vessel is subject to subsection (a)(1) and fails to comply with such subsection; or

(2) if a shipper, consignor, or terminal operator having custody of any goods to be loaded on such vessel is subject to subsection (a)(2) and fails to comply with such subsection.

Clearance may be granted upon the filing of a bond or other security satisfactory to the Secretary of the Treasury and the authorized representative or agent of the public port authority.

(c) A duty of tonnage levied under this Act against a vessel engaged in commerce constitutes a maritime lien against that vessel which may be recovered in an action in rem in the United States District Court of the district within which the vessel may be found.

REGULATIONS; ISSUANCE, AMENDMENT, OR RESCISSION; SCOPE

SEC. 20. The Secretary shall, as soon as practicable after enactment of this act, and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of this Act, in accordance with the provisions of section 553 of title 5, United States Code. Such regulations shall pertain to, but need not be limited to tonnage duties, and to application, issuance, transfer, renewal, suspension, and termination of permits. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with the State in which an affected port is located and for consideration of the views of any interested members of the general public. The Secretary is further authorized, consistent with the purposes and provisions of this Act, to amend or rescind any such regulation.

FINANCING, OPERATION, AND MAINTENANCE OF SAINT LAWRENCE SEAWAY CHANNELS

SEC. 21. (a) Section 4 (a)(10) of the Act of May 13, 1954 (33 U.S.C. 984(a)(10)) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof a comma and "nor facilities necessary to the

operation and maintenance of seaway channels;".

(b) Section 5(b) of the Act of May 13, 1954 (33 U.S.C. 985(b)) is amended by adding the following sentence at the end thereof: "The obligation of the Corporation to pay the principal on such obligations is terminated on the date of enactment of the National Port Development Act of 1982.".

(c) Section 12(a) of the Act of May 13, 1954 (33 U.S.C. 988(a)) is amended by striking out the second sentence and inserting in lieu thereof "Any formula for a division of revenues shall not take into account annual debt charges and shall not include the total cost incurred by the United States in financing activities authorized by this Act, including both interest and debt principal, but shall provide for an equitable division of the revenues of the seaway between the Corporation and the Saint Lawrence Seaway Authority of Canada.".

(d) Section 12(b)(4) of the Act of May 13, 1954 (33 U.S.C. 988(b)(4)) is amended to read as follows: "That the rates prescribed shall be calculated to cover, as nearly as practicable, all costs of operating and maintaining the works under the administration of the Corporation, except for the cost of operating and maintaining connecting seaway channels, which shall be the responsibility of the Secretary of the Army pursuant to the National Port Development Act of 1982.".

(e) Section 12(b)(5) of the Act of May 13, 1954 (33 U.S.C. 988(b)(5)) is amended by striking out the period at the end thereof and inserting in lieu thereof a comma and "but such rates shall not include any charge to amortize the principal of the debts and obligations of the Corporation which have been terminated by the United States pursuant to this subsection.".

ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, there are two special orders this morning; is that correct?

The PRESIDENT pro tempore. The Senator is correct.

Mr. STEVENS. Mr. President, I understand that that will be followed by a period for the transaction of routine morning business not to extend beyond 11 a.m. with 2 minutes allowed therein for speeches of Senators; is that correct?

The PRESIDENT pro tempore. The Senator is correct.

ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that the period for routine morning business commence at this time and Senators who have special orders be recognized for their 15 minutes as they appear in the Chamber.

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

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

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

The Assistant Secretary of the Senate proceeded to call the roll.

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

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

Mr. NUNN. Mr. President, is there a special order in the name of the Senator from Georgia?

The PRESIDING OFFICER. The Senator is correct.

RECOGNITION OF SENATOR NUNN

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

THE CRIME CONTROL ACT OF 1982: TITLE IV—HABEAS CORPUS REFORM

Mr. NUNN. I thank the Chair.

Mr. President, Senator CHILES and I have been addressing this Senate for over 3 months about the necessary need for habeas corpus reform. Almost every day I have pointed to a case where a convicted felon had actually delayed and frustrated the ends of justice by manipulation of the writ of habeas corpus. In all these cases, the problem would have been alleviated under the proposals included in S. 2543, the Crime Control Act of 1982. I might add they would also be alleviated under Senator THURMOND's bill which has recently been introduced, and which is now on the calendar, which Senator CHILES and I have both gladly cosponsored. These examples clearly demonstrate the long-awaited need for change in the rules governing habeas corpus proceedings.

In the case of Dorsey against Gill, the Court of Appeals for the District of Columbia affirmed a district court's denial of a petition for a writ of habeas corpus, but only after fully examining a series of seemingly frivolous and already litigated allegations by the petitioner. In facing that time-consuming task, the appellate court was obviously frustrated with what appeared to be yet another instance of misuse of the writ for purposes of delay.

Given that frustration, it is hardly surprising that the Dorsey court took great care to make some particularly appropriate comments on the problem of abuse of the writ of habeas corpus. It is interesting to note that those comments, made in 1941, are equally pertinent and appropriate today, in 1982. Even in 1941, the problem had already reached substantial and burdensome proportions. Consider the comments and statistics pointed out in the Dorsey opinion:

. . . [P]etitions for the writ are used not only as they should be to protect unfortunate persons against miscarriages of justice, but also as a device for harassing court, custodial and enforcement officers with a multiplicity of repetitious, meritless requests for relief. The most extreme example is that of a person who, between July 1939 and April 1944, presented in the District Court 50 petitions for writs of habeas corpus; another person has presented 27 petitions, a third 24, a fourth 22, a fifth 20. One hundred nineteen persons have presented 597 petitions—an average of 5.

Imagine for a moment the spectacle of an individual filing some 50 petitions for habeas relief within a span of only 5 years. Surely that sort of outrageous litigation does little to enhance the credibility of our courts in the public eye.

Citing the "dangerous possibilities of a too-liberal use of the writ for review purposes," the Dorsey court considered the problems of purposefully delayed petitions:

. . . . If the presumption of regularity of proceedings were permitted to be lightly upset by irresponsible allegations, the judges, to whom petitions for writs of habeas corpus are presented, would be forced to look back of and beyond records, into unreported proceedings, conducted by other judges, with witnesses, lawyers and other court officers long since dead or scattered. The problem would be intensified, also, by the fact that a large percentage of commitments are based upon pleas of guilty. A premium would be placed upon deception if an accused person could plead guilty; wait until the case had become "cold" and then, by challenging jurisdiction or alleging deprivation of constitutional rights, secure a reopening and new trial of his case. If greater safeguards are needed in original proceedings, they should be provided. But it will not solve any problem, which may exist there, to permit large-scale use of this extraordinary writ for review purposes. Instead, it would cause confusion worse confounded.

Abuse of the writ of habeas corpus law has rendered our criminal justice system nearly incapable of producing finality of judgment. S. 2543 confronts this grave problem by requiring Federal courts to give increased deference to State court findings. The bill will also limit Federal habeas corpus relief to those cases brought within a 3-year statute of limitations. This measure will pave the way to a return to a credible and effective criminal justice system. Based on the overwhelming evidence of abuse, no one should doubt the importance of these reforms to this Nation's continuing struggle against violent crime.

Mr. President, I yield back the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

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

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

RECOGNITION OF SENATOR SPECTER

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

S. 2856—AMENDMENT OF PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION ACT OF 1977

Mr. SPECTER. Mr. President, I am today introducing a bill to amend the Protection of Children Against Sexual Exploitation Act of 1977.

Four years ago, congressional hearings indicated that child pornography had become a multimillion dollar industry, victimizing thousands of children. Congress responded by outlawing the production of child pornography and the distribution for sale for sale of obscene materials which pornographically depicted children.

Last month the Supreme Court ruled in New York against Ferber that the compelling State interest in safeguarding the physical and psychological well-being of minors constitutionally justified the prohibition of nonobscene pornography involving children.

I applaud the Supreme Court and concur that the child pornographer's first amendment guarantee of free speech is not violated when he is prohibited from sexually expoliting a child.

My interest in, and commitment to fighting the child pornographer stems from a series of hearings on the sexual exploitation of children which began last November before the Subcommittee on Juvenile Justice. Although it is clear that Federal efforts to enforce existing laws have decreased the availability of child pornography, testimony at those indicated that the Federal law is not tough enough to protect the thousands of our children who continue to fall victim to pornographers and exploiters.

Father Bruce Ritter who directs a runaway house in Times Square testified that thousands of runaways in New York City are "recruited, if not openly abducted, by the organized child prostitution and pornography industries which, in New York at least, are estimated to earn close to $1 billion each year."

In contrast figures supplied by the Department of Justice and the Postal Service show a low number of Federal arrests and convictions of child pronographers. From May of 1977 to April of 1982, 43 persons have been convicted under all available obscenity statutes for distribution of obscene material depicting minors. Less than half of these convictions were for violations of the laws specifically focusing on child pornography, which carry penalties exceeding those imposed by the general obscenity laws. As of April 29, 1982, the 20 persons who were convicted under these tougher child pornography laws had received sentences ranging from a $500 fine with a suspended sentence to a $25,000 fine with a 20-year sentence.

Testimony at the subcommittee hearings offered one key explanation for the limited Federal success in attacking the child pornography industry—Federal law currently reaches only distribution of child pornography for sale. Charles P. Nelson, Assistant Chief Postal Inspector, Office of Criminal Investigations for the U.S. Postal Service testified:

> The bulk of the child pornography is noncommercial. This activity is not in violation of the Federal child pronography statutes. These statutes require a commercial transaction in connection with the manufacture or distribution of the material before a violation exists.

The result of this commercial limitation is far reaching. Dana E. Caro of the Criminal Investigation Division of the Federal Bureau of Investigation testified that:

> (T)he FBI has determined that a clandestine subculture exists in the United States which is functioning in violation of the child pornography and sexual exploitation of children statutes. This culture is involved in recruiting and transporting minors for sexual exploitation and investigation has revealed that this culture is very difficult to penetrate. It has been determined that the largest percentage of child pornography available in the United States today was originally produced for the selfgratification of the members of this culture and was not necessarily produced for any commercial purpose. Pedophiles maintain correspondence and exchange sexual explicit photographs with other members of this subculture and often establish contact with each other through "swinger" type magazines and newspapers which act as mail forwarding services for the readers. FBI investigations have revealed that commercial photographers and major distributors pose as members of this subculture and obtain free of charge the sexually explicit photographs of minor children. As a result, many of the photographs taken for private use and obtained by these commercial photographers and pornographic distributors subsequently appear in child pornography magazines which have wide commercial distribution. Neither the child posing for the picture or the original photographer receive any payment from these commercial photographers or major distributors. Therefore, the FBI's effectiveness in combatting child pornography and the sexual exploitation of children at the grass roots has been seriously impaired by the pecuniary interest requirement contained in title 18, U.S. Code, sections 2251 and 2252.

The bill I am introducing today reflects the testimony of the law enforcement community. It makes any interstate distribution of child pornography or any distribution of child pornography through the mails a Federal crime.

My bill also amends the 1977 law to bring it into accord with the Supreme Court's July 2, 1982, decision in Ferber: It makes unlawful the distribution of any photographs which sexually exploit children under age 16.

Finally, this bill provides for tougher penalties—fines would increase from $10,000 to $75,000 for a first offense and from $15,000 to $150,000 for a second offense. Given the testimony we have heard, it is apparent that the current statutory penalties are insufficient to take the profit out of child pornography. The elevated fines I propose are intended to correct this shortcoming, as well.

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

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

S. 2856

Be it enacted by the Senate and Housing of Representatives of the United States of America in Congress assembled, That section 2251 of title 18, United States Code, is amended in subsection (c)—

(1) by striking out "$10,000" and inserting in lieu thereof "$75,000"; and (2) by striking out "$15,000" and inserting in lieu thereof "$150,000".

SEC. 2. Section 2252 of title 18, United States Code is amended—

(1) in subsection (a)(1) by striking out "for the" through "obscene" and inserting in lieu thereof "any";

(2) in subsection (a)(2) by striking out "for the" through "obscene" and inserting in lieu thereof "any"; and

(3) in subsection (b)(A) by striking out "$10,000" and inserting in lieu thereof "$75,000"; and (B) by striking out "$15,000" and inserting in lieu thereof "$150,000".

SEC. 3. Section 2253 of title 18, United States Code is amended—

(1) in clause (2)(E) by striking out "lewd exhibition" and inserting in lieu hereof "exhibition without literary, artistic, scientific or educational value"; and

(2) in clause (3) by striking out ", for pecuniary profit".

THE PRICE OF ACQUIESCENCE IS TOO HIGH

Mr. BOREN. Mr. President, earlier this week, the United States and the People's Republic of China issued a communique jointly in their respective capitals on the matter of the Republic of China on Taiwan. At the same time, the President of the United States let it be known that he was now prepared to go ahead with the sale of 60 F-5 fighter planes to Taiwan, to be coproduced in Taiwan. This is a sale the President had agreed to in principle last January, but upon which he had not acted until this week.

It is clear that last January when he agreed in principle to the sale, the President was also in the midst of negotiations with the P.R.C. over Taiwan and he knew that the outcome of those talks were going to require at least some small gesture to try to satisfy the friends of Taiwan when the joint communique was finalized and made public.

The price of acquiescence is too high, Mr. President, and I, as one Senator, will not be placated by so cynical a display of diplomatic doubledealing.

Nowhere does it appear that we held to a strong bargaining position on behalf of the 18 million free people of Taiwan. What did we get in return for apparently bartering away their security? What guarantee did we obtain for their right to self-determination? How can we defend such callous treatment of a nation which is one of our best trading partners and one of the few that pays its bills with hard cash? Taiwan has also been our ally in the Korean conflict and in every other international and military crisis.

An excellent editorial appeared in Wednesday's Wall Street Journal entitled "China's China Card." It points out that "it is easy to see what is being surrendered, hard to see what is being gained. As Washington edges its policy further away from Taipei, the world has new cause to wonder what an alliance with the United States is worth."

Beyond even those issues, Mr. President, rises the specter contained in an article on the front page of this morning's Washington Post—namely, that this joint communique has handed the Communist leadership in China what 33 years of civil war has not achieved, the inevitable reunification of Taiwan and the mainland. Included in this analysis is the observation of an unidentified European diplomat that "Peking can just let time run its course."

In 1979, when I first came to this Chamber, one of the first major issues we debated was the Taiwan Relations Act. In fact, the first amendment I offered as a U.S. Senator was to that act.

I remember well the feelings prevailing in the Senate at the time. No one argued with then President Carter's right to normalize relations with the People's Republic. A majority of us, however, were highly displeased with the manner and the conditions under which he proceeded. In particular, we disputed his abrogation of the mutual defense treaty between the United States and Taiwan and his acceptance of a set of conditions which had been rejected by other administrations. There was an additional feeling that Carter's rush to judgment was driven by a strong need to show leadership in foreign affairs.

The result of all this was the passage of the Taiwan Relations Act—an expression of the Congress that we wished to continue our relationship with these 30-year-old allies in as normal a manner as possible under the circumstances. The Taiwan Relations Act was also a signal to the rest of the world that U.S. alliances did mean something and that the Taiwanese could be assured that their future security, resting as it does on U.S. defense arms support, would be uppermost in the minds of their friends in the U.S. Congress.

Almost from the day of its passage, the implementation of the Taiwan Relations Act has been weighed down by the foot-dragging of a State Department which never agreed with its provisions and an administration that viewed its very existence as an infringement on the executive branch's inherent right to conduct foreign policy.

Time after time, the senior Senator from Arizona, Mr. GOLDWATER, and others, inserted into the RECORD examples of how the Taiwan Relations Act was being ignored or circumvented and the trend of eroding away its provisions bit by bit became evident. The old game was on—Congress cannot concentrate on anything for long, so if at first you don't succeed, stall, wait, vacillate—sooner or later, you can get what you want little by little.

There was some hope for those of us who feel commitments are not matters of convenience. In addition to the tenacious pursuit of Senator GOLDWATER, there was a new day on the horizon. Ronald Reagan was on his way to the White House, campaigning around the country in large measure against what he called the weak-kneed foreign policy which was then emanating from the Carter administration, a prime example of which was Jimmy Carter's abandonment of Taiwan. A Reagan administration would not be so callous and capricious with our friends. We were told Communist China needs us more than we need them, and on August 25, 1980, candidate Reagan told the world he "would not impose restrictions which are not required by the Taiwan Relations Act."

But the air on Pennsylvania Avenue is rarefied, Mr. President, probably due in part to its proximity to Foggy Bottom. When Senator JOHN GLENN brought that quote to the attention of the State Department's John Holdridge at a meeting of the Foreign Relations Committee recently, Holdridge made no comment.

In this week's communique and the accompanying statement, now President Reagan declares his affection and commitment to Taiwan while saying the United States—

* * * does not seek to carry out a long-term policy of arms sales to Taiwan, that its arms sales to Taiwan will not exceed, either in qualitative or in quantitative terms, the level of those supplied in recent years, and that it intends to reduce gradually its sales of arms to Taiwan, leading over a period of time to a final resolution.

None of these limitations and phaseouts can be found in, nor can they be squared with, the Taiwan Relations Act.

The Wall Street Journal editorial writers wonder what we received in return, Mr. President, and so do I. Part 4 of the communique does mention the Communist Chinese Government's "fundamental policy of striving for peaceful reunification of the motherland." One is supposed to hope, I suppose, that the P.R.C. can successfully strive to avoid military force on behalf of the motherland. It is possible, however, that Taiwan may be a little nervous on this point faced as they are with 400,000 troops and nearly 4,000 aircraft in the southeast region of Communist China. The reality Taipei must deal with is that the biggest single reason they have been able to deal evenly with Peking—U.S. defensive support—is fading fast.

I disagree with the President's action. I believe that once again our negotiations were driven by expediency, not prudence, and the only long-term interests that have been served are those of the Communist Chinese.

For all these reasons, Mr. President, I deplore this week's communique and urge all my colleagues to review their diligence in protecting the rights of our friends on Taiwan as set forth in the Taiwan Relations Act.

SENATE SCHEDULE

Mr. BAKER. Mr. President, I believe there is an order that at 11 a.m., the Senate will resume consideration of the unfinished business, which is the debate on the debt limit; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, for the benefit of Senators, let me say that I continue to hope for some sort of a time agreement that will permit us to vote on something today. As I indicated last evening, I hope there is some possibility that the distinguished Senator from Oregon (Mr. PACKWOOD), the distinguished Senator from North Carolina (Mr. HELMS), and others who are principally involved in this matter, will urgently explore that possibility. We will be on this bill for the remainder of this day, and since this is Thursday, there is a possibility that it will be a late day, particularly if we can make some progress on the question at hand, that is, the debt limit and the pending amendments to it.

Mr. President, I anticipate that we will have from the other body the conference report on the tax bill sometime today, which, of course, is a privileged matter. If we do receive that today, it would be my hope that we could proceed to the consideration of that tax conference report and dispose of it, and then resume the debate on the debt limit bill.

There is a messenger, I believe, seeking entry to the Chamber at this time from the House of Representatives, who has, I believe, the conference report on the supplemental appropriations bill. Senators should know that

it is not my plan to take up that supplemental conference report today. I think our platter is full today, as the minority leader has said so many times. But I do not think it is possible for us to take care of the tax conference report, the supplemental conference report, and the debt limit during this day, so I anticipate that the supplemental appropriations conference report will be dealt with tomorrow as well as the continuation of the debate on the debt limit as and if that is necessary.

I continue to hope, Mr. President, that we can finish these matters, the debt limit, the amendments to it, the supplemental conference report, and the tax conference report and go out tomorrow evening. There is a recess resolution on its way here from the House of Representatives that provides for a recess tomorrow or Saturday. I would warn Senators once again of the possibility of a Saturday session or even perhaps next week, although I think that is a receding prospect if we get the tax bill, as I anticipate we will, from the House of Representatives.

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

Mr. BAKER. Yes. I yield.

TEMPORARY DEBT LIMIT INCREASE

Mr. HELMS. Mr. President, I thank the able minority leader.

Let me ask the Chair if I am correct in my impression that there are now four amendments that are pending?

The PRESIDING OFFICER. The Senator from North Carolina is informed that there are five amendments pending including the committee substitute.

Mr. HELMS. The Chair is obviously correct, including the committee substitute, but with relation to the school prayer and abortion question there are four amendments, two offered by the Senator from North Carolina, on which the yeas and nays have been obtained, one offered by the able Senator from Connecticut (Mr. WEICKER), and a second-degree amendment by the able Senator from Montana (Mr. BAUCUS).

Am I correct that the yeas and nays have been obtained on all four of these?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. Am I further correct in my understanding that if we were to start voting right now the Baucus amendment would be first to be considered?

The PRESIDING OFFICER. The Senator is correct?

Mr. HELMS. The second will be the Weicker amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. The third would be the Helms abortion amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. And the fourth would be the Helms prayer amendment, so-called?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. Let me say to the distinguished majority leader that I am ready to vote now.

Mr. BAKER. I thank the Senator.

Mr. President, I wonder if the Senator from Oregon, the manager of the bill, and a principal in the debate, could indicate to me what he thinks the prospects are that we might have a vote on one, all, or some kind of composite of these amendments today?

Mr. PACKWOOD. Mr. President, one of the difficulties I face is I need to talk with some of my allies, and I cannot do that while I am on the floor. When we go back on the bill, I have the floor. I am reluctant to give up the floor if it might jeopardize the parliamentary situation.

The other side has indicated, some of them, that they felt shut out; they have not had a chance to speak. I would like to explore the possibility of some agreement, but I would need some time off. During that time I would need agreements that there would be no motions or no votes while the debate is going on.

Mr. BAKER. Mr. President, now I inquire of the distinguished Senator from North Carolina if he would have any objection to such an agreement, were it formulated and presented to the Senate.

Mr. HELMS. I say to the Senator from Tennessee that all I have done this entire week is protect my rights and the interests of the cause I am representing.

While we are on the subject, let me say that there have been certain assertions that there was some double-dealing in this matter. I ask the majority leader right now if I have misled him even once.

Mr. BAKER. Mr. President, the Senator has not. I have indicated to him that, while it is my job to try to protect the interests of every Senator—Senators on both sides of this issue—the Senator from North Carolina has always been square with me. He has never misled me. He has indicated no intention to deceive me, nor has he deceived or misled me. I state for the RECORD that he has dealt aboveboard in every respect, and I have no reservations in making that statement.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

The PRESIDING OFFICER. The hour of 11 a.m. having arrived, under the order previously entered, the Senate will now proceed to the consideration of House Joint Resolution 520, which will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 520) to provide for a temporary increase in the public debt limit.

The Senate resumed consideration of the joint resolution.

Mr. BAKER. Mr. President, a parliamentary inquiry. Does the order provide that the Senator from Oregon be recognized as we resume debate on this measure?

The PRESIDING OFFICER. It does.

Mr. BAKER. Will the Chair please recognize the Senator?

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator from Oregon may yield to me without losing his right to the floor and without his statements prior to or after this interruption appearing as a second speech under the rules.

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

Mr. BAKER. Mr. President, will the Senator yield to me under those conditions?

Mr. PACKWOOD. I yield.

Mr. BAKER. Mr. President, it seems to me that there is the possibility, at least, of working out something. I think the requirement of the Senator from Oregon, that he needs time to check with his conferees and allies, is reasonable.

I suggest, then, that we debate this matter for the next few minutes, while I explore the most reasonable time for the Senate to recess briefly.

I have in mind at this time—so that those who may be listening in their offices may hear and know what I am contemplating—that we recess from 12 until 1:30. That would accommodate, I think, the needs of some other Senators, and it would give the Senator from Oregon and the Senator from North Carolina time to check with their respective partisans and perhaps to bring us closer to an agreement.

First, I ask the Senator from Oregon whether that would be suitable for his purposes.

Mr. PACKWOOD. Yes—if we recess at 12 noon and I have the floor when we return from the recess.

Mr. BAKER. Yes. I include that in the request.

I ask the Senator from North Carolina if that would be agreeable to him.

Mr. HELMS. Mr. President, there is no problem at all. As I have said repeatedly, let us vote. The forces on my side—if indeed there are any forces—are not holding up this matter. We have not even been allowed to have the floor, except when I had to use some unusual circumstances to modify

my own amendment yesterday. I was forbidden to do that by my friend.

So I say to both Senator PACKWOOD and the distinguished majority leader that I want to accommodate the Senate in any way possible, and I think we should go ahead and vote in the order that the amendments appeared, under the Senate rules.

Mr. BAKER. I thank the Senator.

I see the distinguished minority leader on the floor. I would have consulted him in advance on this subject, but I believe he may have been testifying before a committee and could not be present at the time.

I am not sure whether he heard the nature of the request I am perpared to make—that is, at 12 noon we recess for an hour and a half, until 1:30, p.m., so that Senator PACKWOOD and Senator HELMS could explore the possibility of an agreement on some formulation on which we could vote, with the understanding that when we resume debate, the Senator from Oregon would once more be recognized.

Mr. President, I will put a request, now that I have had a moment to consult informally with the minority leader.

Still under the unanimous-consent request which was granted, that the Senator from Oregon will not lose his right to the floor, nor will the interruption create a second speech, I ask unanimous consent that at 12:15 p.m. today, the Senate stand in recess until 2 p.m.; that at 2 p.m., the Senate resume consideration of the pending business, the debt limit; that at that time, the Senator from Oregon, who presently has the floor, will be re-recognized, to proceed with his debate, without it being charged as a second speech.

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

Mr. BAKER. Mr. President, we now need some time for a variety of other reasons, for the transaction of routine morning business. In a moment, I will yield the floor, and I thank the Senator for yielding.

I am a firm and staunch believer in looking forward instead of backward, so what I am about to say is not meant to engage in a further analysis of how we reached the point we are at now, but I should like to say one thing for the RECORD.

Neither side, in my view, has misled me. Both sides have treated fairly with me, and I am grateful for that.

Yesterday what we had, in the parlance of the basketball world, was a tipoff. We had a free ball and threw it in the air to see who would be recognized. The distinguished President pro tempore was in the chair, and he recognized the Senator from North Carolina. I will not engage in that debate, except to say that no unanimous-consent agreement was violated.

There was a previous agreement, on the prior day, that the Senator from Oregon would be recognized. I recessed the Senate on the previous evening because we appeared to be stymied as to how to proceed next, with the understanding that we would resume consideration of that bill, that we would throw the ball up in the air and see how it came down.

So, Mr. President, all I want to say was that, so far as I am concerned, I do not feel misled in any respect. I have seen reports that one side or the other has taken advantage of the Senate or of me, and I wish to say that that is not my understanding of the situation.

Mr. PACKWOOD. May I ask a question?

Do I correctly understand, however, that under the normal precedents of the Senate, after the recognition of the leaders, it is usual for the manager of the bill to be recognized?

Mr. BAKER. Yes, Mr. President, that is the precedent of the Senate. The Chair ruled that the precedent applied in the case of simultaneous efforts by Senators to gain recognition; and as I understood the Chair, he ruled that the recognition effort was not simultaneous. That is not a matter I would care to judge, because I was not in the Chair, which is one of my many blessings.

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 11:30 a.m., in which Senators may speak for not more than 15 minutes each.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. That is not the end of the request.

I also ask unanimous consent that the interruption in this debate not be counted as a second speech to the Senator from Oregon and that after we resume debate on this measure, he once again be recognized.

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

Mr. BAKER. I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader and the distinguished Senator from Oregon.

NATIONAL SUDDEN INFANT DEATH AWARENESS WEEK

Mr. DURENBERGER. Mr. President, I send a joint resolution to the desk and ask for its immediate consideration.

Mr. ROBERT C. BYRD. Mr. President, will the Chair have the clerk state the title of the joint resolution first?

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 233) to provide for the designation of the week beginning October 1, 1982, as "National Sudden Infant Death Syndrome Awareness Week."

Mr. ROBERT C. BYRD. Mr. President, there is no objection to the immediate consideration of the resolution.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration and without objection the joint resolution will be considered to have been read the second time at length.

The joint resolution is introduced by Mr. DURENBERGER, for himself and Senators ABDNOR, BAUCUS, BURDICK, COCHRAN, CRANSTON, DANFORTH, DOLE, FORD, HATCH, HAYAKAWA, HEINZ, HOLLINGS, JACKSON, KASSEBAUM, LEAHY, LEVIN, LUGAR, MATHIAS, MCCLURE, METZENBAUM, MURKOWSKI, PACKWOOD, QUAYLE, SARBANES, WEICKER, ZORINSKY, GORTON, KENNEDY, PROXMIRE, CHAFEE, D'AMATO, and ROBERT C. BYRD.

Mr. DURENBERGER. Mr. President, I thank the minority leader and I thank the Chair.

Mr. President, each day, some 20 infants in the United States succumb while asleep to the sudden infant death syndrome, which is commonly called SIDS. Before it was called SIDS it was known to many as crib death. There is no warning and no reason to expect that any particular baby will die. But 7,000 of them do die each year in this country—7,000 apparently normal and healthy infants between the ages of 1 week and 1 year.

Little is known about his mysterious syndrome. It appears to be as old as recorded history, and it strikes every ethnic group, every social class, every economic stratum, every region of the world.

The death of any child is a senseless tragedy which can totally disrupt the lives of parents and siblings. But a SIDS death or crib death often results in unique and particularly traumatic problems for the families of victims. Because SIDS is not well understood and because it is not well known among the general public, the families of SIDS victims can often find themselves suspected of child abuse or child neglect. Even when an autopsy results in a formal finding of SIDS as the cause of death, friends, neighbors, and relatives often remain confused and parents often suffer from feelings of guilt. This added anguish can be helped with counseling where needed, but it can be avoided if more people are aware of SIDS in the first place. It was for this reason that Congress passed legislation in 1974 to provide for counseling projects and medical protocols in SIDS cases.

But SIDS cuts a wider swath. Because it is not well understood, it can cause panic among parents of any young children. Recently, for example, a brief news item concerning a possible link between SIDS and certain innoculations—a link which was disproved—caused many parents to insist that their children not be innoculated. More horrifying, a number of unscrupulous people have been known to capitalize on the ignorance about SIDS to peddle quackery.

Substantial progress has been made in the investigation of SIDS in the past few years. It is possible that we may soon be able to identify infants who appear particularly susceptible to this pernicious killer. Once identified, they can be closely monitored so that resuscitation is undertaken as soon as needed. But diagnosis and prevention remain only distant goals, and research must be supported with contributions.

In other words, there is a clear need for more awareness of the sudden infant death syndrome. A greater awareness by the public can help the parents of victims to avoid added anguish. Just as important, it can prevent panic among other parents. Finally, it can stimulate the contributions needed for further research.

Mr. President, for the last 10 years, I have known Dr. Ralph Franciosi, a young pathologist up in Minneapolis. He has dedicated his life at the Children's Health Center in Minneapolis to the study of SIDS, and to trying to spread knowledge, information, and a greater awareness among the public. But it was not until I received a phone call about 5 o'clock in the morning very early this spring from one of my legislative assistants who said only, "Something terrible has happened. Our baby is dead," that I felt as a U.S. Senator that I had to take it upon myself to inform my colleagues about their obligations to spread the word and increase the awareness of sudden infant death syndrome.

This resolution is only part of that process. What we and others do with this resolution from here on out is what will help other parents to avoid the problems experienced every year by 7,000 parents in this country.

That is why I have introduced this resolution designating the first week of October as National SIDS Awareness Week. It is why so many other Senators, more than 30, have cosponsored this resolution.

The breadth of support indicates just how serious the problem of sudden infant death syndrome is and how willing people are to work for its solution.

● Mr. QUAYLE. Mr. President, I rise to join my colleague, Mr. DURENBERGER, as he introduces this resolution to declare the week of October 1, 1982, as "National Sudden Infant Death Awareness Week."

Twenty times a day in this country a lifeless infant is found. These babies are normal, healthy infants that are found dead in their cribs by their families. One cannot imagine the grief and heartache these crib deaths bring into a family, nor the guilt or the prosecution.

Because these crib deaths are not well known, many families of sudden infant death victims are suspected of child abuse. In one case, three siblings were removed from the grieving parents by child protection authorities within hours of the death of the new baby. With more public awareness, these needless tragedies can be avoided.

I support this resolution because it will bring public attention not only to the problem, but to the progress that is being made, particularly in the development of monitoring for susceptible children. Infants who have had near misses can be monitored through their first year of life, when the danger of another episode appears to subside.

I commend the Senator from Minnesota for his interest in this problem, and join him in support of this resolution.

Mr. DURENBERGER. Mr. President, I move the adoption of this resolution.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. DURENBERGER. I yield.

Mr. ROBERT C. BYRD. I congratulate the Senator for his introduction of the joint resolution, and I wonder if I might be named as a cosponsor?

The PRESIDING OFFICER. Without objection, the Senator from West Virginia is added as a cosponsor.

If there are no amendments, the question is on the engrossment and 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.

The preamble was agreed to.

The joint resolution (Senate Joint Resolution 233), together with its preamble, is as follows:

S. J. RES. 233

To provide for the designation of the week beginning October 1, 1982, as "National Sudden Infant Death Syndrome Awareness Week."

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Whereas Sudden Infant Death Syndrome is a recognized disease entity which kills at least 7,000 infants per annum in the United States;

Whereas the victims of Sudden Infant Death Syndrome are babies who appear healthy but who nonetheless die without warning while asleep;

Whereas Sudden Infant Death Syndrome knows no boundaries of race, ethnic group, region, class or country;

Whereas Sudden Infant Death Syndrome is the leading killer of infants between the age of one week and one year;

Whereas Sudden Infant Death Syndrome annually kills more infants than cystic fibrosis, cancer, heart disease and child abuse combined;

Whereas research is underway throughout the world to identify the causes and process of this syndrome and to treat infants who can be identified as potential victims;

Whereas the parents and siblings of Sudden Infant Death Syndrome victims often suffer added anguish because many people are unaware of the existence of the pernicious killer; and

Whereas an increase in the national awareness of the problem of Sudden Infant Death Syndrome may ease the burden of the families of victims and may stimulate interest in increased research for the causes and the cure of Sudden Infant Death Syndrome: Now, therefore be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the week beginning October 1, 1982, is designated as "National Sudden Infant Death Syndrome Awareness Week," and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. BAKER. Mr. President, I have a number of items that are cleared for action by unanimous consent on this side. May I inquire of the minority leader if he is in position to proceed on items that I believe have been brought to his attention?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. I thank the Chair.

FEDERAL COMMUNICATIONS ACT AMENDMENTS—CONFERENCE REPORT

Mr. BAKER. Mr. President, I submit a report of the committee of conference on H.R. 3239 and ask 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 amendments of the Senate to the bill (H.R. 3239) to amend the Communications Act of 1934 to authorize appropriations for the administration of such Act, 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 today, August 19, 1982.)

Mr. GOLDWATER. Mr. President, I rise in support of the conference report on H.R. 3239, a bill that contains amendments to the Communications Act of 1934 to facilitate the provision of amateur radio and private land mobile radio services. I first proposed similar provisions to the Senate in 1979. That year, along with Senators SCHMITT, PRESSLER, and STEVENS, I introduced S. 622, the "Telecommunications Competition and Deregulation Act of 1979." No action was taken on that bill. On April 8, 1981, I introduced S. 929, a more far-reaching bill to improve the administration of these communications services. S. 929 was cosponsored by Senators PACKWOOD, SCHMITT, PRESSLER, STEVENS, CANNON, HOLLINGS, and INOUYE. The Committee on Commerce, Science, and Transportation reported that bill with amendments on September 18, 1982 and it passed the Senate on September 25, 1981.

Mr. President, I have been continually frustrated by the failure of many in Congress to appreciate the important role that ham operators and private land radio users have in our national communications system. With the passage of H.R. 3239, I hope we have finally overcome this failure to grasp the importance of these services.

The contributions of the over 400,000 amateur radio operators nationwide to the welfare and safety of the United States, through the furnishing of public service communications, emergency communications, technical self-training, self-regulation and advancement of the modern radio and television arts are too well documented to require elaboration. Nonetheless, threats to the continuation of amateur radio's unblemished record of service to the public exist from a number of sources, including governmental fiscal restraints, unintentional statutory restraints and problems arising from interference to home entertainment equipment through no fault of the amateur radio station. These problems can be easily solved at essentially no cost, and in most cases, the apparent solutions are actually cost-saving measures. Despite the simplicity and cost-saving aspects of these solutions, however, the need for them remains acute.

Amateur radio constitutes one of the best educational opportunities for America's youth and one of the most worthwhile pastimes for its elderly. The unavailability of Federal funds to administer this service need not and should not be permitted to preclude amateur radio involvement for the young or the elderly. Amateurs must be permitted, through voluntary efforts supervised by the FCC, to supply the services, including examinations, to those who would benefit from them, as funds are not available to supply these services any longer. In that regard, the FCC must insure that there are no conflicts of interest in the preparation and administration of amateur examinations and that no one is treated unfairly.

Judicial construction of statutory limitations have bound the hands of amateurs who would work together to identify intruders into the frequency bands used for amateur radio public service communications. It is imperative that amateurs be unfettered in their efforts to continue the cooperative self-regulation that has impressed regulatory authorities since the dawn of radio.

The problem of interference to television and other home entertainment equipment from transmitting equipment has plagued our citizens for years. Complaints are increasing at an exponential rate. This is not because of the transmitting equipment, but because of the need to incorporate inexpensive filtering mechanisms in home entertainment equipment. The need for better design now in such home entertainment equipment is critical to stem the tide of electromagnetic incompatibility now throughout our atmosphere and creating disputes among neighbors. The millions of purchasers of television and radio receivers and other electronic devices each year deserve and need protection from interference.

In addition, this bill contains a provision which will enable the FCC to eliminate licensing of citizens band radio (CB) and radio control (RC) services. The major purpose of this provision is to give the FCC the option of relaxing or virtually eliminating its regulation of operators in the RC and CB services. With respect to CB, licenses are available to virtually anyone who makes such a request. These licenses do not grant any special spectrum privileges, meaning that all CB licenses may use any of the 40 channels allocated to that service. These same considerations apply to the RC service. I believe this is a necessary step, and one which will result in significant savings to everyone concerned.

Mr. President, I also want to emphasize the importance of private land mobile services to the Nation. These services are rapidly becoming an important tool for small businesses to use in operating more efficiently. Also, police, fire, emergency rescue services and other governmental services are heavy users of land mobile radio, as are the railroads and motor carriers. Public utilities depend upon land mobile radio to promptly restore utility service to the public. Other uses include heavy construction, fuel oil delivery, manufacturing, the petroleum industry, and the forest products industry.

At a time of governmental belt-tightening at all levels, this bill is timely. It provides a means of cutting costs, eliminating problems which have plagued a most worthy public service-oriented avocation, and yet actually permits an increase in the availability of services to amateur radio, the most self-regulated radio service in the United States. In an electronic age, it is critical to nurture an interest in technical experimentation and development. Amateur radio inherently fosters such an interest. This bill is necessary to insure continued growth of the service and its continued effectiveness as a source of public service involvement.

Mr. President, the amateur radio and land mobile provisions in this bill are far too important to allow them to not be enacted this year. The time for action is now and I therefore endorse this bill.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the conference report 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.

BOUNDARY OF CRATER LAKE NATIONAL PARK

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1119.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1119) entitled "An Act to correct the boundary of Crater Lake National Park in the State of Oregon, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That (a) the first section of the Act entitled, "An Act reserving from the public lands in the State of Oregon, as a public park for the benefit of the people of the United States, and for the protection and preservation of the game, fish, timber, and all other natural objects therein, a tract of land herein described, nd so forth", approved May 22, 1902 (32 Stat. 202), as amended, is further amended by revising the second sentence thereof to read as follows: "The boundary of the park shall encompass the lands, waters, and interests therein within the area generally depicted on the map entitled, 'Crater Lake National Park, Oregon', numbered 106-80-001-A, and dated March 1981, which shall be on file and available for public inspection in the office of the National Park Service, Department of the Interior.".

(b) Lands, water, and interests therein excluded from the boundary of Crater Lake National Park by subsection (a) are hereby made a part of the Rogue River National Forest, and the boundary of such national forest is revised accordingly.

(c) The Secretary of the Interior is authorized and directed to promptly instigate studies and investigations as to the status and trends of change of the water quality of Crater Lake, and to immediately implement such actions as may be necessary to assure the retention of the lake's natural pristine water quality. Within two years of the effective date of this provision, and biennially thereafter for a period of ten years, the Secretary shall report the results of such studies and investigations, and any implementation actions instigated, to the appropriate committees of the Congress.

SEC. 2. (a) In accordance with section 3(c) of the Wilderness Act (78 Stat. 890, 892; 16 U.S.C. 1132(c)), certain lands in the Cumberland Island National Seashore, Georgia, which comprise about eight thousand eight hundred and forty acres, and which are depicted on the map entitled "Wilderness Plan, Cumberland Island National Seashore, Georgia", dated November 1981, and numbered 640-20038E, are hereby designated as wilderness and therefor, as components of the National Wilderness Preservation System. Certain other lands in the Seashore, which comprise about eleven thousand seven hundred and eighteen acres, and which are designated on such map as "Potential Wilderness", are, effective upon publication in the Federal Register of a notice by the Secretary of the Interior that all uses thereon prohibited by the Wilderness Act have ceased, designated wilderness. Such notice shall be published with respect to any tract within such eleven thousand seven hundred and eighteen acre area after the Secretary has determined that such uses have ceased on that tract. The map and a description of the boundaries of the areas designated by this section as wilderness shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, and in the office of the Superintendent of the Cumberland Island National Seashore.

(b) Within six months after the enactment of this Act, a map and a description of the boundaries of the Cumberland Island Wilderness shall be filed with the Energy and Natural Resources Committee of the United States Senate and with the Interior and Insular Affairs Committee of the United States House of Representatives. Such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such map and description may be made.

(c) The wilderness area designated by this section shall be known as the Cumberland Island Wilderness. Subject to valid existing rights, the wilderness area shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and where appropriate, any reference in that Act to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

Mr. MATTINGLY. Mr. President, it is with great pride that I rise to support S. 1119, which contains a provision establishing portions of Cumberland Island, Ga., as a wilderness area. Some sections of the island are being designated as potential wilderness and will remain so long as there are retained rights owners.

Cumberland Island is one of the many barrier islands along the southern Atlantic coast. Unlike so many of the islands, however, it is unspoiled by commercial development.

There are almost 20 miles of beautiful, untouched beaches. There are marshes, freshwater ponds, creeks, and forests that provide natural habitats for a host of plants and animals.

I cannot adequately describe the beauty of the island here on the Senate floor. Magazines such as National Geographic have attempted to capture the island in words and pictures. But none of these prepare the visitor for the full impact of Cumberland. It is a unique experience and I urge all Senators to one day visit this natural wonder.

The legislation before you today is the end product of more than 10 years of work. In 1972 Congress established the Cumberland Island National Seashore. Since that time, the Interior Department and the State of Georgia have acted to purchase much of the island.

The legislation will insure that the public will always have an unspoiled, natural Cumberland to visit. The provisions of the bill have been worked out carefully between private landowners, the Park Service, the State of Georgia, and other concerned groups. All deserve creidit for the many days of hard work that went into passing the bill.

The legislation has already passed the House, where it was attached by Congressman BO GINN of Georgia to the Crater Lake bill sponsored by Senator HATFIELD. I would especially like to thank Senator HATFIELD for his patience in this matter, as he watched the Georgia amendment slow down passage of his bill.

I was joined by our distinguished senior Senator from Georgia, SAM NUNN, in introducing S. 2569. That bill was the Senate's vehicle for hearings and committee approval. This enabling bill, S. 2569, retained the Cumberland Island language that is in the bill, S. 1119, before you today. I am deeply indebted to my distinguished colleagues Senator WALLOP, Senator MCCLURE, and Senator JACKSON for the expeditious way in which they handled the hearings and the markup on this companion bill.

And so, Mr. Presdient, I commend this bill to the Senate as one that is supported by all parties and will result in the protection of one of my State's and this Nation's treasures.

Mr. NUNN. Mr. President, today the Senate marks a significant achievement in the protection of one of the most outstanding natural areas remaining on our eastern seaboard by passing S. 1119 which designates the majority of the Cumberland Island National Seashore as a wilderness area.

My family and I camped on Cumberland Island during this past Easter, and I can personally attest to this island's beauty and tranquility. Cumberland Island is the largest and southern-most of Georgia's barrier island system. On Cumberland's eastern edge are waves of the Atlantic Ocean, a majestic white sandy beach that stretches for 16 miles with both shifting and stable sand dunes, some of which rise to a height of over 50 feet. West of and behind the dunes is the maritime forest of live oaks, pines, magnolias, hollys, palmettos, and Spanish-moss. Ribbons of tidal creeks slice through this deep forest and are home to waterfowl and alligators. West of the maritime forest is the salt marsh and the Atlantic Intercoastal Waterway.

In 1972, Cumberland Island was established as a National Seashore in order to preserve the scenic, scientific, and historical values of this unique land. Of the 36,878 acres within the national seashore area, the legislation which we are enacting today designates 8,840 acres as wilderness and an additional 11,718 acres as potential wilderness. This acreage comprises the mostly natural area of the northern half of Cumberland Island.

Passage of this legislation by the U.S. Senate guarantees the availability of experiences found nowhere else in the world. This legislation will assure that people seeking a natural wilderness experience will have an opportunity to see representative examples of all of the island's ecosystems under conditions almost identical to those discovered by the island's first inhabitants.

The existence within this wilderness area of a number of privately owned life estates, and of retained rights to vehicular access along the primitive island roads, presents a unique management challenge. Until these rights expire or are teminated, the National Park Service also will be permitted to use the existing access ways for emergency purposes, for essential law enforcement, and for administrative purposes necessary to meet minimum requirements for the administration of these areas as wilderness. The ultimate goal in the Cumberland Island wilderness plan is to phase out activities or uses which are nonconforming to wilderness as soon as it is practicable to do so, and these vehicular access uses—by both private residents and the National Park Service—are to be considered special and limited. Such uses which presently exist should not

be considered or allowed to become traditional or "established," as such term is used in the Wilderness Act.

At the same time, this legislation assures the availability of other examples of the same ecosystems to those people who are not seeking a wilderness experience by leasing the southern half of the island under nonwilderness management.

Mr. President, this bill represents the culmination of a long and deliberate effort by a great many people over a period of nearly 10 years to develop an appropriate wilderness plan for Cumberland Island. It represents the input of thousands of citizens, virtually all of the national conservation organizations, the National Park Service and the State of Georgia.

This work has been shepherded by my colleague in the House of Representatives, Congressman Bo GINN, and by individuals representing each of the major conservation organizations in my State.

I am pleased to join my colleague Senator MATTINGLY and these dedicated individuals in this effort to preserve for the enjoyment of future generations of Americans this remarkable part of our rich environmental heritage.

● Mr. McCLURE. Mr. President, for purposes of the legislative history on S. 1119, I would like to clarify that section 2 of S. 1119 is identical to the text of S. 2569, a bill to declare certain lands in the Cumberland Island National Seashore, Ga., as wilderness, ordered reported by the Committee on Energy and Natural Resources on August 13, 1982. The report to accompany S. 2569 (S. Rept. No. 97-531) provides the legislative history of the Senate for section 2 of S. 1119. The section-by-section analysis included in that report is particularly important and for ease of reference I quote it here in full:

Subsection (a) would designate certain lands as wilderness and potential wilderness additions at Cumberland Island National Seashore, Georgia. About 8,840 acres would be designated wilderness and about 11,718 acres would be designated potential wilderness. Most of the potential wilderness is intertidal area owned by the State of Georgia. The bill provides for public notification of future wilderness boundary changes and for making maps available to the public.

Subsection (b) provides that a map and a description of the wilderness boundaries be filed with the authorizing committees of the Congress within six months of the date of enactment.

Subsection (c) designates the wilderness as the "Cumberland Island Wilderness" and provides that the area be administered in accordance with the relevant provisions of the Wilderness Act.

Since so many of the other barrier islands of the Atlantic Ocean along the eastern seaboard of the United States are in various stages of development, it is most appropriate that the majority of the lands of the Seashore be retained in, and restored to the maximum degree possible, to their natural state.

The Committee supports the compatibility and reinforcement which wilderness designation provides in assuring that the dynamic natural forces at play on the wilderness-designated portions of Cumberland Island National Seashore will continue basically unfettered by activities of man.

Some present human activities and structures and evidence of past activities remain on the landscape, but will phase out in time. The Committee notes some complexities introduced into the wilderness designation action by virtue of: (1) the implications of the retained rights (including vehicle use) granted to former landowners; (2) the need to restore, maintain and provide public access to the historical values of the Plum Orchard mansion bounded by the proposed wilderness; (3) the geologically unstable intertidal zones proposed as potential wilderness additions and (4) existing non-conforming uses of the intertidal areas and related channels. The legally retained private rights which exist shall not be adversely affected by the designation of wilderness or potential wilderness. The Committee does express its desire, however, that insofar as possible as practicable, all such rights, as well as the management activities of the National Park Service, be exercised in a manner as compatible as possible with the wilderness and potential wilderness addition designations.

To the extent it can legally do so, the National Park Service is expected to manage the potential wilderness areas as wilderness, according to the provisions of the Wilderness Act of 1964. Although portion's of the island's existing primitive roads are included within the designated wilderness and potential wilderness areas, the Committee intends that while these access ways continue to exist for honoring retained private rights, the National Park Service may utilize these access ways for emergency purposes. The Committee intends that the National Park Service shall be permitted to respond in an adequate manner to any emergency that might occur within the designated wilderness or potential wilderness. Until all private rights expire or are terminated, National Park Service access within the designated wilderness or potential wilderness also will be permitted for essential law enforcement, and for administrative purposes necessary to meet minimum requirements for the administration of this area. The Committee intends that, wherever feasible, the use of non-motorized conveyance is preferred to the use of motorized conveyance. The Committee notes that nothing in the bill shall affect retained right agreements previously negotiated by the Government, nor shall the bill prejudice the standing of current private landowners in the negotiation of retained right agreements as part of future land sales, nor the renewal of special use permits in accordance with the established practices of the National Park Service.

The Plum Orchard mansion and grounds have been excluded from designation as wilderness or potential wilderness. That portion of Grand Avenue from Plum Orchard mansion to the southernmost wilderness boundary is designated as potential wilderness, and any part of it is intended to change to wilderness classification at such time that all retained rights for use of such road segments expire.

The Committee recognizes the need for access to Plum Orchard for purposes of public visitation and National Park Service restoration, rehabilitation and maintenance activities.

The National Park Service may provide access via the potential wilderness segment of Grand Avenue. The Committee does not intend that any motorized vehicle use of Grand Avenue should become a traditional or "established" use, as such term is used in the Wilderness Act, and all such motorized use shall be discontinued no later than the expiration of the last private, retained right to use any segment of the road. The Committee desires to be kept advised of the development of plans for access to Plum Orchard, and desires to be informed in writing of new access plans before they are implemented.

Existing utility lines may continue to be maintained by the minimum practical tools so long as the retained rights which require their existence remain. The Committee intends that the National Park Service be responsible for determining what constitutes the minimum practical tool(s) each time a maintenance activity is proposed.

Such tool(s) may include motorized vehicles and mechanical equipment if the National Park Service determines that the use of such tool(s) are (is) essential to repair and maintenance of the existing utility lines.

It is the intent of the Committee to allow for the continuation of the operation and maintenance of necessary navigation aids, dredging ranges and survey markers including those intended to assure proper alignments for the maintenance and use of the Kings Bay navigation channel. The agency responsible for these aids should consult with the National Park Service prior to taking actions other than routine maintenance within the wilderness and potential wilderness additions areas established by this Act.

The intertidal lands (those lands between mean high and mean low tides) within the boundary of the Seashore located north of Greyfield on the western side and north of Stafford Beach on the eastern side are designated as potential wilderness. These lands shall be classified as wilderness at such later time as title may be granted to the United States acting through the National Park Service. Since the channels, navigable by small craft, are not included within the wilderness or the potential wilderness additions, the existing uses of these channels for waterborne access or fishing shall not be affected or diminished. The Committee recognizes that these intertidal areas are unstable and subject to changes due to the tide and storm. Accordingly, the Committee feels that the wilderness map that is finally developed by the National Park Service should clearly set forth in writing the Committee's intent, as described in this paragraph, so as to preclude the need to publish new maps each time a physical change in the intertidal lands or channel configuration occurs.●

Mr. BAKER. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

The motion was agreed to.

Mr. BAKER. Mr. President, 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.

CONVEYANCE OF CERTAIN NATIONAL FOREST SYSTEM LANDS

Mr. BAKER. Mr. President, Calendar Order 700, S. 705, has been cleared on this side of the aisle for action at this time, and if the minority leader has no objection, I ask the Chair to lay before the Senate S. 705.

Mr. ROBERT C. BYRD. Mr. President, there is no objection.

The Senate proceeded to consider the bill (S. 705) to authorize the Secretary of Agriculture to convey certain national forest system lands, and for other purposes, which had been reported from the Committee on Agriculture, Nutrition, and Forestry with an amendment to strike out all after the enacting clause, and insert the following:

That for purposes of this Act—

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interest in lands under such regulations as the Secretary may prescribe; and

(3) the term "Secretary" means the Secretary of Agriculture of the United States.

SEC. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of value, including the mineral estate, to the lands being conveyed by the Secretary.

SEC. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more that $150,000, and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description that there was not such encroachment; or

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be consistent with the public interest, exclude from such determination the value of any improvements to the lands made by any person other than the Government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be consistent with the public interest, waive payment by any person of costs incidental to such conveyance or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section.

SEC. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining "approximate value"; and

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3.

SEC. 7. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

SEC. 8. The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or" and from the Committee on Energy and Natural Resources with amendments to the reported amendment of the Committee on Agriculture, Nutrition, and Forestry, as follows:

On page 5, line 15, after "lands", insert the following: "of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and."

On page 6, line 9, strike "approximate value,", and insert "approximately equal value,";

On page 6, after line 11, insert the following: "The Secretary shall insert in any such quit-claim deed such terms, convenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.".

On page 8, line 5, strike "consistent with the public interest", and insert "in the public interest,";

On page 8, beginning on line 13, strike "consistent with the public interest,", and insert "in the public interest,";

On page 8, beginning on line 15, strike "such conveyance", and insert "any conveyance authorized by this Act";

On page 9, line 4, strike "'approximate value'" and insert "'approximately equal value'";

On page 9, line 12, strike "System.", and insert the following: "System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.".

On page 9, line 17, strike "Sec. 8.", and insert "Sec. 8. (a)";

On page 9, after line 21, insert the following: "(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.".

Mr. DOMENICI. Mr. President, S. 705, the Small Tracts Act is long overdue because the problem it addresses grows with each passing day.

The problem is one that involves disputes between the U.S. Forest Service and adjacent landowners. These disputes have occurred as the Federal Government has engaged in resurveying of the public lands of this Nation. Those surveys are conducted today using the most modern technological equipment available. However, they have turned up numerous boundary discrepancies across the United States. This is not simply a New Mexico problem nor just a California problem. It exists across our Nation and currently the U.S. Forest Service has some 60,000 pending cases involving adjacent landowners who thought they owned land that they now find has been placed by these new surveys within the boundaries of our national forests.

I want to make it very clear that through absolutely no fault of their own these property owners now find their titles to deeds clouded and have seen, in some cases, improvements to their property now placed within the boundaries of the national forests. It is clear that these citizens relied on the only surveys that were available, those that had been done to the best degree possible years ago with the then-existing surveying equipment. Everyone, including the U.S. Government, thought those surveys were correct.

Now, if these disputes had occurred between two private landowners, the individual would have some recourse through the doctrine of adverse possession. However, under our laws, an individual cannot invoke that doctrine against the U.S. Government.

So what are the individual's options?

Of course the individual can perhaps sue the U.S. Government. That type of action is, needless to say, long and costly with no guarantee of vindica-

tion in our courts. And in most cases, the amount of land involved in these disputes is less than 10 acres.

Another method of satisfaction to the individuals involved is the use of legislative remedy or private relief bills which allow the individual to purchase the dispusted land back from the Federal Government or trade it back for an equal value.

Can you imagine some 60,000 individual relief bills coming before the U.S. Senate in trying to solve this problem?

I think S. 705 provides us with a solution to this dilemma. It also provides a form of relief to countless thousands of property owners across the Nation who just want this cloud of ownership lifted.

Simply stated, the Small Tracts Act allows the Forest Service at the local level to enter into negotiations with these individuals and, further, it gives the U.S. Forest Service the authorization to clear title.

I would point out that we have placed a cap on this legislation and only parcels of 10 acres or less can be returned to the property owners. It seems to me that the cap insures the fact that this act will not be abused. Furthermore, with this cap we allow the Forest Service to administratively resolve 99 percent of the existing disputes.

I think this bill, while not addressing all of issues involved with the Government's land survey problems, goes a long way in resolving the issue for thousands of our citizens. It is a fair bill that is supported by the administration, by the U.S. Forest Service, by countless organizations and by thousands of individual Americans.

I would point out that the U.S. Government has to some extent just begun its resurveying of Federal land across the United States. This means that today we may have 60,000 cases of boundary disputes and tomorrow we could easily have 100,000. Unless the Congress acts we are doing an extreme disservice to countless thousands of our citizens.

A similar measure is currently moving its way through the House of Representatives and, I am confident that once the U.S. Senate acts, the Members of the House will expedite this legislation.

Mr. HUDDLESTON. Mr. President, I support S. 705 as reported by the Senate Committee on Agriculture, Nutrition, and Forestry and the Committee on Energy and Natural Resources.

S. 705 authorizes the Secretary of Agriculture to convey certain small tracts of national forest lands to individuals and local governments. Presently, the Forest Service is responsible for managing many thousands of very small and irregularly shaped lots for which proper management is impractical. An example of such a parcel of land is a road right-of-way several yards wide and 33 miles long. By allowing the Secretary to sell or exchange these small tracts of land, S. 705 would enable the Secretary to better manage national forest lands.

In addition, some parcels of national forest land have been innocently encroached upon because of inaccurate surveys taken many years ago. S. 705 would provide a method of resolving innocent encroachment cases equitably and avoid lengthy and costly litigation for private landowners and the Government.

The amendments included by the Committee on Energy and Natural Resources would provide additional protection of the public interest. The committee's amendments specify that scenic, wildlife, and recreation values be included in assessing the value of small tracts to be conveyed.

I urge my colleagues to join me in supporting S. 705.

Mr. BAKER. Mr. President, there are amendments from the Committee on Agriculture as well as from the Committee on Energy and Natural Resources, is that correct?

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

The PRESIDING OFFICER. If there are no further amendments, 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.

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

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

The motion to lay on the table was agreed to.

USE AND DISTRIBUTION OF CERTAIN INDIAN JUDGMENT FUNDS

The Senate proceeded to consider the bill (S. 1986) to provide for the use and distribution of funds awarded the Blackfeet and Gros Ventre Tribes of Indians and the Assiniboine Tribe of the Fort Belknap Indian Community, and others, in dockets numbered 250-A and 279-C by the U.S. Court of Claims, and for other purposes, which had been reported from the Select Committee on Indian Affairs with amendments, as follows:

On page 2, line 8, strike "Reservation", and insert "Indian Community";

On page 2, line 23, strike "Reservation", and insert "Indian Community";

On page 3, line 6, strike "Reservation", and insert "Indian Community";

On page 3, line 12, strike "Reservation", and insert "Indian Community";

On page 3, line 19, strike "Reservation", and insert "Indian Community";

On page 3, strike line 24, through and including page 4, line 5, and insert the following:

(a) Eighty per centum of such funds shall be distributed in the form of per capita payments (in sums as equal as possible) to all persons born on or prior to and living on the date of enactment of this Act who are duly enrolled as Gros Ventre members of the Fort Belknap Indian Community who are at least one-quarter degree Gros Ventre blood or who are at least one-eighth degree Gros Ventre blood and at least one-eighth degree Assiniboine blood and who are not eligible to share in section 3 of this bill.

On page 4, line 19, strike "Reservation", and insert "Indian Community";

On page 5, line 14, after "Act", insert "or other Federal assistance programs"; and

On page 5, line 17, strike "Act", and insert the following:

"Act, including the establishment of deadlines for filing applications for enrollment.".

So as to make the bill read:

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 the law, the funds appropriated on January 23, 1981, in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724a), in satisfaction of a judgment awarded to the Blackfeet and Gros Ventre Tribes of Indians and the Assiniboine Tribe of the Fort Belknap Indian Community in dockets numbered 250-A and 179-C of the United States Court of Claims (less attorney fees and litigation expenses), including all interest and investment income accrued, shall be distributed and used as herein provided.

SEC. 2. The funds appropriated to the Blackfeet Tribe of the Blackfeet Reservation, Montana, in docket numbered 279-C, amounting to $400,000, shall be held in trust and invested by the Secretary of the Interior (hereinafter "Secretary") for the benefit of the members of the Blackfeet Tribe. The governing body of such tribe is authorized to utilize such funds on a budgetary basis, subject to the approval of the Secretary, for governmental operation and social and economic programs.

SEC. 3. The funds appropriated to the Assiniboine Tribe of the Fort Belknap, Indian Community, Montana, in docket numbered 250-A, amounting to $2,170,013 shall be used and distributed as follows: *Provided,* That no person shall be eligible to share in more than one award in his own right.

(a) Eighty per centum of such funds shall be distributed in the form of per capita payments (in sums as equal as possible) to all persons duly enrolled as Assiniboine members of the Fort Belknap Indian Community and born on or prior to and living on the date of enactment of this Act.

(b) Twenty per centum of such funds shall be held in trust and invested by the Secretary for the benefit of the members of the Assiniboine Tribe of the Fort Belknap Indian Community. The treaty committee of such tribe is authorized to utilize such funds on a budgetary basis, subject to the approval of the Secretary, for social and economic programs. Such programs may include but are not limited to land acquisitions and the development of local reservation projects.

SEC. 4. The funds appropriated to the Gros Ventre Tribe of the Fort Belknap Indian Community, Montana, in docket

numbered 279-C, amounting to $2,094,987, shall be used and distributed as follows: *Provided*, That no person shall be eligible to share in more than one award in his own right.

(a) Eighty per centum of such funds shall be distributed in the form of per capita payments (in sums as equal as possible) to all persons born on or prior to and living on the date of enactment of this Act who are duly enrolled as Gros Ventre members of the Fort Belknap Indian Community who are at least one-quarter degree Gros Ventre blood or who are at least one-eighth degree Gross Ventre blood and at least one-eighth degree Assiniboine blood and who are not eligible to share in section 3 of this bill.

(b) Twenty per centum of such funds shall be held in trust and invested by the Secretary for the benefit of the members of the Gros Ventre Tribe of the Fort Belknap Indian Community. The treaty committee of such tribe is authorized to utilize such funds on a budgetary basis, subject to the approval of the Secretary, for social and economic programs. Such programs may include but are not limited to land acquisitions and the development of local reservation projects.

SEC. 5. The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed pursuant to regulations prescribed by the Secretary. Per capita shares of individuals under age eighteen shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be necessary to protect and preserve the interests of such individuals.

SEC. 6. None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

SEC. 7. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act, including the establishment of deadlines for filing applications for enrollment.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

UP AMENDMENTS NO. 1254

(Purpose: To distinguish between membership in the Gros Ventre Tribe and the Fort Belknap Indian Community and to clarify that eligibility for per capita payments as provided in S. 1986 does not affect the Tribe's right to determine its membership)

(Purpose: To assure that other judgments awarded by the Court of Claims to the Gros Ventre Tribe of the Fort Belknap Indian Community are distributed in accordance with the provisions of S. 1986)

Mr. ROBERT C. BYRD. Mr. President, I send to the desk on behalf of Mr. MELCHER two amendments, and I ask unanimous consent that they be considered en bloc and that an explanation of the amendments by Mr. MELCHER be printed in the RECORD.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) for Mr. MELCHER proposes an unprinted amendment numbered 1254, en bloc.

Mr. ROBERT C. BYRD. 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:

On page 3, beginning on line 18, strike Sec. 4 and insert a new Sec. 4 as follows:

"SEC. 4. The funds appropriated to the Gros Ventre Tribe of the Fort Belknap Indian Reservation, Montana, in docket numbered 279-C amounting to $2,094,987, shall be used and distributed as follows: *Provided*, That no person shall be eligible to share in more than one award in his own right.

(a) Eighty per centum of such funds shall be distributed in the form of per capita payments (in the sums as equal as possible) to all persons born on or prior to and living on the date of enactment of this Act who are (1) duly enrolled members of the Gros Ventre Tribe of the Fort Belknap Indian Reservation who possess at least one-quarter degree Gros Ventre blood, or (2) who are enrolled in the Fort Belknap Indian Community and are at least one-eighth degree Gros Ventre blood and at least one-eighth degree Assiniboine blood and are not eligible to share in Section 3 of this bill.

(b) Twenty per centum of such funds shall be held in trust and invested by the Secretary for the benefit of the members of the Gros Ventre Tribe of the Fort Belknap Indian Reservation. The treaty committee of such tribe is authorized to utilize such funds on a budgetary basis, subject to the approval of the Secretary, for social and economic programs. Such programs may include but are not limited to land acquisitions and the development of local reservation projects.

(c) Nothing in this section is deemed in anyway to increase, diminish or in anyway affect the right of the Gros Ventre Tribe to determine its membership."

On page 5, after line 18, insert the following new sections:

"SEC. 8. Twenty-six and eight-tenths percent of funds in the amount of $29,404,951.84 (less attorney fees and litigation expenses), appropriated on June 30, 1981 in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724a), in satisfaction of a judgment awarded to the Blackfeet and Gros Ventre Tribes in Docket numbered 649-80L of the U.S. Court of Claims, shall be distributed to the Gros Ventre Tribe of the Fort Belknap Reservation in accordance with sections 4, 5, 6, and 7 of this Act.

"SEC. 9. Funds in the amount of $77,780.13 (less attorney fees and litigation expenses), appropriated on July 16, 1981, in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724a), in satisfaction of a judgment awarded to the Gros Ventre Tribe of the Fort Belknap Indian Community in Docket numbered 309-74 of the U.S. Court of Claims, shall be distributed in accordance with sections 4, 5, 6, and 7 of this Act.".

● Mr. MELCHER. The blood quantum requirements in S. 1986 for participation in per capita payments differ from the requirements for membership in the Gros Ventre Tribe, whose affairs are conducted by its treaty committee. The amendment clarifies that the distribution of the judgment awards will not affect tribal membership requirements. It should be noted that membership in the tribe is not synonymous with enrollment in the Fort Belknap Indian Community, which is made up of Indian residents of the reservation who have enrolled as either Gros Ventre or Assiniboine. Some are mixed blood of the two tribes, but the election determines how they participate in affairs affecting the entire Fort Belknap community.

The new section 8 relates to a plan for the distribution of judgment funds awarded by the U.S. Court of Claims in Docket 649-80L to the Gros Ventre Tribe of the Fort Belknap Reservation that was timely submitted to the Congress in accordance with the Indian Judgment Funds Act of October 19, 1973. The Gros Ventre Tribe was awarded 26.8 percent of the $29,404,951.84 judgment, with the remainder going to the Blackfeet Tribe. The Blackfeet Tribe's share of the judgment is not affected by the bill. The Gros Ventre plan, as submitted, was to conform to an amendment proposed by the Department of the Interior to S. 1986. However, the specific amendment referred to was further amended by the Select Committee on Indian Affairs in its business meeting. To be sure that the distribution of the Gros Ventre portion of the funds in Docket 649-80L is in accordance with the decisions of the select committee, the plan was disapproved by the Senate. (See: S. Res. 409, passed on June 16, 1981.) Section 8 authorizes the distribution of these judgment funds in accordance with sections 4, 5, 6, and 7 of the bill.

The new section 9 relates to a judgment in the amount of $77,780.13 awarded to the Gros Ventre Tribe by the U.S. Court of Claims in Docket 309-74 for which the Department of the Interior failed to submit a distribution plan within the statutory time limit. The funds were appropriated on July 16, 1981, and section 9 provides that these funds shall be distributed to the Gros Ventre Tribe in accordance with sections 4, 5, 6, and 7 of the bill.●

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

The amendments (UP No. 1254) were agreed to.

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

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

Mr. ROBERT C. BYRD. I take great pleasure in moving to table the motion

of the distinguished Senator, who serves very ably as majority leader of this body. I am able to win on these motions.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, it will not diminish the relationship between the two of us to say that if the Senator is going to win on something, I would rather it would be on this than almost anything else. [Laughter.]

ORDER THAT H.R. 5288 BE HELD AT THE DESK

Mr. BAKER. Mr. President, I ask unanimous consent that H.R. 5288 be held at the desk pending further disposition.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. BAKER. Mr. President, on today's Executive Calendar on my side of the aisle I find that I am prepared to proceed by unanimous consent to the consideration of nominations under Department of State on page 4, continuing on page 5 under New Reports in the Air Force and the Army, through page 6 and page 7, including nominations in the Navy, page 8 for nominations in the Marine Corps and those nominations under Securities and Exchange Commission, and finally, on page 9, the nominations placed on the Secretary's desk in the Air Force, Army, Marine Corps, and Navy.

Mr. ROBERT C. BYRD. Mr. President, there is no objection to proceeding with the nominations enumerated by the majority leader.

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

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering the nominations just identified.

The PRESIDING OFFICER. Without objection, the Senate will go into executive session.

Mr. BAKER. Mr. President, I ask unanimous consent that the nominees identified and listed just previously be considered and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered en bloc and confirmed en bloc are as follows:

DEPARTMENT OF STATE

William Schneider, Jr., of New York, to be Under Secretary of State for Coordinating Security Assistance Programs, vice James L. Buckley.

AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 8036, to be Surgeon General of the Air Force:

To be Surgeon General, USAF

Maj. Gen. Max B. Bralliar, xxx-xx-xxxx xxx-... FR, U.S. Air Force, Medical.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. John L. Piotrowski, xxx-xx-xxxx xxx-... FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, Section 601:

To be lieutenant general

Lt. Gen. Philip C. Gast xxx-xx-xxxx FR, U.S. Air Force.

ARMY

The following-named officer, under the provisions of title 10, United States Code, section 3015 to be Chief, National Guard Bureau:

To be chief, National Guard Bureau

Maj. Gen. Emmett H. Walker, xxx-xx-xxxx xxx-x... Army National Guard of the United States.

The following-named Army National Guard of the U.S. officer for appointment to the grade of major general as a Reserve commissioned officer of the Army under the provisions of title 10, United States Code, sections 593(a) and 3385:

To be major general

Brig. Gen. Herbert R. Temple, Jr., xxx-xx-x... xxx-....

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be general

Lt. Gen. Roscoe Robinson, Jr., xxx-xx-xx... xxx-... U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Alexander M. Weyand, xxx-xx-x... xxx-... U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsiblity designated by the President under title 10, United States Code, section 601.

To be lieutenant general

Maj. Gen. Emmett H. Walker, Jr., xxx-xx-x... xxx-x... Army National Guard of the United States.

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601.

To be lieutenant general

Lt. Gen. LaVern E. Weber xxx-xx-xxxx, Army of the United States.

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370.

To be lieutenant general

Lt. Gen. Hillman Dickinson, xxx-xx-xxxx, (age 56), U.S. Army.

NAVY

The following-named officer, under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601.

To be admiral

Vice Adm. Wesley L. McDonald, xxx-xx-xx... xxx-... /1310, U.S. Navy.

MARINE CORPS

Capt. Truman W. Crawford, USMC, for appointment to the grade of major (temporary) while serving as the Director of the Marine Corps Drum and Bugle Corps in accordance with article II, section 2, clause 2 of the Constitution.

SECURITIES AND EXCHANGE COMMISSION

James C. Treadway, Jr., of the District of Columbia, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 1987, vice Bevis Longstreth, term expired.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, MARINE CORPS, NAVY

Air Force nominations beginning Clayton B. Anderson, and ending Terrence P. Woods, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 10, 1982.

Air Force nominations beginning John S. Adams, Jr., and ending Allen V. Wexler, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 12, 1982.

Army nominations beginning Robert O. Porter, and ending Robert A. Sharp, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 10, 1982.

Army nominations beginning Enrique Del Campo, and ending Richard Hagle, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 12, 1982.

Marine Corps nominations beginning Robert L. Peterson, and ending Michael L. Zanotti, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 12, 1982.

Navy nominations beginning Michael L. Arture, and ending Charles E. Johnston, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 4, 1982.

Navy nominations beginning Javier Arquimedes Arzola, and ending Patricia James Watson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 10, 1982.

Navy nominations beginning Bruce P. Dyer, and ending Joseph C. Wiley, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 17, 1982.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nominees were confirmed.

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

The motion to lay on the table was agreed to.

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

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

LEGISLATIVE SESSION

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

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

ORDER THAT THE RECESS TODAY BE EXTENDED TO 2:30 P.M.

Mr. BAKER. Mr. President, I ask unanimous consent that the previous order providing for a recess of the Senate over until 2 p.m. be extended to 2:30 p.m. under the same terms and conditions.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

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

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A joint resolution (H. J. Res. 520) to provide for a temporary increase in the public debt.

The Senate resumed consideration of the Joint Resolution.

AMENDMENT NO. 2040

(Previously number UP amendment No. 1253.)

The PRESIDING OFFICER. The pending question is the Baucus amendment. The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, when I was speaking last night, we were talking about the so-called prayer portion of the substantive amendment before the body. Let me recap the situation. There is clearly a difference of opinion in this country on the subject of abortion. Should a woman have a right to make a choice whether or not she wants to have an abortion? There are people who feel strongly on both sides of that issue. There are well-intentioned people on both sides and we fully understand in this body that difference of opinion.

There is a second issue involved now before us that was not initially before us, and it has nothing to do with abortion. It has to do with the issue of the jurisdiction of the Federal courts over the subject of voluntary prayer in public schools. Only, in a greater sense, it goes way beyond that, because it has to do with the issue of whether or not this Congress has the right to take away from the Federal courts jurisdiction to hear cases involving fundamental constitutional issues.

Therefore, I want to read for the Senate the particular amendment that relates to the jurisdiction of the courts and voluntary prayer.

This section may be cited as the "Voluntary School Prayer Act of 1982" and

Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Appellate jurisdiction; limitations

"Notwithstanding the provisions of sections 1253, 1254, and 1257 of this chapter, the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any state statute, ordinance, rule, regulation, or any part thereof, or arising out of any act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and public buildings.": *Provided further,* That the section analysis at the beginning of Chapter 81 of such title 28 is amended by adding at the end thereof the following new item:

"1259. Appellate jurisdiction; limitations."

Provided further, That Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1259 of this title."; provided, further, that the section analysis at the beginning of chapter 85 of such title 28 is amended by adding at the end thereof the following new item:

"1364. Limitations on jurisdiction."

And provided further, That the amendments made by this section shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any case which, on such date of enactment, was pending in any court of the United States.

Translated into layman's language, that means essentially as follows: If this bill passes, we will be taking away by statute—which can be passed by 51 votes in the Senate out of the 100 and by a majority out of 435 in the House of Representatives—we will be passing by statute a bill that will take away from all Federal courts—Federal district courts, Federal courts of appeals, the U.S. Supreme Court—the right to hear any cases involving voluntary school prayer, including any appeal from any State court to the U.S. Supreme Court.

The reason offered by the proponents of this amendment is that they do not like the Supreme Court decisions on this subject which have limited school prayer. Those decisions started about 20 years ago. The gist of them is that you cannot have a school board or a State legislature or a Governor, or any other governmental body, write the school prayer which the school teacher is compelled to recite and the students in the class recite it with the teacher, unless they want to be excused from reciting. They can go stand in the hallway or go in the cloakroom, whatever. They are not compelled to do it. But in the process of not doing it they are going to have to distinguish themselves from their fellow students who are willing to stand and recite the prayer of the teacher.

The first issue, of course, is what prayer—assuming this statute passes—whose prayer? A Catholic prayer? A Baptist prayer? I would defy anyone in this Senate, let alone in the gallery, to sit down and attempt to get an agreement among the different religions in this country as to what would be a uniform, acceptable prayer that had any meaning.

In New York City, you have a heavy predominance in the public schools of Hispanics, many of whom are Catholic. You have heavy predominance of Jewish students who are obviously of the Jewish faith. Does it mean that the school board in New York City can write a prayer that would tilt toward the Jewish religion? tilt toward the Catholic religion? And despite the fact that many Baptists, Presbyterians, and Moslems go to those schools, they would be compelled to say the prayer or ask to be excused.

First, Mr. President, I defy you to try to write a meaningful prayer.

If the purpose of religion, as we understand it in our churches and in our homes, is to try to inculcate our families with the religion of the parents, to try to pass it on to our grandchildren, you do not do it by some meaningless, watered-down prayer that has no significance to anybody and is so inoffensive because it says nothing. Yet if you try to write a meaningful prayer, you are clearly going to have objections.

But if this amendment is agreed to, what it means is that any school district can decide what the prayer is going to be for that school district, compel the teacher to read it, and say that the students must recite it unless they are going to be excused.

If you do not like it, if your child is going to a school where a prayer is being given that you think tramples on your child's religion, you cannot sue in the Federal courts. That marvelous first amendment of ours that prohibits the Government from establishing religion will be of no help.

That is what is going to be accomplished if this amendment is agreed to.

I was struck by an article I read in the Washington Post some time ago, which read as follows:

PINEVILLE, LA.—At precisely 7:45 a.m. Principal Robert Cespiva eyed the wall clock at E. I. Barron Elementary School and made the day's first official announcement over the intercom: "Will everyone please stand while Matt Barlett leads us in prayer."

A fifth-grader stepped to the microphone, a pint-sized point man in Rapides Parish's (county) defiance of the U.S. Supreme Court. "Dear Heavenly Father," said Matt, 11, as students bowed their heads, "we are thankful for today. We ask that You let us live without committing any sins. In Your name we pray. Amen."

And with that, he was off to class, having sent a message from this Bible Belt of bayou rebels all the way to Washington, D.C., via the Lord.

Louisiana's law allowing voluntary prayer sessions in public schools was ruled unconstitutional by the U.S. Supreme Court last month, but many schools are praying away. The people of Rapides Parish say God and President Reagan are on their side.

As for the Supreme Court, "To heck with them," said Ina LaBorde, who defied a federal busing order last year to send her daughter, Michele, to all-white Buckeye High School. "I'm not going to let anyone tell me when my child can pray. If we're breaking the law, so be it."

All across America, people like Ina LaBorde are interpreting Reagan's election and his vow to get government off the backs of the people as a license to do their will, even if it goes against the law of the land.

"I feel like Reagan is cheering us on from the sidelines," said school board member Arthur Martin, 63, a local real estate man whose white Cadillac sports a "My Nationality, American" bumper sticker. "He keeps making references to God on the TV. In fact, he's the most outspoken president, in reference to God, we've ever had. I figure if he had to take a stand, he'd come out for prayer in public schools."

Mr. GOLDWATER. Will the Senator yield at that point?

Mr. PACKWOOD. I am willing to yield so long as I do not lose my right to the floor and so long as what I say following not be considered a second speech.

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

Mr. GOLDWATER. I thank the Senator. I wanted to ask a question relative to a court case. As I remember a court case which prohibited schools from giving prayer, did it not involve a prayer prepared by the State?

Mr. PACKWOOD. There is a particular case in Alabama where the prayer that is being given to the children in the Alabama schools was written by the Governor's son. That is being contested in court right now, yes. That is correct.

Mr. GOLDWATER. Could I ask a further question? Would the prayer amendment proposed by the Senator from North Carolina allow the Governor's son to write the prayer or the Governor or the school board?

Mr. PACKWOOD. Yes; it would.

Mr. GOLDWATER. Is there much argument against children praying in school as long as they pray in their own way?

Mr. PACKWOOD. I think Senator Danforth, if we every get to the substantive issue, will have a long amendment on that. So long as you or your child want to stand up and say a silent prayer to themselves, to their own God, there are many people who have no objection to that. But when the school board writes the prayer that you are going to say if you are going to say a prayer at all, that is an entirely different matter.

Mr. GOLDWATER. I agree with the Senator. I think that that one inclusion in Senator HELMS' amendment will destroy an amendment that many people in this body had hoped they could support, but I cannot support that type of prayer amendment. As much as I want my grandchildren to pray anytime they want to, I do not want them praying some prayer that somebody wrote. I hope that the Senator from North Carolina would understand this and remove it. But if he does not, he is going to lose some votes.

Mr. PACKWOOD. I thank the Senator from Arizona very much. I could not agree with him more.

May I ask a question of the Chair? What is the order of the Chair as to when we reconvene at 2:30? Who has the floor?

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon would be recognized and his speech will still be the first speech.

Mr. PACKWOOD. I would be recognized regardless of who had the floor when we recessed at 12:15?

The PRESIDING OFFICER. Will the Senator withhold for a minute?

The Senator is correct. Regardless of who has the floor at the time the Senate goes into recess, the Senator from Oregon will be recognized when the Senate reconvenes.

Mr. President, let me read that one sentence again. I am quoting now from Mr. Martin, school board member:

Just because the Supreme Court says it doesn't mean it is the law. The people are the law of the land.

Mr. President, it was only a few years ago, during the zenith of the Vietnam war, that we heard roughly that same chant:

Power to the people. It doesn't matter what the Supreme Court says about the legitimacy of the draft; it doesn't matter what the Supreme Court ruled about whether or not Americans have a right to be fighting in Vietnam. The people are the law of the land.

Mr. President, this country cannot be operated on the basis of everybody choosing to observe or not observe the laws as they choose. We are a free country. We vote every 2 years for the House of Representatives, we vote every 4 years for President. In addition, we elect a third of the Senate every 2 years. The legitimate way to express your complaints about Government is to change the Government when you have an opportunity to vote. But we do not selectively decide which laws we are going to observe and which ones we are not. And we do not, if we have any good sense, decide to try to overrule the Supreme Court by a statute when we do not like the constitutional decisions of the Supreme Court.

Do I like every decision of the Supreme Court? Of course not. When I was a young lawyer, I practiced extensively in labor relations. The court made decision after decision interpreting the National Labor Relations Act and upholding decisions of the National Labor Relations Board that I thought were wrong. I thought they were adverse to my clients. I thought they put us in a difficult situation in the area dealing with labor relations. I did not go out and attempt to say, I am the law, and thumb my nose at the Supreme Court.

If we can do it for prayer, and I want to emphasize that this is a constitutional right, there shall be no establishment of religion. If we can pass a law that says henceforth, the Federal courts, including the Supreme Court on any right of appeal, shall have no jurisdiction over the issue of establishment of religion, because that is what prayer is, then there is nothing we can not take away from the Supreme Court.

Do you think the local newspapers are unfair, think they slant the news? Take away from the Federal courts the right to review cases involving freedom of the press.

Are you mad because a group you do not like in your town gets a permit from the local city council and assembles 300 or 400 people in the city park and chants things you do not like and holds meetings you find objectionable? Get the city council to pass a limitation on the right to peaceably assemble. Then pass a law saying that the Federal courts cannot review the right of the citizens to assemble.

You do not like self-incrimination? You think that a defendant ought to have to be made to take the stand in a criminal trial regardless of the Constitution, that says no person shall be made to be a witness against himself? Pass a statute saying that, henceforth, the Federal courts cannot review any cases involving the fifth amendment and self-incrimination. It is easy to do.

When I was reading last night, I was reviewing the history of some of the efforts made by Congress to take away jurisdiction from the Court. I had just started to move into the issue of reapportionment of the legislatures and eventually of Congress because, prior

to 1964, in a case called Baker against Carr, the Federal courts took no jurisdiction over issues involving reapportionment.

We had congressional districts in this country with a million, a million and a half people; congressional districts with 50,000, 60,000, 70,000 people; we had legislative districts five, six, or seven times as big as other districts. While we all paid homage to the concept of one man, one vote, we did nothing to enforce it. Finally, the Supreme Court, after years of saying they would not interfere in this subject, found the disparity of representation so gross that it was a denial of the equal protection of the laws to the citizens when perhaps, in one district, a citizen's vote was worth 10 times as much as that in another district.

So, in those famous cases, Baker against Carr and Reynolds against Simms, the Supreme Court said, henceforth, that is out; the districts are going to be reasonable in size; one person's vote in a congressional district in Tennessee is going to mean as much as one person's vote in a congressional district in New York, Oregon, Connecticut, and Virginia. So Congress set about trying to undo that Supreme Court decision.

I continue with that history:

H.R. 11926 was introduced in 1964 by Congressman Tuck to remove the Court's appelllate jurisdiction and to deprive the inferior federal courts of trial jurisdiction in all cases relating to the apportionment of representation in state legislative bodies.

To translate what that means, it was to remove the jurisdiction of the Federal courts to determine whether or not you are being denied equal protection of the laws in reapportionment matters where you had districts that were horrendously different in population. Take it away.

The bill was referred to the House Committee on the Judiciary, but the Committee gave no evidence of intention to act on the bill. Therefore, proponents of the measure introduced a procedural resolution, which was referred to the Rules Committee and reported out, to discharge the Judiciary Committee from consideration of the bill and calendar the bill for immediate action by the full House. After an acrimonious debate, the resolution was passed and the bill was called for consideration. By nearly the same margin, the bill was subsequently passed. However, the Tuck bill died in the Senate without further action being taken. In the case of the Tuck bill, the House was affirmatively on record in a formidable way as disapproving of a particular doctrine enunciated by the Court, and one peculiarly close to the political question doctrine of justiciability. The relevant language of the Tuck bill was as follows:

"The Supreme Court shall not have the right to review the action of a Federal court or a state court of last resort concerning any action taken upon a petition or complaint seeking to apportion or reapportion any legislature of any State of the Union or any branch thereof. . . .

"(c) The district courts shall not have jurisdiction to entertain any petition or complaint seeking to apportion or reapportion the legislature of any State of the Union or any branch thereof."

The lack of action in the Senate on this bill is, however, illusory. The Senate had considered a bill introduced by Senator Dirksen which would have required that in cases before the federal courts which complained of malapportionment, the court, on petition, would be required to stay further action until two regular sessions of the legislature involved had passed. The House action in passage of a stronger measure was seen as a possible method of acquiring the Senate's approval of a lesser version; in fact, this was not to be successful.

Other than the Jenner Bill in 1958 and the Tuck Bill in 1964, no substantial activity took place in Congress to except subjects from the appellate jurisdiction of the Court until the Spring of 1979. During debate on the establishment of the Department of Education, Senator Helms proposed an amendment to exclude from the Court's appellate jurisdiction, and the inferior federal court's jurisdiction as a whole, any cases drawing into question the validity of state or local statutes or ordinances permitting voluntary prayer in public schools or other public buildings.

Subsequently, on the premise that the Department of Education bill would not otherwise pass, the Helms Admendment was added to a bill abolishing for the most part the mandatory jurisdiction of the Court—i.e. The Appeals Docket—thus permitting the Court complete control and discretion as to what cases it would hear. Thereafter, the Senate reconsidered the Helms Amendment as added to the education bill and tabled it; both the Department of Education bill and the Supreme Court jurisdiction bill was passed and sent to the House.

In the House, the Supreme Court jurisdiction bill, with the Helms amendment, was referred to the Committee on the Judiciary, but the Committee took no action. Congressman Crane filed a petition to discharge the Committee on the Judiciary of further responsibility for the bill, thus allowing individual Members to indicate whether they desired the bill brought before the full House. The petition for discharge, which is filed with the Rules Committee, is essentially the written version of the up-or-down vote on the procedural resolution which brought the Tuck bill to the floor of the House in 1964, and requires a majority of Members' signatures to become effective. Thereafter the Judiciary Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice held hearings on the school prayer amendment. However, neither the Committee nor the discharge petition brought the bill to the floor and the measure died at adjournment.

At the beginning of the 97th Congress, Senator Helms reintroduced his proposal as a free standing bill. On the House side, Representative Crane introduced an identical bill. The language is as follows:

"§ 1259 Appellate Jurisdiction; limitations

"(a) Notwithstanding the provisions of sections 1253,1254, and 1257 of this chapter the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any State statute, ordinance, rule, regulation, or any part thereof, or arising out of any act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and public buildings.

"For the purposes of this section, the term 'voluntary prayer' shall not include any prayer composed by an official or employee of a State or local government agency.

"§ 1364 Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1259 of this title."

Like its predecessors, the Helms bill responds to a perceived erroneous interpretation of the Constitution by the Court, in this instance to the cases of *Engel* v. *Vitale* and *Abington School District* v. *Schempp*. Engel held that the regulated recitation of the "Regents' Prayer" at the beginning of each school day violated the Establishment Clause of the First Amendment. Schempp held that mandatory Bible reading violated the Establishment Clause. The doctrinal development of the Establishment and Free Exercise Clauses has been steady since the mid-1960's. Most recently, the Court held that a University could not prohibit religous services held by students at its facilities, in *Widmar* v. *Vincent*. The bills to limit jurisdiction in instances of state regulation relating to voluntary school prayer would appear to preclude adjudications such as Widmar. The bills introduced in the 97th Congress are pending before the respective Committees on the Judiciary.

The only other substantial action in this area occurred in 1968 during consideration of what is now the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 3500 *et seq.* (1976). Similar provisions were included to limit the power of the Court in State criminal confessions cases, but these were dropped before passage. Other bills have not received attention on either Floor; the bulk of proposals introduced to limit the appellate jurisdiction or remedies of the Supreme Court have been reintroductions of prior bills.

Mr. President, I emphasize once more the seriousness of that with which we are dealing: Should we take away from the Federal courts of the United States the right to hear cases involving fundamental constitutional liberties, take it away, cannot hear it.

This debate is not a debate over whether we agree or disagree with certain decisions of the courts. As a matter of fact, I thought the best single statement that I have seen on this subject comes from Robert Bork. Robert Bork was a well-known professor of law in this country. He is a previous Solicitor General of the United States, and he has recently been appointed by President Reagan to the U.S. court of appeals. He is generally regarded as a conservative legal scholar, and his credentials on scholarship are without question unassailable. Professor Bork, now Judge Bork, did not think that the case of Roe against Wade, which was the case which granted to women the right to make the decision whether or not they wanted to have an abortion, was correctly decided. He thought that the Supreme Court overstepped its bounds in that case. He thought that their decision was unconstitutional. He means

that, of course, in a technical sense, because whatever the Supreme Court finds to be constitutional is what our forefathers said will be the final interpretation unless it is reversed by the Court itself or reversed by a constitutional amendment.

Professor Bork, now Judge Bork, thought the case was utterly and totally wrong. He said as follows:

The question to be answered in assessing S. 158—

S. 158 is the so-called human life bill and in that bill—it is a bill of Senator HELMS—we would take away from the courts the power to hear cases involving abortion—

is whether it is proper to adopt unconstitutional countermeasures to redress unconstitutional action by the Court. I think it is not proper. The deformation of the Constitution is not properly cured by further deformations. Only if we are prepared to say that the Court has become intolerable in a fudamentally democratic society and that there is no prospect whatever for getting it to behave properly should we adopt a principle which contains within it the seeds of the destruction of the Court's entire constitutional role. I do not think we are at that stage, but if others think we are then we should be debating not the technicalities of S. 158 but the question of whether we should retain, abandon or modify the constitutional function of the courts as we have known it since Marbury v. Madison in 1803. That is a legitimate subject for inquiry, but we ought not arrive at the answer in the narrow context of S. 158 without fully realizing what we are really discussing.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator from Oregon may yield to me without losing his right to the floor and without it counting as an additional speech.

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

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

Mr. PACKWOOD. I yield to the majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. BAKER. Mr. President, I ask unanimous consent that the time for the recess—which is now 12:15—ordered earlier today be changed to 12:30 and that the remainder of the order remain unchanged.

Mr. PACKWOOD. Mr. President, based upon the previous agreement, I have made arrangements to meet with some people at 12:15.

Mr. BAKER. Mr. President, I can assure the Senator that between 12:15 and 12:30, no action will be taken on this measure. I need the additional 15 minutes, however, in order to let another Senator try to clear another piece of work on this bill, and it is not possible for him to reach Senators who have to consider that by 12:15.

Senator LEVIN is trying to reach Senator DOLE, the chairman of the committee. I am not certain he will be able to do that by 12:15, and in order to accommodate that, I want to extend the time to 12:30.

Mr. PACKWOOD. I am wondering if there is a way we could put that into a unanimous-consent order, so that I could go to the 12:15 meeting without jeopardizing any of the parliamentary rights I would have.

Mr. BAKER. Mr. President, instead of extending the agreement, I will suggest the absence of a quorum at 12:15, and I will object to calling it off.

Mr. WEICKER. Mr. President, to accommodate the distinguished Senator from Oregon and the distinguished majority leader, if I took the floor at this time, would it be all right? What was the agreement as to whom should be recognized when we return?

Mr. BAKER. The previous agreement provided that the Senator from Oregon would be recognized when we resume debate on this bill.

Mr. PACKWOOD. That would be most helpful to me, if the Senator from Connecticut could have the floor until he yields it to the majority leader for the purpose he has requested; and when he returns at 2:30, I would still have my right to the floor.

Mr. BAKER. Mr. President, I amend the unanimous-consent request as follows: That at 12:15 the Senator from Connecticut (Mr. WEICKER) will be recognized; that the Senate will recess at 12:30; that at 2:30, the Senate will reconvene, and the Senator from Oregon will be recognized once more to resume the debate; that in neither case will the interruption—that is, of the Senator from Connecticut or the Senator from Oregon—count as an additional speech.

Mr. WEICKER. If, by some chance, the Senator from Oregon is in negotiations or discussion with the majority leader, why not just leave it that the Senator from Oregon or the Senator from Connecticut can resume at 2:30?

Mr. BAKER. I include that in the request.

The PRESIDING OFFICER. Will the Senator restate the unanimous-consent request?

Mr. BAKER. As we put it together, it is this: Instead of going out at 12:15, in order to accommodate certain Senators who must attempt to arrive at a time agreement—and they know that I wish them well in that respect—we will go out at 12:30; that at this time, the Senator from Connecticut will be recognized; that the Senate will recess then at 12:30, to reconvene at 2:30; that at that time, 2:30, the Chair will recognize either the Senator from Oregon or the Senator from Connecticut, depending on which seeks recognition at that point; and that the interruption of their presentation will not show as a second speech.

The PRESIDING OFFICER. Without objection, the new unanimous-consent request is agreed to.

Mr. PACKWOOD. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, I have in my hands a memorandum prepared by the Congressional Research Service of the Library of Congress. It is from the American Law Division. The subject is "Possible Arguments in Opposition to Amendment to Strip the Federal Courts of Jurisdiction over Cases Involving School Prayer."

[Memorandum]

(This is in response to your request for brief "talking points" that might be used in opposition to an upcoming amendment to the debt-ceiling bill. That amendment would eliminate the jurisdiction of the federal courts over cases involving voluntary school prayer. Arguments that might be used are attached.)

POSSIBLE ARGUMENTS IN OPPOSITION TO AN AMENDMENT TO STRIP THE FEDERAL COURTS OF JURISDICTION OVER CASES INVOLVING SCHOOL PRAYER

(1) If enacted, proposal would undermine the system of separation of powers embodied in the Constitution. The Founding Fathers created a system of government in which—the better to protect liberty—political power was dispersed rather than concentrated and certain rights of the people were enumerated. One aspect of this system was the vesting in the federal courts of the power to review the acts of the other branches of government, and particularly of the Congress, for consistency with the Constitution. As expressed by Alexander Hamilton in the Federalist Papers, this power of judicial review was deemed essential to the preservation of constitutional rights from "legislative encroachments."

"Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing."—The Federalist, No. 78

But the pending proposal would undermine this notion of an independent judiciary dedicated to upholding the Constitution against abuse by the other branches of government. It would vest in Congress the power to determine whether its acts should be subject to judicial review in the federal courts.

(2) Similarly, if enacted, the proposal would undermine the system of checks and balances created in the Constitution. Though creating a system of political power divided among three branches of government, the Founding Fathers provided as well for numerous checks and balances among and between the branches, again for the purpose of preventing the exercise of tyranny by any one branch and preserving liberty. Each branch was given some degree of authority with respect to the other branches. But the pending proposal, if enacted, would connote a plenary power in Congress, virtually unchecked and uncheckable by the other branches. Under the Constitution, the acts of Congress are subject to review in the federal courts, and this was seen as an essential restraint on majoritarian excess. But if Congress can insulate its own acts from review by the federal judici-

ary by simply denying the courts jurisdiction of their subject matter, that essential check on majoritarian excess would be eliminated.

(3) The proposal would substantially undermine the independence of the federal courts. The Constitution takes great pains to assure that federal judges can exercise their powers free from political pressures—life tenure, no diminution of compensation, etc. That independence was deemed essential if the courts were to maintain an "inflexible and uniform adherence to the rights of the Constitution, and of individuals . . ."[1] and to render judgment impartially. But the pending proposal would make judges less independent. To preserve their powers, they would have to pay close attention to the political tides of the moment, lest popular displeasure with their decisions cause Congress to divest them of jurisdiction in particular subject areas. As the Senate Judiciary Committee noted in 1937, in opposing President Roosevelt's plan to "pack" the Supreme Court:

"Courts and the judges thereof should be free from a subservient attitude of mind, and this must be true whether a question of constitutional construction or one of popular activity is involved. If the court of last resort is to be made to respond to a prevalent sentiment of a current hour, politically imposed, that Court must ultimately become subservient to the pressure of public opinion of the hour, which might at the moment embrace mob passion abhorrent to a more calm, lasting consideration.—S. Rept. No. 711, 75th Congress, 1st Session (June 7, 1937).

(4) The proposal attempts to amend the Constitution without using the procedures of Article V. The Constitution contemplates the overruling or revision of federal court interpretations of the Constitution in two ways-reversal by the courts themselves, and constitutional amendment. The former may happen as the courts themselves reconsider their previous decisions or as new judges are appointed to the courts. The latter is, perhaps, even more cumbersome, a process that Justice Frankfurter has described as deliberately "leaden-footed." The reason for the difficulty of the amending process was to assure that the basic charter of the nation would not be changed unless there was a considered consensus in the country that it ought to be changed. But the pending proposal attempts to obtain a reversal of Supreme Court interpretations of the Constitution without going through this process. It attempts to bypass the method set out in the Constitution for assuring that the Constitution is not changed for merely temporary reasons.

(5) The proposal would eliminate as well the other means of altering federal court interpretations of the Constitution—reconsideration by the courts themselves. By eliminating Supreme Court jurisdiction over the matter, the proposal would set in stone the Court's previous decisions on the matter of school prayer. State courts would remain bound by those decisions, and the possibility of Supreme Court revision of its precedents would be eliminated.

(6) The proposal is based on a pernicious assumption about the integrity of state court judges. The proposal would not in itself restore prayer to the public schools; that could occur only as stated authorities acted to do so and had their actions upheld by the state courts. Because the pending proposal would leave intact the Supreme Court's decisions on school prayer, that could occur only if state court judges, freed from the possibility of Supreme Court review, chose to ignore the Court's decisions. But Article VI of the Constitution makes it the "Supreme Law of the Land" and obligates state court judges, by oath or affirmation, to support the Constitution. Thus, as the Conference of State Chief Justices observed in a resolution adopted on Jan. 30, 1982:

"These proposed statutes give the appearance of proceeding from the premise that state court judges will not honor their oath to obey the United States Constitution, nor their obligations to give full force to controlling Supreme Court precedents."

(7) The proposal would undermine the essential function of the Supreme Court of giving national uniformity to the interpretation of the Constitution. The proposal, if adopted, would make the highest court in each state final arbiter of the meaning of the First Amendment in the context of school prayer. Thus, the possibility would be created of the First Amendment coming to mean different things in each of the fifty states. An individual's constitutional rights would become a matter of geography.

(8) Similarly, the proposal would undermine the supremacy of the Constitution and of federal law. If state courts could be the final arbiters of the meaning of the Constitution and of federal law within their jurisdictions, and if as a consequence the Constitution and federal law could be interpreted differently from place to place, it would mean little to say, as does Artaicle VI, that "This Constitution and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land . . ." That exhortation connotes some means to make it a reality, some national tribunal able to give binding and uniform interpretations to the Constitution and to federal law. As Chief Justice Taney stated in *Ableman v. Booth*, 62 U.S. (21 How.) 506 (1858):

"But the supremacy thus conferred on this Government could not peacefully be maintained, unless it was clothed with judicial power, equally paramount in authority to carry it into execution; for if left to the courts of justice of the several States, conflicting decisions would unavoidably take place . . . and the Constitutions and laws and treaties of the United States, and the powers granted to the Federal Government, would soon receive different interpretations in different States, and the Government of the United States would soon become one thing in one State and another thing in another. It was essential, therefore, to its very existence as a Government that . . . a tribunal should be established in which all cases which might arise under the Constitution and laws and treaties of the United States . . . should be finally and conclusively decided . . . And it is manifest that this ultimate appellate power in a tribunal created by the Constitution itself was deemed essential to secure the independence and supremacy of the General Government in the sphere of action assigned to it; and to make the Constitution and laws of the United States uniform, and the same in every State."

(9) The language of the "exceptions and regulations" clause itself suggests that it is not a grant to Congress of plenary power over the appellate jurisdiction of the Supreme Court. In contrast to the sweeping description of Congress' power relative to the inferior federal courts ("The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish"), the term "exceptions" suggests a broader power of appellate review in the Supreme Court immune from Congressional excision. As Attorney General William French Smith has stated:

"The concept of an "exception" was understood by the Framers, as it is defined today, as meaning an exclusion from a general rule of law. An "exception" cannot, as a matter of plain language, be read so broadly as to swallow the general rule in terms of which it is defined. Letter to Sen. Strom Thurmond, Chairman, Senate Committee on the Judiciary (May 6, 1982), reprinted at 128 *Cong. Rec.* S4727 (May 6, 1982)."

(10) The Case of *Ex parte McCardle*, 74 U.S. (7 Wallace) 506 (1868) is no justification for a broader interpretation of Congress' exceptions power. In that case the Court upheld the constitutionality of a Congressional act repealing an 1867 *habeas corpus* statute under which McCardle had brought his appeal. Even though the Court had already heard oral argument on the case, it promptly dismissed it, stating:

"We are not at liberty to inquire into the motives of the legislature. We can only examine its powers under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words. What, then, is the effect of the repealing act upon the case before us? . . . Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. 74 U.S. (7 Wallace) at 514."

But the Court carefully noted that Congress had repealed only the means provided in 1867 for appealing from a denial of *habeas corpus* and that it retained jurisdiction over such appeals if brought under the Judiciary Act of 1789. The case thus stands only for the limited proposition that Congress may eliminate one means of appealing from a denial of a petition for *habeas corpus* when another avenue remains open.

(11) More to the point of the proper scope of the exceptions power is the case of *United States v. Klein*, 80 U.S. (13 Wallace) 128 (1871). That case involved a statute adopted by Congress which provided that, contrary to a Supreme Court ruling, a Presidential pardon could not be used as the basis for claiming damages from the U.S. for property seized or destroyed during the Civil War and which further provided that the Supreme Court would have no appellate jurisdiction over any pending case if it found that a pardon had been held to be the predicate for such a claim. The Court held not only that the statute unconstitutionally infringed on the President's pardoning power but also that it unconstitutionally infringed on the Judicial function by prescribing a particular outcome for the cases pending before the Court:

"* * * The language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end * * * Congress has already provided that the Supreme Court shall have jurisdiction of the judgments of the Court of Claims on appeal. Can it prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred, because and only because its decision, in accordance with settled law, must be adverse to the government and favorable to the suitor? The question seems to us to answer itself. 80 U.S. (13 Wallace) at 145-147."

[1] The Federalist No. 78 (Hamilton).

The case establishes, in other words, that the separation of powers doctrine imposes substantial limitations on Congress' use of the exceptions power.

RECESS UNTIL 2:30 P.M.

The PRESIDING OFFICER. Under the previous order entered into, the Senate now stands in recess until 2:30 p.m. today.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. WARNER).

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, as we continue the debate on the Weicker-Baucus-Helms amendments, I would like to read a later communication from the American Bar Association, from the new president of the American Bar Association, Mr. Morris Harrell. It is dated August 18, 1982:

AMERICAN BAR ASSOCIATION,
Washington, D.C., August 18, 1982.

DEAR SENATOR: As the newly installed president of the American Bar Association, I write at this critical time to repeat, and reinforce strongly, the position of the ABA expressed by my predecessor, David Brink, opposing the many pending proposals to limit the ability of federal courts to act in abortion, school prayer and busing cases. I urge the Senate to reject any and all such proposals offered as amendments to the debt limitation bill, H.J. Res. 520, currently under consideration.

These proposals have been perceived by many as involving only positions for or against prayer, abortion or busing. But the truth is that they are unabashedly court-stripping bills, and that is the reason that thoughtful Senators on both sides of the underlying controversial social issues should recognize these proposed amendments for what they really are and join in defeating them.

The present proposed amendments are offensive to our American governmental framework and processes on two grounds. First, the means by which these proposals attempt to change constitutional law derogate the Constitution, the separation of powers and the restraint that traditionally and uniformly has been observed among the three branches of government. Second, the amendment procedure being used circumvents the normal legislative process by coupling two unrelated measures of great importance that deserve separate consideration, by forcing uncritical consideration of both as a unit and by avoiding customary and appropriate advance study.

Mr. President, I ask unanimous consent that I might be permitted to yield to the distinguished Senator from Vermont (Mr. LEAHY) for 10 minutes without losing my right to the floor.

The PRESIDING OFFICER. Is there objection?

Mr. WEICKER. Without this being construed as the end of the speech for the purposes of the two-speech rule.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. HELMS. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Chair asks the Senator from Connecticut to restate his request.

Mr. HELMS. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank my distinguished colleague from Connecticut, and I thank the Chair.

The debate over limiting Federal court jurisdiction to make changes in the nature and quality of rights declared by the Supreme Court under the Constitution is not new. It seems that every generation is bound to test the strength and the limits of the principles of an independent judiciary and the separation of powers. I compare the current assault on Federal court jurisdiction to attacks through our history on the first amendment. It is by now a truism that the first amendment is most ardently embraced when there is relatively little dissent in the society and most challenged when unpopular views seem to disturb the placid consensus.

Much the same can be said of our courts, the branch of Government devoted to interpreting our Constitution and laws, free of the pressures of the passing majority. A healthy and independent judiciary is never more necessary than at a time when there is impatience and discontent with the way the Supreme Court chooses to interpret the Constitution.

There are numerous bills before the Senate that seek to limit or eliminate the jurisdiction of the Federal courts, and the amendment of the Senator from North Carolina on school prayer eliminating both lower and Supreme Court jurisdiction is but one example. On some of the issues a majority of this body will agree with the underlying social goals of particular bills. But much more than school prayer, busing, or abortion are at stake, and much more than court jurisdiction will be limited if we let expediency become the engine of change.

In all of these examples, State statutes to be shielded from review would override rights declared and protected by the courts. The impatience and outrage of some Americans is directed to the fact that the courts move more slowly than legislative bodies, and a change in the law is brought about not in response to a public outcry for change but as a byproduct of a legal dispute arising under our laws—that is, a case or controversy.

In normal times, we all perceive a great personal stake in the independence of the courts. No one can safely predict whose rights will depend on that independence in the future. Therefore, we favor a strong judiciary, under law, rather than a judiciary that bends first in one popular direction, then in another. But to make this system work, no one has the right to look to the courts for a quick fix. No one has a stake in courts that can be easily persuaded to follow the howls rather than the law.

I do not accept the proposition that if Congress creates lower Federal courts it must endow them with unlimited authority to vindicate every federally created right. There have been limitations on Federal court jurisdiction, such as increases in the jurisdictional amount, changes in the nature of diversity and removal jurisdiction, and a few—very few—instances where Congress has limited Federal court jurisdiction altogether, such as the Norris-LaGuardia Act and the Tax Injunction Act of 1937.

But not even the few instances where Congress limited the jurisdiction of the Federal courts in specific subject areas did Congress ever go so far as to remove from the total protection of the Federal courts rights guaranteed under the Constitution. Through the lengthy and sometimes tumultuous history of Congress, many bills have been introduced to do just that, and none has ever passed. Through that long history the power of Congress to establish lower Federal courts and to make exceptions to the appellate jurisdiction of the Supreme Court has been exercised to adjust the scope and authority of the judiciary to better serve the needs of the litigants, to promote efficiency, to maintain a healthy balance between the State and Federal systems.

But there should be a clear distinction in the minds of every Senator between legislation to improve the courts and legislation to use the courts to accelerate changes in substantive constitutional law. The thrust of the court-stripping bills now before the Senate, including the amendment to the debt ceiling bill on school prayer, is to short circuit the normal processes for amending the Constitution, which are difficult and time consuming. But they are difficult and time consuming for a reason. The Constitution should reflect the wise resolve of the people, tested over time.

In the Constitution Subcommittee hearings on court jurisdiction conducted in 1981, we observed the Nation's finest legal scholars in a sincere and technically complex discussion of the constitutionality of various proposals to limit lower and appellate Federal court jurisdiction on an issue-by-issue basis. It is hard to predict the outcome of that same debate in the courts, simply because there is a scarcity of precedents truly on point. The scarcity, however, results from the devotion of past Congresses to the principle of shared powers and an unwillingness to buy fast changes in law at a steep constitutional price.

Among the eminent law professors who appeared before the Constitution

Subcommittee, a few believed that there were few limitations imposed by the Constitution on Congress under article III and that an underlying purpose of Congress to extinguish particular rights did not, in general, signal a violation of the Constitution. But it is interesting that most of the scholars who read article III broadly—that is, in a manner giving Congress relatively broad authority—also believe that it would be a tragedy for Congress to forgo the self-restraint that has united each generation with the next.

One witness, Prof. Martin Redish of Northwestern University Law School, believed that Congress has a broad authority under article III and that the court-stripping bills may be constitutional. But he ended his visit with us on a very different note:

> In past years, previous Congresses were also disturbed with many substantive decisions of the Supreme Court. They, too, considered legislation to curb the Court's jurisdiction. But, with rare exception, those Congresses declined to take such drastic action. I strongly urge you to exercise similar restraint, both for the good of the nation and for the rule of law.

The hearings and the opinions can only help us to decide if we have the authority to act. We must answer the question of whether we ought to act. It is that issue which must concern us all.

Nothing less than the rule of law is at stake. It may be shocking to think that not every syllable of every word necessary to protect the rights of citizens under the Constitution is located within the four corners of that document, that so much of the quality of constitutional government rests with the judgment of the fallible men and women who serve in government.

Limiting the jurisdiction of the courts as a means of reversing particular decisions or limiting their effects is a grave and potential threat to our system of checks and balances.

The separation of powers has never been absolute in our system of government. The three branches overlap. The lines of authority are at times unclear.

Underlying the success of the system over nearly 200 years, is a strong notion of comity and accommodation among the branches. The self-restraint exercised by each branch is strengthened by genuine concern about destroying that sense of comity, just as one is careful to nurture a fruitful relationship with a good neighbor.

Perhaps the most important language from the most important Supreme Court case on the issue of Congress control of the Supreme Court's appellate jurisdiction, ex parte McCardle, is the Court's simple description of what happens to the legal process itself when jurisdiction is eliminated:

> Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining in the court is that of announcing the fact and dismissing the cause.

In limiting the power of the Supreme Court, no one is left to declare the law. There are no rights out there that you can rely on. The people of our country must realize that if their rights are violated, they have no one to turn to.

Mr. President, the issue before us, the issue of court-stripping, is truly a radical issue. This is a radical concept. Anyone who considers himself a true conservative should reject this. This is radicalism in the extreme. This is a vast change in 200 years of our history. It is destructive of the process of three equal branches of Government.

Every school child in this country, if they have had even a modicum of training in the Government of their Nation, will tell you we have three equal and separate branches of Government. If this radical court-stripping move were to be adopted where we say there are two far more than equal branches of Government and there is a third branch of Government but a vestigial residue of its former self, not equal, unequal, grossly unequal, and that your rights, if they are not protected by the executive and the legislative, they will never be protected by the judiciary no matter what might be the makeup of the judiciary because they no longer will have the power to do so.

A Government of carefully balanced powers is very literally unbalanced and thrown into disarray. Relations among the three branches of Government are a careful mix of competition and accommodation. Without the final authority to declare the law in any branch, the will to accommodate the other branches declines, and the need to become the strongest branch, prevailing amid the chaos, grows ever greater.

The matter has never been put better than Alexander Hamilton stated it in the Federalist, No. 80:

> There ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the State legislatures without some constitutional mode of enforcing the observance of them? * * * No man of sense will believe that such prohibitions would be scrupulously regarded without some effectual power in the Government to restrain or correct infractions of them. This power must either be a direct negative on the State laws or an authority in the Federal courts to overrule such as might be in manifest contravention of the articles of Union. There is no third course that I can imagine. The latter appears to have been thought by the convention preferable to the former, and I presume, will be most agreeable to the States.

I hope that as we consider the amendment presented to this body earlier today, we can remember that what is permissible is not always wise. Simply because we can do it does not mean that we should. Simply because we have the power does not mean that it is good for our Nation. Congress must resist temptation to adjust the jurisdiction of the lower Federal courts, or of all Federal courts, to respond to particular decisions of the Supreme Court.

The process of constitutional amendment is clearly open to the Nation to alter or reverse a judgment of the Supreme Court. While that process is slow, the result is a more certain measurement of national sentiment and a deeper respect for the law that results.

In addition to the amending process, the power of the President to affect the makeup of the courts over time through judicial appointments is an important one. The President, and indirectly, the political process, can have a potent effect on law and public policy.

The 75th Congress was faced with a dilemma not unlike our own when it considered and rejected President Roosevelt's Court-packing proposal. The Senate Judiciary Committee rose to the occasion, despite the great pressure to speed along legislation that was designed to ease the pains of the Great Depression. The words of that committee could be our own today:

> Let us, of the 75th Congress, in words that will never be disregarded by any succeeding Congress, declare that we would rather have an independent court, a fearless court, a court that will dare to announce its honest opinions in what it believes to be the defense of liberties of the people, than a court that, out of fear or sense of obligation to the appointing power or factional passion, approves any measure we may enact. We are not the judges of the judges. We are not above the Constitution.

Mr. President, what the Judiciary Committee said during the 75th Congress should be harkened to by this Congress.

If the amendments before us were to be enacted into law, we would shatter the independence of the Federal courts. We would shatter the foundation of our freedoms which have been nurtured through 200 years of constitutional government. We would shatter the Constitution, itself.

The freedom of every American is at stake. And every American should know that we will have as much freedom as he or she is willing to fight for.

I believe the American people will not reject our history. They are not seeking a new, radical vision of America in which the Government can sweep into every corner of a person's personal life. I believe that when the American people understand the stakes we are playing for, they will do what every generation of Americans has done. They will fight to preserve

the Constitution and the freedoms it protects.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I resume the letter of August 18, 1982, from the president of the American Bar Association, Morris Harrell, to this Senator:

As you well know, the ABA takes no position on the issues of school prayer, abortion or busing, but is concerned that the pendency of another highly emotionally-charged debate over prayer or abortion will obscure the fundamental flaw in all these proposals. We emphasize again that the issue is not prayer, abortion or busing; the real issue is the integrity of our tripartite system of government. The ABA has long opposed any legislative attempt to alter constitutional law through means other than constitutional amendment. We believe that the enactment of any of these measures would constitute an unprecedented attack on the Constitution and the independence of the federal judiciary and establish unwise policy. Such proposals, if enacted, could be used in the future as precedents for effecting constitutional changes that would impair other rights of all Americans, including proponents of the present amendments. All such proposals should be vigorously resisted.

We also reiterate that the serious constitutional questions involved in these court limitation proposals deserve full consideration in Committee. Avoiding the healthy public debate currently underway in the Judiciary Committee and injecting the unrelated court jurisdiction issue into the debate over the debt ceiling would do a grave disservice to both issues.

We strongly urge that the Senate permit the normal legislative process to continue uninterrupted and to oppose any court-stripping proposals. Consequently, we endorse adoption of the pending Weicker and Baucus amendments.

Sincerely,

MORRIS HARRELL.

Mr. President, let me review for a few minutes, if I might, the amendment of the distinguished Senator from North Carolina. I will ask rhetorical questions as to the substance of that amendment.

QUESTIONS AND ANSWERS ON SCHOOL PRAYER BILLS

WHAT DOES THIS LEGISLATION PROPOSE TO DO?

This legislation would enable State courts to sanction "voluntary" prayers in public school classrooms. No longer would the Supreme Court be able to review State court decisions. Additionally, challenges to school prayer programs could no longer be brought in any Federal court.

The statutes do not define "voluntary" prayer, but it is generally assumed that the term refers to proposals whereby students, teachers or others offer prayers of their own choosing in school classrooms. Used as such, the term "voluntary" is a misnomer because, as the courts have found, prayer sessions in the schools are never truly voluntary. Students are pressured by their peers and teachers to participate in the prayer sessions and are severely stigmatized if they choose not to.

WHAT IMPACT WOULD THIS LEGISLATION HAVE ON THE FIRST AMENDMENT PRINCIPLE OF RELIGIOUS LIBERTY, THE ESTABLISHMENT CLAUSE, AND CHURCH-STATE SEPARATION?

This legislation would violate the fundamental principle of church-state separation and dilute the strength of the establishment clause. Its intent is to undermine those Supreme Court rulings which prohibit government sponsored and supervised prayer in public schools. This would directly violate the establishment clause which guarantees each and every citizen the right to be free of governmental entanglement with religion, such as prayer in the public schools. The passage of this legislation would run counter to American tradition and religious liberties.

WHAT IS THE CURRENT LAW ON THE SUBJECT?

In the early 1960's, the Supreme Court ruled in the cases of *Engel* v. *Vitale*, 370 U.S. 421 (1962) and *Abington School District* v. *Schempp*, 374 U.S. 203 (1963) that a State may not compose and prescribe a form of prayer for recitation in the schools, and that a State or city may not require the Bible to be read without comment and the Lord's Prayer to be recited in public schools. Following upon the principles established in these cases, Federal courts have forbidden students to compose their own prayers and offer them. As recently as January 25, 1982, the Supreme Court unanimously upheld a fifth circuit ruling that Louisiana's "voluntary" school prayer law which authorized local school districts to adopt a before-class school prayer period was unconstitutional. (*Treen* v. *Karen B.*, No. 81-1031)

Neither the fact that the prayer may be denominationally neutral, nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause . . . The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. (Engel at 430.)

Nothing under current law regarding school prayer prohibits a student from freely exercising his/her right to voluntarily pray. Religious freedom and true voluntary prayer for public schoolchildren has never been outlawed by the Supreme Court. Therefore, this legislation is unconstitutional and unnecessary.

WHAT ELSE IS PERMISSIBLE UNDER CURRENT LAW?

First, schools may use the Bible or other religious books as source books in teaching about religion.

Second, schools may offer a course in the Bible as literature and history.

Third, schools may offer objective instruction in comparative religion.

Fourth, students may study the history of religion and its role in the story of civilization.

Fifth, students are free to recite such documents as the Declaration of Independence which contain reference to God.

Sixth, students may sing the national anthem and other patriotic songs which contain reference and assertions of faith in God.

Seventh, references to faith in God in connection with patriotic or ceremonial occasions are permissible.

Eighth, students may be dismissed for sectarian instruction off school premises.

Ninth, school facilities may be rented during off-hours to religious groups if there is a general policy of renting the facilities to nonschool organizations.

WHAT IS THE GOVERNMENT'S ROLE WITH REGARD TO RELIGION?

Government's role has been and should continue to be one of neutrality. It should neither oppose nor support religion, favor one religion over others or favor nonreligion. It has no expertise in religion and should leave the teaching of theology and the practice of it to parents and theologians.

HOW WILL THIS LEGISLATION ALTER THE FEDERAL COURTS' ABILITY TO ADDRESS CONSTITUTIONAL RIGHTS?

This legislation removes the jurisdiction of the Supreme Court and the lower Federal courts in cases of government sponsored and supervised prayer in the public schools. It would establish a dangerous precedent of disabling the Federal courts and preventing them from protecting constitutional rights when those rights become politically unpopular. Only through decisions by the Federal judiciary has this country seen a uniform and consistent principle of judicial supremacy in matters of constitutional interpretation established in *Marbury* v. *Madison*, 1 Cranch 137 (1803). By precluding Supreme Court and lower Federal court review of any cases arising from State court decisions pertaining to school prayer, parents and other aggrieved parties would have no opportunity to acquire relief from State court decisions.

WHY DO MAINLINE DENOMINATIONS OPPOSE THIS LEGISLATION?

This legislation, contrary to the philosophical view of its proponents on other issues, would not get Government out of our lives. There would merely be a transfer of governmental authority and power from the Federal level to the State level. Local governments would be given greater power to intervene, influence, support and control religious exercises in the classroom.

These programs are never truly "voluntary" and produce psychological pressures upon the children who do

not wish to participate or whose parents do not wish them to participate. No child should be faced with the Hobson's choice implicit in any "voluntary" school prayer program: Either participate in a ceremony contrary to your religious beliefs or find yourself labeled as "different."

The Supreme Court's interpretation of the first amendment's wall of separation in school prayer cases is consistent with the Constitution and the intention of the Founding Fathers. It is in the best American tradition and serves religion and religious freedom. The legislation proposed is unconstitutional, unnecessary, and constitutes an unconscionable attempt to breach that "wall." It is an attempt which we strongly urge Congress to reject.

(Mr. HAYAKAWA assumed the chair.)

Mr. President, I would like to, if I might, at this time indicate for the benefit of those who might be listening to these words the difference between the prayer recited in this Chamber and that recited or that proposed to be recited in the classrooms of the Nation. Many times people say, "Well, prayer is recited in the Senate Chamber at the opening each day of this body." What has to be pointed out is that this Senator does not have to attend. He does not have to be in this Chamber and, indeed, may leave the Chamber in the middle of the prayer if he so chooses.

That choice and that option is not available to any child attending school. There is nothing voluntary about attendance at school. That is mandatory. So let us make it clear that when the term "voluntary" is used, it might be used in conjunction with the prayer. It cannot be used in conjunction with presence in the classroom. That is mandatory. That is the very distinct difference between the occasion of prayer in the Senate and the occasion of prayer in the public schools. One truly is voluntary in the sense that those who are in the Chamber do not have to be here and may leave. It is mandatory in the sense of the schoolchildren who are obliged to be in the classroom.

There are those who indicate that no harm can come from this, and, indeed, a young child does not have to listen. I ask anybody within the sound of my voice, what 6-year-old, 7-year-old child is going to stand up and insist on their constitutional rights? At that age and even older, when everybody stands, you stand; when everybody bows their head, you bow your head; when everybody mumbles words, you go ahead and mumble words. So, in the very real sense, neither is the exercise of the prayer voluntary to a young child.

I am well aware, Mr. President, that public polls are taken on this subject of "voluntary prayer in the schools." I am well aware that a majority say, "Let us have voluntary prayers in the schools." Maybe this is a good time for us to once again review the history of this Nation to come to an understanding as to what it is the Constitution of the United States says. These words were not planted here by some liberal fanatic from the 1960's and 1970's and 1980's. Rather, these words were carefully chosen and written on the basis of experience back in the 1700's.

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

No law. The Archbishop of Canterbury was not on the *Mayflower.* The Archbishop of Canterbury was not on the *Mayflower* because those who were on the *Mayflower* were fleeing from the state religion of England. That is our origin as a Nation. There is no greater mischief that can be created than to combine the power of religion with the power of government, and history has shown us that time and time and time again.

Now, tell me, what is the prayer to be if it is to be voluntary? Is it to be a Protestant prayer? Is it to be a Catholic prayer? Is it to be a Jewish prayer? Is it to be a Buddhist prayer? Is it to be a Mormon prayer? Or is it to be a mishmash of every religion known to the world and therefore meaningless?

The Constitution of the United States was not written for the generation that existed at the time of its writing. It was meant to last through all generations and all circumstances, and so now I pose to you the question: Who knows today whether any faith or any religion is the true faith or the true religion?

What the Constitution is saying is that when that comes along—if indeed none of the faiths existing today are the true faiths—when that comes along, the circumstances should exist whereby it could be proclaimed in total freedom to all the people of this country. That is the purpose of the Constitution.

So I do not care if a prayer is written that encompasses every faith in this country. I have to make sure that document stays clean for the faith that has not even been proclaimed yet. That is the purpose—not to tailor it to the existing circumstances or the people of this generation, but to make certain that it is operative for all generations and all circumstances and, in the case I am talking about, all faiths.

That is why I say that probably nothing is more important to the Nation than this debate.

It sounds very comfortable, very inspiring: One can almost envisage a Norman Rockwell painting, with people in their pews, with hands clasped, to illustrate all this business of prayer in school, as if it will protect us. The only thing that will protect us is the assurance, by the laws of this country, that no matter what a person believes, he will be able to practice it in total freedom, free from any hurt or any harm.

People say, "In the United States of America, in 1982, how can we have religious persecution?" Why do we have to put it in terms of persecution? Why do we have to put it in terms of anybody being burned at the stake, and so forth? Let us put it in its mildest form: Why should a child be embarrassed by his or her classmates because he or she fails to stand up or bow his or her head or mumble some set words prescribed by the Government of the United States?

I referred earlier to our history as a nation, when I said that those who came here were fleeing from religious persecution, the religion of the state—the Church of England. We are a nation of immigrants. Nearly all of us come from families that have practiced various faiths around the world.

It is ironic that here I stand as a citizen of the United States, reciting the history of a people fleeing from the Church of England, when my own great-uncle was the Archbishop of Canterbury. But I do not want a state religion in this Nation.

We forget so fast. It is not a matter that there is any peculiar mark upon all of us living in the year 1982 that we tend to forget our origins or the words in that document, because it was shortly after the arrival in the United States by those who were persecuted that they started their own persecution. The Salem witch trials are nothing of which any citizen of this Nation is particularly proud.

Ask my colleagues here on the floor of the U.S. Senate who are of the Mormon persuasion about the persecution of the members of their faith as they trekked across the Nation to find their final home in the West.

As I say, it sounds very convenient and very comfortable and warm and cozy, this idea of a little prayer. But the history of the world offers too many instances of being bathed in blood in the name of religion. What has distinguished the United States of America from any other nation has been our unwillingness to go down that path.

For those who disagreed with the Supreme Court decisions of several decades ago and thought the world was going to come to an end, I suggest that never before have we had such religious freedom in the United States of America. It was a touchy matter just within my lifetime to be Jewish. It was touchy to be Roman Catholic. Why should it have been? Who gave to anybody the right to say that Protestantism, my faith, should de facto be the State religion of the United States? Who gave anybody the right to do that? And the fact that that "right"

was taken away is bothersome? Not at all. It should not be. It should never have been. This is not a Protestant country; but for some 200 years it was—to the detriment of Catholic and Jew, to the detriment of the Mormon, to the detriment of many other minority faiths.

I do not yearn for those good old days. We are finally living what the Constitution says, and I want to leave it that way.

Just in our memory, President John F. Kennedy brought down the barriers that existed for politicians of the Roman Catholic faith. It was said that no Catholic could be President of the United States, because he or she would owe their allegiance to the Pope in Rome. That did not come out of your history book. Those were the words we heard as we were growing up. With the election of President Kennedy, that barrier came tumbling down.

Let me read some words of that President of these United States. During a campaign address in 1960, President Kennedy told the Greater Houston Ministerial Association:

> I believe in an America where the separation of church and state is absolute, where no Catholic prelate would tell the President how to act, and no Protestant minister would tell his parishioners for whom to vote, where no church or church school is granted any public funds or political preference, and where no man is denied any public office merely because his religion differs from the President who might appoint him or the people who might elect him.

When the Supreme Court banned school prayers in the New York public school system in 1962, President Kennedy commented:

> We have in this case a very easy remedy and that is to pray ourselves. And I think it would be a welcome reminder to every American family that we can pray a good deal more at home, we can attend our churches with a good deal more fidelity, and we can make the true meaning of prayer more important in the lives of all our children.

There was a man who understood what prayer is all about and what the Constitution is all about, whose faith had been denied access to the highest offices in the land because Protestantism was de facto the official state religion.

No, I think we are under a far better set of circumstances today, since that Supreme Court decision.

It is not up to the Senator on Monday to take up where the rabbi leaves off on Saturday or the priest or the minister on Sunday. That is not the job of the men and women of this Chamber.

It is all we can do to see the Constitution of the United States is lived up to, never mind some particular religious creed.

When I think of the teachings of my own faith on the matter of prayer, I recall the words of the Sermon on the Mount. I am reading from the Phillips edition of the New Testament, the Gospel of Matthew:

> Beware of doing your good deeds conspicuously to catch men's eyes or you will miss the reward of your Heavenly Father.
>
> So when you do good to other people don't hire a trumpeter to go in front of you like those play actors in the synagogues and streets who make sure that men admire them. Believe me, they have had all the reward they are going to get.
>
> No, when you give to charity don't even let your left hand know what your right hand is doing so that your giving may be secret. Your Father who knows all secrets will reward you.
>
> And then when you pray don't be like the play actors. They love to stand and pray in the synagogues and street corners so that people may see them at it. Believe me, they have had all the reward they are going to get. But when you pray go into your own room, shut your door and pray to your Father privately. Your Father who sees all private things will reward you, and when you pray don't rattle off long prayers like the pagans who think they will be heard because they use so many words.
>
> Go into your room and pray to your Father in secret because he knows all secrets.

Why all this great proclamation? Why this wearing of religion on the sleeve? Why the writing of these matters in the Constitution of the United States when they should be written in the heart?

This is one of the great debates, not in the sense of my contribution to it, but in the sense of the subject matter, that will ever come before this Chamber during the course of the lives of those both on the floor and in the galleries.

If anyone thinks that the problems of this Nation are reduced merely to those things which we hold in our hand, be it money, or be it an automobile or a home, or a television set, or all these matters—that has never been the measurement for greatness in this Nation. It has been our idealism, and the courage to have that idealism manifest itself time in and time out that has given to us the greatness that we enjoy.

You do away with the Constitution of the United States and what it says and the United States will not be No. 1 for very long, not with all the missile systems in the world, not with all the billions of dollars spent on defense, not with the greatest gross national product. The greatness of this Nation lies in those words, those principles, those ideals. They give to this very few people a greatness way beyond our numbers and way beyond the resources or the land that comprises America.

People have come here to this Nation because man and woman can speak whatever they feel. They can worship as to however they feel. Why is it up to us to narrow those visions and to define religion in terms of the religions that we know now? There might be something greater and more beautiful out there than anything we have ever heard or seen something that might be even truer than anything that we have had taught to us.

But it will take that much longer to flower and to be revealed to us by virtue of the fact that we have defined religion within the terms of our own experience.

I understand that it is difficult for those of us as we move along in years to comprehend what the status of the young of this Nation is compared to our experiences.

I was asked a question by the distinguished Senator from North Carolina—we had a good go-around on public television yesterday. He very articulately and eloquently expressed his point of view. I did my best to lay out on the table my own belief. He indicated to me that prayer was recited as he was attending public school. He asked me whether or not such was my experience. I explained I had not been to public school, that I attended private school, and indeed in the private school I attended, prayer was mandatory. Worship was mandatory, and believe me it was Protestant in form.

My Jewish friends either had to attend or they could stand in the park. The same holds true of my Catholic friends. And we looked upon them as something different just as they must have looked upon themselves. There have to be certain scars that go along with that, even though they are not the ones that you visibly see on a person.

Of my children, and there are eight of them, some go to private school and some go to public school. They have not had that experience. On the other hand, I think they probably have a more profound understanding of the world around them and a greater love and a greater beauty to their lives than I do mine. I wonder when I see them working with a group of retarded children, giving of their free time, whether or not that really is not a form of worship far more exhilarating and far more meaningful than my sitting in the pew in church with hands folded. It is certainly different, far different from what I did. But according to the matters in which I believe I think maybe they are closer to Heaven than I am. Times change. Love changes. Faith changes.

How we view our fellow man changes. But, yes, I believe this is a far more religious Nation, and one far closer to the ideals professed by many religions, today than it was 20 or 30 or 40 years ago.

People say, "Well, take a look at all the promiscuity, drugs and sex," and all the rest of it. There is only one difference, only one difference today. You are seeing it, you are seeing it in a free society.

Everybody is amazed. When I grew up, to be called Victorian was the epitome of strictness, of discipline. Now we know differently, do we not? We know behind those closed doors and under all those big dresses and all the rest of it that it was not such a disciplined or such a strict society. So that all that is different is not that the world is going downhill. What we see is with a far greater eye for the truth, and there is nothing wrong with that.

I do not feel my children are one step behind me. Indeed, they are ahead of me in the practice of ideals, the lessons I learned through a formalized instruction in my particular religious faith. Some turn to me and say, "Well, you know, unlike those of us who had to perform our military service, the youngsters nowdays do not have to go into the Army, the Navy, or the Marine Corps, or whatever, and, therefore, they are less patriotic."

They are not less patriotic. My kids and all those I know would lay down their lives just as would any other generation. They might demand a little bit of reason, a little bit of logic, before they do it. Too often in the past we have all gone marching just on the symbol of a flag to lay down our lives, not always necessarily in the greatest causes. Because there is some logic that comes to our patriotism, does that make somebody less patriotic? Hopefully, it takes us a step away from war and from death and from destruction. But indeed when we do lay them down, we know what we are laying them down for, and it will be for a good reason.

I remember when I first came to the Congress of the United States representing the Fourth District of Connecticut, and I believe it was during the October break, it was during the time of Vietnam, and a time of profound change in the physical, not just the mental but the physical, appearance of the Nation. Young people were considered to be disrespectful and not patriotic. We did not understand people who had beards and bluejeans and granny dresses and all the rest of it; they were different, they were not patriotic. To be sure, some were not patriotic.

But I always remember this: I remember a class of seniors from Roosevelt High School in Bridgeport, Conn., and they came down during their Thanksgiving vacation and they were dressed just as I have described to you. Their appearance was nothing that was in line with the way I had been raised or indeed the Nation as a whole had been raised. But when it came to the subject of patriotism, instead of standing all neatly dressed and cleanshaven in their classrooms in Bridgeport, Conn., reciting the Pledge of Allegiance to the flag and singing the Star Bangled Banner, they chose to take their Thanksgiving vacation and bring down to Washington, D.C., one-on-one a retarded child.

So I would have to ask the question, who is the greater patriot? That is a different form of patriotism, is it not, to share America with those who do not have the opportunity available to each one of us? All of a sudden the bluejeans and the beards and the stench, and everything else, are sort of forgotten. What a great act of Americanism.

There can be no returning to the good old days. I do not want people dying for just a flag or a bar of music. I want them to lay down their lives because this Nation in its living means something, has a value to it. To recite words, does that do any of us any good? Call it a prayer but it becomes just words and, indeed, if it is so watered down that it appeals to every religion in the world it cannot mean very much. By the time you are through with the Constitution of the United States and you throw in there busing and abortion and balanced budgets and congressional salaries and school prayer, it is not going to mean very much. It may make you feel good to read it but it will not mean anything, and it will not create something better as each day dawns on this Nation.

I do not recall, for example, that we can rest easy with religion around or that all good emanates from it. Where were the religious leaders of this Nation, where were they, when we unabashedly practiced segregation? That was not just something of the time of Martin Luther King. We have been practicing it since the document was written. Where were they? Where were all the great principles that were recited in church on Sunday and forgotten on Monday? Where were they? Maybe it will be that if indeed there has been a decline in church attendance that that will spur people on to doing a better job in convincing persons they ought to belong to some particular faith. I might add that my profession is not immune from that because we have had a little decline in attendance when it comes to voting. I have all I can do to take care of the Government side of the United States. Do you know where we have come to in this Nation? We are at the point now where a majority to elect a President of the United States is 29 percent of those eligible to vote. That was the majority in the last election.

A majority to elect a Senator of the United States is now about 25 percent. Probably a majority to elect a Congressman is somewhere around 20 percent. I should worry whether the churches are full? I have got to worry whether the voting booths are full of people who care about this Government, and if they do not then something is wrong in our own backyard.

Maybe it is that we are not living up to the ideals of that document so that we can inspire people to participate in Government, to elect the best, to vote. Obviously, we are falling short, and maybe so it is with the various religions in this country. No, the churches are not full. Maybe they had better do something about that. But that is their job. My job is to reinstill an enthusiasm and a faith and ideal in the political system of this country.

I have never seen a merger between two weak companies that ever worked, and that is what you are trying to do, trying to lean one on the other, religion and government, in this country. Each has to stand on its own two feet, and if it cannot, then shake it up, but do not glue them together because then we will both go down the chute.

I realize that at the outset of this debate I have got an awful lot of convincing to do. The polls say that, people say we ought to have prayer. But, it is to be hoped that by the time we are through we will have it clearly understood that what we are not talking about in any way is the stifling of religion but rather the encouragement of it.

I find it ironic that my conservative brethren, so-called, who want Government out of our lives want Government in religion. There are some areas where the Government should be because nobody else wants to go there. But religion is not one of those areas. Once the Government comes into our faith, then, believe me, it can tell you exactly what to believe in. That is not a happy circumstance for the United States of America.

Mark Twain had a great paragraph in his "A Connecticut Yankee in King Arthur's Court," which book a little later I think my colleagues would like to listen to. But Twain, speaking on the separation of church and State, said:

> Spiritual wants and instincts are as various in the human family as are physical appetites, complexions, and features, and a man is only at his best, morally, when he is equipped with the religious garment whose color and shape and size most nicely accommodates themselves to the spiritual complexion, angularities, and stature of the individual who wears it; and besides I was afraid of a united church; it makes a mighty power, the mightiest conceivable, and then when it by and by gets into selfish hands, as it is always bound to do, it means death to human liberty, and paralysis to human thought.

You see, he was not just a man who wrote about Tom Sawyer and Huck Finn. He knew about the spirits that bring greatness or bring tragedy to this world.

How many of you remember seeing the movie "Cromwell"? I remember that depiction of the Battle of Naseby. The two forces opposing each other across the valley were the forces of Charles I and the forces of the Lord Protector Oliver Cromwell. And there

on one side of the valley sat Charles I, next to him the Archbishop of Canterbury and all the bright Polesian horses and armored officers, with Charles I praying to the Almighty to give him the victory in the name of right. And the camera pans across the field and there sit the troops of the Lord Protector, a ragtag bunch, and there sits Cromwell on his horse, hands clasped, asking the Almighty to give him the victory in the name of right.

My job is not to define who is right. That is left to a far higher authority. And I do not know what that authority is. Do I think he exists, she exists? Yes. But there is no great wisdom on this floor of this U.S. Senate in the year 1982 that should make that determination.

So I would hope that everybody that is of a religious bent would please write their Senator and Congressman and ask them kindly to keep their noses out of their particular faith.

This is not the business of the U.S. Senate, the President of the United States, or the House of Representatives. It is the business of each American.

Do I encourage my fellow citizens to pray? Yes. And I hope that much of it will be devoted to those of us serving here in the U.S. Senate. But constitutionally for this body to tell you what to pray, that is a blasphemy. That is blasphemy, constitutionally.

Now we get back to the issue presented, the form as to how we are all supposed to line up here and pledge allegiance to some particular prayer that is going to be put together by—I do not even know what committee this is going to be assigned to in the U.S. Senate, but whatever it is let us talk about the form as to how we are going to achieve this.

We are going to achieve it, in essence, not by constitutional amendment, but by stripping the courts of their powers.

You see, as soon as I see that I smell the weakness of the case. Why not go the constitutional amendment route? Do you want to know why? Let me read to you from the Constitution of the United States.

This is not the personal credo of some screaming liberal. It is the Constitution.

This article is just as it was written. Just as it was written. Just as George Washington signed it. I do not think he has ever been put into the screaming liberal category.

Article V. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article, and that no State without its Consent, shall be deprived of its equal Suffrage in the Senate.

That is why we are coming down the road of court stripping. This is too tough. This is too tough. You cannot get it through, not for a long time. And, if there is any opposition, you might never get it through. But in the tempers of these times, in the philosophy and partisanship of this particular moment, it is the intention of some to quickly try to run it through the legislative route to strip the courts of their authority to protect the rights of all of us as Americans under the Constitution of the United States.

That is the reason why it is being done in the fashion of court stripping. The Constitution is too tough. Well, it was meant to be too tough. It was not easy to amend. It is not easy to amend the Constitution of the United States.

Now what? Is this generation going to be the one to change the rules of the game just so we feel good and cozy with our little prayer? Never mind future generations, never mind the protections of the courts. To heck with the first amendment and the Constitution as to no establishment of religion. Throw it all out. People will not care. You cannot drive it, you cannot live in it, you cannot watch it, you know, in the evening. Who cares about the first amendment? Who cares about article V of the amending process? Nobody even knows the Constitution anymore.

Make people feel good in 1982. But I am not going to let you feel good. It is a disagreeable activity on the floor of the U.S. Senate for Senator PACKWOOD, myself and others, who are clearly in the minority on this issue. The idea is to go along with the polls, go along with the majority and enjoy life.

No. If you are going to win this one, and I am addressing both my fellow Senators and the American people, you are going to have to fight very hard. You are not just going to have something handed to you. If you want to change the Constitution of the United States, and the ideals and principles that have brought this Nation to its present greatness, if you want to do that you are going to have to really fight.

This is not just the fight of a few Senators here on the floor, whether it is Senator BAUCUS, Senator PACKWOOD, Senator LEAHY, Senator SPECTER, or others. This is not our problem. I do not think that many people in the State of Connecticut care about what it is that is going on right now. I am up for reelection. I have things to do.

People ask, "How does this affect your election?" I do not think it is affecting my election one iota. Certainly it is not a plus. Certainly, it is true that I am not in Connecticut doing what I am supposed to be doing during an election year.

We have thrown too much of value out the window of late without exacting any price or any recognition of what it is we are doing. But when it comes to the Constitution, we all take an oath. We all line up, those who are elected come walking down this aisle and then move to the right, hold up the Bible and take an oath of office under the Constitution, to preserve it and protect it, and we are here for another 6 years. Most of the time they are great moments. They are moments of humor, moments of great thought, great debate, the adulation of the public, the television cameras, the press, all the rest. It is great. But then there come those times when you just have to stand in there. What you do is unpopular. But in this case I think it is totally necessary. It is one of those times. So much has been given away without anybody thinking twice or exacting any price for it. But I am saying, as I have said since the beginning of this session, leave the Constitution alone—alone. The Constitution is not in trouble. The words that are there are the words that have lasted for hundreds of years. The ideas have lasted for hundreds of years. The concepts.

There is nothing wrong with the Constitution. It is the country that is in trouble, big trouble. Unemployment, high interest rates, no homes being built. I can go down the whole list. There is the problem.

That is what we ought to be doing on the floor of the U.S. Senate. Instead, all we have to do is to fend off all this garbage that is being thrown out here in the name of social issues.

I will fight tooth and nail against the making of a trash basket out of this document. Maybe my generation is willing to let it go in return for "feeling good."

But then that means that my children and those after them will not have a United States of the same value as the one that was my Nation when I took my oath of office in that well. And I would hope others would feel the same.

Get on your Congressmen and Senators. Tell them to fix up the economy. Tell them to get people back to work. Tell them to bring the interest rates down. Tell them to get the housing industry and the automobile industry going. Tell them to clean up the air and all the rest. That is all well and good. But tell them that you want this document with the same value tomorrow, next week, next month, that it has today.

Right now it is all right. It has not been changed. But it is only when the American people speak on this subject that the efforts will stop here on the floor of the U.S. Senate.

This is not an exercise separate and apart from what the American people think and feel.

I remember several years ago an enterprising young radio reporter standing in the supermarket, I think in Miami, Fla., with a copy of the Bill of Rights. It was not labeled Bill of Rights. It was just a copy of the statements of the Bill of Rights. He had it there as a petition for people to sign. Seventy-five percent of the people he asked to sign it would not sign it, and the reason given was that it was some Communist document.

If everybody knows what is in here and they still want what is being advocated on the floor, I will give up. But I do not think anybody in this country has read this for a heck of a long time. I think they better start to do it.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Contained there is a whole group of concepts and of ideals just within the first amendment that are very uncomfortable to live with. But they were born of the discomfort that was visited upon those in their home country who came to found this one. They did not have a free press.

How many times do I hear people say, "The press is at fault. Look at all that bad news. Why do they not clean up what they talk about?"

They cleaned up the press in the nations from which our forefathers came and they did not have the truth. Hitler cleaned up the press. Stalin cleaned up the press. Brezhnev cleans up the press.

You either have the press free or you do not have it free. And there is no middle ground. That means you get the bad news with the good, and it means that you get the biggest bigots and the racists and the incompetents in the press along with the great people, just like life. You cannot pick and choose any more than you can pick and choose as to what the right religion is. Again, our forefathers came here when somebody tried to pick and choose the right religion.

Do you think there is some magic that is going to excuse us from the tragedies of history when it comes to religion, that we are going to escape scott free? The heck we are.

Freedom of speech, the right of people peaceably to assemble.

Well, the Ku Klux Klan was recently in Connecticut. You know, that is a thrill we do not normally enjoy up in my neck of the woods.

I have never been prouder of my State than I was several weeks ago. They were there. They were there. They went into town and there they were with their hoods and sheets, hiding behind whatever it is they hide behind, mouthing their thoughts, which defy every principle of religion or of State, as we know State in this country. But they were there.

People say, "Well, they should not be here. Let us get an injunction to stop them from speaking."

Let them speak. Do you want to know how to destroy the Ku Klux Klan? Let them get out in that bright sunshine and unload from those dirty minds with those dirty mouths. They will not last a week. They were made a laughingstock in the State of Connecticut with that hate. That has been an issue from time to time throughout the Nation, as to whether or not they should be permitted to speak, to assemble. They certainly should be. Nothing will knock them off faster than letting them speak.

On the other side of town, the NAACP was having a voter registration session.

Now, there is the difference of the United States, not to deny the Ku Klux Klan their first amendment rights but, rather, to assure every American of their right to vote. That way not only will the people of the Klan not get elected but the ideas they espouse will never come to pass.

That is the way you knock off the Klan. Let them do their work in the daylight and out vote them. Do not deny them their first amendment rights.

Mr. RANDOLPH. Will my able colleague yield?

Mr. WEICKER. Yes. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from West Virginia (Mr. RANDOLPH) for the purpose of debate only without losing my right to the floor and without this being construed as the end of the speech for purposes of the two-speech rule.

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

Mr. RANDOLPH. Mr. President, I am grateful to the able Senator from Connecticut.

The Senator has been discussing, very thoughtfully, a subject that needs to be discussed, the right of all eligible Americans to vote in our country. The trouble is that we talk about the right to use the ballot but we fail, in substantial degree, to use that ballot.

In 1960, when John Kennedy was elected President of the United States, 63 percent of the eligible voters in this country were at the polls. Approximately 1 year later, as I recall, he created a commission to study an appalling condition in the country where Americans do not vote. As many other studies, it went forward and then, gathered dust.

Twenty years later in this country we had not 63 out of every 100 Americans using their vote but the figure had dropped to 53.4 percent.

We are a republic of, for, and by the people. We talk of the strengthening of voting rights. I would appreciate it very much if the Senator and others would help me, and I would work with those of good intent, as is the Senator from Connecticut, to have that American ballot used at the polling place.

Most recently, in Michigan, for example, a State where there is heavy unemployment, with the condition of the automobile industry, that in the primary election contests for the governorship, approximately 21 to 22 eligible voters out of every 100 were at the polls.

I shall not ask my friend what the vote was percentagewise in Connecticut in 1980. It was 71.4 percent in the State of West Virginia. So I am not attempting to spell out States so much but to give an indication, with which the Senator would agree, that the strengthening of the voting rights legislation has seemingly not received a positive response from the American people.

I offered the constitutional amendment, first in 1942 when I was a Member of the House of Representatives, to provide the opportunity for 18-, 19-, and 20-year-old youth to have not only the right but the responsibility to vote. As the Senator will recall, the only State in 1942 to have this vote by our youth was Georgia.

In 1942 I was disappointed that in the process of the hearing on the subject only two members of the House Judiciary Committee were present—the veteran chairman, Emanuel Celler, of New York, and Representative John Tolan of California. The energetic young Governor of Georgia, Ellis Arnall, appeared and testified for the constitutional amendment. It went absolutely nowhere. It was 30 years later in this country that we gave the right, coupled with the responsibility, to vote to the young people of this Nation. We passed it in the Senate and in the House in 1971 almost unanimously and referred it to the States. In 90 days, the quickest time in which a constitutional amendment has received the approval of the States, we acted to provide the right and responsibility to our youth to vote.

In the last Presidential election, in 1980, only 22 out of every 100 of these young Americans went to the polls.

I hope that I have not made an interruption in reference to the Senator's discussion of the ballot and its use by saying we have every reason to mount a crusade for a nonpartisan effort—an effort in which leaders like the senior Senator from Connecticut,

can join, to elicit from men and women, fathers and mothers, youth, their sons and daughters, the responsibility of the use of the American ballot.

Mr. WEICKER. Mr. President, I agree with the comments of my good friend, the distinguished Senator from West Virginia. As usual, he has articulated the matter in a very expert way, in a way that clearly speaks from the heart.

He raises this very valuable point: We are not going to take care of the problem as articulated by the Senator from West Virginia by adding an amendment to the Constitution saying that we will all vote. We are not voting. The Senator is right: We are not voting. That is the situation in elections for Senators, President, and Congress—in Connecticut, West Virginia, and across the country.

Now, according to the temper of the times, we are going to put a little amendment to the Constitution saying that we will all vote. How do you think anything is going to change? The way people are going to vote is if we get good men and women running, if we have a simplified political process in which all can share in the selection of candidates. Get it out of the smoke-filled rooms. Get it to the American people. We are not going to accomplish it by saying that we will all vote.

Yet, that voting is absolutely key to everything else that issues therefrom—everything. The United States is only going to be as good as the men and women who run it. Right now, with only a few people voting, the emphasis is on mediocrity so far as the humanity of politics is concerned; and if that is the case, we are going to have mediocrity with the Government of the United States and everything this Government does.

Would it make everybody feel good? Do you want to feel good? Let us have a little amendment saying we will all vote. Let us write it in the Constitution: We will all vote. Does it make you feel good? Do you think one more person is going to vote than voted last week or last year? Not one.

Congress wants to balance the budget. So it seeks to write it in the Constitution. You will balance the budget by electing men and women who have the guts to stand up here and set their priorities and be willing to speak out for the costs of achieving those priorities. That is the way you balance the budget. You do not balance it by saying, "We are going to balance the budget." You do not get political participation by saying, "We will vote." You are not going to get great religious fervor by mumbling a prayer in school. And so on down the list.

There is no easy way to excellence or greatness. There just is not.

I hope that the words of the distinguished Senator from West Virginia are taken to heart, that people will realize the importance of what is at stake here in terms of their Nation.

We have had great pressure lately on the floor of the U.S. Senate on abortion, because somebody was elected just on the issue of abortion; or somebody was elected just on the issue of school prayer; or somebody was elected on the issue of busing; or just on the issue of balancing the budget.

How about the issue of the United States of America, of life in these United States? How about all those issues, instead of just one issue? I think it is terribly important that good men and women come down here.

I repeat: I respect the differing points of view as articulated by the distinguished Senator from North Carolina and others. I am not saying they are wrong. Obviously, they are very forceful in their presentation, and very convincing, if a lot of the polls I read are correct. But there had better be another point of view, and there had better be somebody here to enunciate it. The only time we really get into trouble in this country is when everybody agrees. Right now, the agreement is an agreement to silence, an agreement to the easy way out, and that is of concern.

I certainly hope that serious attention is paid to this matter by the Senate, that we stand up and be counted.

Mr. PACKWOOD. Mr. President, the Senate is deeply indebted to the Senator from Connecticut for the extraordinary analysis he has made, not just of the bill before us but also the fact that we are talking about something greater than just this bill. We are talking about a fundamental change in the concept of government, a change so fundamental that we have never even dared approach it with any seriousness since the founding of this country.

Mr. President, when I was speaking yesterday, I was talking about the history of the efforts that have been made—and they are only recent—to strip the courts of jurisdiction. They really started only in the 1950's, with the Jenner bill to strip the courts of jurisdiction over subversive activities. That was the word—subversive activities—however defined, and it can be defined by school boards or by States.

We had an effort to strip the courts of their right to hear cases on reapportionment after the Supreme Court made its famous one-man, one-vote decision in the mid-1960's.

Then, again, we did not have any serious effort until 1978 or 1979, when we approached the attempt to remove from the jurisdiction of the courts some of the issues with which we are now dealing.

Mr. President, one of the excellent memos that has been done on this subject was done by Mr. David Ackerman of the Library of Congress, entitled "Adoption of Bills Limiting Federal Court Jurisdiction over Prayer, Busing, and Abortion by Either House or Senate, Bills Pending in Present Congress." I should like to read that memo:

This is in response to your request for a listing of bills limiting federal court jurisdiction over prayer, busing, or abortion which have been adopted by either the House or Senate, and for a listing and brief description of such bills pending in the current Congress.

With respect to prayer, the Senate on April 9, 1979, adopted an amendment sponsored by Sen. Helms denying the federal district courts all original jurisdiction, and the Supreme Court all appellate jurisdiction, over "any case arising out of any State statute, ordinance, rule, regulation, or any part thereof, or arising out of an Act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation which relates to voluntary prayers in public schools and public buildings."

Several days earlier the Senate had initially added this amendment to the bill establishing the Department of Education by a vote of 47–37 after rejecting, 43–43, a motion to table the amendment. But on April 9 the Senate deleted the amendment from that bill and added it instead to a minor bill (S. 450) which specifically concerned federal court jurisdiction. That bill was then adopted by the Senate and became the subject both of an unsuccessful discharge petition campaign in the House and of hearings by the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee. But no further legislative action was taken on the bill.

With respect to abortion, neither the House nor the Senate has adopted any restriction on the federal courts' jurisdiction, although the Subcommittee on the Separation of Powers of the Senate Judiciary Committee has approved a bill (S. 158) which would, inter alia, deny the federal courts jurisdiction to issue any temporary or permanent injunction or declaratory judgment with respect to any state statute or municipal ordinance protecting fetuses or regulating abortions and an identical bill (S. 1741) has been placed directly on the Senate calendar.

Congressional action with respect to limitations on the jurisdiction of the courts to employ busing as a remedy in desegregation cases is detailed in the enclosed CRS report, "A Legislative History of Federal Anti-Busing Legislation: 1964 To 1981."

With respect to bills in this Congress relating to prayer, abortion, and busing which would limit or eliminate the jurisdiction of the federal courts, three constitutional amendments and thirty statutory limitations have been proposed. Each of the constitutional amendments—H.J. Res. 56, H.J. Res. 91, and H.J. Res. 95—would bar the federal courts from requiring that a student attend a particular school because of race. Eight of the proposed bills—H.R. 340, H.R. 761, H.R. 869, H.R. 1079, H.R. 1180, H.R. 3332, S. 1005, and S. 1647—would similarly extinguish federal court jurisdiction to order the attendance of children at particular schools, while three bills—H.R. 2047, S. 528, and S. 1743—would limit federal court

jurisdiction to order the transportation of any student except in specified circumstances. Six bills—H.R. 73, H.R. 900, H.R. 3225, S. 158, S. 583, and S. 1741—would bar the lower federal courts from issuing any injunctive or declaratory relief with respect to state statutes and municipal ordinances protecting fetuses or limiting abortions, while another bill—H.R. 867—would eliminate all original and appellate federal court jurisdiction over matters relating to abortion. Eleven bills—H.R. 72, H.R. 311, H.R. 326, H.R. 408, H.R. 865, H.R. 989, H.R. 1335, H.R. 2347, H.R. 4756, S. 481, and S. 1742—would eliminate all original and federal court jurisdiction over state statutes and regulations relating to voluntary prayer in public buildings. Finally, one bill—H.R. 114—would bar the federal courts from modifying any order of a state court that is or was reviewable in the highest court of a state.

Submitted by David M. Ackerman, Legislative Attorney, American Law Division, Library of Congress.

Mr. RANDOLPH. Mr. President, will my capable colleague from Oregon yield to me for an observation?

Mr. PACKWOOD. I yield, asking unanimous consent that I not lose the floor and succeeding comments that I may make not be counted as a second speech for the purposes of the two-speech rule.

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

Mr. RANDOLPH. Mr. President, I have listened with interest to what my colleague is saying. He has made reference, as our colleague from Connecticut has made reference, to constitutional amendments.

I do believe the record should indicate that we have had, as of now, 193 years under which Congress has been constituted as it is at this moment, only 26 amendments have been brought into being.

I shall not say that some were wrong and some were right. But I do for the record include one that I believe should be mentioned today and that was the right given to women to vote in the United States of America.

The record can further indicate that there are at the present time 8 million more women eligible to vote in the United States of America than there are men eligible to vote.

So as we look back to those earlier days of the so-called suffrage movement. It seemed that this constitutional amendment would not have support. But we have come forward with a greater activity, a greater participation of women in the body politic. I mentioned particularly the right of women to vote and a responsibility to vote.

Franklin Roosevelt at the very beginning of his first term in March 1933 nominated Frances Perkins to be the Secretary of Labor of the United States. She served for 12 years in a constructive manner indicating then as now that women have a very vital public role in this country. Only a few months ago President Reagan nominated the first woman to serve on the Supreme Court of the United States, Mrs. Sandra O'Connor.

I refer only to the earlier action with the nomination by Franklin Roosevelt of Frances Perkins, coming up to just a few months ago, as I have indicated, the first women to serve in the Supreme Court of the United States of America, and I supported both of those efforts. I supported the nomination of Frances Perkins in 1933, although I was not in the Senate. I could not on rollcall support it, but I advocated it then in the House where I served. Recently I supported with my vote the nomination of Mrs. O'Connor to be a member of the Supreme Court.

In fact, I testified before the Judiciary Committee, for Mrs. O'Connor.

I realize my comments today do not focus directly on the issues that are being discussed. I think however, that we must pause, in a sense, and mention the contributions of women, as well as men.

A young man asked me in recent days, "why is my one vote important, Mr. Randolph?" I said to him, as I have said to hundreds of young people, it is important, and I say this to the able Senator from Oregon, it is important because it belongs to that person, no one else. "It belongs to you and if you do not use it it ceases to exist."

Over and over, with an organization hopefully like Convention II meeting here soon on the 195th year of the Constitution, young people themselves must generate this effort to a greater degree than before. But with dad and mother not voting it is increasingly difficult, perhaps even though they have concerns, for them to vote in elections, local, State, and Federal.

The prayer and the abortion issues are controversial. I include in the RECORD today the words of a poem I shall read, called "There's Another Day."

If things go wrong
And skies are gray,
Remember—there's
Another day!
If paths are steep
And hard to climb,
Remember—sometimes
Things take time!
Don't give up hope
And don't despair,
Remember—God hears
Every prayer!

I believe those words by Helen Farries in her book—and I know they are believed by the Senator who now occupies the floor and allows me to interrupt him—that it all comes back to the belief that the individual himself or herself must feel so deeply on any of these subjects that they are direct participants in the process.

Perhaps, in the quiet of a morning or evening, it would be good to remember that there is another day. Each day on this Hill must be not just another day, Senator; it is a new day. I ask the Senators, the Representatives, those who sit in these galleries, to remember that there are firm foundations in this country. If we drift from these moorings we are in difficulty in a world of violence and strife and misunderstanding and war.

Mr. PACKWOOD. I thank my distinguished colleague from West Virginia. Few people have done more to advance the causes of women and the poor and disenfranchised than the Senator from West Virginia with his 50 years of service, with a slight intermission, as I recall, in the service of this country, having been elected for the first time in 1932 to the House of Representatives.

Mr. President, I ask unanimous consent that I might yield without losing the floor to my colleague from the State of Oregon, Senator HATFIELD, for the purpose of his making remarks.

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

Mr. PACKWOOD. I ask unanimous consent that my previous comments not be considered to be a second speech under the second-speech rule.

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

Mr. HATFIELD. Mr. President, I want to thank my colleague and friend from Oregon for yielding the floor at this time.

Mr. President, I will not belabor the constitutional issues involved when Congress attempts to wrest jurisdiction from the Federal judiciary. This constitutional question has been vigorously debated and is an issue upon which the minds of reasonable persons can, with good cause, differ. The grant in article III of the Constitution to Congress, which vests judicial power in such inferior courts as Congress deems necessary, is well documented. I am also aware of how, by curtailing the Federal court's jurisdiction, the Supreme Court's constitutional authority to interpret constitutional questions could be eviscerated, if not altogether eliminated.

No, Mr. President, I will not consume more of the Senate's time with an elaboration on the constitutional merits of court-stripping legislation. Even if we assume, for purposes of argument, that Congress is within the four corners of the Constitution when it enacts legislation that deprives the Federal judiciary of jurisdiction over controversial issues—in this instance, voluntary prayer in schools—Congress must still go a step further. An examination of constitutional authority should not be Congress primary inquiry. A cursory look at the language in the Constitution indicates that Congress has tremendous authority and

can enact a broad range of restrictive legislation.

If this body is to be truly a deliverative one, then it must ask the normative question: Should Congress legislate here? Should Congress consent to legislation which withdraws court jurisdiction from the Federal judiciary? In my estimation, this is the crucial channel of inquiry.

I oppose this court-stripping legislation because I perceive it as a gross intrusion into the sacred area which, throughout history, has separated our three branches of Government. By enacting this legislation, Congress would sanction affirmatively such an abhorrent invasion. What Congress is contemplating in the amendment offered by my colleague from North Carolina is no minor housekeeping matter. There is a fundamental question at stake in this debate, and that is: To what degree will Congress compromise our historical adherence to the constitutionally ordained and time-honored doctrine of separate but equal branches of government? That, my distinguished colleagues, is the pertinent question.

Mr. President, deciding what Congress ought to do is a two-step process. We must look into the past and we must glimpse into the future. From a historical perspective, I see a clear parallel between the proposal at the desk and the effort by President Franklin Roosevelt in 1937 to stack the Supreme Court so that the Court would render decisions consistent with the New Deal philosophy. A discussion of the history of this matter will not only set the amendment being considered today in close perspective, but will be sufficient to caution against similar assaults on the judiciary, both now and in the future.

Rather than consume precious time of the Senate by expounding on the details of President Roosevelt's initiative, I have a prepared statement that I would like to insert into the RECORD, Mr. President, which adds a historical color to this debate and which discusses the events of some 45 years ago when revolutionary use of Executive power was tempered by legislative review.

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

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

STATEMENT OF MARK O. HATFIELD

Mr. HATFIELD. Mr. President, in November 1932, the Nation voted in large Democratic majorities in the Congress and a Democratic President. President Roosevelt made it clear that he would exercise "broad executive power to wage a war against an emergency as great as the power that would be given me if we were in fact invaded by a foreign foe." He called an emergency session of the Congress and during the next 100 days passed into law much of the New Deal.

Legislation passed included such bills as the Emergency Banking Act, which called for the surrender of all gold and gold certificates to the Treasury Department; the Agricultural Adjustment Act, which provided for an agreement between the Federal Government and farmers that the farmer would plant fewer acres and in return would receive better prices for his goods through a Federal subsidy; the National Industrial Recovery Act, which established codes of fair competition for wages, prices, and trade practices; and the Tennessee Valley Authority Act, which created a Government corporation to construct dams to develop the Tennessee Valley region. Each of these bills was based on the emergency powers of the Executive and the power of the Congress to act on behalf of the general welfare of the Nation and to regulate interstate commerce. Each was passed with alacrity due to the pressing needs of the moment by a Congress that was most receptive to supporting the President.

However, the New Deal package encountered significant opposition in the Supreme Court, which was not receptive to this revolutionary use of Executive power. Between January 1935 and June 1936, the Supreme Court ruled against the New Deal in 8 out of 10 major cases involving New Deal statutes. The only measures upheld by the Court were the monetary legislation of 1933 and the creation of the Tennessee Valley Authority.

The first major New Deal measure to be overturned was the case of Panama Refining Company against Ryan, the hot oil case, where the Court held unconstitutional the portion of the National Industrial Recovery Act (NIRA) which provided for a code to govern the production of oil and petroleum products. The Court held that the contested portion unlawfully delegated legislative power to the President.

Shortly thereafter, the Court struck down the Railroad Pension Act. This action was based on the Court's view that Congress had exceeded its scope of power to regulate interstate commerce when it approved the creation of an industry-wide pension system. The vote on this ruling was 5 to 4 and initiated a series of votes by that tally, indicating an ideological split against the New Deal on the Court.

On "Black Monday," May 27, 1935, the Court, in unanimous decisions, struck down the National Industrial Recovery Act, the Frazier-Lemke Act and ruled that the President lacked any inherent power to remove members of the Federal Trade Commission from their posts. FDR was particularly upset at the Court's actions in overturning the NIRA, as it was the foundation of the President's recovery program. In expressing his frustrations with the Court, FDR stated:

"Is the United States going to decide . . . that their Federal Government shall in the future have no right under any implied or any court-approved power to enter into a solution of a national economic problem, but that the national economic problems be decided only by the states? . . . We thought we were solving it, and now it has been thrown right straight in our faces. We have been relegated to the horse-and-buggy definition of interstate commerce.

The Court continued its opposition to the New Deal in 1936 as the court struck down several portions of the New Deal. On January 6, 1936, the Court opposed the Agricultural Adjustment Act as an unconstitutional invasion of State's rights. In May 1936, the Court struck again, as it held the Bituminous Coal Conversion Act to also be an unconstitutional invasion of State's Rights. One week later the Court maintained the same position in overturning the Municipal Bankruptcy Act.

Throughout this time, opposition to the actions of the Court in overturning New Deal legislation was mounting throughout the country and within the administration. The Nation was viewing the court as an obstacle to much-needed reform and several Members of Congress introduced bills which ranged from expanding the size of the Court to allowing congressional override of Court decisions.

In response to this growing concern and based on an overwhelming mandate from the Nation, FDR moved with a plan to increase the size of the Supreme Court to 15 Justices, creating one new seat for each Justice who, upon turning the age of 70 refused to retire. While calling for other changes, such as the creation of additional judgeships and assignment of judges to congested areas to relieve the backlog of cases, the President's purpose was barely concealed:

"During the past half-century the balance of power between the three great branches of the Federal Government has been tipped out of balance by the Courts in direct contradiction of the high purposes of the framers of the Constitution. It is my purpose to restore that balance. You who know me will accept my solemn assurance that in a world in which democracy is under attack I seek to make American democracy succeed."

Opinion in the Congress was sharply divided over the President's proposal. Some shared the view of Senator Thomas Minton:

"It is said that this is an attempt to pack the Court. How do we find the Court today? It is packed now by appointees of administrations gone and repudiated. Do you think these administrations are more entitled to pack the Court than Roosevelt? Do you think that Harding, Coolidge, or Hoover were qualified to pick judges for the Supreme Court, but Roosevelt is not? I think the Court is already packed, and this bill would unpack it."

Similar sentiments were shared by the Honorable Thomas F. Ford, who stated:

"These men are legal-minded; they are corporation-minded; they were nourished on the discredited economy of laissez-fair; they do not believe in Government 'interference' in business; they are doubtlessly honest and sincere in thinking that the public welfare clause of the Constitution is not to be taken seriously, while the tragically perverted 'without due process of law' clause is to be utilized against every law that looks too progressive to be safe. Thus, five reactionaries exercise the veto power over legislation they are temperamentally unable to see as constitutional, because it is out of line with old economics."

However, most of the sentiments toward the President's proposal ran contrary to it. Despite disgruntlement with the decisions of the Court, a great surge of opposition arose from all sectors of the Nation, since the people of this country saw that the independence of the judiciary was at stake. We would be well-advised to fully consider the sentiments expressed in that day, as I believe we could learn much from the wisdom of our predecessors. The noble Senator from North Carolina, Josiah W. Bailey, expressed his deepest concerns as he stated:

"Courts, in order to administer justice, must be independent. Grant that his motive is the purest, I deny the President's right to

seek to mold the Supreme Court to his heart's desire. I deny the right of Congress to seek to form a court that will interpret the Constitution to suit its interpretation, its judgment, or its will. None may seek to influence the Court save by accepted processes of justice. President, Congress, and Court are each under the Constitution. It is the people's instrument, the charter of their rights, the sheer anchor of their liberties and it must be interpreted, if it is to be of value, only by a court independent of all influence, free of all politics or personal will, free of all force, inducement, or temptation, and upon the altars of reason and conscience * * *

"Congress is mighty, but the Constitution is mightier. Presidents are powerful, but the Constitution is more powerful. Courts are great, but the Constitution is greater.

"The Court and the Constitution, they stand or fall together. The Constitution creates the Court, and the Court declares and maintains the Constitution. To weaken one is to weaken the other. To weaken either is to weaken the foundations of our Republic; to destroy either is to destroy the Republic."

As we can see from the statement by the Senator from North Carolina, Senator Bailey, he properly understood the issue of the day—the shaking of the very foundations of the Republic. We simply cannot affect the independence of the Court without shaking the roots of this great Nation of ours. For these roots are planted firmly in the Constitution and are nourished by the freedoms protected in that document. By causing an imbalance in the delicate balance created in the Constitution between the three branches of Government, we are heading down a reckless course. Senator Arthur Vandenburg of Michigan understood this as he stated:

"When you tamper with the Supreme Court you tamper with the Constitution's safety valve. It is not enough to infer that it has occasionally been done to some degree before. Maneuver to control the Court may address an objective which you may aggressively approve. Tomorrow's objective, under different Auspices, may address a purpose you abhor. The consequences of such an innovation are as incalculable as time and vital as the spark of life itself."

This same sentiment was echoed by the Senate Judiciary Committee report, signed by members of the President's party, loyal supporters, but who nevertheless were able to envision the consequences of FDR's action. These great men, Patrick McCarran, Tom Connally, Joseph O'Mahoney and Republicans like William E. Borah, among others, had a sense of vision. I trust we would exercise that same vision in the contemplation of this proposal today. This Senate Judiciary Committee report stated some very succinct points for our consideration today, and let me quote from the Judiciary Committee's report of that day:

"Today it may be the Court which is charged with forgetting its constitutional duties. The next day it may be the Executive. If we yield to temptation now to lay the lash upon the Court, we are only teaching others how to apply it to ourselves and to the people when the occasion seems to warrant. Manifestly, if we force the hand of the Court to secure our interpretation of the Constitution, then some succeeding Congress may repeat the process to secure another and a different interpretation and one which may not sound so pleasant in our eyes as that for which we now contend."

Mr. HATFIELD. Mr. President, Congress also has a duty, to the best of its ability, to take a prospective look at the effect of its actions. None of us here can claim to predict future developments without legitimate reservations. But it is incumbent upon this body to attempt to consider what this amendment will mean 10, 15, 25 years down the road. Do we want every constituency that is the victim of a Supreme Court ruling to turn to Congress for relief in the form of a court-stripping bill? More importantly, do we want to address public policy questions with after-the-fact, jurisdiction-limiting bills?

Let me pose a simple hypothetical situation which illustrates exactly what I am talking about. Suppose public sentiment reached a point whereby the majority of this body was staunchly pro-gun control. How would we look at legislation which precluded the Supreme Court from interpreting the meaning of the right to bear arms?

Mr. President, the plethora of jurisdiction-stripping proposals that the Congress has considered over the years, in many cases, reflect the failure of the Congress to perform its responsibilities on controversial matters. When the courts step into this vacuum created by congressional inaction, then a host of legislative initiatives are dropped into the hopper denying the Supreme Court and lower Federal courts the authority to decide such cases.

The most obvious example of what I am talking about occurred between 1953 and 1969 with the Warren Court when it stepped into the legislation vacuum by delivering activist opinions affecting civil rights and civil liberties. While many in Congress proposed drastic jurisdiction-stripping measures, fortunately, wisdom prevailed and major civil rights legislation was enacted.

Today that same "ducking of issues" is continuing and is leading to more of this same judicial activism. By refusing to deal with emotional issues like school prayer, abortion, and tax exemptions for racially discriminatory schools, we invite the kind of drastic jurisdiction-stripping measures that we are faced with today.

For nearly 10 years, we have waited for the Congress to substantively deal with the emotionally charged issue of abortion. For nearly the entire 97th Congress, we have told the right-to-life groups that pressing economic and budgetary matters precluded the consideration by the Senate of this issue. Again, we are avoiding a quality and substantive debate on the abortion issue and are concentrating our efforts on procedural haggling.

I understand the strategy fully, and I do not in any way question the right of any Senator to further his particular issue and position on that issue. All I am saying is simply that if the Committee on Labor of the Senate 5, 6, 7, 8, 9 years ago had addressed this issue and brought the bill to the floor where we could have had a substantive debate up or down we would not be facing then this issue every year on the appropriations bills which has, in effect, crippled in many ways the appropriation process. Mr. President, the Senate must break this cycle of inaction and avoidance and face up to the responsibilities that the Constitution puts squarely in our hands.

We cannot forever postpone the discussions of abortion and school prayer and busing and other controversial issues and use the appropriations vehicle in order to get some kind of confrontation. We cannot afford to dodge these issues by consenting to legislation which perverts the Constitution and which dodges a debate on the merits of controversial social and moral issues by trying to strip the courts of their rightful jurisdiction for judicial review.

I thank the Senator from Oregon for yielding the floor.

Mr. PACKWOOD. I thank my distinguished colleague.

I must say that no one has had to put up with this more than he has. He has been patient and long-suffering as the chairman of the Appropriations Committee.

He is absolutely right. There are great issues to be discussed in this Congress. Abortion, busing, and prayer are some of them. But the place to discuss them is not on the appropriations bills. My colleague from Oregon and I are longstanding friends of 35 years duration and fraternity brothers from college. He was my teacher in college. We have gone through many battles together, mostly side by side. And, as far as the battles on the appropriations bills, I stand side by side with him again.

Let us face up to this. Let us have a debate. Let us do it in a proper forum. The proper forum is not the appropriations bill or the debt ceiling.

Let us dispose of some these issues up or down. He and I have been in politics long enough to know that we are going to lose some and win some.

But you do not try, when you lose a case in the Supreme Court, to overturn it by some kind of a statute because you do not like the decision.

I would say again that there are a fair number of decisions the Supreme Court has passed that the senior Senator from Oregon does not agree with. Yet I have not found him as an author of any bill to overturn those decisions.

Again, I wish to thank him once more. And I hope—and I will say this to him publicly—I hope we can work out something, somehow that will get us through the rest of this Congress with appropriation bills where we dis-

cuss money and how much money we should spend for the subjects that are relevant to those appropriation bills. And that is a fair discussion. I hope we can keep those bills as clean and neat as possible, and he will have my support in that.

Mr. HATFIELD. Will the Senator yield?

Mr. PACKWOOD. Without losing my right to the floor.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senator be able to yield to me without losing his right to the floor.

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

Mr. HATFIELD. I just want to make a record here that even though my very dear friend and colleague from Oregon and I happen to be, perhaps, on opposite sides of the question of abortion, let us not be found off wandering into the byways and highways of these other matters which we stand shoulder to shoulder on, and that is the question of keeping the appropriations process free from the entanglements and these thickets in which we have been plunged by these controversial measures because of the use of that vehicle.

Second, we revere equally the role of the Supreme Court in our constitutional system. As I say, we may be on different sides of a particular issue from time to time, but these are issues I think that transcend the subject issues that we find ourselves in debate and so forth. These are matters that really strike at the very heart of our whole constitutional system, strike at the very heart of our legislative system.

I think sometimes we do not concern ourselves sufficiently with the preservation of the vehicles and the framework and the whole mechanism of government that is the greatest that has ever been conceived by human minds, our constitutional system.

I think, wherever we may differ on the issue, that transcending those differences are greater common allegiances to the things we are trying to preserve in this country.

Mr. PACKWOOD. My distinguished colleague will recall that Senator Morse, my predecessor and his colleague in the Senate, he probably heard him say many times, as I did: "Give me control of the procedures of democracy and I will control the substance of democracy." And he was absolutely right.

Mr. HATFIELD. Absolutely, I thank the Senator.

Mr. PACKWOOD. I thank my distinguished colleague.

Mr. President, in an earlier speech on the floor of the Senate, our distinguished colleague from Maryland had indicated attempts in the past to limit Supreme Court jurisdiction or Federal court jurisdiction. He indicated those issues had not been limited solely to busing, prayer, and abortion. Those are the hot issues now, Federal court jurisdiction over those things.

As I indicated in my earlier comments, this is not the only time in the last 20 years, because of passion—I will not say misguided conclusions, because many times the courts have taken actions I did not agree with. But I think in misguided passions we have attempted to overturn decisions of the Supreme Court.

Therefore, let me recount again what we have done in the past when we have found decisions that we did not agree with. The distinguished Senator from West Virginia, Senator RANDOLPH, talked about the fact there have been only 26 amendments to the Constitution. And when you realize the first 10 of those, the Bill of Rights, were passed in 1791, we have had only 16 amendments since that time in almost 200 years of history.

Hundreds of amendments have been introduced in Congress. Most have failed. A few have passed Congress and been submitted to the States for ratification and have failed as, unfortunately, the equal rights amendment. It would be my hope that we will again see that amendment passed through Congress and submitted to the States and one day adopted.

But in the past, we have had circumstances where the Congress and the populace in this country did not agree with decisions of the Supreme Court and we went through the proper procedure for changing them—the constitutional amendment.

First, the 11th amendment. In the case of Chisholm against Georgia, the Supreme Court came forth with a decision that a citizen of one State had the right to sue another State in Federal courts. A citizen of one State suing a State, the States did not like that. The 11th amendment was offered in the Congress which would prohibit a citizen of one State from suing another State and that amendment was adopted for the specific purpose of overturning a Supreme Court decision. It was a legitimate way to go about overturning it.

In the infamous Dred Scott case, the Supreme Court reached the conclusion in the mid-1850's that blacks were not citizens. Even then, when we were approaching the Civil War and the passion that that war generated—and that war divided this country more deeply than even the Vietnam war—even in the heat of that war, and even though in the Congresses of that period the southerners had left so that it would have been easy to pass through the remainder of the Congress a bill to overturn the Dred Scott case, we did not do so.

Instead, we adopted an amendment, the 14th amendment, to overturn the Dred Scott case. And even though Abraham Lincoln, a wartime President, was beset with criticism at a time when the war was going badly for the North, he did not succumb to the pressure of trying to overturn the Dred Scott case with a statute. It was done with an amendment.

A few years later, the Supreme Court, in the case of Pollock against the Farmers' Loan Trust Company, handed down a decision that said Congress could not levy an income tax, mainly because Congress the previous year had tried to tax income as uniformly throughout the United States and the Court held that violated the Constitution. Therefore, we adopted the 16th amendment. We said that Congress could levy an income tax.

There were efforts, there were thoughts, that we should overturn that Supreme Court decision by statute. Suggestions were made in the Congress, but we did not adopt them. And after waiting a fair number of years, we finally passed and had ratified that amendment that allows the Congress to levy an income tax.

And then just recently, Congress passed a statute that said 18-year-olds could vote in this country in both Federal and State elections. The Supreme Court held that while Congress has the power to say that 18-year-olds could vote in Federal elections, we did not have the power to say they could vote in State elections. So, Congress sent out the 26th amendment guaranteeing to all those 18 and over the right to vote in all elections in this country. And that amendment was adopted by the States.

In each case, we followed the constitutional procedure for reversing Supreme Court decisions we did not like.

But as my distinguished colleague, the Senator from Connecticut said earlier, it is a very difficult and burdensome process, deliberately so. It was meant to be so.

All of us who supported the equal rights amendment were very disappointed that it was not ratified by the States. For 10 years we worked for the ratification and we lost. But we will try again, and I assume the fight will be another long fight. But our founders did not intend that the Constitution be changed easily or lightly. Least of all did they intend that it be changed in moments of passion.

Mr. President, there is another excellent memo that has been written by the Library of Congress, written by David Ackerman 3 years ago, on the subject of the constitutionality of the withdrawal of all Federal court jurisdiction over questions involving state-sponsored prayer in public schools and public buildings.

I would like to read that memorandum for the benefit of the Senate.

In the case of *Engel* v. *Vitale* the Supreme Court held the establishment of religion

clause of the First Amendment to be violated by a state requirement that school children say aloud at the beginning of each school day the following prayer:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country."

The following year the Court similarly held unconstitutional, in the case of *Abington School District* v. *Schempp*, a state requirement that at least ten verses from the Holy Bible be read at the beginning of each school day and that students join in the unison recital of the Lord's Prayer. The Court found these requirements to constitute establishments of religion notwithstanding that in both cases the states made provision for the excusal or nonparticipation of students either at their own request or at the request of their parent(s) or guardian(s).

Let us understand what the situation is. My children are 15 and 11. They go to the neighborhood public schools. A prayer is not required of them in the public school, and I would object if it was. We will say grace at our dinner table at night. We will worship in our way. But I do not want my children having to say a prayer written by the local school board or written by the State or written by anybody else. I will challenge any of you to try to sit down and say to yourselves, "What kind of a prayer, am I going to write?"

One of the most interesting cases that has recently come to mind comes out of Alabama. I am reading here from the wire service report from the Associated Press:

A bill to allow prayer in Alabama public schools was signed into law Monday of Gov. Fob James, and opponents of school prayer promised a court challenge of the measure.

James said he views the new law as a legal vehicle for Alabama to test the U.S. Supreme Court's 1962 ruling against prayers in public schools.

He said the law will "challenge the fundamental essence of that '62 decision that I think is totally ridiculous."

He said he doesn't think the nation's founders intended the Constitution to ban prayer in public schools and that the new legislation gets "right at the heart of that question."

The law allows public school teachers and professors to lead "willing students" in prayer. It includes a suggested prayer written by the governor's oldest son, Fob James III.

I say to my fellow Senators, that is one written by the Governor's son, whatever it is he may be. The children in Alabama are going to have a choice of saying the prayer written by the Governor's son or excusing themselves and going outside the room, to the bathroom or someplace, but they will have to say to the teacher: "Teacher, I do not want to say this prayer written by the Governor's son."

We all know what kind of pressure there is on our children to conform in school, be it in terms of dress, social behavior, or the possibility of trying drugs. They do not want to be "out."

Consequently, when a prayer is going to be read by the teacher, written by the Governor's son, most children will probably say it or recite it, even if they in their heart do not feel they want to, because they will not have the courage to ask to be excused.

To resume the Library of Congress memorandum:

On April 9, 1979, the Senate adopted an amendment which would deny the federal district courts all original jurisdiction, and the Supreme Court all appellate jurisdiction, over "any case arising out of any State statute, ordinance, rule, regulation, or any part thereof, or arising out of an Act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation which relates to voluntary prayers in public schools and public buildings."

All appeal of any Federal court, including the U.S. Supreme Court, would be stricken. That means that the interpretation of the first amendment, which is probably the most important amendment in the history of our liberty and probably the most important single sentence in the history of liberty in the world, will be left to the vagaries of the different State courts. What the term "establishment of religion" means may mean one thing in Alabama and another in Connecticut and another in Oregon. The one thing that you will be able to guarantee, guarantee with certainty, is that it will not be a uniform protection of civil liberties throughout this country. That is not what our founders intended.

They were well familiar with State churches. They had left a country that had a State church, and they had no desire for a State church to be imposed in this country. Yet that is exactly what you will get in some States if this kind of an amendment is passed.

Quoting again from the memorandum:

That is, under this amendment, sponsored by Senator Helms, no case challenging the constitutionality of a state statute relating to voluntary prayer in the public schools could be heard in any federal district court. Such cases could be adjudicated only in state courts. Moreover, no decision by the highest court of any state concerning such a statute or regulation could be reviewed in the Supreme Court. Each state's highest court would be its own final arbiter in such cases. *Engel* and *Schempp* would continue to stand as controlling precedents, but future litigation on the issue could be heard only in state courts, with no opportunity for review by any federal court.

The issue addressed in this report is whether Congress has the constitutional power to eliminate completely all federal court jurisdiction over a matter involving a constitutional right. Assuming the efficacy of the Senate-adopted amendment, the constitutional right that is implicated is the First Amendment right to be free from governmental establishments of religion, in this instance, as held by the Supreme Court in *Engel* and *Schempp*, state-sponsored voluntary prayer in the public schools. The Senate amendment would remove all federal court jurisdiction, both original and appellate, over all cases related to such state-sponsored prayer. The issue is, does Congress have that power under the Constitution?

CONGRESSIONAL POWER OVER THE JURISDICTION OF THE LOWER FEDERAL COURTS

Article III of the Constitution defines the judicial power of the United States in the following terms:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States; and Citizens of the same State claiming Lands under grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Article III does not by its terms create any of the inferior federal courts, but instead confers that power on Congress:

Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .

This Congressional power is also affirmed in Article I of the Constitution concerning the legislative power, which states:

Section 8. The Congress shall have the Power . . . To constitute Tribunals inferior to the Supreme Court.

Let me digress from the memorandum for a moment so that it is clear what we are talking about. The United States Constitution creates the Supreme Court. That Court is not a creature of Congress. All of the other Federal courts are created by statute, all of the U.S. Federal district courts, all of the courts of appeals, and we determine their jurisdiction. We have on occasion raised what is known to lawyers as the "amount in controversy," how much are you suing for, so that cases with a very low amount in controversy will not be brought in Federal court and clog up the Federal courts. And thereby we have denied jurisdiction to certain kinds of claims in Federal courts by simply saying that they must reach a certain amount or the courts cannot hear them.

In the Norris-LaGuardia Act, we passed a law that said that henceforth Federal courts could not issue injunctions in labor disputes. The case testing that went to the Supreme Court, and the Supreme Court upheld the right of Congress to take away the power to issue injunctions in labor disputes although it was very clear that the court said in that case it was not leaving litigants without other remedies, that all Congress did was remove from the courts one remedy, an injunction.

The issue boils down to this: If we in Congress have the power to create the

district court and the courts of appeals, do we have the power to abolish them? We probably do. If we have the power to create them and determine their jurisdiction, do we have the power to say that they may not have jurisdiction over certain subjects? Clearly, we do. We say that they cannot have jurisdiction over cases unless a certain amount of money is involved and they cannot issue injunctions in labor disputes.

Then the question further evolves, do we have the power to deny to the Federal district courts and courts of appeals, which we have created, the power to hear cases involving constitutional liberties guaranteed to our citizens by other sections of the Constitution?

By the very act of taking away the jurisdiction of the court, can we effectively prevent a citizen of the United States from attempting to bring a case involving what they regard as a constitutional liberty?

That case has never been tested clearly and exactly in the Supreme Court. I hope that we do not have that constitutional power because, if we do, then we are perfectly at liberty to say not only do we take away from the courts jurisdiction over cases involving the establishment of religion and school prayer, not only do we take away from courts the right to hear cases involving abortion, even though the Supreme Court in its decision almost 10 years ago said that that is a constitutional liberty that the women of this country are entitled to, but if we can take away from the courts the power to try abortion cases or prayer cases or busing cases, we can take away from them the power to try freedom of speech cases, freedom of press cases, self-incrimination cases.

Mr. President, I ask unanimous consent, without losing my right to the floor and without this being construed as the end of a speech for the purposes of the two-speech rule, to yield to the Senator from Colorado.

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

Mr. HART. Mr. President, I thank the distinguished Senator from Oregon. Among the many ironies that prevail and surround the current debate over the issues of stripping the courts of jurisdiction of cases involving abortion or school prayer are the relative roles of the parties in this debate, for there are those who have complained at great length and with extreme conviction about the prevailing role of Government in our lives and the increasing repressive and suppressive position that the Government plays in intruding into the lives of the American people one way or the other, and yet these very same people, who claim to be extremely concerned abouth the growth of governmental power, are here in the Senate today advocating an increase in governmental power, for it is, after all, the Government that would write the prayers that the children of this country would recite. Whatever claim might be made for voluntariness, we all know that in the mind of the 5-, 6-, and 7-year-old child there is very little sense of voluntariness when an official in a school is presenting a prayer for the children of that school to recite.

One wonders who the governmental official would be who would write the prayer. Would it be a committee? Would it be a group of teachers? Would it be the school principal? Would it be some designee of the board of county supervisors? Would the school board pick the prayer writers? Who are these prayer writers and how will they be selected?

Further, what is one's qualification to write prayers? Must one attend church every Sunday or the synagogue? Must one hold a seminary degree? Must one be qualified by examination in religious history or theology or doctrine? If so, who will judge those qualifications? Who will set the standards that qualify someone to be the official government prayer writer for the school district where that prayer is going to be invoked?

Mr. President, I can think of no area of our lives, particularly given the history of religious liberty dwelt upon, to a very accurate and considerable extent, by the Senator from Connecticut, no area of our lives where the Government is less qualified to intervene than in our practice of religion and our individual religious beliefs. If there is one theme that runs throughout the deliberation of the Founding Fathers and the framers of our Constitution, it was, "Keep the Government out of religion." Keep the Government out of religion—no official ministers of the country, no official church of the country. I dare say that the Jeffersons, the Madisons, the Hamiltons, the Patrick Henry's all would roll over in their graves if they thought there was serious consideration in the Senate to the designation of an official writer of prayers for our children. But that is exactly what this amendment contemplates. It says that the court cannot hear a case by an aggrieved party where that individual has been subjected to the official hand of the Government inserting religion and prayers into the public schools.

There was no American of his time—and perhaps of any time since—who felt more strongly about the role of public education in this democracy and of sustaining the future of this Republic than Thomas Jefferson. Throughout his writings, throughout his speeches, throughout his leadership, he constantly stressed the need for a strong educational system to underlie the foundations of this country. Also, there was no individual who was more concerned about the intermingling of state and church than Thomas Jefferson.

I should like to see the advocates of this amendment to incorporate official government prayers in the schools go down and hold a rally at the Jefferson Memorial and find anywhere in the writings of Thomas Jefferson justification for the radical proposal to appoint official school prayer writers. Who is going to do that? The Secretary of Education? I suppose that he would be the logical officer in our Government to select the official school prayer writers for our schools.

What if a prayer writer, the officially designated prayer writer, for the school districts in Portland, Oreg., or Denver, Colo., did not write a good prayer? Maybe parents in those cities quarreled with that prayer. They did not like it. It did not sound like the kind of prayer they wanted their children reciting. To whom would they appeal? Maybe they would write a letter to the Secretary of Education: "Mr. Secretary, we are reciting prayers in our schools here in Denver that we do not like. Can you intervene and get the official school prayer writer dismissed?"

Let us think about that. We could have the Secretary of Education before the appropriate committees of Congress, and we could inquire as to how he is doing in terms of the thousands of official school prayer writers around our country. We could hold hearings. We could compare the relative merits of the prayers that are being written. That might be interesting. Or we could do what most governments in the history of mankind have done: We could help devise the, single, official prayer, so that the 7-year-olds in Portland are reciting the same prayer as the 7-year-olds in Denver and Montgomery, Ala., and New York City and Sacramento, and all across this country. Would not that be nice?

We would eliminate disparities in the prayer, so that one child was not reciting a better prayer than another, or a worse one; but we would have an official Government religion.

I think that anyone who spends 10 minutes thinking about the implications of government bureaucrats, whether at the local, State, or Federal level, trying to devise an official prayer for the schools of America, understands the brier patch that the amendment represents in terms of social policy, in terms of equity in our society, in terms of public well-being; leaving aside the issues of law and constitutionality. It is the height of irony that those who profess to worry about the Government intruding into our lives are now suggesting that the Government write the prayers for our chil-

dren. They cannot be serious. They cannot be serious.

A government runs our schools, our public schools. That is what public schools in the United States means. They are functions and institutions of the State, of the Government—albeit, and I think wisely, those are local institutions, local school boards, local school districts, but local governments.

There is government all over the United States. There is the General Government that we participate in, in Washington. There are 50 governments in the States of the Union, in 50 State capitals, and there are thousands, if not tens of thousands, of governments at the local level. Many of those governments and those governmental units, official public bodies created by law and sustained by law, do nothing but run the school system of this country, the public schools, and that is what we are talking about. But they are governmental entities.

So, do the people who advocate this amendment really believe they are talking seriously about getting the Government out of our lives? They cannot be serious. They cannot be serious. They are not talking only about getting the Government deeper into our lives. They are talking about having the Government do something that, to a person, the Founding Fathers said should not be done, and that is even suggest the possibility or the insinuation of an official Government role in religion.

There is no end to that. Once the Government, any government, even a local school board, acquires to itself the authority to write an official school prayer, then it can do all kinds of things, without—if this amendment were adopted—any possibility on the part of any American citizens to question the constitutionality of any of those things.

If you can take the Supreme Court out of the issue of the constitutionality of school prayer, you can take the Supreme Court out of the constitutionality of when churches should meet. Let us not have churches meet on Sundays. Let us have churches meet on Wednesday. Why not? Do you want the Government deciding that? No church on Sunday. We think Sunday is more important for professional football—or who knows that? Maybe government rallies. So the churches will convene on Wednesdays.

Do you want to appeal that to the Supreme Court? No, no, you cannot do that. You cannot do that in any Federal court. We have taken the jurisdiction away. We took it away in 1982 for official government school prayers, and now we are going to take it away—in 1985, 1990, or 1995—for a challenge to the constitutionality of a law that says churches will convene only on Wednesdays, because the Government wants them to convene on Wednesdays, not on Sundays. The Government has another purpose for Sundays.

I think that is wonderful. I think it is wonderful that we are talking seriously in the U.S. Senate about the Government—the Government—writing prayers for our schoolchildren. It may not be the Federal Government, or it may be. There is nothing that says the Federal Government, down the road, could not write these prayers or might not be called upon to do so when the squabble breaks out among the parents of the children as to whether one prayer is better than another. Why not take it to Washington? That is where everything else ends up.

I can see it: a Subcommittee of the Senate Judiciary Committee on School Prayer. Or on official religion. Subcommittee of the Senate Judiciary Committee on Official Religion. The first hearings will be held on the adequacy of school prayers in Portland, Oreg., or Cleveland, Ohio, or Denver, Colo. The prayers in Denver are better than the ones in Cleveland and Portland, so the parents in Cleveland and Portland want a prayer as good as the one in Denver.

They come back to Washington to appear before the Subcommittee on Official School Prayer of the Senate Judiciary Committee. They have their Senator convene a hearing of that subcommittee to have the Senate of the United States discuss whether one prayer is better than another, and we could have all the Government bureaucrats up here. We could have the Secretary of Education and call some ministers in.

What is that? That is the Govenment in religion that Thomas Jefferson said we should not have, James Madison said we should not have, and all the rest. Talk about a slippery slope. This is it.

If you talk about getting the Government out of our life, this is the place to do it. This is the place to do it.

I cannot believe anyone in this body is serious about a claim of Government intrusion in our lives and comes out on the floor of the Senate barefaced and advocates the Government writing official school prayers.

It is appalling. It is shameful. It is ridiculous, not to say asinine.

So how do we fix this? How are we going to guarantee the Government is not going to get in religion, get itself hip deep in religion in this country and violate all of the principles, standards, and barriers set up by the framers of the Constitution. We are going to say you cannot appeal to the Constitution. That is the way to fix that.

Now, we heard a lot in the 1960's and 1970's about radicals, radicals in our country, radicals opposing the Vietnam war, radicals doing this and radicals doing that. Radicals were going to tear down our form of Government. They were going to tear down America, radicals who wanted to peaceably assemble, radicals who disagreed with the official Government policy of being involved in Vietnam, radicals who disagreed with the CIA and the FBI wiretapping them and opening their mail and intervening in their political meetings—radicals. Radicals were threatening America. We heard a lot about that in the late 1960's and early 1970's.

I have not heard a more radical proposal in my 8 years in the Senate than the one that is pending before the Senate today, not one, not one. If we want to look for some radicals in this country, let us find the people who are proposing to strip the courts of the authority to hear constitutional challenges to these actions.

I will challenge any Senator to find me a more radical proposal of the tens of thousands that get introduced in this body every session than the ones that are pending before the Senate today. That is a challenge. I cannot think of anything more radical, a back door alteration of the sacred charter of this country, back door, not front door, not the procedure set up in the Constitution, a back door alteration of the Constitution of the United States so the Government can write prayers for the children of this country. If that is not radical I will eat your hat.

So here we have a wonderful situation. We have people saying the Government is involved in our lives too much, and they also say or did say some years ago the country was in jeopardy of some sort of radical element in our country. So what are we doing? We are spending our time while the economy of this country deteriorates debating one of the most radical notions this body has seen in decades, a back door alteration of the constitutional process and the authority of the judicial branch of this Government, so the Government can write prayers for the children of this country.

If you seriously think about that for 3 minutes we would be off this matter and we would be onto something that really counts and that is getting people back to work, getting this economy stabilized, controlling nuclear weapons, and the rest. No. We are wasting our time debating the issue of whether we are going to have official prayers in the schools.

I still have not heard from any of the proponents of this measure their views on who is going to write the prayers or what their qualifications are, or who is going to judge their qualifications, or to whom they will be responsible, and where a parent who believes the prayer is not the best kind of prayer can go to get that matter solved. A parent is certainly not going to be able to go to the Federal courts if this amendment passes. We are

taking that constitutional right away from him. We are going to take that constitutional right away from that parent. You cannot, if this amendment passes, go to the court to exercise your constitutional right to complain about that prayer. So not only are we going to get the Government into religion, we are going to take your right away to complain if you do not like what the Government did—that is pretty frightening—all in the name of the free exercise of religion.

I say nonsense. I think Thomas Jefferson would have said nonsense thrice over and I suspect his colleagues who established this Republic would have done likewise.

This is not a serious proposition. I cannot believe it is a serious proposition. And I certainly do not hear any advocates of it out on the floor of the Senate trying seriously to suggest that it is a serious proposition, and I particularly do not hear the advocates of it out here justifying the radical scheme that is incorporated here so that we can have an official prayer for our schools.

There is no justification for the radical proposal that we take away individual constitutional rights so that we can have official Government prayers in our schools.

Talk about a compound felony, we are going to have the Government writing prayers and to permit that happening we are going to deny the existing constitutional rights of citizens to complain if they do not like the Government action.

I wonder if the American people really understand that. I really seriously wonder if the people outside this Chamber who pay their taxes, pay our salaries, and wish we would get on with the business of this country understand what it is we are discussing here today. We are discussing taking away their constitutional rights—that is what we are discussing—in the name of religion.

I have made my case, and one hopes that sooner rather than later the majority of Senators will let their views be known on what their priorities are so that we can get back to serious business and get off this sidetrack that unfortunately we have been put on while the economy burns.

I appreciate the indulgence of the Senator from Oregon and I wish him well in his continued leadership.

I yield back the floor.

Mr. PACKWOOD. I thank very much my distinguished colleague.

I was intrigued by the question of who writes the prayer. It is a very valid question. I know what Alabama's solution is. The Governor's son writes the prayer.

Mr. HART. Yes; I saw that.

Mr. PACKWOOD. That makes it much more simple. It is sort of a gubernatorial primogeniture, so long as the Governor has an eldest son he can write the prayer. I do not know what he would do if the Governor has daughters.

Mr. HART. He would pick his major contributor to his last campaign. We all know how that works. We get people who contribute to our campaigns who get certain privileges. They can come down and have lunch with us in the Senate dining room. Why not be the prayer-writer for the State of Colorado or the State of Oregon?

Mr. PACKWOOD. If you have a prayer a week you can spread it around. It has good potential.

The Senator mentioned churches on Wednesday night. He raised a very valid question. We are all old enough to recall the blue laws in our country that were passed on the assumption that people went to church on Sunday or they should go to church on Sunday and we would not have any businesses on Sunday. It did not matter if the Sabbath, the Jewish Sabbath, was Friday night and Saturday; it did not matter that for the Seventh Day Adventists it was the same time; it did not matter that other religious groups observed it during the week. This was a country that was going to observe Sunday as a day of rest, even though many people in this country did not observe a religion that said Sunday was a day of rest. Finally, the Court struck down those laws and justifiably so.

Mr. HART. Mr. President, will the Senator yield for a question? What does the Senator think would happen if, in its infinite wisdom, the Senate of the United States had said at that time, "We are going to permit the States and local governments to have those blue laws, and you cannot take a challenge of those laws to the Federal courts in this country"? That is exactly the analogy, as I understand it.

Mr. PACKWOOD. You know it would be dependent upon the predominance of a particular religion in a different State. You could have different days of observation officially designated by the State and based on the observation by the rest of the citizens of the State, depending on whether you belonged to that religion or not.

There is no reason why this country can or will escape. It happens in most countries which have a dominant religion, which insists on imposing its views on the country, and they are well meaning people who do it out of zeal, and who want to make the country perfect, as they see it, in their God's eyes, and if you do not agree, you are not on the right wavelength because it cannot be that they are wrong. There must be some other reason, and that is dangerous thinking because when you know you are right, you absolutely know you are right, because God tells you you are right, and then those who disagree with you must be wrong. They have to be.

Mr. HART. Do you not suppose it is exactly that concern about that peculiar brand of zealotry that led Jefferson and Madison and others to say, "Don't do that"?

Mr. PACKWOOD. They absolutely knew our liberties were best protected not by some kind of compelled conformity to one view but by a protection of diversity where each of us had our own God, each of us had our own jealousies, each of us were a bit suspicious of each other's God, but we tolerated all of our views for the sake of liberty for all of us, and that has worked well for 200 years.

Mr. HART. Does not the Senator agree that we have breached that separation between church and state in this very crucial way, and that we are opening up the floodgates for untold mischief of the sort the Senator From Colorado tried to suggest in his remarks?

Mr. PACKWOOD. I posed the question yesterday, and I am delighted that the Senator from Colorado dwelt on it at length, because it is not just the establishment of religion clause we are dealing with. I posed the situation of a particularly heinous murder, a Lindburgh kind of kidnaping, and a suspect is caught, and on the way to the police station he makes some statements to the police officers, and maybe signs a confession. It is hard to tell whether he has done so. He goes to trial. The defendant does not take the stand, but the alleged confession or statements to the police officers are admitted in evidence, and the defendant is convicted, sentenced to death, and the case goes to the U.S. Supreme Court, and the Supreme Court overturns it on the basis of self-incrimination, and the defendant is set free, and the public is up in arms.

We come to this Congress and we pass a law that says that henceforth the Federal courts cannot consider cases involving self-incrimination. If we can do that with religion, we can do that with self-incrimination, we can do that with the right to assemble if we get tired of our constituents bothering us or we can do it with regard to the right to petition your government.

Mr. HART. Or freedom of the press.

Mr. PACKWOOD. Or anything.

The danger of starting down that road on something that is so popular, because we have all seen the polls, so popular as prayer in schools, is that it then becomes very easy to bend whatever popular transitory, passionate opinion happens to be in the majority at the time, and if that means an absolute trampling on the rights of the minority, so be it. They will understand or they will learn to live with it.

Only what happens in history is they do not learn to live with it; they

chafe under it, it rankles in them all the time, and finally, if worse comes to worst, and there is no safety valve for them to be able to protect their liberties, you finally have civil war because one group insists upon using the Government to impose upon another group the views of the dominant group.

Mr. HART. Certainly that is so from reading human history.

The Senator from Colorado thanks the Senator from Oregon.

Mr. PACKWOOD. I thank the Senator from Colorado.

Mr. President, I ask unanimous consent that I may yield to the Senator from Ohio (Mr. GLENN) for the purpose of debate only without losing my right to the floor and without it being construed as the end of a speech for the two-speech rule.

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

Mr. GLENN. Mr. President, I thank the distinguished Senator.

The amendments we are talking about here or we are considering are wrong, and I am opposed to them. The one on abortion would have the effect of overturning by a majority vote of Congress the Supreme Court's 1973 Roe against Wade decision which legalized most abortions under the constitutional right to privacy.

We are discussing two important issues here: A woman's right to choose whether to have an abortion, and also whether we can overturn a constitutional decision of the Supreme Court by congressional statute.

I believe the decision to have an abortion should be an individual one based on the woman's own personal religious and moral views, in consultation with her husband, her priest, her pastor, her rabbi, whomever, and I do not think it would be wise for this body to try to reverse the Supreme Court's Roe against Wade decision.

You know, recent polls across these United States have shown that the majority of Americans support those views for freedom of choice, not pro-abortion but freedom of choice, and are opposed to legislation prohibiting abortion.

Further, making abortion illegal would not end the controversy, and it certainly would not stop women from having abortions. What it would do would be to cause them to once again probably go and seek unsafe, illegal abortions.

Before 1973 the individual States had different laws with regard to abortion, and women who could afford to went to the States with the least restrictive abortion laws. Others relied on self-induced or even illegal abortions. I do not want to see a return to that tragedy that was caused by illegal abortions.

We have all heard too many horror stories about that, and we have seen the difficulties with it.

Even with the Roe against Wade decision some women are unable to obtain abortions due to a restriction on Federal funding under medicaid to pay for abortions except to save the life of the mother.

I believe this discriminates against low-income women, and I have consistently voted against such prohibition when it has come up on appropriation bills.

The amendment before us now would make permanent this restriction of Federal funds, and it would also prohibit the use of Federal funds for medical training and research with regard to abortion. I think that would be a mistake.

I also oppose this amendment on the ground that it attempts to overturn a constitutional decision of the Supreme Court by a majority vote of Congress, and I do not want to see that precedent set.

Many consitutional scholars who disagree with the Roe against Wade decision, nevertheless, even though they disagreed, believe that to overturn a Supreme Court decision by a majority vote is an unconstitutional violation of the separation of powers. A Supreme Court decision can be reversed by the Court overturning its own decision or by an amendment to the Constitution.

Our Nation is divided on this issue of abortion. I respect the hearfelt views of those who are opposed to abortion, and I certainly support their right to live their lives under whatever rules, whatever moral compunctions, they feel are right for them. But, Mr. President, I also feel that those who do not believe the same as the people who hold those views against any abortion at all should not force their views on others in this country who feel every bit as strongly. If we do not know the moment when this is a God-given life, and that moment is not just the instant of conception, those who wish to go along with the Roe against Wade decision of the Supreme Court. In other words, I do not believe that the views of those who are so opposed to abortion should be imposed on those who hold a different but equally firm conviction.

Mr. President, I thank the distinguished Senator for yielding to me for this purpose, and I yield the floor back to him.

Mr. PACKWOOD. I very much thank my distinguished colleague from Ohio. I agree with every word he said.

Mr. President, I ask unanimous consent that the earlier yielding of the floor by the Senator from Connecticut (Mr. WEICKER) not be construed as the end of a speech for the purpose of the two-speech rule.

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

Mr. PACKWOOD. Mr. President, those who are listening to this debate or reading the RECORD may wonder why there is a mix of discussion on the establishment clause and prayer in schools and the subject of abortion. That is mainly because the issue has been fused in an amendment that we may or may not have to vote on offered by the Senator from North Carolina (Mr. HELMS), which has put both the subject of prayer and abortion in one amendment.

The prayer part of it is the straight-out court stripping that Senator HART from Colorado and others have referred to, that no Federal courts may hear these issues involving voluntary school prayer. The abortion part of it, after some extensive statements that the decision in Roe against Wade allowed the woman to make the choice whether she wants to have an abortion or not was wrong. There were attempts to overturn that decision by statute and also prohibit funding by the Federal Government for a whole variety of reasons, training of doctors, Federal health insurance that would provide abortions for Federal employees, and what not. But they are in the same amendment and that is why, therefore, you will find some speakers talking about one and others talking about the other.

Let me dwell at some length on the abortion part of it, although I have spent the bulk of my time today on the prayer part.

The abortion part comes from the decision of Roe against Wade in 1973 when the Supreme Court said that a woman had the choice, the right for herself to decide whether or not she wanted an abortion.

Basically, it said that in the first 3 months of her pregnancy she had an unlimited right to make the choice whether or not she wanted to have the abortion. In the second 3 months, she could, by and large, make the choice but the State could put limitations on who could perform it and where it could be performed, basically medical limitations. In the third 3 months, the balance tilted on the side of the fetus and the woman could only have an abortion if her physical or mental health was in danger. That is roughly the paraphrasing of the decision. That is not exactly legally it, but very close.

Now, what that caused, of course, is any number of people wanting to reverse the Supreme Court decision; people who very honestly do not think that a woman ought to have the right to make the choice; that it is not an individual choice; that basically it is a State choice and the position of the State should be that she cannot legally have an abortion.

I think even the proponents of those measures are not blind enough to fool themselves into thinking that if a law is passed people will not have abortions. We tried that once with prohibition. It did not work. It is very clear, from the evidence that is available, that, during the entire history of the period in this country when many of the States had laws against abortions, women had them. Dangerous on many occasions, performed under very adverse circumstances, very unsanitary circumstances, and many women died because of unsafe abortions.

Fortunately, since the Supreme Court decision in the legalizing of abortion, that problem has been almost totally eliminated in this country until today, and abortions, properly done, are safer than the conditions for a woman who carries the child. More women die in carrying a fetus to 9 months than die by abortions. But that is the background.

The Supreme Court made that decision and the argument was made that the Supreme Court had no business making that decision, that it was an unconstitutional decision, although that is an internal contradiction in terms. As our founders gave to the Supreme Court the ultimate responsibility to determine what is and what is not constitutional, clearly what they say is constitutional is constitutional, because there is no higher authority to appeal to. If we do not like their decision, if we want to reverse what they have done, then we pass a constitutional amendment to reverse their constitutional decision.

For those who say the Supreme Court has become too activist, too far-reaching, that the Court is undertaking the legislative decisions in the guise of constitutionality, they would suggest the responsibility be shifted to the Congress to make the decisions as to what is constitutional. And we can do that in a variety of guises, but the principal one is that we will take away from the courts the power to make decisions on those cases and then we will write what is constitutional and there will be no appeal from us.

Of course, the danger in that is that our minds change and popular opinion changes. And if we are to be nothing but a weather vane and reflect popular opinion, abortion will be legal this year, illegal the next year, and legal after that. We will put limitations on the press the next year, perhaps ease them up after that, depending upon what the popular opinion may be as reflected by the elections. That is not what our founders intended.

I would go even further, however, in attempting to analyze why those who want to reverse the Supreme Court decision want to reverse it. First, they have a misreading of history in this country and in England. In arguing on this subject, they will talk about returning to the morality of our founders and, in their mind, I think they are thinking of a Puritan time of heart and home, strict morality, enforced puritanism. That was not this country at the time the Constitution was written.

First, in England, an abortion was not a felony, or at least what we call abortion before quickening; that is, when a woman could feel a child move, and that would be some place between 20 and 24 weeks in most cases. It was not a felony. It was common. It was not punished as a felony at common law.

At the time this country was founded, not a single State had any laws against abortion. It was commonly practiced in this country. Our founders were well familiar with it. Whatever they may have thought of it personally or whether they liked it or did not like it, they did not think it rose to the dignity of having to pass laws to prohibit it.

So, whatever their personal views may have been, they thought it was certainly not the job of the Constitutional Convention or the Bill of Rights or Congress to pass laws prohibiting women from having that choice.

It was only in the middle 1800's that many of the States in this country began to pass laws against abortion. Some of the motivation behind the passage of the laws was moral. People seized control of the legislatures that did not like abortion, did not like the women's right to choose, and they passed laws prohibiting it.

Some of it was medical, because many women were dying from infection following badly performed abortions.

Interestingly, part of the motivation was commercial. The establishment doctors—those that had gone to establishment medical schools—really were dispensing relatively primitive medicine in those days, primitive even by the standards in those days. They could set a broken arm. They had slightly above a witch doctor's concept of the use of herbs and certain remedies. But, by and large, if you got any of the diseases that you could commonly be saved from today, you died in those days. And the doctors did not know how to save you. They did not know how to treat smallpox. They did not know how to treat typhoid. They did not know how to treat most of the diseases that would ravage across the country from time to time.

Most of the citizens in this country, and especially in the rural areas, began to realize that the establishment doctors could not do them much good and there was really no harm, no greater harm, in turning to folklore remedies dispensed by people with significantly less training than the establishment doctors and at a significantly less price than the establishment doctors charged.

Abortion was commonly performed by these people that were not trained at the then existing medical schools. The establishment doctors found themselves in the position of losing patients. So they, either on the sly, began to do the abortions themselves or attempted to get them outlawed.

Now, that is the history, again, a very condensed history, of the 1800's.

In the 1950's, the situation had turned again. First, we realized by that time that abortions properly done under clinical circumstances were very safe.

Second, the issue of physicians and money had faded and most physicians were not worried about what they regarded as quacks taking away their business. Consequently, you find the American Medical Association on the side today of saying that a woman should be able to make the choice as to whether or not she wants to have an abortion.

Then you begin to have a greater tolerance for differences of opinion, for your religious tolerances in ths country.

Most of us in the Senate today can still remember when, if you were a Jew, you could not be admitted to the so-called better country club, and unfortunately in some areas that still exists today.

If you were a black, you could not join the local civic clubs.

If you were a woman, you were discriminated against in a variety of ways. I am not talking just about abortions, I am talking about joining clubs, practicing law, joining a law firm, becoming a partner. Letting a woman handle a case? Terrible.

Those barriers have gradually changed, and with that change came the difference in attitude on abortion. Several States changed their laws. Colorado was the first to adopt what is known as the modern, liberalized abortion law in the mid-1960's, followed closely by a titanic struggle in New York when abortion was legalized by the legislature, followed in Hawaii, followed in Alaska. In the State of Washington, interestingly enough, the issue was placed on the ballot. The people voted on it and they voted to allow women to have the right in that State.

So you began to have a variety of States saying that as far as the women in that State were concerned, they should be permitted to have an abortion if they wanted.

Naturally, this lent itself to a situation where women of wealth traveled to the States where abortion was legal to have one, and the women of poverty could not. It was very clearly a dual standard. If you were poor, whether or not you wanted it, you had a baby, and if you were rich, if you chose you

could have an abortion by flying to New York, Washington, or Hawaii.

At that juncture, the case of Roe against Wade went up to the Supreme Court out of Texas.

Texas had a very restrictive law, very, very severely limiting abortions. The Supreme Court struck it down. They rested the case principally on the woman's right of privacy, on the 9th and 14th amendments, and said that henceforth States could not pass laws prohibiting a woman from making the choice. They could set certain limitations on where it could be done, when it could be done, but not on the fundamental decision.

That is why we find ourselves in the position we are in today. Those who think that the right to make a choice is immoral, is ungodly, is irreligious, is going to cause this country to degenerate into debauchery, want to change the law in one way or another. Their preference would be, if they had their druthers, to have a constitutional amendment passed which would simply reverse the Supreme Court decision and, as a matter of law in the Constitution, say that henceforth nobody could legally have an abortion.

They have clearly not the votes to pass that constitutional amendment through this Congress. I very greatly doubt if it were passed through this Congress that it would be ratified by the States. That would take the law even further back than where it was before the case of Roe against Wade, because prior to that case whether or not a State wanted to sanction abortion was a State's decision. But those who would like to abolish that choice all together would take a national decision that there would be no freedom of choice on abortion any place, in any State, under any circumstances.

It is hard to tell, then, what the next best choice is because it presents a dilemma for those who do not want the choice. Picture in your mind, assuming that you are very much opposed to a woman having the right to make that choice, just morally opposed, but you cannot pass a constitutional amendment that will reflect your choice. Well, another alternative is to pass what is known as a States rights constitutional amendment. We will send an amendment out to the States for ratification that says henceforth it will be up to each State to decide whether or not they want to permit a woman to have a choice in that State.

But that bothers the moral sensibilities of those who do not think you should have the right in any State, and it puts you back in the situation roughly where you were before Roe against Wade, where some States would have it and some States would not. A rich woman could fly to a State to have an abortion and a poor woman could not.

I do not think that type of a constitutional amendment could pass this Congress either, and if by chance it did pass I do not think it could be ratified by the States. Besides that, it is a long, slow, tortuous process. The attempt for the passage of the Equal Rights Amendment demonstrated that. It was an attempt for 10 years and it did not pass.

Those who want to limit the right of a woman to have the choice as to whether or not she can have an abortion want action now—not 5 years from now, not waiting for the ratification of a constitutional amendment assuming you could pass one through the Congress that you liked. They want it now. So the avenue they are prepared to try is to strip the Federal courts of the right to pass on the subject of abortion. They they hope that different States will pass laws restricting abortions and perhaps the courts in those States will uphold at least those State laws. But in any event, the Federal courts would be prohibited from ever again passing on the subject.

Do not let it bother you that it is a constitutional right the Supreme Court says every woman has. Henceforth, they will take away the decisions of the courts to determine that, if the votes are here. It is the quick and expedient way, if the votes are here, to impose on this country their view of morality.

That is what we are basically debating, only we have also fused it, and perhaps confused it, with the school prayer issue because both of the issues are involved in the one amendment. If and when we finally have to vote on the issue we will have to vote on both. Both of them reflect the same principle: Should this Congress pass a law to take away from the courts the right to pass on fundamental liberties, assuming the courts uphold it? I do not think they will, but I would not advise anyone to vote for it or against it on the assumption of what a court would or would not do when the constitutionality of this issue is tested.

If the court did find it constitutional, then there is no end to the mischief, no end to the dangers to the constitutional liberties that may be threatened by the possibility of a Congress, this Congress or any Congress, by a majority vote, passing a law to prohibit any particular enforcement in the Federal courts of any particular liberties guaranteed under the Constitution.

Let me read from three statements of three different groups involving the issue of prayer.

The first is from the National Council of Churches of Christ in the United States, from testimony presented on July 29, 1980, before the Subcommittee on Courts, Civil Liberties, and Administration of Justice of the House Judiciary Committee during the hearings on S. 450, a Senate-passed school prayer bill.

The quote is from M. William Howard, the president.

This the fifth time in 17 years that major religious bodies of the nation have come to Washington to resist attempts to reverse the rulings of the Supreme Court which held that it is not the business of government to institute prayers for the nation's children to recite in public schools.

There was the Becker Amendment in 1964, followed by two Dirksen Amendments in the '60s, the Wylie Amendment in the early '70s and now the Helms Amendment in 1980. Whereas the previous four attempts sought to reshape the First Amendment to the U.S. Constitution by straightforwardly following the amending process set forth in the Constitution, the Helms Amendment seeks to achieve the same effect without submitting the issue to the necessary two-thirds majority vote of both houses of Congress and the ratification by three-quarters of the States.

The Amendment in question undertakes to withdraw the subject of prayer from the jurisdiction of the U.S. Supreme Court and relegate it to jurisdiction of State authorities. This tactic is fraught with problems that reach far beyond the issue of prayer itself. If Congress can eliminate from the purview of the Supreme Court any issues on which its decision displease a portion of the electorate, what implication will this have for the entire Bill of Rights? If this can happen by way of a mere majority vote of both houses of Congress, without ratification by the States, is this not a way of amending the Constitution without regard for the safeguards which shield our nation's highest laws and principles from capricious attack?

To say the very least, it is appalling that one should propose to put outside the purview of the Supreme Court the protection of the basic rights of Americans guaranteed by the Bill of Rights in any area, let alone the sensitive and intimate area of religion. It is also disturbing indeed that one house of Congress should actually have approved such a proposal. Now it rests with the other house to resist this misguided undertaking, lest the important gains made with regard to civil liberties of all kinds be whittled away.

Why does the National Council of Churches oppose the effort to reintroduce prayer in public schools? The reasons should be plain to all who have reviewed the three volumes of hearings which the House Judiciary Committee held in 1964. Nothing significant has been added to the controversy since that time, but once more we must reiterate the arguments for a new generation, and we do so glady.

1. Public school prayers are an injustice to those children and their families who belong to minority religions or to no religious group. Persons in this category, because of their religious views, can be made to feel out of place and less than equals in public institutions. Such persons are told they are free to excuse themselves from prayers which offend their religious beliefs. I suppose that is what is meant by "voluntary" prayer.

But do we really expect impressionable and vulnerable children to separate themselves from the rest of their peers, thus branding themselves as "oddballs"? Do we expect them to excuse themselves from ac-

tivities that are sanctioned by their school, in which all the other children are joining? Having a difference in religious belief should not be a stigma for our children. In our increasingly pluralistic society, we must not subject youngsters of religious minorities to the queries, taunts and jeers of uncomprehending classmates. Instead we must leave way for the children, with ease, to be true to the religious tutelage, or the lack of it, that is propagated in their families. This does not even begin to address the problem of religiously pluralistic teaching and administrative staffs who would presumably be responsible for leading such prayers.

2. Public school prayers are a disservice to true religion. The other reason we are opposed to prayer in public schools is that we believe prayer is too important, too sacred, too intimate to be scheduled or administered by government. It is the responsibility of the family, the home, the religious institution, not the public school, to provide religious education and experience. Children attend public schools under force of law. They come from many religious and ethnic backgrounds and, therefore, should not find their school experience demeaning to their religious heritage.

We are told that the prayers could be "nonsectarian," or that they could be offered from various religious traditions in rotation. I believe such a solution is least acceptable to those most fervently devoted to their own religion. Furthermore, I believe they do not want least-common-denominator prayers addressed "to whom it may concern." Even less do they wish to engage in the prayer forms peculiar to religous traditions other than their own or to have to show their colleagues the discourtesy of nonparticipation.

In our view, there is simply no such thing as "nonsectarian" prayer, and if there were, it would be of little value to either committed Christians or adherents of the other religious traditions. Whenever prayer is presented in a group gathered for other purposes (such as a public school classroom), the question cannot be avoided: "Whose prayer is it"? And all too often it will be either the prayer form of the majority (imposed on the minorities) or a nearly meaningless prayer belonging to no historic religion. In the latter case, the exercise is likely to be offensive to devout members of all religions.

We are told that there are many children in public schools who would have no other contact with prayer and religion than what they might gain from public schools.

We think it odd that this argument comes most often from those who otherwise are highly resistant to governmental interference in family life. It suggests a curious willingness to condone governmental imposition of religious practices on children contrary to their own parents' choices for them. We oppose any effort to allow the government to intrude in this most sacred of parental responsibilities, even if the parents have chosen to give their children no religious training. This is their right. If it is not, then religious freedom in this nation has lost an essential part of its meaning.

We are told that the current proposal is not designed to overturn the Supreme Court's decisions barring prayer from public schools. We are told that it is meant only to restore the matter to the States for the future. What can this mean other than a return to the "local option" which prevailed before the Supreme Court's decision on this issue? During the days of local option, children were actually subjected to corporal punishment for refusing to participate in public school prayers that were contrary to their own religious practice.

"Local option" is unlikely to be very pluralistic. Though this nation is highly pluralistic, taken as a whole, its pluralism tends not to be very local. A map showing the religious complexion of the counties of the United States submitted in the 1964 hearings showed that the vast majority of the counties in the U.S. have more than 51 percent of their population affiliated with one particular denomination; Lutherans in the North Central States, Baptists in the Southeast, Roman Catholics in the Northeast and Southwest, et cetera. In those counties it would be surprising if the majority religion did not dominate the prayer practices. in the public schools.

We are told that 70 per cent of our people responding to public opinion polls favor restoring prayer to public schools, and that may indeed be the case. But the rights protected by the Bill of Rights. I am pleased to say, are not at the mercy of public opinion polls. As the U.S. Supreme Court said in words that undergird the rights of every one of us:

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election."

Our experience over the past 20 years has been that when people are asked point-blank, "Do you think there should be prayer in public schools," their impulse may be to reply "Why yes, I guess so." But if they study the issues, all their ramifications, for a while, they often come to the opposite conclusion. That has happened in the governing body of the NCCC—the National Council of Church of Christ—when it considered this issue in 1963. It happened in the United Presbyterian Church and in one after another of our major member denominations.

That is the kind of consideration that we believe this important matter deserves. We do not believe these issues can be properly understood without indepth study and reflection on the issues and their widest implications. So we welcome the hearings being undertaken by this committee. We are confident that all sides will be fully considered and that a deeper understanding of this fundamental issue of civil liberty will be attained by all.

I think, Mr. President, if you were to actually take a poll of the governing bodies of the principal denominations about "Do you want prayer reinstituted in public schools?" you would find that they would come out in opposition to prayer, voluntary or otherwise, in public schools.

Next I read a statement by the Synagogue Council of America given at the same hearing, presented by Rabbi Daniel F. Polish:

The Synagogue Council has a long history of defending both dimensions of the First Amendment's guarantees—both free exercise and the separation of church and State.

Yours is a most important and unquestionably difficult task, as you deliberate what must be called by its proper name—the issue of prayer in public schools. Certianly it would be appropriate for you to ask why then is there such an intense interest in introducing it into the school setting? Why not prayer in factories or offices, prayer on public transportation or places of entertainment?

The issue, no doubt, is because the school setting offers the prime opportunity to shape and mold the attitudes of future citizens, and an exposure to the minds of people when they are at the most malleable and impressionable stages of their lives. It is precisely for those reasons that the issue of prayer in public schools arouses such deep-seated concern.

Certainly, it is commendable to seek to see religious attitudes inculcated in our children. Certainly, it is of greatest importance to instill in them the values taught by the Jewish and Christian traditions. But it is no less self-evident that prayer in the public schools is not a satisfactory means of attaining those fine and desirable ends.

I respectfully suggest that you judge the proposal not by its worthy intent, but by a careful consideration of the consequences which would flow its adoption. I can talk with some competence about two of the consequences which would flow from its adoption—the impact on children who are members of minority religious groups and the effect on popular understanding of prayer itself.

Truly, voluntary prayer is already permitted in public schools. What we are discussing here is officially sanctioned and officially conducted prayer exercises.

The voluntary nature of these exercises would be difficult indeed for a child to comprehend. For a child, these class prayers are more likely to be understood as compulsory. Children, who are encouraged to hold their teachers in the highest respect and to accept their word as authoritative in all matters, are not likely to question their authority when it comes to this specific subject.

Similarly, children are more subject than adults to the tremendous influence of peer pressure. A child in school would rather conform to the actions and expectations of his classmates than deviate from them, even if that deviance carried the approval of their families.

To suggest that under the proposed amendment a child would be free to excuse himself to remain aloof from a class prayer is, at the very best, to invite that child to be exposed to the cruelest inner turmoil.

Add to this the fear, real or imagined, of the disapproval of the teacher, and the ridicule of their classmates and the threat of alienation from them for being different and you have a situation which involves coercion of the most potent kind.

Now you may ask, what would be wrong with coercing a child to pray. The answer to that question lies in the nature of those prayers themselves. They will either possess a specifically sectarian character or they will be of a nondenominational nature. Either alternative carries within it implications which warrant attention.

It is not inconceivable that prayer in a school setting will, indeed, be sectarian in form and content. It is not unreasonable to conjecture that they may well reflect the religious orientation of the individual teacher or child assigned to lead them. Or, they may simply conform to the religious patterns of

the majority community of a particular school district.

In either event, they would be indirect conflict with the religious traditions of some, perhaps a sizeable number, of children in the class. Of course, this could be true of Jewish children. But it would be no less possible for Catholic children in a predominately Protestant community, Protestant children in largely Catholic areas, members of other minority religious communities, of children of no faith at all.

Perhaps, some might suggest, it is right and proper for a majority group to impose its values and beliefs on the minority. This is certainly a conceivable position. But it is manifestly at odds with the pluralistic ideals of America.

America is unique in the religious history of mankind. For too much of human history, States arrogated to themselves the right to impose religious beliefs and practices on their children.

America alone has been scrupulous in avoiding that practice. Indeed, American society arose in part in reaction against theocratic government. The religious genius of America, for which we have become a beacon to the entire world, is the conviction that each of its citizens is entitled to his own faith, and even the right to have no faith at all.

The Jewish community is one that has had a long and painful acquaintance with the government imposition of religion. Indeed, it was the pain that resulted from that very union of church and State which led many of our ancestors to flee the tyrannies of Europe and seek refuge in this blessed land. We cannot help but view the attempt to undermine America's pluralism with alarm and profound concern.

The form of the very proposal before you, of course, assures the likelihood rather than the unlikeliness of a sectarian character to the prayers which would be introduced into the schools.

For this amendment would deprive aggrieved parents of judicial recourse if the religious sensitivities of their children were violated by the practices of their schools.

It is those children who would suffer most grievously. Children of minority religious communities would be confronted with the choice between fidelity to the religious patterns of their families, or participating with their classmates in religious practices which are not their own and which might even be in conflict with their own beliefs. Such a choice can only be wrenching and painful and beyond what a young child should be expected to cope with.

Now it is possible that the prayers to be recited in schools will be especially constructed to reflect the lowest common denominator of the faith traditions represented in a particular class; that is, they would be nondenominational in character.

Certainly, this would solve some of the civil rights and civil liberties issues with which we have dealt to this point. But it would raise questions which are no less disturbing from a theological or religious perspective.

The effect of the State-enforced, mechanical recitation of 'prayers' at times that must be called arbitrary because of their unrelatedness to the religious calendar of any faith, would be to trivialize the nature of prayer itself, to diminish rather than enhance it in the eyes of those who were forced to participate in such exercises.

By the same token, these prayers would have to be carefully constructed to avoid specific theological content. The effect of such denatured religious expression could only be to give children a distorted sense of what real prayer is.

The effect of the attempt to create nonsectarian prayers would, ultimately, and most disturbingly, amount to the creation of a secular religion, a religion of the State, if you will, which would now take its place alongside the various particular faith traditions.

The need to compose or monitor such prayers would put the government in the business of religion, a position which neither government officials nor religious leaders can contemplate with much enthusiasm.

Perhaps, in response to everything that I have said, you might ask me how children are to form religious values and come to appreciate the elevating and sustaining nature of prayer.

I would tell you that the proper locus for the formation of religious values and for religious expression is in the home and in the religious institutions with which a family is affiliated.

Let children pray in the home, in the church, the mosque, or the synagogue, there and not in the classroom. It is not proper to intrude the State into the true domain of faith.

Mr. President, we have discussed at length the problems involved in the amendments we face—one on abortion and one on prayer. There are some people who are not as disturbed by the removal of the jurisdiction of the courts for prayer as others of us are. There are some who are more concerned with the abortion section of this amendment than the prayer section of this amendment. But, whichever section you are concerned with, it is very, very clear that those in this body who do not agree with the Supreme Court decisions in these areas want, if they can find it, to change those decisions by a majority vote and to impose upon this country not a tolerance and a diversity of opinion but a conformity of opinion to a particular belief.

I will not call it a particular religious belief, because there are many, many religious views that have misgivings about a woman's right to choice.

This not an issue to attempt to remove the right of choice nor one that is being pushed by any particular religion, but the attempt to remove the right of choice to have an abortion is an effort by a coalition of people who share a similar belief to impose that belief on those who do not share that view.

What is going to happen to this country if those who want to impose their view that a woman should have no choice in the matter of abortion fail? What if the Supreme Court decision is not overturned by constitutional amendment? What if they are not successful in getting a majority of votes in Congress and the situation continues as it is—that is, a woman will have a right to make a choice whether or not she wants to have an abortion? Are families going to fly apart? There is no evidence of that.

In the almost 10 years we have had legalized abortion in this country, there has been no evidence—no evidence—that the divorce rate or the decision to marry or not to marry has been in any way related to the fact that the Supreme Court has allowed a woman to make a decision as to whether or not she wants to have a choice. Has the country become less patriotic? I think not.

COURT JURISDICTION AND SCHOOL PRAYER STATEMENT

Mrs. KASSEBAUM. Mr. President, my comments will be brief. I believe strongly in the need for a strong and independent judicial branch of our Government. This structure was created by our Constitution and nothing in our 200 years of history has cast doubt on the wisdom of it. Indeed, one of the central themes of the deliberations of our Founding Fathers was the need for such an independent judiciary.

I have long held a strong and abiding belief in the value of voluntary prayer in our public schools. It is also my belief that such voluntary prayer is consistent with the first amendment guarantee of the free exercise of religion. Voluntary prayer has an essential role to play in the shaping of the moral and social fabric that has served our country so well.

Regardless of how one feels concerning the role of voluntary school prayer, however, the method that this amendment utilizes to achieve the laudable goal of insuring such prayer sets an extremely dangerous precedent. To arbitrarily strip the Supreme Court of its jurisdiction to interpret any area of our Constitution strikes at the very heart of our tripartite form of government. The essential strength of our Constitution lies in the structure that it created making the Supreme Court the final arbiter of its meaning. This structure has resulted in a living Constitution that is able to adapt to our rapidly changing world. This amendment would establish the dangerous precedent of "freezing" the Constitution by prohibiting review of whatever area happened to be in disfavor with the Congress at the time.

I would readily admit that I do not always believe that the Supreme Court interprets the Constitution correctly, nor do I always believe that even correct interpretations of the Constitution lead to wise social policies. However, the Constitution clearly spells out the procedure to be followed when Congress and the country desire to change those fundamental precepts contained in that document. To endorse this attempt to, in effect, amend the Constitution by a simple majority vote of the Congress would be to yield to the siren song of the easy cure, the quick fix. We would not be making progress, but rather breaking down

the process of order when it has been struck by the tide of the public opinion of the moment. I urge my colleagues to join me in opposing this unconstitutional assault on the jurisdiction of the Supreme Court.

IN SUPPORT OF PRO-LIFE LEGISLATION

Mr. ZORINSKY. Mr. President, it is a privilege for me to stand before my colleagues in support of this pro-life initiative by the distinguished senior Senator from North Carolina. I greatly admire the diligence and dedication that he has consistently demonstrated in defense of the unborn child. It has long been my position that legislation which protects the rights of unborn children be enacted. Today we have the opportunity and we must take this opportunity to prevent the future loss of so many young lives.

I can think of no more worthy role for the Senate of the United States of America than the protection and safeguarding of innocent human life. As Thomas Jefferson declared, "the care of human life and happiness, and not their destruction is the first and only legitimate object of good government."

When one considers that over 10 million human lives have been lost through abortion since the tragic Supreme Court decision of January 22, 1973, it is not at all difficult to appreciate why the Senate Judiciary's Subcommittee on Separation of Powers has reported that "today there is strong concern among many citizens that Government is not fulfilling its duty to protect the lives of all human beings."

Those concerned citizens include many of my constituents and they certainly include me.

There may have been a time when the key question to the abortion issue was "When does human life begin?" But I submit the answer to that question can no longer be held to be in reasonable doubt. Not when Newsweek can declare: "A developing baby is known as an embryo * * * during its first 8 weeks of gestation. The process starts at the moment of conception. * * * the sperm merges its genes with the egg * * * that union creates a new human life." and again: "a fertilized human egg * * * is unquestionably alive, a unique entity whose destiny was forged in the ecstatic mingling of male and female gametes, within minutes of fertilization." Again, the subcommittee is on sound footing in finding that "contemporary scientific evidence points to a clear conclusion: The life of a human being begins at conception, the time when the process of fertilization is complete."

So if the key question to the abortion issue was "When does human life begin?" The key question today is "What value shall we assign that life?"

Obviously, there can be no "mother" without a "child." Should the happiness of the mother sanction the killing of her child? Not, Mr. President, in a civilized and humane society, one which holds with the principles outlined in our Declaration of Independence, which as the subcommittee quite properly observed, "expressly affirms the sanctity of human life."

Mr. President, I believe with our Founding Fathers, with the distinguished Senator from North Carolina, and with numerous people of Nebraska that we are endowed by our Creator with the unalienable right to life and this it is the legitimate and necessary function of Government to safeguard that God-given right.

Accordingly, I proudly and earnestly urge my colleagues to favorably consider this amendment.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator may yield to me without losing his right to the floor and without the interruption counting as an additional speech.

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

UNANIMOUS-CONSENT AGREEMENT

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I believe that very shortly we will receive the conference report on the tax bill from the House of Representatives, and I hope we can proceed to the consideration of that matter. I should like to do certain routine matters that the Senate should attend to before that. I will make this unanimous-consent request, which has been cleared on this side with the principals involved, and which I hope will be satisfactory to the Senate.

Mr. President, I ask unanimous consent that the Senate now have a brief period for the transaction of routine morning business, not to extend past 7 p.m., in which Senators may speak for not more than 10 minutes each.

I ask unanimous consent that when we resume consideration of the pending bill, the pending question, the distinguished Senator from Oregon be rerecognized and that the interruption in his presentation not count as an additional speech under the rule.

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

Mr. BAKER. Mr. President, I also say to my colleagues that as soon as we receive the conference report, since it is privileged, it is my intention to ask the Senate to proceed to its consideration. I hope we may do that prompty and by unanimous consent. I think it is urgently important that we try to do that tonight.

We still have the supplemental appropriations conference report to deal with tomorrow, plus a continuation of the debate on abortion. We will deal with that, of course, when the conference report arrives and is received in the Chamber.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. BAKER. I yield.

ROBERT C. BYRD. I suggest that our respective cloakrooms—certainly my own—alert Senators to the fact that the distinguished majority leader is going to present the unanimous-consent request to proceed to the consideration of the tax bill, so that they can be present, hear the request, and if they have any objections, make them.

Mr. BAKER. Mr. President, I think the suggestion is very timely. I will instruct my cloakroom to issue a hotline notice to that effect, and it should be done promptly, because I intend to try to proceed to it as soon as we receive it from the House of Representatives.

Mr. President, there are certain routine matters I am prepared to deal with.

Mr. LEVIN. Mr. President, will the Senator yield for a question?

Mr. BAKER. I yield.

Mr. LEVIN. Is it the majority leader's intention to propound a unanimous-consent request relative to the tax bill?

Mr. BAKER. Yes. Mr. President, it is my hope that the Senate will grant unanimous consent to proceed immediately to the consideration of the tax bill when it is received from the House of Representatives.

Mr. LEVIN. Without any time limitation?

Mr. BAKER. I would hope the Senate would also agree to a short time limitation. I do not know how much time Members might require, but I had in mind 1 hour equally divided or 2 hours equally divided.

Mr. LEVIN. In any unanimous-consent request which is propounded by the majority leader, I request that the interests we discussed earlier, relative to an amendment of mine on the debt limit bill—to be sure that amendment is voted on by the end of business tomorrow—be considered.

I think it is important—we discussed this earlier, and the majority leader has been very helpful—that I have an opportunity to have a vote in a short period of time before we go out, and I ask that any unanimous-consent request propounded by the majority leader consider that.

Mr. BAKER. Mr. President, I will consult once again with the distinguished chairman of the Finance Committee, Senator DOLE.

EXECUTIVE CALENDAR

Mr. BAKER. Mr. President, there are certain matters that can be dealt with at this time by unanimous consent, according to my calendar.

I inquire of the minority leader if he is in a position to consider one nomination on the Executive Calendar, the nomination of Oliver G. Richard III, of Louisiana, to be a member of the Federal Energy Regulatory Commission, Calendar No. 902.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader allow me just a moment to ascertain what our situation is here?

Mr. BAKER. Yes, I will indeed.

Mr. ROBERT C. BYRD. Mr. President, I am now prepared to respond to the distinguished majority leader with respect to the nomination, and I am prepared on behalf of Senators on this side of the aisle to go forward with the nomination.

Mr. BAKER. I thank the Senator.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering the nomination of Oliver G. Richard III.

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

The PRESIDING OFFICER. The nomination will be stated.

DEPARTMENT OF ENERGY

The bill clerk read the nomination of Oliver G. Richard III, of Louisiana, to be a member of the Federal Energy Regulatory Commission.

Mr. McCLURE. Mr. President, on August 12 the Committee on Energy and Natural Resources held a hearing on the Presidential nomination of Oliver G. Richard III, to be a member of the Federal Energy Regulatory Commission. Mr. Richard was nominated for a term expiring on October 20, 1985. The Committee on Energy and Natural Resources favorably reported Mr. Richard's nomination on August 13. The vote was 16 to 0.

Mr. Richard is a partner in the law firm of Hayes, Durio & Richard in Lafayette, La. From 1977 to 1981, Mr. Richard served as energy legislative assistant to Senator BENNETT JOHNSTON. In that position he worked on a broad variety of energy legislation, including the Natural Gas Policy Act of 1978, the Powerplant and Industrial Fuel Use Act of 1978, the Public Utility Regulatory Policies Act of 1978, the Emergency Conservation Act of 1979, and the Energy Security Act.

Mr. Richard holds a bachelor of arts degree and a juris doctor degree from Louisiana State University, and he has also received a master of laws degree in taxation from Georgetown University.

In his testimony before the committee, Mr. Richard described why his background as a member of the Senate staff is particularly relevant to a position on the FERC. He stated:

During my tenure, Mr. Chairman, my duty involved analyzing questions of national energy policy. National policy does not stand in a vacuum, devoid of particular regional considerations. The mosaic is made up of many pieces of unique regional characteristics.

As an energy advisor to Senator Johnston I became aware of the diversity of regional perspectives. As importantly, I came to recognize the importance, indeed the obligation, for decisions regarding national policy to be made so as to balance interests from all parts of the country. Without that balance, compromise is difficult, if not impossible. And compromise is the heart of consensus decisionmaking.

Mr. President, Mr. Richard has fully complied with the committee's rules requiring submittal of a financial disclosure report and a detailed information statement. On behalf of the Committee on Energy and Natural Resources, I am pleased to recommend Senate approval of the Presidential nomination of Oliver G. Richard, III, to be a member of the Federal Energy Regulatory Commission.

Mr. BAUCUS. Mr. President, I support the President's nomination of Mr. Richard, and I am confident that the Senate will confirm him as a member of the Federal Energy Regulatory Commission (FERC).

As the Senate is no doubt aware, the only opposition to Mr. Richard's appointment has come from some who are concerned that being from Louisiana his decisions will too often reflect oil and gas producing States' interest as opposed to consumer or national interest.

I am confident that Mr. Richard will not let this occur. Indeed, I would call to the Senate's attention two letters from Mr. Gordon Bollinger, chairman of Montana's Public Service Commission, with regard to this point.

On July 13, Chairman Bollinger wrote to me to express his concern about this appointment. His concern reflects the spirit of activism and consumer protection that has been evident at the Montana Public Service Commission in recent years. Indeed, his letter is just one example of many in which the commission or its individual members have taken extra initiative, beyond their traditional rate-setting duties, to try to protect the interests of Montanans. I, for one, appreciate and strongly encourage this activism and vigor at the Montana Commission.

Upon receiving Mr. Bollinger's letter, I forwarded it to the Senate Energy Committee, and had my office contact Mr. Richard. At my request, Mr. Richard in turn took the time to telephone Chairman Bollinger. I understand they had a most productive discussion during which Mr. Richard expressed his strong concern and willingness to work with Montanans and others to make sure that FERC policy and case decisions are regionally balanced and do not work on behalf of one interest over another.

Based upon this conversation, Mr. Bollinger wrote to me a second time. In this letter of August 5, he expressed his support for Mr. Richard. I have forwarded this letter to the Energy Committee as well, and I ask that both letters be placed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BAUCUS. Mr. President, I have expressed my concern in several forums that FERC work harder to see that the interests and needs of parts of the country remote from Washington, D.C., are adequately taken into account during its decision processes. I have been particularly concerned that FERC hold field hearings close to the sites of matters in controversy before it. Indeed, I recently wrote to the Senate Appropriations Committee to express my strong concern on this point. In at least three instances over the past year—concerning natural gas pricing review: a Kootenai Falls, Mont., hydroelectric proposal; and the designation of a potential tight sands gas formation in Montana—I have asked for FERC field hearings and in only one case received a positive response. Even in this case, concerning the Kootenai Falls application, at this time FERC has agreed to hold a hearing only in Montana's capitol, hundreds of miles from the site in controversy.

I ask unanimous consent that a copy of my letter to the Senate Appropriations Committee also be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. BAUCUS. Mr. Richard has assured my office that he shares this strong concern about FERC responsiveness to State and local concerns, especially those brought to FERC's attention by Members of the Senate. His quick responsiveness to my request that he call upon Chairman Bollinger reflects his willingness to respond to my State and others.

During its hearings on the nomination, the Senate Energy Committee has reviewed Mr. Richard's background thoroughly. He has been found to be both highly qualified and personally competent to become a member of the Commission, and I would strongly urge my colleagues to support his nomination.

EXHIBIT 1

PUBLIC SERVICE COMMISSION,
Helena, Mont., July 13, 1982.

Hon. MAX BAUCUS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAUCUS: I am writing you to urge that you oppose the pending nomina-

tion of Oliver G. Richard III of Louisiana to the Federal Energy Regulatory Commission. The appointment of another commissioner from a major producing State could have major consequences for natural gas consumers at a time when FERC is contemplating whether to effectively decontrol old gas.

At present two of the four commissioners are from Texas. A third is from Hawaii, which consumes little natural gas, and the fourth is from Virginia, a State ranking in the lower half of the natural gas consuming States.

I am also enclosing a reprint of the Plain Dealer which is an editorial and self-explanatory.

Anything that you may be able to do to keep the nomination from going to Mr. Richard would be appreciated.

Sincerely,

GORDON E. BOLLINGER,
Chairman.

PUBLIC SERVICE COMMISSION,
Helena, Mont., August 5, 1982.

Hon. MAX BAUCUS,
U.S. Senator,
Washington, D.C.

DEAR SENATOR BAUCUS: This is a follow-up on my July 13 letter, in which I opposed the nomination of Oliver G. Richard, III, of Louisiana to the Federal Energy Regulatory Commission.

While the conditions remain that the FERC Board will not be made up of members representing the various parts of the United States, after talking with Mr. Richard, I am certain that he is very well qualified and will do his best to represent the interests of the entire United States, as well as the various regions. I am also certain that he will not be parochial in his outlook as the FERC regulations affect our part of the country.

In visiting with our congressional people, I am assured that Mr. Richard is a very knowledgeable individual and would be a good asset to the Federal Energy Regulatory Commission. It is very important to have someone with a knowledge of the industry, as well as the interest of the entire nation at heart when decisions are made on the Commission.

I, therefore, withdraw my opposition to Mr. Richard and concur that he would be an excellent member of FERC.

Sincerely,

GORDON E. BOLLINGER,
Chairman.

EXHIBIT 2

U.S. SENATOR,
Washington, D.C., August 13, 1982.

Hon. MARK HATFIELD,
Chairman, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I write concerning appropriations for the Federal Energy Regulatory Commission (FERC).

As you are no doubt well aware, in places such as Oregon and Montana it is quite difficult for a citizen to see and participate in FERC hearings held in Washington, D.C. FERC, by nature of its responsibilities, has the decision making authority for many constroversial issues ranging from dam permits to natural gas pricing. When these matters are before FERC, constituents often seek intervention from their Senators and Congressmen. While the quasi-judicial nature of FERC significantly restricts the substantive involvement that would be appropriate from members of the House and Senate, at least these elected representatives are often able to point out to FERC matters of significant public concern to their states and attempt to see that FERC's administrative procedures are adequate.

Often, the simple rescheduling of hearings from Washington, D.C., closer to the areas of controversy will suffice to allow adequate public participation in the process. It is, therefore, most unfortunate when members of the Senate advise FERC of the need for a field hearing on a matter of such importance to a locality of state only to be told that budget constraints prohibit FERC from holding its hearings far from Washington. If travel costs pose a difficulty for FERC and its personnel, they certainly pose a difficulty for individual citizens and local interest groups with an interest in the proceedings.

Accordingly, I seek appropriations report language as follows:

The Committee would emphasize its concern that the Commission utilize its support funds to hold field hearings as necessary to ensure that controversial matters before it and its administrative law judges affecting states and regions distant from Washington, D.C., are aired in the states and localities affected. The Committee is especially concerned that the Commission respond favorably to requests from the Senate and its members for such hearings.

The Commission is directed to report back to the Committee as part of its fiscal 1984 budget request with a comparison of field hearings scheduled in response to congressional requests during fiscal years 1980, 1981, 1982, and 1983.

It is my hope that report language this year will focus the Commission's attention on this problem and avoid the need for specific earmarking of a higher percentage of FERC support appropriations for this function in the future.

Thank you for your assistance.

With best personal regards, I am

Sincerely,

MAX.

Mr. JOHNSTON. Mr. President, under the Constitution it is the duty of the Senate to give to the President advice and consent on certain nominations. I am particularly well qualified to perform this function with regard to the nomination of Oliver G. "Rick" Richard to be a Commissioner of the Federal Energy Regulatory Commission.

As most of you know, Rick served as my legislative assistant for energy matters for roughly 3½ years. During this period, which extended from November 1977 to August 1981, the Energy Committee dealt with some of the most complex and difficult issues in recent memory. Rick was intricately involved in virtually every aspect of these matters, which included such bills as the Natural Gas Policy Act, the Public Utility Regulatory Policies Act, the Fuel Use Act, and the Energy Security Act.

Rick clearly demonstrated an outstanding intellectual ability, and showed a great capacity for thoughtful, independent judgment. As a Commissioner at the FERC, Rick will once again be called upon to use these abilities. From his previous experiences in the Senate, Rick learned very well the special concerns which combine to form the national interest. I have no doubt that he will prove himself to be one of the most qualified and able Commissioners to serve on that body. I commend the President for his choice of nominees for this position, I congratulate Rick in his selection, and I strongly urge my collegues to support his nomination.

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

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

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.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

Mr. STENNIS. Mr. President, today we had the Executive Calendar and Gen. Emmett H. Walker was confirmed to be Director of the National Guard Bureau.

I ask unanimous consent that my remarks be printed in the RECORD.

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

NOMINATION OF MAJ. GEN. EMMETT H. WALKER TO BE THE CHIEF OF THE NATIONAL GUARD BUREAU

Mr. STENNIS. Mr. President, I wholeheartedly and enthusiastically endorse and support the nomination of my fellow Mississippian, Maj. Gen. Emmett H. Walker, to be the Chief of the National Guard Bureau. From long personal experience and observation, I know that General Walker, or Mickey, as we know him, is qualified in every respect for this important and responsible position.

General Walker has made outstanding contributions to the Army National Guard during more than 37 years of distinguished commissioned service in the U.S. Army. This service culminated most recently with a 4-year tour as Director of the Army National Guard. During his tenure the Army National Guard benefited greatly from his fine leadership and sound judgment. Upon confirmation by the Senate, as I know he will be, he will bring the same fine qualities to all of the activities of the National Guard Bureau.

Some of us sometimes overlook the important and major role of the National Guard and other reserve components in our military posture, structure and policy. The Army National Guard represents some 46 percent of the total ground combat power of the U.S. Army as measured by the number of combat brigades and battalions.

The Air National Guard represents 32 percent of the Air Force tactical airlift forces and 26 percent of the tactical fighter forces.

The truth is that our military strength and power would be significantly reduced and impaired without the National Guard forces. It is important that we keep the very valuable talents and abilities of these forces carefully honed and adequately trained so that we can call on them immediately if the need should arise. It is also important that we provide these forces with the modern equipment which is necessary for these forces to do their job.

Equally important we must provide the National Guard with the finest type of leadership at the highest levels of command. I am convinced beyond all doubt that Mickey Walker will bring that type of leadership to his new command. His long, varied and distinguished military career assured that he will provide the guidance and direction that will serve to enhance the quality, capability and preparedness of our Guard forces.

I congratulate General Walker on the new honor and challenge which has come to him. He is completely qualified in every respect by training, experience and character for his new post. I know that he will continue the superb performance he has consistently displayed over his years of service and bring added credit both to himself and our National Guard forces.

I urge my colleagues to give prompt consent to and approval of General Walker's nomination.

I was highly impressed and personally with the Nations wide support that rolled in from over 40 States that officially recommended the selection of General Walker. These recommendations were of the highest quality and all emphasized his achievement and his high sense of dedication. This all pleased me very much. I predict that his services will continue to be of the highest order.

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

MOTOR CARRIER DEREGULATION

Mr. BAKER. Mr. President, another matter that has been cleared on this side to which I invite the attention of the majority leader is H.R. 3663.

Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3663.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 3663) entitled "An act to amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers", and ask a conference with Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. HOWARD, Mr. ANDERSON, Mr. RODINO, Mr. CLAUSEN, and Mr. SHUSTER be the managers of the conference on the part of the House.

Mr. BAKER. Mr. President, I move that the Senate insist on its amendment and agree with the conference requested by the House of Representatives and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Chair appointed Mr. PACKWOOD, Mr. DANFORTH, and Mr. CANNON conferees on the part of the Senate.

EXTRADITION ACT OF 1981

Mr. BAKER. Mr. President, S. 1940, Calendar Order No. 576, is cleared on this side for action by unanimous consent.

I inquire of the minority leader if he is prepared to consider that item at this time.

Mr. ROBERT C. BYRD. Mr. President, speaking on behalf of the Senators on this side of the aisle, there is no objection.

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate S. 1940.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1940) to amend chapter 209 of title 18, United States Code, relating to extradition, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments, as follows:

On page 16, line 17, strike "may", and insert "shall";

On page 16, line 19, strike "Attorney", through and including "satisfaction", and insert "court is satisfied";

On page 18, line 7, strike "punishing the person for his political opinions", and insert the following: "punishing the person for his political opinions. When it is claimed that the foreign government is seeking the person for a political offense or an offense of a political character, the Secretary will make his determination in accordance with the following principles. A political offense or an offense of a political character normally does not include—

"(A) an offense within the scope of the Convention for the Supression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

"(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

"(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

"(D) an offense with respect to which a treaty obligates the United States to either extradite or prosecute a person accused of the offense;

"(E) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnaping, the taking of a hostage, or serious unlawful detention;

"(F) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

"(G) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs; or

"(H) an attempt or conspiracy to commit an offense described in clauses (A) through (G) of this subparagraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

On page 19, line 25, strike "A decision", through and including line 2 on page 20, and insert the following: A decision of Secretary under paragraph (1) or (2) or a decision of the Secretary under paragraph (3) with respect to whether the foreign state is seeking the person's extradition for the purpose of prosecuting or punishing the person for his political opinions is final and is not subject to judicial review. A decision by the Secretary under paragraph (3) denying the person's claim that the foreign state is seeking his extradition for a political offense or an offense of a political character may be appealed by the person to the United States court of appeals to which an appeal under section 3195 would lie. The court shall not set aside the Secretary's decision if it is based on substantial evidence. The appeal shall be determined promptly. Pending determination of the appeal, the court shall stay the extradition of the person, unless the court determines that the appeal is frivolous or taken for purposes of delay.

And had been reported from the Committee on Foreign Relations, with amendments, as follows:

On page 7, beginning on line 22, strike "for a political offense, for an offense of a political character, or";

On page 10, strike line 19, through and including page 11, line 11, and insert the following:

"(e) POLITICAL OFFENSES AND OFFENSES OF A POLITICAL CHARACTER.—The court shall not find the person extraditable after a hearing under this section if the court finds that the person has established by clear and convincing evidence that any offense for which such person may be subject to prosecution or punishment if extradited is a political offense.

"(1) For the purposes of this section a political offense does not include—

"(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

"(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

"(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

"(D) an offense with respect to which a multilateral treaty obligates the United States to either extradite or prosecute a person accused of the offense;

"(E) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs;

"(F) an attempt or conspiracy to commit an offense described in subparagraphs (A) through (D) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(2) For the purposes of this section a political offense, except in extraordinary circumstances, does not include—

"(A) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnaping, the taking of a hostage, or a serious unlawful detention;

"(B) an offensive involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

"(C) an attempt or conspiracy to commit an offense described in subparagraphs (A) or (B) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(f) DETERMINATION BY THE COURT OF THE APPLICATION OF THE POLITICAL OFFENSE EXCEPTION.—

"(1) Upon motion made by the person sought to be extradited or the Attorney General, the United States district court may order the determination of any issue under paragraph (e) of this section by a judge of such court.

"(2) No issue under paragraph (e) of this section shall be determined by the court and no evidence shall be received with respect to such issue unless and until the court determines the person sought is otherwise extraditable.

"(g) OTHER ISSUES.—

"(1) Any issue as to whether the foreign state is seeking extradition of a person for the purpose of prosecuting or punishing the person because of such person's political opinions, race, religion, or nationality shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(2) any issue as to whether the extradition of a person to a foreign state would be incompatible with humanitarian considerations shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(3) In determining the application of subparagraphs (1) and (2) of this paragraph, the Secretary of State shall consult with the appropriate Bureaus and Offices of the Department of State including the Bureau of Human Rights and Humanitarian Affairs.

"(h) CERTIFICATION OF FINDINGS TO THE SECRETARY OF STATE.—

"(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of State declines to order the person's surrender.

"(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the court considers appropriate, to the Secretary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.".

On page 17, line 25, strike "; or";

On page 18, strike line 1, through and including page 19, line 21;

On page 20, line 3, strike "or a decision", through and including "opinions" on line 6;

On page 20, line 7, strike "A decision", through and including line 17;

So as to make the bill read:

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

SEC. 2. Chapter 209 of title 18, United States Code, is amended as follows:

(a) Section 3181 is deleted.

(b) Section 3182 is redesignated as section "3181".

(c) Section 3183 is redesignated as section "3182" and is amended by striking out "or the Panama Canal Zone" in the first sentence.

(d) A new section 3183 is added as follows:

"§ 3183. Payment of fees and costs

"All costs or expenses incurred in any interstate rendition proceeding and apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.".

(e) Sections 3184 through 3195 are deleted.

(f) The chapter heading and section analysis are amended to read as follows:

"CHAPTER 209—INTERSTATE RENDITION

"3181. Fugitives from State or Territory to State, District, or Territory.
"3182. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of the United States.
"3183. Payment of fees and costs.".

SEC. 3. A new chapter 210 of title 18 of the United States Code is added as follows:

"CHAPTER 210—INTERNATIONAL EXTRADITION

"Sec.
"3191. Extradition authority in general.
"3192. Initial procedure.
"3193. Waiver of extradition hearing and consent to removal.
"3194. Extradition hearing.
"3195. Appeal.
"3196. Surrender of a person to a foreign state.
"3197. Receipt of a person from a foreign state.
"3198. General provisions for chapter.

"§ 3191. Extradition authority in general

"The United States may extradite a person to a foreign state pursuant to this chapter only if—

"(a) there is a treaty concerning extradition between the United States and the foreign state; and

"(b) the foreign state requests extradition within the terms of the applicable treaty.

"§ 3192. Initial procedure

"(a) IN GENERAL.—The Attorney General may file a complaint charging that a person is extraditable. The Attorney General shall file the complaint in the United States district court—

"(1) for the district in which the person may be found; or

"(2) for the District of Columbia, if the Attorney General does not know where the person may be found.

"(b) COMPLAINT.—The complaint shall be made under oath or affirmation, and shall specify the offense for which extradition is sought. The complaint—

"(1) shall be accompanied by a copy of the request for extradition and by the evidence and documents required by the applicable treaty; or

"(2) if not accompanied by the materials specified in paragraph (1)—

"(A) shall contain—

"(i) information sufficient to identify the person sought;

"(ii) a statement of the essential facts constituting the offense that the person is believed to have committed, or a statement that an arrest warrant for the person is outstanding in the foreign state; and

"(iii) a description of the circumstances that justify the person's arrest; or

"(B) shall contain such other information as is required by the applicable treaty;

and shall be supplemented before the extradition hearing by the materials specified in paragraph (1).

"(c) ARREST OR SUMMONS.—Upon receipt of a complaint, the court shall issue a warrant for the arrest of the person sought, or, if the Attorney General so requests, a summons to the person to appear at an extradition hearing. The warrant or summons shall be executed in the manner prescribed by rule 4(d) of the Federal Rules of Criminal Procedure. A person arrested pursuant to this section shall be taken without unnecessary delay before the nearest available court for an extradition hearing.

"(d) DETENTION OR RELEASE OF ARRESTED PERSON.—

"(1) The court shall order that person arrested under this section be held in official detention pending the extradition hearing unless the person establishes to the satisfaction of the court that special circumstances require his release.

"(2) Unless otherwise provided by the applicable treaty, if a person is detained pursuant to paragraph (1) in a proceeding in which the complaint is filed under subsection (b)(2), and if, within sixty days of the person's arrest, the court has not received—

"(A) the evidence or documents required by the applicable treaty; or

"(B) notice that the evidence or documents have been received by the Department of State and will promptly be transmitted to the court:

the court may order that the person be released from official detention pending the extradition hearing.

"(3) If the court orders the release of the person pending the extradition hearing, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

"§ 3193. Waiver of extradition hearing and consent to removal

"(a) INFORMING THE COURT OF WAIVER AND CONSENT.—A person against whom a complaint is filed may waive the requirements of formal extradition proceedings, including an order of surrender, by informing the court that he consents to removal to the foreign state.

"(b) INQUIRY BY THE COURT.—The court, upon being informed of the person's consent to removal, shall—

"(1) inform the person that he has a right to consult with counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

"(2) address the person to determine whether his consent is—

"(A) voluntary, and not the result of a threat or other improper inducement; and

"(B) given with full knowledge of its consequences, including the fact that it may not be revoked after the court has accepted it.

"(c) FINDING OF CONSENT AND ORDER OF REMOVAL.—If the court finds that the person's consent to removal is voluntary and given with full knowledge of its consequences, it shall, unless the Attorney General notifies the court that the foreign state or the United States objects to such removal, order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition. The court shall order that the person be held in official detention until surrendered.

"(d) LIMITATION ON DETENTION PENDING REMOVAL.—A person whom the court orders surrendered pursuant to subsection (c) may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings, the person is not removed from the United States within thirty days after the court ordered the person's surrender. The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

"§ 3194. Extradition hearing

"(a) IN GENERAL.—The court shall hold a hearing to determine whether the person against whom a complaint is filed is extraditable, unless the hearing is waived pursuant to section 3193. The purpose of the hearing is limited. The court does not have jurisdiction to determine the merits of the charge against the person by the foreign state or to determine whether the foreign state is seeking the extradition of the person for a political offense, for an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions. The hearing shall be held as soon as practicable after the arrest of the person or issuance of the summons.

"(b) RIGHTS OF THE PERSON SOUGHT.—The court shall inform the person of the limited purpose of the hearing, and shall inform him that—

"(1) he has the right to be represented by counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

"(2) he may cross-examine witnesses who appear against him and may introduce evidence in his own behalf with respect to the matters set forth in subsection (d).

"(c) EVIDENCE.—

"(1) A deposition, warrant, or other document, or a copy thereof, is admissible as evidence in the hearing if—

"(A) it is authenticated in accordance with the provisions of an applicable treaty or law of the United States;

"(B) it is authenticated in accordance with the applicable law of the foreign state, and such authentication may be established conclusively by a showing that—

"(i) a judge, magistrate, or other appropriate officer of the foreign state has signed a certification to that effect; and

"(ii) a diplomatic or consular officer of the United States who is assigned or accredited to the foreign state, or a diplomatic or consular officer of the foreign state who is assigned or accredited to the United States, has certified the signature and position of the judge, magistrate, or other officer; or

"(C) other evidence is sufficient to enable the court to conclude that the document is authentic.

"(2) A certificate or affidavit by an appropriate official of the Department of State is admissible as evidence of the existence of a treaty or its interpretation.

"(3) If the applicable treaty requires that such evidence be presented on behalf of the foreign state as would justify ordering a trial of the person if the offense had been committed in the United States, the requirement is satisfied if the evidence establishes probable cause to believe that an offense was committed and that the person sought committed it.

"(d) FINDINGS.—The court shall find that the person is extraditable if it finds that—

"(1) there is probable cause to believe that the person arrested or summoned to appear is the person sought in the foreign state;

"(2) the evidence presented is sufficient to support the complaint under the provisions of the applicable treaty;

"(3) no defense to extradition specified in the applicable treaty, and within the jurisdiction of the court, exists; and

"(4) the act upon which the request for extradition is based would constitute an offense punishable under the laws of—

"(A) the United States;

"(B) the State where the fugitive is found; or

"(C) a majority of the States.

The court may base a finding that a person is extraditable upon evidence consisting, in whole or in part, of hearsay or of properly certified documents.

"(e) CERTIFICATION OF FINDINGS TO THE SECRETARY OF STATE.—

"(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of State declines to order the person's surrender.

"(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the court considers appropriate, to the Secreatary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.

"(e) POLITICAL OFFENSES AND OFFENSES OF A POLITICAL CHARACTER.—The court shall not find the person extraditable after a hearing under this section if the court finds that the person has extablished by clear and convincing evidence that any offense for which such person may be subject to prosecution or punishment if extradited is a political offense.

"(1) For the purposes of this section a political offense does not include—

"(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

"(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

"(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

"(D) an offense with respect to which a multilateral treaty obligates the United States to either extradite or prosecute a person accused of the offense;

"(E) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs;

"(F) an attempt or conspiracy to commit an offense described in subparagraphs (A) through (D) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(2) For the purposes of this section a political offense, except in extraordinary circumstances, does not include—

"(A) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnaping, the taking of a hostage, or a serious unlawful detention;

"(B) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

"(C) an attempt or conspiracy to commit an offense described in subparagraphs (A) or (B) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(f) DETERMINATION BY THE COURT OF THE APPLICATION OF THE POLITICAL OFFENSE EXCEPTION.—

"(1) Upon motion made by the person sought to be extradited or the Attorney General, the United States district court may order the determination of any issue under paragraph (e) of this section by a judge of such court.

"(2) No issue under paragraph (e) of this section shall be determined by the court and no evidence shall be received with respect to such issue unless and until the court determines the person sought is otherwise extraditable.

"(g) OTHER ISSUES.—

"(1) Any issue as to whether the foreign state is seeking extradition of a person for the purpose of prosecuting or punishing the person because of such person's political opinions, race, religion, or nationality shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(2) Any issue as to whether the extradition of a person to a foreign state would be incompatible with humanitarian considerations shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(3) In determining the application of subparagraphs (1) and (2) of this paragraph, the Secretary of State shall consult with the appropriate Bureaus and Offices of the Department of State including the Bureau of Human Rights and Humanitarian Affairs.

"(h) CERTIFICATION OF FINDINGS TO THE SECRETARY OF STATE.—

"(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of State declines to order the person's surrender.

"(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the court considers appropri-

ate, to the Secretary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.".

"§ 3195. Appeal

"(a) IN GENERAL.—Either party may appeal, to the appropriate United States court of appeals, the findings by the district on a complaint for extradition. The appeal shall be taken in the manner prescribed by rules 3 and 4(b) of the Federal Rules of Appellate Procedure, and shall be heard as soon as practicable after the filing of the notice of appeal. Pending determination of the appeal, the district court shall stay the extradition of a person found extraditable.

"(b) DETENTION OR RELEASE PENDING APPEAL.—If the district court found that the person sought is—

"(1) extraditable, it shall order that the person be held in official detention pending determination of the appeal, or pending a finding by the court of appeals that the person has established that special circumstances require his release;

"(2) not extraditable, it shall order that the person be released pending determination of an appeal unless the court is satisfied that the person is likely to flee or to endanger the safety of any other person or the community.

If the court orders the release of a person pending determination of an appeal, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

"(c) SUBSEQUENT REVIEW.—No court has jurisdiction to review a finding that a person is extraditable unless the person has exhausted his remedies under subsection (a). If the person files a petition for habeas corpus or for other review, he shall specify whether the finding that he is extraditable has been upheld by a court, and, if so, shall specify the court, the date, and the nature of each such proceeding. A court does not have jurisdiction to entertain a person's petition for habeas corpus or for other review if his commitment has previously been upheld, unless the court finds that the grounds for the petition or appeal could not previously have been presented.

§ 3196. Surrender of a person to a foreign state

"(a) RESPONSIBILITY OF THE SECRETARY OF STATE.—If a person is found extraditable pursuant to section 3194, the Secretary of State, upon consideration of the provisions of the applicable treaty and this chapter—

"(1) may order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition;

"(2) may order such surrender of the person contingent on the acceptance by the foreign state of such conditions as the Secretary considers necessary to effectuate the purposes of the treaty or the interest of justice; or.

"(3) shall decline to order the surrender of the person if the Secretary is persuaded, by written evidence and argument submitted to him by written evidence and argument submitted to him by the person sought, that the foreign state is seeking the person's extradition for a political offense or an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions. When it is claimed that the foreign government is seeking the person for political offense or an offense of a political character, the Secretary will make his determination in accordance with the following principles. A political offense or an offense of a political character normally does not include—

"(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

"(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

"(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

"(D) an offense with respect to which a treaty obligates the United States to either extradite or prosecute a person accused of the offense;

"(E) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnaping, the taking of a hostage, or serious unlawful detention;

"(F) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

"(G) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs; or

"(H) an attempt or conspiracy to commit an offense described in clauses (A) through (G) of this subparagraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

The Secretary may order the surrender of a person who is a national of the United States unless such surrender is expressly forbidden by the applicable treaty or by the laws of the United States. A decision of the Secretary under paragraph (1) or (2) or a decision of the Secretary under paragraph (3) with respect to whether the foreign state is seeking the person's extradition for the purpose of prosecuting or punishing the person for his political opinions is final and is not subject to judicial review. A decision by the Secretary under paragraph (3) denying the person's claim that the foreign state is seeking his extradition for a political offense or an offense of a political character may be appealed by the person to the United States court of appeals to which an appeal under section 3195 would lie. The court shall not set aside the Secretary's decision if it is based on substantial evidence. The appeal shall be determined promptly. Pending determination of the appeal, the court shall stay the extradition of the person, unless the court determines that the appeal is frivolous or taken for purposes of delay.

"(b) NOTICE OF DECISION.—The Secretary of State, upon ordering a person's surrender or denying a request for extradition in whole, or in part, shall notify the person sought, the diplomatic representative of the foreign state, the Attorney General, and the court that found the person extraditable. If the Secretary orders the person's surrender, he also shall notify the diplomatic representative of the foreign state of the time limitation on the person's detention that is provided by subsection (c)(2).

"(c) LIMITATION ON DETENTION PENDING DECISION OR REMOVAL.—A person who is found extraditable pursuant to section 3194 may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings—

"(1) the Secretary does not order the person's surrender, or decline to order the person's surrender, within forty-five days after his receipt of the court's findings and the transcript of the proceedings; or

"(2) the person is not removed from the United States within thirty days after the Secretary ordered the person's surrender.

The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

"§ 3197. Receipt of a person from a foreign state

"(a) APPOINTMENT AND AUTHORITY OF RECEIVING AGENT.—The Attorney General shall appoint an agent to receive, from a foreign state, custody of a person accused of a Federal, State, or local offense. The agent shall have the authority of a United States marshal. The agent shall convey the person directly to the Federal or State jurisdiction that sought his return.

"(b) TEMPORARY EXTRADITION TO THE UNITED STATES.—If a foreign state delivers custody of a person accused of a Federal, State, or local offense to an agent of the United States on the condition that the person be returned to the foreign state at the conclusion of criminal proceedings in the United States, the Bureau of Prisons shall hold the person in custody pending the conclusion of the proceedings, and shall then surrender the person to a duly appointed agent of the foreign state. The return of the person to the foreign state is not subject to the requirements of this chapter.

"§ 3198. General provisions for chapter

"(a) DEFINITIONS.—As used in this chapter—

"(1) 'court' means

"(A) a United States district court established pursuant to section 132 of title 28, United States Code, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands; or

"(B) a United States magistrate authorized to conduct an extradition proceeding;

"(2) 'foreign state', when used in other then a geographic sense, means the government of a foreign state;

"(3) 'foreign state', when used in a geographic sense, includes all territory under the jurisdiction of a foreign state, including a colony, dependency, and constituent part of the state; its air space and territorial waters; and vessels or aircraft registered in the state;

"(4) 'treaty' includes a treaty, convention, or international agreement, bilateral or multilateral, that is in force after advice and consent by the Senate; and

"(5) 'warrant', as used with reference to a foreign state, means any judicial document authorizing the arrest or detention of a person accused or convicted of a crime.

"(b) PAYMENT OF FEES AND COSTS.—Unless otherwise specified by treaty, all transportation costs, subsistence expenses, and translation costs incurred in connection with the extradition or return of a person at the request of—

"(1) a foreign state, shall be borne by the foreign state unless the Secretary of State directs otherwise;

"(2) a State, shall be borne by the State; and

"(3) the United States, shall be borne by the United States.".

SEC. 4. This Act shall take effect on the first day of the first month after enactment, and shall be applicable to extradition and rendition proceedings commenced thereafter.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. BAKER. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

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

Mr. BAKER. Mr. President, I move adoption of the amendments.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 1940) was passed.

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

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

The motion to lay on the table was agreed to.

CERTAIN FEDERAL LANDS HELD IN TRUST

Mr. BAKER. Mr. President, if the minority leader does not object or other Senators do not, I propose to ask the Chair to proceed to the consideration of Calendar Order No. 727, S. 1858.

Mr. ROBERT C. BYRD. Mr. President, there is no objection.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1858) to declare that the United States holds certain lands in trust for the Washoe Tribe of Nevada and California and to transfer certain other lands to the administration of the U.S. Forest Service.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Select Committee on Indian Affairs with an amendment to strike out all after the enacting clause, and insert the following:

That (a) subject to the provisions of subsection (b), all right, title, and interest of the United States in the following lands (including all improvements thereon and appurtenances thereto, particularly all water rights appurtenant thereto which are presently administered by the Bureau of Indian Affairs of the Department of the Interior) are hereby declared to be held by the United States in trust for the benefit and use of the Washoe Tribe of Nevada and California and are hereby declared to be part of the Washoe Indian Reservation:

Township 14 North, Range 19 East, Mount Diablo Meridian, Nevada

Section 1: Lot 2 northeast quarter, lot 3; 84.90 acres.

Section 3: West half lot 1 west half lot 2, northeast quarter, east half lot 1, east half lot 2, northwest quarter; 157.14 acres.

Section 14: East half southwest quarter, southwest quarter northeast quarter, southeast quarter northwest quarter excluding any portion lying west of Jack's Valley Road as it presently exists; 160.00 acres.

Section 22: South half north half; 160.00 acres.

Section 23: South half, south half northwest quarter, northeast quarter northwest quarter; 440.00 acres.

Section 24: South half south half; 160.00 acres.

Section 25: North half, southeast quarter, northeast quarter southwest quarter; 520.00 acres.

Section 36: West half, north half northeast quarter, southwest quarter northeast quarter, south half southeast quarter, northwest quarter southeast quarter; 560.00 acres.

Total acreage: 2,242.04 acres more or less.

Township 14 North, Range 20 East, Mount Diablo Meridian, Nevada

Section 5: The north half of the northwest quarter lying west of the V and T right-of-way and south of Clear Creek; and the east half of lot 2 in the northwest quarter. Total acreage: 108.01 acres more or less.

Section 6: Lots 1 and 2; 144.13 acres.

Section 18: West half northeast quarter, southeast quarter northeast quarter, northwest quarter southeast quarter; 160.00 acres more or less.

Section 19: South half lot 2 northwest quarter, lot 2 southwest quarter; 98.36 acres more or less.

Township 15 North, Range 20 East, Mount Diablo Meridian, Nevada

Section 32: The east half of the southeast quarter and the southwest quarter of the southeast quarter; and two parcels of and lying within the northwest quarter of the southeast quarter of section 32 in township 15 north of range 20 east of the Mount Diablo Meridian in Ormsby County, Nevada. Parcel numbered 1 is south of the highway leading from the Stewart Indian School to the Minden-Carson City Highway and is described as beginning at a point at the southeast corner of the parcel, the corner being also the southwest corner of the missionary lot, said point of beginning and further described as bearing north 52 degrees 43 munutes west, a distance of 2,198.00 feet from the southeast corner of section 32:

thence north 89 degrees 50 minutes west, a distance of 900.00 feet to the southwest corner of the parcel, said corner being also the southwest corner of the above described subdivision;

thence north 0 degrees 04 seconds east, a distance of 1,102.00 feet to a point at the northwest corner of the parcel and the southerly of the highway 100-foot right-of-way line;

thence south 51 degrees 32 minutes east, along the southerly side of the highway right-of-way line a distance of 1,600.28 feet to a point at the intersection of the highway right-of-way line and the northerly property line of the missionary lot;

thence north 55 degrees 24 minutes west along the northerly property line of said lot a distance of 430.00 feet to a point;

thence south 0 degrees 04 minutes west, along the west boundary of said lot a distance of 354.40 feet to the point of beginning; said parcel numbered 1 containing 15.51 acres more or less.

Parcel numbered 2 is north of the highway leading from the Stewart Indian School to the Minden-Carson City Highway and is described as beginning at a point at the southeast corner of the parcel, said corner being on the northerly side of the highway 100-foot right-of-way line and the east side of the above described subdivision, said point of beginning being further described as bearing north 41 degrees 18 minutes west, a distance of 2,010 feet from the southeast corner of section 32:

thence north 51 degrees 32 minutes west, along the northerly side of the highway right-of-way line a distance of 1,690.00 feet to a point;

thence north 0 degrees 04 minutes east, a distance of 35.80 feet to the northwest corner of the parcel, said corner being also the northwest corner of the above described subdivision;

thence south 89 degrees 50 minutes east, along the subdivision line a distance of 1,239.50 feet to the northeast corner of the parcel and the west right-of-way line of the Virginia and Truckee Railroad;

thence south 0 degrees 04 minutes west, along the railroad right-of-way line a distance of 44.50 feet to a point;

thence from a tangent whose bearing is the last described course curving to the left with a radius of 1,196.28 feet through an angle of 21 degrees 15 minutes 40 seconds a distance of 443.90 feet to a point on the railroad right-of-way line and the east side of the subdivision;

thence south 0 degrees 04 minutes west, along the east side of the subdivision a distance of 655.70 feet to the point of beginning.

And the south half of the southwest quarter excepting the following parcels:

(1) land lying west of the V and T Railroad right-of-way contained in the southeast quarter southeast quarter; and

(2) southwest quarter southeast quarter.

Total acreage 165.54 acres more or less.

(b) Nothing in this section shall deprive any person or entity of any legal existing right-of-way, legal mining claim, legal grazing permit, legal water right (including any water right with respect to the Carson River as decreed by order of the United States District Court of the State of Nevada on October 28, 1980, in the matter of the determination of the relative rights in and to the waters of the Carson River and its tributaries in Douglas County, Nevada), or other legal right or legal interest which such person or entity may have in land described in subsection (a).

(c) The lands which are declared to be held in trust and part of the Washoe Indian Reservation under subsection (a) shall be used primarily for agricultural purposes.

(d) Section 164 of the Act of July 14, 1955 (69 Stat. 322, 42 U.S.C. 7474), as amended, shall be applied without regard to the provisions of this section.

SEC. 2. On or before the expiration of one hundred and eighty days from the date of enactment of this Act the Bureau of Indian Affairs shall transfer to the Forest Service, United States Department of Agriculture, the following lands which shall become national forest system lands subject to all laws, rules, and regulations applicable to the national forest system:

Township 14 North, Range 19 East, Mount Diablo Meridian, Nevada

Section 21: Southeast quarter northeast quarter; 40 acres.

Section 28: Northeast quarter northeast quarter; 40 acres.

Total acreage: 80.00 acres more or less.

The PRESIDING OFFICER. The bill is open to amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1858) was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 5081) entitled "An act to declare that the United States holds certain lands in trust for the Washoe Tribe of Nevada and California and to transfer certain other lands to the administration of the United States Forest Service", do pass with the following amendment: Strike out all after the enacting clause and insert: That (a) subject to the provisions of subsection (b), all right, title, and interest of the United States in the following lands (including all improvements thereon and appurtenances thereto, particularly all water rights appurtenant thereto which are presently administered by the Bureau of Indian Affairs of the Department of the Interior) are hereby declared to be held by the United States in trust for the benefit and use of the Washoe Tribe of Nevada and California and are hereby declared to be part of the Washoe Indian Reservation:

Township 14 North, Range 19 East, Mount Diablo Meridian, Nevada

Section 1: Lot 2 northeast quarter, lot 3; 84.90 acres.

Section 3: West half lot 1 west half lot 2, northeast quarter, east half lot 1, east half lot 2, northeast quarter; 157.14 acres.

Section 14: East half southwest quarter, southwest quarter northeast quarter, southeast quarter northwest quarter excluding any portion lying west of Jack's Valley Road as it presently exists; 160.00 acres.

Section 22: South half north half; 160.00 acres.

Section 23: South half, south half northwest quarter, northeast quarter northwest quarter; 440.00 acres.

Section 24: South half south half; 160.00 acres.

Section 25: North half, southeast quarter, northeast quarter southwest quarter; 520.00 acres.

Section 36: West half, north half northeast quarter, southwest quarter northeast quarter, south half southeast quarter, northwest quarter southeast quarter; 560.00 acres.

Total acreage: 2,242.04 acres more or less.

Township 14 North, Range 20 East, Mount Diablo Meridian, Nevada

Section 5: The north half of the northeast quarter lying west of the V and T right-of-way and south of Clear Creek; and the east half of lot 2 in the northwest quarter. Total acreage: 108.01 acres more or less.

Section 6: Lots 1 and 2; 144.13 acres.

Section 18: West half northeast quarter, southeast quarter northeast quarter, northwest quarter southeast quarter; 160.00 acres more or less.

Section 19: South half lot 2 northwest quarter, lot 2 southwest quarter; 98.36 acres more or less.

Township 15 North, Range 20 East, Mount Diable Meridian, Nevada

Section 32: The east half of the southeast quarter and the southwest quarter of the southeast quarter; and two parcels of land lying within the northwest quarter of the southeast quarter of section 32 in township 15 north of range 20 east of the Mount Diablo Meridian in Ormsby County, Nevada. Parcel numbered 1 is south of the highway leading from the Stewart Indian School to the Minden-Carson City Highway and is described as beginning at a point at the southeast corner of the parcel, the corner being also the southwest corner of the missionary lot, said point of beginning and further described as bearing north 52 degrees 43 minutes west, a distance of 2,198.00 feet from the southeast corner of section 32:

thence north 89 degrees 50 minutes west, a distance of 900.00 feet to the southwest corner of the parcel, said corner being also the southwest corner of the above described subdivision;

thence north 0 degrees 04 seconds east, a distance of 1,102.00 feet to a point at the northwest corner of the parcel and the southerly side of the highway 100-foot right-of-way line;

thence south 51 degrees 32 minutes east, along the southerly side of the highway right-of-way line at a distance of 1,600.28 feet to a point at the intersection of the highway right-of-way line and the northerly property line of the missionary lot;

thence north 55 degrees 24 minutes west, along the northerly property line of said lot a distance of 430.00 feet to a point;

thence south 0 degrees 04 minutes west, along the west boundary of said lot a distance of 354.40 feet to the point of beginning; said parcel numbered 1 containing 15.51 acres more or less.

Parcel numbered 2 is north of the highway leading from the Stewart Indian School to the Minden-Carson City Highway and is described as beginning at a point at the southeast corner of the parcel, said corner being on the northerly side of the highway 100-foot right-of-way line and the east side of the above described subdivision, said point of beginning being further described as bearing north 41 degrees 18 minutes west, a distance of 2,010 feet from the southeast corner of section 32:

thence north 51 degrees 32 minutes west, along the northerly side of the highway right-of-way line a distance of 1,690.00 feet to a point;

thence north 0 degrees 04 minutes east, a distance of 35.80 feet to the northwest corner of the parcel, said corner being also the northwest corner of the above described subdivision;

thence south 89 degrees 50 minutes east, along the subdivision line a distance of 1,239,50 feet to the northeast corner of the parcel and the west right-of-way line of the Virginia and Truckee Railroad;

thence south 0 degrees 04 minutes west, along the railroad right-of-way line a distance of 44.50 feet to a point;

thence from a tangent whose bearing is the last described course curving to the left with a radius of 1,196.28 feet through an angle of 21 degrees 15 minutes 40 seconds a distance of 443.90 feet to a point on the railroad right-of-way line and the east side of the subdivision;

thence south 0 degrees 04 minutes west, along the east side of the subdivision a distance of 655.70 feet to the point of beginning.

And the south half of the southwest quarter excepting the following parcels:

(1) land lying west of the V and T Railroad right-of-way contained in the southeast quarter southeast quarter; and

(2) southwest quarter southeast quarter.

Total acreage 165.54 acres more or less.

(b) Nothing is this section shall deprive any person or entity of any legal existing right-of-way, legal mining claim, legal grazing permit, legal water right (including any water right with respect to the Carson River as decreed by order of the United States District Court of the State of Nevada on October 28, 1980, in the matter of the determination of the relative rights in and to the waters of the Carson River and its tributaries in Douglas County, Nevada), or other legal right or legal interest which such person or entity may have in land described in subsection (a).

(c) The lands which are declared to be held in trust and part of the Washoe Indian Reservation under subsection (a) shall be used primarily for agricultural purposes.

(d) Section 164 of the Act of July 14, 1955 (69 Stat. 322, 42 U.S.C. 7474), as amended, shall be applied without regard to the provisions of this section.

SEC. 2. On or before the expiration of one hundred and eighty days from the date of enactment of this Act the Bureau of Indian Affairs shall transfer to the Forest Service, United States Department of Agriculture, the following lands which shall become national forest system lands subject to all laws, rules, and regulations applicable to the national forest system:

Township 14 North, Range 19 East, Mount Diablo Meridian, Nevada

Section 21: Southeast quarter northeast quarter; 40 acres.

Section 28: Northeast quarter northeast quarter; 40 acres.

Total acreage: 80.00 acres more or less.

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

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5081.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5081) to declare that the United States holds certain lands in trust for the Washoe Tribe of Nevada and California and to transfer certain other lands to the administration of the United States Forest Service.

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. BAKER. Mr. President, I ask unanimous consent that all after the enacting clause of H.R. 5081 be stricken and that there be substituted therefor the text of S. 1858, as amended, as just adopted by the Senate.

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

Without objection, the bill will be considered as having been read twice and the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The bill (H.R. 5081), as amended, was passed.

Mr. BAKER. I thank the Chair.

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

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that S. 1858 be indefinitely postponed.

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

BUDGET ACT WAIVER

Mr. BAKER. Mr. President, H.R. 4347 is cleared on this side. If it is agreeable to the majority leader, I wish to ask the Chair to proceed to the consideration of that item at this time.

Mr. ROBERT C. BYRD. Mr. President, there is no objection.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask that the Chair lay before the Senate the budget waiver to accompany that measure which is Calendar Order No. 732, H.R. 4347, if there is no objection.

The resolution (S. Res. 440) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 4347, was considered and agreed to, as follows:

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 H.R. 4347. Such waiver is necessary because H.R. 4347, as reported, authorizes the enactment of new budget authority which would first become available in fiscal year 1983, and such bill was not reported on or before May 15, 1982, as required by section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

The waiver of section 402(a) is necessary to permit construction of the WEB rural water development project to be initiated in early fiscal year 1983 so as to take advantage of favorable weather conditions for such construction.

H.R. 4347 provides a reauthorization of the WEB project which was authorized by the Rural Development Policy Act of 1980 (94 Stat. 1171). It should be noted that $1,900,000 was appropriated for fiscal year 1981 to provide for initial planning and construction of the project; however, obligation of the funds was deferred until conditions of section 9(b) of the Rural Development Policy Act of 1980, regarding the Oahe project (also in South Dakota), had been met; H.R. 4347, as reported, meets those conditions.

Failure to pass H.R. 4347 would preclude initial construction activities during calendar year 1982 (or early in fiscal year 1983) because the construction season for the authorized types of work is generally only from March to November. Such a delay in initial construction activities until calendar year 1983 would result in increases in construction costs.

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

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

The motion to lay on the table was agreed to.

DEVELOPMENT OF CERTAIN WATER PROJECTS

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate H.R. 4347, Calendar Order No. 732.

The Senate proceeded to consider the bill (H.R. 4347) to authorize the Secretary of the Interior to proceed with development of the WEB pipeline, to provide for the study of South Dakota water projects to be developed in lieu of the Oahe and Pollock-Herreid irrigation projects, and to make available Missouri basin pumping power to projects authorized by the Flood Control Act of 1944 to receive such power, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause, and insert the following:

That the WEB Rural Water Development Project, authorized by section 9 of the Rural Development Policy Act of 1980 (94 Stat. 1175), is reauthorized subject to the provisions of section 9 of that Act, as amended by section 2 of this Act. The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to proceed with the development of the WEB Rural Water Development Project, consistent with the terms and conditions of section 9(e) of that Act, as amended by section 2 of this Act, and to make available for immediate obligation any funds appropriated for such project for fiscal year 1981.

SEC. 2. Section 9 of the Rural Development Policy Act of 1980 is amended by—

(a) striking out in subsection (b) all after "the types of construction involved herein" and inserting a period in lieu thereof;

(b) striking out the first sentence of subsection (d); and

(c) striking out the first sentence of subsection (e) and inserting in lieu thereof the following: "The Secretary of the Interior shall use funds appropriated under this Act to provide financial assistance to plan and develop the WEB Rural Water Development Project under the terms and conditions of the Consolidated Farm and Rural Development Act and the rules and regulations promulgated by the Department of Agriculture under that Act, except to the extent such Act or rules or regulations promulgated thereunder are inconsistent with the provisions of this section.".

SEC. 3. (a) The Secretary is authorized, in cooperation with the State of South Dakota, to conduct feasibility investigations of the following proposed water resource developments:

(1) alternate uses of facilities constructed for use in conjunction with the Oahe unit, initial stage, James division, Pick-Sloan Missouri basin program, South Dakota;

(2) future uses in South Dakota of water delivered by the Garrison unit, Pick-Sloan Missouri basin program, North Dakota; and

(3) a reformulated plan for the development of the Pollock-Herreid unit, South Dakota pumping division, Pick-Sloan Missouri basin program, South Dakota, including irrigation of alternative lands or reduced acreages.

(b) The Secretary shall report to Congress the findings of the studies authorized by this section along with his recommendations.

(c) The Secretary may contract with the State to carry out the studies authorized by this section.

SEC. 4. (a) The Secretary is authorized to cancel the master contract and participating and security contracts for the Oahe unit, initial Stage: Provided, That such actions shall be done with the agreement of the Oahe Conservancy Subdistrict and the Spink and West Brown irrigation districts: Provided further, That any repayment obligation existing at the time of cancellation of the master and participating and security contracts shall thereafter be treated as a deferred cost of the Pick-Sloan Missouri basin program: Provided, however, That such costs shall be assumed and repaid by the beneficiaries of any future project which utilizes the Oahe unit facilities. Such repayment obligation and manner of repayment shall be determined pursuant to the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. 371).

(b) Those features of the authorized plan of development for the Oahe unit, initial stage, which were designed for an could be used only to deliver irrigation water to the Spink and West Brown irrigation districts namely: Faulkton, Cresbard, West Main, Redfield, James, and East canals; Cresbard, and Byron dams and reservoirs; James and Byron pumping plants; and associated features; shall not be constructed by the Secretary without further action by the Congress, but nothing in this Act shall be deemed to limit the authority of the Secretary to recommend development of other features, based upon any study authorized by section 3(a)(1) of this Act.

SEC. 5. The Secretary of the Interior, in cooperation with the Department of Energy, is authorized to make available the Pick-Sloan Missouri basin program pumping power to the Crow Creek, Cheyenne River, and Standing Rock Indian Reservation irrigation developments, and the Grass Rope Unit, Pick-Sloan Missouri basin program. Such pumping power shall also be made available to such additional irrigation projects as may be subsequently authorized to receive such power by Act of Congress.

SEC. 6. There is hereby authorized to be appropirated beginning October 1, 1982,

such funds as may be necessary to carry out the provisions of this Act.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

UP AMENDMENT NO. 1255

Prupose: To include the Omaha Indian Reservation Irrigation Development within the authorization to receive Pick-Sloan Missouri Basin program pumping power.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. EXON, I offer an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. EXON, proposes an unprinted amendment numbered 1255:

On page 9, line 16, after the word "River," and before the word "and" add the word "Omaha".

Mr. MURKOWSKI. Mr. President, I am pleased the majority leader has offered this amendment on behalf of the Senator from Nebraska (Mr. EXON). As my colleagues will note, section 5 of H.R. 4347 as reported by the Committee on Energy and Natural Resources, identifies specific irrigation projects as being eligible to receive pumping power from the Pick-Sloan Missouri Basin program. The amendment which I offer on behalf of the Senator from Nebraska identifies an additional irrigation development which would be authorized to receive such power. The lands to be served are on the Omaha Indian Reservation and the irrigation development is being funded by the Bureau of Indian Affairs. This proposal is similar in nature to the other Indian irrigation projects which were included in the bill by the committee and I support the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment (UP No. 1255) was agreed to.

Mr. PRESSLER. Mr. President, I rise in support of House Resolution 4347, legislation to reauthorize the WEB pipeline project, authorize feasibility studies of the CENDAK irrigation project and the extension of the Garrison Diversion Unit, as well as provide low-cost pumping power to a number of Indian irrigation projects. Passage of this legislation will be a first step in meeting the Federal commitment to South Dakota for land sacrificed for construction of dams on the Missouri River.

Under the Pick-Sloan Missouri Basin program, a water development plan was established for the Missouri River basin. This plan included the construction of four dams on the Missouri River in South Dakota and irrigation of over 900,000 acres of land in South Dakota. The four dams were constructed, flooding over 530,000 acres of land in South Dakota, but the irrigation facilities have not been constructed.

The Oahe irrigation project was authorized in 1968 to meet a major part of the commitment to South Dakota, but due to local controversy over the project, work on it ceased in 1977. As a result, South Dakota has not received any irrigation from the Pick-Sloan Missouri basin program. South Dakota has not been compensated for the 530,000 acres of land sacrificed to construct the dams.

In 1975, the WEB Water Development Association was formed to provide domestic and municipal water to an area in north central and northeast South Dakota. The WEB pipeline project was proposed to provide domestic water to 30,000 people and 50 rural communities in 10 counties. The project has the support of South Dakota's Governor and State legislature, the Oahe subdistricts and the people in the WEB region. In fact, the State of South Dakota and the Oahe subdistricts have committed funds to help finance the construction of the WEB pipeline. The WEB pipeline project was originally authorized in 1980, but the authorization was tied to the deauthorization of the Oahe project. Because of this linkage, the WEB project authorization expired September 31, 1981, since the Oahe project was not deauthorized.

The bill will reauthorize the WEB pipeline, subject to the provisions of the original 1980 authorization and the terms and conditions of the consolidated Farm and Rural Development Act. The Rural Development Policy Act of 1980 specifies that the project be funded by a combination of grants and loans with grants for not less than 75 percent of the eligible cost. When the WEB project was originally authorized the Rural Development and Policy Act and the Farmers Home Administration regulations established a 5-percent interest rate for the loans that may be required to develop the WEB project.

This legislation, H.R. 4347, would reauthorize the WEB project and begin to resolve the Oahe project issue. The bill will provide for the cancellation of the contracts between the Bureau of Reclamation and the Oahe subdistricts and will prohibit the construction of the Oahe project features listed in the bill without specific direction from Congress. The features could not be constructed unless reauthorized by Congress. To further clarify this section, I request that two letters interpreting this section of the bill be included in the RECORD, immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is ordered.

(See exhibit 1.)

Mr. PRESSLER. Feasibility level studies of the CENDAK irrigation project and the Garrison diversion unit extension would also be authorized in H.R. 4347. The CENDAK project is a grassroots movement to use the Oahe unit features that were constructed to irrigate an area in central South Dakota. The CENDAK organization has already done a great deal of work and study on the project. The next step needed is a feasibility study for the project.

The extension of the Garrison diversion unit would study the possibility of the Garrison diversion unit providing water for irrigation and domestic use along the James River in South Dakota. With Canada's objection to receiving return flows from the Garrison diversion unit in North Dakota, the alternative route for return flows is the James River in South Dakota. If the return flows are to flow down the James River through South Dakota, it is important that the possible beneficial use of the water be studied.

Finally, H.R. 4347 also provides low-cost Missouri Basin program pumping power to a number of Indian irrigation projects. This power is part of the Pick-Sloan program and will help to make these small irrigation projects profitable. Other qualifying irrigation projects may also be granted low-cost pumping power by Congress in the future.

Mr. President, I would also like to enter into a brief colloquy with the floor manager of the bill to clarify one technical point. This legislation includes a provision for making available $1.9 million appropriated for fiscal year 1981 for initial planning and construction of the WEB pipeline which were not spent. The Secretary of the Treasury will make these funds available at the request of the Secretary of the Interior, based on the authority of this act. It is my understanding that this is the administrative procedure to be followed for the release of the $1.9 million appropriated for the WEB pipeline. Is this correct?

Mr. MURKOWSKI. That is correct.

Mr. PRESSLER. I thank my distinguished colleague from Alaska for his clarification of this important matter.

The WEB organization has met all of the requirements to begin construction of the project as soon as it is authorized and the funds released. The WEB organization has waited 2 years for the $1.9 million and it is important that the funds be made available as soon as possible.

Mr. President, I urge my colleagues to join me in support of H.R. 4347. South Dakota has made a major sacrifice for flood control, navigation, and hydroelectric power, mostly for the benefit of neighboring and downstream States. South Dakotans have long waited to receive compensation

for their sacrifices and H.R. 4347 would begin to repay South Dakota for its sacrifices.

EXHIBIT 1

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., March 17, 1982.

To: Hon. LARRY PRESSLER.
From: American Law Division.
Subject: Whether Language in H.R. 4347 (97th Congress) Constitutes a Deauthorization of the Oahe Irrigation Unit.

This memorandum responds to the request of Mr. Ustad that our telephone conversation on the topic above be put into writing.

H.R. 4347 provides in section 3(b) that—

"Those features of the authorized plan of development for the Oahe unit, initial stage, which were designed for and could be used only to deliver irrigation water to the Spink and West Brown irrigation districts . . . shall not be constructed by the Secretary [of the Interior] . . ."

Research reveals no reason why the operative phrase—"shall not be constructed by the Secretary"—should be interpreted as anything less than a deauthorization of the specified features of the Oahe unit. The legal literature reveals no rule to the effect that Federal project deauthorizations can only be achieved through use of the term "deauthorize" or any other particular language.

The contemplated addition of the phrase "unless reauthorized by Congress" immediately following "shall not be constructed by the Secretary" seems to be unnecessary, given the foregoing interpretation. It is a truism that a deauthorized project remains so only until such time as it is reauthorized.

ROBERT MELTZ,
Legislative Attorney.

U.S. SENATE,
OFFICE OF THE LEGISLATIVE COUNSEL,
Washington, D.C., March 5, 1982.

MEMORANDUM

To: Senator Pressler.
Re deauthorizing language in H.R. 4347 relating to the WEB Pipeline.

You requested an opinion as to the effect of subsection (b) of section 3 of H.R. 4347 which provides as follows:

"(b) Those features of the authorized plan of development for the Oahe unit, initial stage, which were designed for and could be used only to deliver irrigation water to the Spink and West Brown irrigation districts, namely: Faulkton, Cresbard, West Main, Redfield, James, and East Canals; Cresbard and Byron Dams and Reservoirs; James and Byron Pumping Plants; and associated features; shall not be constructed by the Secretary, but nothing in this Act shall be deemed to limit the authority of the Secretary to recommend development of other features, based upon the study authorized by section 2 (a) (1) of this Act".

You have specifically asked about the effect of the language "shall not be constructed". If this bill is enacted into law, the effect of the language would be to deauthorize construction of the features specified in such subsection. Any future construction relaitng to such features would have to be specifically reauthorized by legislation.

Please do not hesitate to contact me if I can be of further assistance in this matter.

Respectfully,

WILLIAM F. JENSEN.

Mr. ABDNOR. Mr. President, I rise in strong support of H.R. 4347, as reported by the Committee on Energy and Natural Resources, and I urge its passage.

Congressman ROBERTS and I have authored this measure, with the cosponsorship of our colleagues in the South Dakota delegation; and while we would prefer to see it enacted in the form it was introduced, it is acceptable to us and to the State of South Dakota as it has been modified by the committee.

Repeatedly, on the floor of the House and the Senate, I have raised the issues which justify enactment of this measure; and my colleagues may wish to look in particular at page S8868 of the July 30, 1981, CONGRESSIONAL RECORD and page H8758 of the September 15, 1980, RECORD for further background. The committee report (S. Rept. 97-514) restates the case very well, however, and I ask unanimous consent that an excerpt from the report be reprinted at this point in the RECORD.

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

BACKGROUND AND NEED

A comprehensive program for the development of the water resources of the Missouri River Basin was authorized by section 9 of the Act of December 22, 1944 (58 Stat. 887). The Act authorized the then War Department and the Secretary of the Interior to undertake a massive program based upon water resource development plans set forth during the 78th Congress in House Document 191 (the Bureau of Reclamation's proposal) as revised and coordinated in Senate Document 247. The reconciliation of the two plans became known as the Pick-Sloan Missouri Basin Program and called for construction by the Corps of Engineers of a series of main stem dams on the Missouri River in Nebraska, South Dakota, North Dakota, and Montana and irrigation of over 5 million acres to be served by Bureau of Reclamation facilities. Major project purposes included flood control, navigation, irrigation and municipal and industrial water supply, and electric power generation.

Under the Pick-Sloan program, South Dakota was to be the site of four main stem dams along the Missouri: Gavins Point, Fort Randall, Big Bend, and the Oahe. Identified for irrigation development were 972,000 acres of irrigable land. The main stem dams have been built at the expense of the flooding of over 530,000 acres of lands in South Dakota; much of which were fertile bottom lands along the Missouri River. However, the irrigation developments as authorized for South Dakota under the Pick-Sloan plan have not come to fruition. The strong support which South Dakota has given to the Pick-Sloan plan resulted, in effect, in benefits accruing to downstream states with virtually none accruing to the State which had made the greatest sacrifice.

Mr. ABDNOR. Mr. President, the committee is absolutely correct that virtually none of the irrigation benefits promised to my State have been provided, despite the fact we sacrificed over a half million acres to provide flood control for downstream States. The strong support of which the committee report speaks was predicated upon the Federal commitment to irrigation development in our State. It should be noted as well that there was also strong opposition to the program in the Dakotas. I myself, as a private citizen, was against construction of the high dams because of all the land required. Based upon the promise of Federal irrigation development, however, our major elected officials went along the program; and the supporters prevailed over the opponents.

Notwithstanding the promises which were made, the following tables demonstrate very graphically that we, along with our sister State to the north, have been left behind by comparison to the water development which has been undertaken both in the other States of the Missouri River basin and in the other 15 traditional Western reclamation States. I ask unanimous consent that these tables be printed at this point in the RECORD.

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

ESTIMATED USE OF WATER IN THE UNITED STATES IN 1980

	Water withdrawal (million gallons per day)		
	Industrial	Irrigation	Total
Missouri Basin States:			
1. Colorado	910	14,000	14,910
2. Nebraska	2,300	9,300	11,600
3. Montana	280	11,000	11,280
4. Kansas	530	5,600	6,130
5. Missouri	5,800	130	5,930
6. Wyoming	420	4,900	5,320
7. Iowa	3,800	60	3,860
8. Minnesota	2,300	160	2,460
9. North Dakota	930	280	1,210
10. South Dakota	50	460	510
Reclamation States:			
1. California	12,400	37,000	49,400
2. Idaho	2,200	16,000	18,200
3. Texas	8,300	8,400	16,700
4. Colorado	910	14,000	14,910
5. Nebraska	2,300	9,300	11,600
6. Montana	280	11,000	11,280
7. Washington	1,030	6,400	7,430
8. Arizona	250	7,100	7,350
9. Oregon	520	5,900	6,420
10. Kansas	530	5,600	6,130
11. Wyoming	420	4,900	5,320
12. Utah	580	3m200	3,780
13. New Mexico	70	3,600	3,670
14. Nevada	240	3,100	3,340
15. Oklahoma	550	870	1,420
16. North Dakota	930	280	1,210
17. South Dakota	50	460	510

Source: Geological Survey 1980 update to Circular 765 (1982).

Mr. ABDNOR. Mr. President, these tables speak for themselves. The Dakotas, which together gave up over 1 million acres for the benefit of other Missouri basin States, have been forgotten and ignored. We have not received equal consideration, even if not for our sacrifice. Taking into account the tremendous acreage we relinquished, the failure of the Federal Government to honor its commitment to water development in the Dakotas becomes almost criminal. Considering that I was opposed to the high dams in the first place, I would be more than justified in being outraged, but I prefer instead to be hopeful.

Mr. President, the measure before the Senate today, H.R. 4347, constitutes a small step toward rectifying the great injustice which has been done to my State. Hopefully, it will help to get water development moving in South Dakota, consistent with the obligation of the Federal Government to do so. Specifically, it will reauthorize the WEB pipeline project, a sizable rural and municipal water supply project; it will authorize three studies which may lead to development of irrigation projects; and it will provide hydropower for several Indian irrigation projects funded by the Bureau of Indian Affairs, rather than through traditional procedures.

The latter provision has significance beyond its importance for the particular projects named in section 5 of the bill because it sets the precedent that Missouri basin hydropower will be provided for nonreclamation irrigation projects in the Missouri basin. In other words, the failure of the Bureau of reclamation to provide construction funding for irrigation developments, as promised, will no longer be a sufficient excuse to deny the hydropower allocated to these projects as well. The promised hydropower will be provided even if the local sponsors must finance construction of their projects through sources other than the Bureau of Reclamation.

In that regard it should be noted that the Indian projects covered by section 5 will use a very small portion of the Missouri hydropower allocated to irrigation development in our State. Over 300 million kilowatt hours of energy and over 170,000 kilowatts of power are allocated to irrigation in South Dakota under the Missouri basin program. For further information on water and power allocations under the program, my colleagues may wish to refer to my statement on page 1677 of the April 5, 1978, CONGRESSIONAL RECORD.

This measure takes a hopeful step in the direction of honoring the Federal commitment through the projects listed in section 5, and the committee has also included language in the bill which states: "* * * power shall also be made available to such additional irrigation projects as may be subsequently authorized to receive such power by act of Congress." This language renews in clear, explicit statutory terms the commitment of the Federal Government to follow through on its obligation to provide the hydropower as promised.

While not addressed directly in H.R. 4347, the provision of Missouri basin hydropower is vital to the CENDAK project, which will be studied under paragraph 3(a)(1) of the bill as a potential alternate use of facilities already constructed for use in conjunction with the Oahe unit. The Oahe unit was authorized by Public Law 90-453 (43 U.S.C. 371), approved August 3, 1968, but subsequently became embroiled in controversy, as noted in the committee report, and has been terminated. CENDAK has garnered substantial local support, however, and appears at this point to be a viable alternative, potentially to be constructed as a reformulation of the Oahe unit. If CENDAK can be constructed under the Oahe authorization, the hydropower can be provided under that authorization, too. If, on the other hand, CENDAK requires a new authorization, the language the committee has included in section 5 indicates that the power will be provided at that time.

Technically, it appears CENDAK could be constructed under the Oahe authorization, and I ask unanimous consent that the Oahe authorization be reprinted at this point in the RECORD.

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

PUBLIC LAW 90-453—AN ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE INITIAL STAGE OF THE OAHE UNIT, JAMES DIVISION, MISSOURI RIVER BASIN PROJECT, SOUTH DAKOTA, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to construct, operate, and maintain in accordance with the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto) the initial stage of the Oahe unit, James division, Missouri River Basin project, South Dakota, for the principal purposes of furnishing a surface irrigation water supply for approximately one hundred and ninety thousand acres of land, furnishing water for municipal and industrial uses, controlling floods, conserving and developing fish and wildlife resources, and enhancing outdoor recreation opportunities, and other purposes. The principal features of the initial stage of the Oahe unit shall consist of the Oahe pumping plant (designed to provide for future enlargement) to pump water from the Oahe Reservoir, a system of main canals, regulating reservoirs, and the James diversion dam and the James pumping plant on the James River. The remaining works will include appurtenant pumping plants, canals, and laterals for distributing water to the land, and a drainage system.

SEC. 2. The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the initial stage of the Oahe unit shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). Construction of the initial stage of the Oahe unit shall not be commenced as long as the State of South Dakota retains in its laws provisions that prohibit the hunting of migratory waterfowl by nonresidents in the waterfowl enhancement areas included within the area served by the project herein authorized.

SEC. 3. The Oahe unit shall be integrated physically and financially with the other Federal works constructed or authorized to be constructed under the comprehensive plan approved by section 9 of the Act of December 22, 1944, as amended and supplemented.

SEC. 4. For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marked is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

SEC. 5. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

SEC. 6. There is hereby authorized to be appropriated for construction of the initial stage of the Oahe unit as authorized in this Act the sum of $191,670,000 (based upon January 1964 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the unit.

Mr. ABDNOR. It may be argued that the CENDAK proposal is significantly enough different from the originally authorized Oahe unit plan that it should be reauthorized. Realistically speaking, that is no doubt the most likely course of action if the results of the study are positive. CENDAK could be constructed under the terms of Public Law 90-453, however, particularly in light of the provisions of paragraph 3(a)(1) and subsection 4(b) of the measure before us.

Paragraph 3(a)(1) provides for a study of alternate uses of Oahe unit facilities, and subsection 4(b) lists certain facilities which cannot be constructed under the existing authorization. If the listed facilities cannot be constructed "without further action by the Congress," as stated in section 4(b), the implication is clear that other facilities can be constructed. That implication is made still more clear by the clause which follows: "* * * nothing in this Act shall be deemed to limit the authority of the Secretary to recommend development of other features, based upon any study authorized by paragraph 3(a)(1) * * *" Therefore it is quite clear that features identified in the study authorized in paragraph 3(a)(1) can be constructed under the author-

ity of Public Law 90-453, so long as they are not explicitly prohibited from construction "without further action by the Congress," under the terms of subsection 4(b). To construct the features identified under paragraph 3(a)(1), the Secretary would recommend their development to Congress through the Department's budget submission, and Congress would determine whether to appropriate the necessary funds.

I ask unanimous consent that subsection 4(b) of H.R. 4347 be reprinted at this point in the RECORD.

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

Those features of the authorized plan of development for the Oahe unit, initial stage, which were designed for and could be used only to deliver irrigation water to the Spink and West Brown irrigation districts namely: Faulkton, Cresbard, West Main, Redfield, James, and East Canals; Cresbard and Byron dams and reservoirs; James and Byron pumping plants; and associated features; shall not be constructed by the Secretary without further action by the Congress, but nothing in this Act shall be deemed to limit the authority of the Secretary to recommend development of other features, based upon any study authorized by section 3(a)(1) of this Act.

Mr. ABDNOR. Mr. President, there has been quite a controversy over the language of subsection 4(b). This controversy delayed action on the bill in the House Agriculture Committee; and the words, "without further action by the Congress," were added at the insistence of the Oahe Conservancy Subdistrict. Whereas the subsection previously stated simply that the listed facilities "shall not be constructed," now the implication is clearly present in the compromise language that Congress may act to reauthorize construction of those facilities. I do not believe that is likely, but I have raised the issue to show how petty differences can be made into major obstacles and, in fact, have been made into obstacles to the passage of H.R. 4347.

The last thing South Dakotans need is to continue needlessly to fight among ourselves. Doing so will only make it easier for the Federal Government to continue to ignore us.

On March 2, 1982, Commissioner Broadbent wrote to me on this particular issue. His letter makes very clear that the objectionable features of the Oahe unit plan could not have been constructed under the terms of subsection 3(b), which has become subsection 4(b) in the committee amendments, prior to the addition of the language, "without further action by the Congress," upon which the Oahe Subdistrict insisted. I ask unanimous consent that the Commissioner's letter be reprinted at this point in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, D.C., March 2, 1982.

Hon. JAMES ABDNOR,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ABDNOR: In response to your letter of earlier today, this is to confirm your understanding of the meaning of the language of subsection 3(b) of S. 1553/H.R. 4347 regarding the construction of certain features of the authorized Oahe unit, initial stage. The Department has endorsed enactment of this legislation with amendments.

In our view the language of subsection 3(b) is clear on its face. The listed facilities could not be constructed under this provision unless Congress were to reverse itself and reauthorize them. Enacted into law, subsection 3(b) would preclude construction of those facilities by the Department.

While the intent of the language is clear as it is, we would have no objection to a technical amendment citing House Document 90-163 in order to further and more formally identify the features not to be constructed.

I regret any confusion which has resulted on this point as a result of the August 31, 1981, letter addressed to Mr. John Sieh by Acting Assistant Commissioner Aldon Nielson. Hopefully, this will clarify the legal interpretation of subsection 3(b).

Sincerely yours,

ROBERT N. BROADBENT,
Commissioner.

Mr. ABDNOR. Again, this was a minor misunderstanding which was blown all out of proportion, into a major, public, confrontation simply because of the petty differences of the parties involved. South Dakotans must guard against future incidents of this sort or we will have no one but ourselves to blame for the results. There is no reason why such differences cannot be settled quietly, dispassionately, and without fanfare; and the results will not be good if South Dakotans cannot learn to do so among ourselves, rather than in the press and before congressional committees in Washington.

Washington is not the seat of all wisdom, nor can the Federal Government respond to a Tower of Babel of voices from South Dakota. It is for that reason that I believe two apparently minor provisions of section 3 may prove to be major in importance; that is, the provision in subsection 3(a) which directs the Secretary to conduct the authorized studies "in cooperation with the State of South Dakota" and the provision in subsection 3(c) which allows the Secretary to contract with the State to carry our the studies.

These provisions will be important for several reasons, not the least of which is that the State can speak as a single, authoritative voice for the best overall interests of the people of the State. In addition, by conducting the studies with and through the State, the Bureau of Reclamation will be able to avoid the bureaucratic redtape and delays associated with the Federal procurement process. The Reagan administration has worked to eliminate bureaucratic requirements which exist only for their own sake, and the provisions of subsection 3 (a) and (c) will enable the Department to cut the redtape in this instance. Finally, in view of its past failings, the credibility of the Federal Government is not great in our State. Having the State play a major role in the studies will enhance in the eyes of South Dakotans the validity of the findings and will increase the likelihood of success in developing the projects.

On that note, the one, major project which will actually be brought to the construction stage through enactment of H.R. 4347 is the WEB pipeline project. Considering the relatively short period of time since WEB was conceived, as compared to the much longer period it takes normally to authorize water projects, WEB has a very intricate history, one which would require many words fully to explain. I will try to give an admittedly less-than-complete summary in a few words, however.

As pointed out in the committee report, the area to be served by WEB is characterized by inadequate water supplies, both in terms of quality and quantity. Much of the water consumed by citizens in the area does not meet Safe Drinking Water Act standards; and the dual quality and quantity problems prompted citizens in Walworth, Edmunds, and Brown Counties to band together in search of a feasible solution. Thus, the name, WEB, resulted from the first initial of each of the three originally organized counties. Subsequently, others in other counties expressed interest in joining; and WEB's engineering firm determined that the presently proposed area, involving 51 towns and about 30,000 people in portions of 10 counties, could feasibly be served by one system using the Missouri River as a source.

WEB is solely a rural and municipal domestic and livestock water supply system. It will use a relatively small quantity of water, only about 6,000 acre-feet annually, and in that sense is more a public health project than it is a water development project. Nevertheless, it will have beneficial economic impacts upon livestock production in addition to the obvious health, convenience, and esthetic benefits. It will not be an inexpensive source of water, but it will certainly be cheaper than hauling water, as one community was forced to do last winter. It will be cheaper, too, than many of the existing, inadequate wells which provide poor quality water and can fail with little warning.

WEB will be reauthorized through enactment of H.R. 4347. It was authorized initially in the Rural Development Policy Act of 1980, and first year

funding in the amount of $1.9 million was appropriated in the fiscal year 1981 Interior appropriations. The House attempted to rescind these funds, however. At my urging, the Senate refused to do so, but the House insisted in the conference that the funds be deferred until the project is reauthorized. Section 1 of the measure before us today reauthorized WEB, thereby meets the conditions of the deferral and directs that the first year funding be released for obligation.

Mr. President, this incident involving first year funding for WEB is yet another episode in a long and continuing tale of how South Dakotans have been promised one thing and given another, or perhaps I should say given almost nothing at all, in the context of the Pick-Sloan Missouri Basin program commitment to water development in the Dakotas. Although I had been assured, once the Senate had rejected the House-passed deferral, that the house would give us no further trouble on the WEB funds, we were betrayed and the House conferees did insist that the funds be deferred. In order to refute certain misrepresentations being made by the House conferees, my staff prepared and I circulated at the afternoon session of the conference committee a seven-point factsheet. The House conferees were not interested in the facts, however, and continued to insist that the funds be deferred. Facing a delay in progress in resolving other differences in the bill and in view of the fact the House conferees had relented to the degree of insisting only on a delay in expenditures of the funds, and not a rescission as the House had originally proposed, the Senate conferees were forced to agree to the WEB funding delay insisted upon by the House.

Immediately upon conclusion of the conference committee, I wrote Chairman YATES, who headed the House conferees on this issue, to express my disappointment and displeasure. Enclosed with my letter was another copy of the seven-point factsheet which I had presented to him at the conference committee meeting. I ask unanimous consent that the letter and factsheet be reprinted at this point in the RECORD.

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

JUNE 3, 1981.

Hon. SIDNEY YATES,
Chairman, Subcommittee on Interior, House Committee on Appropriations, Washington, D.C.

DEAR SID: As you know, the history is not good with respect to the Federal Government living up to its commitment to South Dakota to provide water development assistance to offset our sacrifice of over 500,000 acres for the flood control benefit of downstream states. It is a history of changing authorizations through appropriations to delay and deny the water development needed and promised to my state.

You are well aware that I consider the action just taken by the appropriations conference committee to be a continuation of that history, as per the seven points on the attached sheet. Be that as it may, however, can we be assured that if "the conditions of Section 9(b) of Public Law 96-355 regarding deauthorization of the Oahe Unit have been met," that you will support funding the WEB project to completion?

More specifically, officials at OMB have indicated to WEB that $33 million is available for their project in the fiscal year 1982 budget, under the Interior Secretary's contingency fund. I have attempted to obtain some assurance from Interior and OMB that these funds will, in fact, be made available to WEB. The language which you moved in conference would seem to imply that WEB's funding problems will be resolved when continued authorization is assured. Is that the case as far as your subcommittee is concerned, and will you support the provision of $33 million for WEB in fiscal year 1982?

Again, Sid, I sincerely believe that the interests of my state are being deeply wronged. In fairness, any further consideration you can give us will be appreciated, particularly with respect to the prospect of fiscal year 1982 funding for WEB.

With best wishes,

Sincerely,

JAMES ABDNOR,
United States Senator.

Enclosure.

Per section 9(a) of Public Law 96-355, fiscal year 1981 funding for the WEB project in the amount of $1.9 million is not contingent upon deauthorization of the Oahe Unit.

The agreement between the Carter Administration and the South Dakota Congressional delegation and enacted by Congress provides for a period, ending September 30, 1981, during which the terms of deauthorization of the Oahe Unit should be negotiated.

In view of critical water supply needs, now aggravated by the drought, the WEB project was to be initiated without delay as part of the Oahe "settlement."

The South Dakota Congressional delegation is working to achieve an acceptable settlement and has requested Congressional field hearings on the necessary legislative action.

Deferring fiscal year 1981 funding for WEB will contravene the intent of Public Law 96-355 and negate the agreement between the Carter Administration and the South Dakota Congressional delegation which was reached through long and arduous discussions.

South Dakotans have been waiting for years for the Federal Government to live up to its commitment to provide water development assistance to offset over 500,000 acres relinquished for flood control reservoirs for the benefit of downstream states.

Deferring fiscal year 1981 funding for WEB is not consistent with the clear intent of the authorization act and would be further evidence to the people of South Dakota that the Federal Government cannot be trusted to live up to its commitments.

(Note: The Oahe unit was initially authorized in the Flood Control Act of 1944, which also authorized construction of the dams and reservoirs which have taken so much of our land, only in effect to be deauthorized in a Missouri Basin Program monetary authorization act in 1964. It was reauthorized in 1968, only to be stymied again. Now an appropriations act has been used to contravene the first year funding for WEB, in clear contradiction to the authorization.)

Mr. ABDNOR. Mr. President, Chairman YATES never replied to my letter; but I have heard thirdhandedly, through Congressman DASCHLE'S office that the language in H.R. 4347 with respect to WEB is adequate to insure that Chairman YATES and the House will cause no further problems with the funding of WEB. I wish I could be confident that such will be the case. Bitter experience would cause me to feel otherwise, but, again, I prefer to be hopeful.

Lest there be any further confusion on that point, however, I ask unanimous consent that a pertinent excerpt from the Senate committee report be reprinted at this point in the RECORD.

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

Section 1 reauthorized the WEB Rural Water Development project authorized by section 9 of the Rural Development Policy Act of 1980 (Public Law 96-355; 94 Stat. 1175, 1176), as amended by section 2 of this Act, and authorizes the Secretary of the Interior to proceed with the development of the WEB Rural Water Development project and make immediately available any funds heretofore previously appropriated.

It should be noted that the sum of $1,900,000 was appropriated to the Department of the Interior on December 12, 1980, by the Department of the Interior and Related Agencies Appropriations Act, fiscal year 1981 (94 Stat. 2970), for initial planning and construction for the WEB Rural Water Development project, and that on June 5, 1981, the Supplemental Appropriations and Rescission Act of 1981 (95 Stat. 46), deferred obligation of said funds until the conditions of section 9(b) of the Rural Development Policy Act of 1980 (Public Law 96-355), regarding deauthorization of the Oahe unit, had been met. H.R. 4347, as amended, meets those conditions.

Mr. ABDNOR. Thus, Mr. President, the Senate committee removes any doubt as to the authority to proceed with development of WEB and the availability of first year funding. Prospects for funding for fiscal year 1983 and beyond are uncertain at this point due to budgetary constraints, but the funds which were appropriated for obligation in fiscal year 1981 will be released immediately to initiate construction.

So after numerous fits, starts, and frustrations it appears the WEB project may at last get underway. The success of WEB, together with the progress on the irrigation projects addressed in the bill, can provide the impetus and the inspiration toward the development of other projects in South Dakota so that we can begin to capitalize upon the great potentials which the huge Missouri River reservoirs afford. For the hope that H.R. 4347 represents for the future of water

development in my State, a number of people have my deepest gratitude.

Foremost among those responsible for passage of H.R. 4347 today is my good friend and colleague, Senator FRANK MURKOWSKI, the chairman of the Subcommittee on Water and Power, who scheduled and sat through a long and hot field hearing in Pierre, S. Dak., followed up with the requisite hearing here in Washington, and shepherded the bill through the Committee on Energy and Natural resources and to the floor of the Senate. The chairman has been ably assisted throughout by Mr. Russell Brown of the committee staff, and the unanimous vote by which the committee reported the bill to the floor is a testament to Mr. Brown's work.

Finally, Mr. President, I have spoken repeatedly of the sacrifice made by the Dakotas for the benefit of other States under the Pick-Sloan Missouri Basin program. Mr. Michael L. Lawson, a historian in the BIA's Office of Rights Protection in Aberdeen, S. Dak., has written a book on this subject as it relates to the Indian people of the Dakotas. The foreword to Mr. Lawson's book, entitled "Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944-1980," was written by Mr. Vine Deloria, Jr., who has authored such works as "Custer Died for Your Sins" and "Behind the Trail of Broken Treaties."

I ask unanimous consent that the following review of "Dammed Indians" by the University of Oklahoma Press be reprinted at this point in the RECORD.

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

Increasingly in the twentieth century the United States has used its powers of eminent domain to seize large parcels of Indian land for flood-control and reclamation projects. The Pick-Sloan Plan in the Missouri River Basin was developed by the United States Corps of Engineers and the Bureau of Reclamation in 1944. It caused more damage to Indians than any other public works project in America and was perhaps the single most destructive act perpetrated against an Indian tribe by the United States. Three of the dams constructed—the Fort Randall, Oahe, and Big Bend dams—flooded over 202,000 acres of profitable Sioux bottomland on the Standing Rock, Cheyenne River, Lower Brule, Crow Creek, and Yankton reservations in North Dakota and South Dakota.

Using the Sioux reservations flooded by the Pick-Sloan Plan as examples of federal acquisition of trust land and the application of recent Indian policies, Michael L. Lawson sketches briefly the history of the Missouri Basin, the Pick-Sloan legislation, and the land and peoples of the reservations. He chronicles eloquently and thoroughly the events from the 1940s through the 1960s, when the impact of the federal water projects was most keenly felt, and describes in detail the personalities and agencies involved.

"One cannot read this book without a shudder of fear at bedtime that one's life and property may someday fall victim to ruthless, power-mad federal agencies."—Vine Deloria, Jr., in his foreword to "Dammed Indians."

Mr. ABDNOR. Mr. President, while I do not shudder in fear or share Mr. Deloria's view that the Bureau of Reclamation and the Corps of Engineers are "ruthless, power-mad Federal agencies" his comments do make a valid point. The institutional effect of the actions of these agencies through the Pick-Sloan program has been inexcusable, even though the officials of these agencies may have acted with the best of intentions. In H.R. 4347, however, we have the threads of hope that the wrong which has been done will be righted, both for the Indian and the non-Indian people of my State alike.

Mr. President, I am committed to developing the water resources of our State and to seeing to it that the Federal Government carries out its obligations in that regard. H.R. 4347 is a good stride in the right direction and I urge its enactment.

The committee amendment was agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

The resolution (S. Res. 448) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 6409, was considered and agreed to, as follows:

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 H.R. 6409, a bill to authorize appropriations for the participation of the United States in the 1984 Louisiana World Exposition to be held in New Orleans, Louisiana, and for other purposes. Such waiver is necessary to allow the authorization of an appropriation of $10,000,000 for the costs of the design and fabrication of exhibits, and the appointment by the President of a commissioner general for the exposition. The need for the expeditious passage of authorizing legislation is great. There are less than two years remaining to put together a presentation of which the American people can be proud.

Compliance with section 402(a) of the Congressional Budget Act of 1974 was not possible by the May 28, 1982, deadline because the committee was unaware of the time constraints on the planners of the exposition and the administration had failed to formally request authorizing legislation prior to the deadline.

The effect of defeating consideration of this authorization will severely impede the preparations for the Louisiana World Exposition.

The desired authorization will not delay the appropriations process and is being accommodated in the supplemental appropriation.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

U.S. PARTICIPATION IN THE LOUISIANA WORLD EXPOSITION

The Senate proceeded to consider the bill (H.R. 6409) to provide for the participation of the United States in the 1984 Louisiana World Exposition to be held in New Orleans, La., and for other purposes, which had been reported from the Committee on Foreign Relations with an amendment. On page 11, after line 24, insert the following:

SEC. 16. (a) That section 3 of the Act of May 27, 1970 (84 Stat. 272; 22 U.S.C. 2803), is amended by—

(1) striking out "The" and inserting in lieu thereof "(a) The";

(2) redesignating clauses (a), (b), and (c) as clauses (1), (2) and (3), respectively;

(3) striking out all after the period where it first appears in clause (3) as redesignated in clause (2) of this Act and inserting in lieu thereof the following: "The Secretary of Commerce shall include in such plan any documentation described in subsection (b)(1)(A) of this section, a rendering of any design described in subsection (b)(1)(B) of this section, and any recommendation based on the determination under subsection (b)(1)(C) of this section."; and

(4) by adding at the end thereof the following new subsections:

"(b)(1) In developing a plan under subsection (a)(3) of this section the Secretary of Commerce shall consider whether the plan should include the construction of a Federal pavilion. If the Secretary of Commerce determines that a Federal pavilion should be constructed, he shall request the Administrator of General Services (hereinafter in this section referred to as the 'Administrator') to determine, in consultation with such Secretary, whether there is a federally endorsed need for a permanent structure in the area of the exposition. If the Administrator determines that any such need exists—

"(A) the Administrator shall fully document such determination, including the identification of the need, and shall transmit such documentation to the Secretary of Commerce;

"(B) the Secretary of Commerce, in consultation with the Administrator, shall design a pavilion which satisfies the federally endorsed needs for—

"(i) participation in the exposition; and

"(ii) permanent use of such pavilion after the termination of participation in the exposition; and

"(C) the Secretary of Commerce shall determine whether the Federal Government should be deeded a satisfactory site for the Federal pavilion in fee simple, free of all

liens and encumbrances, as a condition of participation in the exposition.

"(2) Notwithstanding paragraph (1)(B) of this subsection, if the Secretary of Commerce, in consultation with the Administrator, determines that no design of a Federal pavilion will satisfy both needs described in paragraph (1)(B) of this subsection, the Secretary shall design a temporary Federal pavilion.

"(c) The enactment of a specific authorization of appropriations shall be required—

"(1) to construct a Federal pavilion in accordance with the plan prepared pursuant to subsection (a)(3) of this section;

"(2) if the Federal pavilion is not temporary, to modify such Federal pavilion after termination of participation in the exposition if modification is necessary to adapt such pavilion for use by the Federal Government to satisfy a need described in subsection (b)(1)(B)(ii) of this section; and

"(3) if the Federal pavilion is temporary, to dismantle, demolish, or otherwise dispose of such Federal pavilion after termination of Federal participation in the exposition.

"(d) For the purposes of this section—

"(1) a Federal pavilion shall be considered to satisfy both needs described in subsection (b)(1)(B) of this section if the Federal pavilion which satisfies the needs described in paragraph (1)(B)(i) of such subsection can be modified after completion of the exposition to satisfy the needs described in paragraph (1)(B)(ii) of such subsection, provided that such modification shall cost no more than the expense of demolition, dismantling, or other disposal, or if the cost is higher, it shall be no more than 50 per centum of the original cost of the construction of the pavilion; and

"(2) a Federal pavilion is temporary if the Federal pavilion is designed to satisfy the minimum needs of the Federal Government described in subsection (b)(1)(B)(i) of this section and is intended for disposal by the Federal Government after the termination of participation in the exposition.".

Mr. JOHNSTON. Mr. President, I am both pleased and gratified to see the Senate take up H.R. 6409 today, legislation which authorizes the participation of the United States in the 1984 Louisiana World Exposition scheduled to be held in New Orleans from May 12, 1984, through November 11, 1984.

Sections 1 through 15 of H.R. 6409 as reported incorporate the main concepts of S. 2701, legislation which the senior Senator from Louisiana and I introduced on June 30 to provide for U.S. participation in the New Orleans World Fair. The committee amendments authorize the appropriation of $10 million for expenses associated with the planned exhibits, personnel necessary to staff the U.S. pavilion and other necessary expenses associated with our responsibilities as host nation. No funds are authorized in the amendments for construction of the pavilion itself. Instead, this facility will be built with local funds and will be leased to the United States for a nominal sum. After the Expo is finished, the site, all permanent structures and improvements will be returned to private developers and public use.

The $10 million authorized is considerably less than the total Federal investment made in the two most recent world fairs held in the United States in Spokane, Wash., in 1974—$11.5 million—and in Knoxville, Tenn., this year—$20.8 million. Moreover, the Federal investment authorized in H.R. 6409 is less than 10 percent of the State and local commitments made to date—$100 million and $50 million respectively. As the report accompanying H.R. 6409 points out, "the organizers have presented the Congress with the minimum possible funding request for U.S. participation, in keeping with the current budget restraints being addressed by the Congress and the Nation." The administration supports enactment of this authorization, Mr. President, and I was pleased to note that the Foreign Relations Committee ordered it favorably reported by voice vote.

Mr. President, the need for expeditious action on this measure is critical. Funding for the United States participation requested by the administration was included in the fiscal year 1982 supplemental appropriations bill, but none of the funds can be made available until the authorization is enacted. I believe the need for urgent action is amply explained in a letter from the Assistant Secretary for Trade Development in the Department of Commerce to the majority leader and I ask unanimous consent that this letter be printed in full in the RECORD at this point.

I urge approval of this measure and hope congressional action on it will be completed prior to the upcoming recess.

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

Hon. HOWARD H. BAKER, Jr.
Majority Leader,
U.S. Senate, Washington, D.C.

DEAR HOWARD: On behalf of the Department of Commerce, I urge you to help expedite authorizing legislation for the 1984 Louisiana World Exposition. As you know, the legislation has cleared the Senate Committee on Foreign Relations and is awaiting consideration before the Senate floor. Not only will passage of this bill permit the Department of Commerce to proceed on this project, but it also will make it possible for the President to nominate a Commissioner General of the United States for this exposition. Until that time, I have been appointed to be the United States Commissioner General.

While I appreciate the critical nature of the numerous issues before you, I want to alert you to the very serious time pressures faced by the Department of Commerce as we seek to provide a suitable Federal presence at the 1984 Louisiana World Exposition. Even if we already had Congressional authorization and appropriations in hand, we would be facing the shortest deadline we have ever faced for a BIE-sanctioned exposition. May 1984 is now less than two years away, and there is much to be done. Until we receive Congressional approval for this project, we cannot sign the contracts or hire the staff necessary for the most important phase of this undertaking.

If action on this measure is delayed until the fall months, I have grave doubts that the U.S. Pavilion can be completed in time for opening day. I am sure that with your knowledge of international expositions, you will agree that as the host nation for this exposition, we cannot permit such an unfortunate occurrence to take place. It would be a blow to our international prestige and standing in the BIE and could endanger future U.S. expositions requiring BIE approval.

I appreciate your consideration and assistance in this matter.

Sincerely,

W. H. MORRIS, Jr.,
Assistant Secretary
for Trade Development.

Mr. HOLLINGS. Mr. President, I am pleased that the Committee on Foreign Relations has amended H.R. 6409 by adding most of the substance of S. 1482, that Senator WEICKER and I introduced to provide a procedure for determining the need for permanent facilities for U.S. participation at international expositions. As the committee's report indicates, S. 1482 was based on a series of recommendations by the General Accounting Office, in report No. 81-11 of March 20, 1981, and are designed to avoid unnecessary expenditures and maximize residual use of U.S. pavilions constructed as part of such expositions in the future. I requested the GAO report as the former chairman of the State, Justice, Commerce, the judiciary and Related Agencies Appropriations Subcommittee, that Senator WEICKER now chairs, and of which I am the ranking minority member. The GAO also submitted an earlier report in June 1976 that came to the same conclusions.

The current Knoxville World's Fair is evidence of why this legislation is needed. We have built a $12,800,000 building down there and no one knows what to do with it after the Fair is over. They are now thinking of making an arts center out of it. While we all support the arts, it is obvious they are straining to find a use for the building. You may recall that in New York, the Federal Government had to spend $530,000 to demolish the beautiful $10,400,000 pavilion we built there, when no use could be found for it. We have got to treat the taxpayers better than that in the future.

I believe that U.S. participation in international expositions is good in the context that it promotes the sale of our products or substantially draws international visitors to the United States. However, Senator WEICKER and I are among the many that are concerned that these events are becoming thinly disguised urban renewal projects, with huge amounts of Federal funds being passed through the back door in grants that result in far greater costs than is readily evident.

In Knoxville for example, GAO documented $23,000,000 in Federal funds went out through the back door in addition to the $21,800,000 appropriated directly for U.S. participation—and that does not count all the highway improvements.

By training the spotlight on Knoxville, we held things down in New Orleans so that this bill contains the $10,000,000 lid that the President imposed on U.S. participation. That is salutory indeed and is commendable, but these proposals are always last-minute, hurry-up matters. Our bill would insure that permanent facilities not be constructed unless the after use is clearly identified, a change that I believe the Congress should grasp if only to protect us from ourselves.

Therefore, I am concerned that the amendments proposed by the Committee on Foreign Relations may weaken the reforms we seek with regard to the facilities constructed for U.S. participation in international expositions. The committee has changed our original language so that a "federally endorsed" need has to be determined for future structures for U.S. pavilions instead of a strictly "Federal Government need" in S. 1482.

The committee's hearing on S. 1482 is printed in the report. Senator MATHIAS used that opportunity to show the difference between a "Federal need" and a "federally endorsed" need. On page 22 he noted that the fine officers quarters at the Norfolk Naval Base were constructed as part of the Jamestown Exposition of 1907. This certainly is a true Federal need, but not likely to come along often. On the other hand, he mentions the pavilion in Golden Gate Park that was left over from the Golden Gate Exposition. I agree with Senator MATHIAS that pavilion is beautiful, and with that example of a "federally endorsed" need, as the after-use of that building was clearly in the public's interest. If Knoxville had presented us with a pavilion with a continuing use—such as the one in San Francisco—perhaps I would not have been as aroused about this, but we were asked to build a $12,800,000 pavilion that they are now scrambling for someone to use after the fair.

Mr. President, based on the above examples, I cannot object to the term "federally endorsed" being inserted in our bill. That is considerable progress from the conditions that now govern these international expositions.

Mr. BAKER. Mr. President, I might say that I wish the city of New Orleans and the State of Louisiana well in their efforts for a world exposition and world fair. Being a native of Tennessee, as I am and of my hometown of Knoxville, I can attest to the extraordinary effort that is required to consummate an undertaking, but the great satisfaction that results from a successful exposition, and I wish them well.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

TRANSFER OF CERTAIN LAND TO HOBOKEN, N.J.

The Senate proceeded to consider the bill (H.R. 3620) transferring certain Federal property to the city of Hoboken, N.J., which had been reported from the Committee on Governmental Affairs with amendments, as follows:

On page 1, line 4, strike "transfer", through and including "value,", and insert the following: "transfer for the fair market value as determined by the General Services Administration under the guidelines set forth in this Act, at a price to be negotiated,"

On page 3, after line 12, insert the following:

SEC. 2. In making its determination of fair market value, the General Services Administration shall recognize that the fair market value of the property is determined by the market in which it shall be sold, with the city of Hoboken being the only potential purchaser. The General Services Administration shall make every effort to expedite the sale and transfer of the property to the city of Hoboken, recognizing the hardship which would result in any undue delay in lengthy negotiations. The General Services Administration shall give full consideration to the right of the Federal Government to be compensated for the property while considering the city of Hoboken's ability to pay for the property. Furthermore, the General Services Administration shall give consideration and recognition to whatever funds and costs the Federal Government has invested in the property. The General Services Administration shall also give consideration to the fact that the city of Hoboken has been deprived of tax revenue from the property since its acquisition by the United States, in 1917, but has been required, despite its loss of tax revenue, to provide municipal services to the property.

On page 4, line 8, strike "2." and insert "3."

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

Mr. STEVENS. Mr. President, H.R. 3620 is a bill to transfer certain property located in Hoboken, N.J. from the Federal Government to the city of Hoboken. The transfer will be made at fair market value, under guidelines specified in the bill. The bill was reported out unanimously by the Governmental Affairs Committee on June 17, 1982, and the committee report was printed on August 11, 1982.

I also ask unanimous consent to insert into the RECORD at this time two letters received by Chairman ROTH on the issue of whether a related transfer of land from the Maritime Administration to the Department of Agriculture shall be made for monetary consideration. I want to emphasize, however, that this intra-agency transfer of property is not the subject matter of the bill before us.

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

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C., August 16, 1982.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in regard to H.R. 3620, a bill providing for the sale of the Hoboken Pier Terminals. The bill was reported out of your Committee recently.

The property has been under the jurisdiction of the Maritime Administration since 1917. One parcel of the property has been occupied by the Department of Agriculture; this parcel is not subject to sale. It was my Committee's intent that this excluded portion be transferred from the Maritime Administration to the Department of Agriculture without compensation. As I understand it, the General Services Administration has recently established a policy that transfers of property between Federal agencies shall be compensated. I thought it important that the intent of the Committee on Merchant Marine and Fisheries be clarified on this point. I would hope that you concur in this judgment and that the Department of Agriculture will be relieved of complying with the new policy laid down by the General Services Administration.

Sincerely,

WALTER B. JONES,
Chairman.

U.S. SENATE, COMMITTEE ON GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION AND GOVERNMENT PROCESSES,
Washington, D.C., August 18, 1982.

Hon. WILLIAM V. ROTH, Jr.
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR BILL: I am writing you to clarify my intentions with regard to H.R. 3620, the Hoboken Pier Terminals bill.

As you know, I offered an amendment to the bill to require that the property be transferred at the full fair market value. The determination of full market value is to take into consideration several factors including the planned use of the property, as well as Hoboken's ability to pay. Since marking up the bill, some questions have been raised as to whether this fair market standard was intended to cover a portion of the Hoboken Piers property that is to be

transferred from one federal agency to another.

The portion of the property I am referring to has been under the jurisdiction of the Maritime Administration since 1917. It has been occupied by the Department of Agriculture. This parcel is not part of the sale to the city of Hoboken.

I fully support the President's policy, as explained in the 1982 budget message, of requiring full fair market value payment by federal agencies when transferring excess property from one agency to another. It is my intention that for any portion of the Hoboken Piers property which is transferred from one agency to another, the receiving agency pay full fair market value. Also, any such transfer should be reviewed and approved by the Federal Property Review Board. Any exceptions to this policy should come only if approved by the Federal Property Review Board.

Thank you for your cooperation on this matter.

Warm personal regards,

CHARLES H. PERCY,
Chairman.

Mr. BRADLEY. Mr. President, the measure which the Senate is now considering is one of utmost importance to the people of New Jersey. Very briefly, this legislation which I am pleased to sponsor authorized the sale of approximately 50 acres of Federal property to the city of Hoboken, N.J. With the anticipated sale of the property, the city of Hoboken will be able to turn blighted land and burned-down piers into economically productive property.

This extraordinary legislation is necessary to dispose of the property because the legal and leasing arrangements which now govern the property prevent its economic development and prevent any transfer under normal administrative means. This legislation, H.R. 3620, sponsored in the House of Representatives by Congressman FRANK GUARINI, will provide for the expedited sale of the property to the city of Hoboken.

I am particularly pleased that this legislation provides for the sale of the property in a manner which is fair to all parties involved—the people of New Jersey, the city of Hoboken, and the Federal Government. The General Services Administration is specifically directed to consider the enormous burden which Federal ownership of the property has placed on Hoboken for over 50 years and must make every effort to expedite the transfer of the property to relieve Hoboken of this hardship without undue delay.

Mr. President, the passage of this legislation represents an important first step in our effort to rebuild our urban waterfronts. I thank the members of the Governmental Affairs Committee for their assistance in bringing this legislation before the Senate. I hope that this measure will soon become law so that we may begin to rebuild Hoboken's waterfront without delay.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read third time, and passed.

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

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I thank the minority leader for his cooperation on this extensive list of items to be dealt with by unanimous consent.

Now, Mr. President, I see my fondest wish has been realized. There is a messenger from the House of Representatives at the door seeking admission, and I yield for that purpose.

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982—CONFERENCE REPORT

Mr. BAKER. Mr. President, as I indicated earlier in my remarks during morning business, it is my hope that the Senate will proceed now to the consideration of this item of this important conference report which has just been adopted by a substantial margin in the other body.

I am prepared now, Mr. President, to ask the Chair to lay before the Senate and I do ask unanimous consent that the Chair lay before the Senate, the conference report on H.R. 4961.

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER. The clerk will report.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object——

The PRESIDING OFFICER. Is there a reservation there?

Mr. ROBERT C. BYRD. I beg the Chair's pardon?

The PRESIDING OFFICER. Is there a reservation?

Mr. ROBERT C. BYRD. I beg the Chair's pardon?

The PRESIDING OFFICER. Did the minority leader reserve the right to object?

Mr. ROBERT C. BYRD. Yes, momentarily.

Mr. President, I personally have no objection, but I am reserving the right to object in order to protect my colleagues on this side who may or may not wish to object. For the moment I continue my reservation.

Mr. LONG. Mr. President, reserving the right to object, I just do not believe that for the Senate to vote on this conference report that anybody ought to have any commitment, anybody ought to receive a commitment, and, therefore, I object, and I will continue to object as long as the condition of bringing this conference report up here is that somebody has to make some agreement with somebody to do anything. This is something we are all entitled to vote on regardless of how we want to vote, and I just object to doing business that way.

One hundred Senators are entitled to vote on the conference report however they want to vote, and I do not think as a condition of voting on that we have to agree to do anything for anybody, and I therefore object.

The PRESIDING OFFICER. Objection is heard.

Mr. BAKER. Mr. President, Senators should pay attention because I really want to ask the Senate to act on this request, if it will. I ask unanimous consent that the Senate now proceed to the consideration of the conference report on H.R. 4961.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. 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. 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 withdraw my request for the time being. We are still in morning business and I believe one or two Senators are seeking recognition.

THE SOVIET DAY OF SHAME

Mr. ZORINSKY. Mr. President, Saturday, August 21, marks the 14th anniversary of the brutal Soviet-led 1968 invasion and occupation of Czechoslovakia. With martial law continuing in Poland and the "Forgotten War" dragging on in Afghanistan, it is more important than ever that we pause now to remember this infamous Soviet Day of Shame and the plight of yet another country suffering under Communist tyranny.

The occupation of Czechoslovakia foreshadowed in many ways last year's equally brutal Polish crackdown. Both brought to an end brave experiments in independence behind the Iron Curtain. And both proved once again that Soviet communism is incompatible with the traditional concepts of freedom and democracy.

In Czechoslovakia, the Soviets, threatened with a breath of freedom, had no choice but to crush the people's attempt to fashion institutions of government free of external influence. But, despite a Soviet occupation that continues to this day, many courageous Czechoslovak citizens continue to call out for a restoration or freedom and human rights in their country.

In particular, the charter 77 group continues to grow and urge adherence to the Helsinki agreement. It flour-

ishes despite severe oppression that takes the form of harassment, arrest and imprisonment by the puppet regime in Prague.

These people deserve our admiration, our support and, most of all, or gratitude for constantly reminding us that we cannot turn our backs on Soviet aggression. Nor can be ignore flagrant violations of human rights and the denial of freedom of an entire nation.

The struggle of the Czechoslovak people reminds us of our own good fortune to be citizens of the United States and of our responsibilities and obligations to the 1 billion people now living under Communist enslavement. Let us join with these brave patriots in their own solemn acknowledgment of the Soviet Day of Shame and reaffirm our commitment to men and women everywhere who yearn for freedom and democracy.

ACID PRECIPITATION TESTIMONY

Mr. ROBERT C. BYRD. Mr. President, today I testified before the Committee on Energy and Natural Resources. The committee was holding hearings on the acid precipitation control proposal which was recently adopted by the Committee on Environment and Public Works during their markup of the Clean Air Act. I have been very concerned with this issue for some time, especially since the proposal, if passed, will have a devastating impact on an important segment of the West Virginia coal industry, as well as on the economy of my State.

Since this issue is of interest to many of my colleagues from the Appalachian and Midwestern States, I ask unanimous consent that my testimony be inserted in the RECORD.

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

ACID PRECIPITATION TESTIMONY BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Senator ROBERT C. BYRD. Mr. Chairman, let me first take this opportunity to thank you for providing this occasion to express my views on a difficult issue. As you know, the issue of acid precipitation has been of concern to me for some time now. On January 28, 1982 I introduced S. 2027, the Acid Precipitation Accelerated Review and Reporting Act. This legislation, which is identical to Title IV of S. 2266, my bill to amend the Clean Air Act, is an alternative to the proposal which was recently adopted by the Committee on Environment and Public Works. The Committee's proposal would require expensive reductions in SO_2 emissions to achieve an arbitrary reduction target. More recently, I have written letters to the Chairman of the Committee on Environment and Public Works and to you, Mr. Chairman, to express my deep concerns.

Mr. Chairman, the new acid precipitation control program recently adopted by the Committee on Environment and Public Works as a part of the Committee's revision of the Clean Air Act is considered by some to represent a compromise. I cannot agree.

The proposal adopted by the Committee requires an 8 million ton emissions reduction. However, it also requires that any new sources be offset by equal reductions from existing sources. As a consequence, the estimated total reduction is not 8 million tons, but 12 million tons when one includes the estimated 4 million tons of reductions required to offset emissions from new sources.

In addition, the proposal places a cap on nitrogen oxide emissions. This provision would, in effect, prohibit coal conversions altogether, and it is conceivable that facilities which have converted from oil to coal may have to convert back to oil in order to comply with the cap. This is quite obviously contrary to the bipartisan policy which the Congress has endorsed calling for greater use of coal to meet our energy needs.

Mr. Chairman, I am deeply concerned by the proposal. It implicitly assigns the blame for acid precipitation in the Northeast on the Midwestern and Appalachian states. In my view, this approach is based upon incomplete scientific information and a limited understanding of the implications for the use of coal. Indeed, such an approach does a disservice to the complexity of the issue by over-simplifying the scientific evidence and virtually ignoring the severe economic and social impacts on the Midwest and Appalachian regions.

I am particularly concerned with the disruptive impact of the Committee's proposal on the pattern of traditional markets for coal. Midwestern and Northern Appalachian coal markets could be devastated as high sulfur coal from these regions lose their markets to low sulfur coals from the Western coal states. Obviously, this would entail the loss of thousands of jobs in the mining industry in states such as West Virginia. In West Virginia it is estimated that the acid precipitation control program being proposed will put about 15,000 miners out of work, and could entail a direct loss of about $380 million to the West Virginia economy.

As these figures suggest, the proposed new control program would place inequitable burdens upon some of the states in the 31 state control region defined by the Committee's proposal.

In fact, under the proposal adopted by the Committee on Environment, eight states—Illinois, Indiana, Kentucky, Ohio, Pennsylvania, Missouri, Tennessee and West Virginia—would bear 78 percent of the required 8 million ton reduction. This means that the costs of the program would be borne largely by the residents of these states. In contrast, the Northeastern states, where acid precipitation is perceived to be most in evidence, eight states—New England plus New York and New Jersey—would bear less than 2 percent of the reduction requirement. Thus, the responsibility, and the costs, for achieving the reduction target will be borne by those living outside the Northeastern states.

Mr. Chairman, let me say that while acid precipitation appears to have some environmental consequences over a long period of time, there is also little doubt that the Committee proposal will have major economic consequences which will be manifest in the near term. Yet I fear that these consequences were only superficially explored and may have received only passing consideration.

Mr. Chairman, with your indulgence, let me go into a bit more detail with regard to the points I have just raised.

The proposal adopted by the Committee on Environment is based upon an oversimplification of the diversity of scientific opinion regarding a complex phenomenon. Based upon the testimony received in the Senate and other evidence, it is clear that there are areas of agreement within the scientific community about the origins, causes and effects of acid precipitation. However, it is very important to point out that there are also areas of disagreement and uncertainty on key issues. Indeed, there is insufficient scientific data in many of these areas so that drawing firm conclusions is impossible.

For example, the Interagency Task Force on Acid Precipitation, which was directed to conduct a scientific research program on acid precipitation, has pointed out that there is considerable controversy regarding the data presented as evidence of changes in precipitation acidity. The Task Force has pointed out that the acidity of precipitation has only been measured consistently for a long period of time in one place in North America—the Hubbard Brook Experimental Forest in New Hampshire. According to the Task Force, there is no marked trend in PH evident in that record. In other words, because of the general lack of consistent monitoring, trends in acid deposition in North America are only poorly defined.

Indeed, a recent report by the U.S. Geological Survey in New York has concluded that sulfate concentration in New York has actually decreased an average of 1 to 4 percent per year. The report notes that this decrease in sulfate concentration is similar to that observed for precipitation in New York and "may, therefore, reflect a decrease in sulfate from atmospheric deposition." This, then, suggests that acid precipitation may be decreasing in New York, despite the increased use of coal in the Midwest and elsewhere, over the past several years.

The Committee's proposal is based upon the assumption that SO2 emissions from coal-fired powerplants in the Midwest are transported long distances, transformed into acid precipitation, and deposited in New York and New England. In other words, the Committee's proposal is based upon the principle of "what goes up must come down." The issue of long range transport of pollutants is one of the crucial questions. Although this issue is becoming better understood, the Interagency Task Force has pointed out that it is still not possible, based upon the scientific evidence, "to determine the extent to which any specific source or collection of sources, of SO2 in one region leads to acid deposition in another region." In mid-November 1981, a panel of distinguished scientists testified before the House Committee on Natural Resources, Agriculture Research and Environment. During their testimony on the status of acid precipitation resarch, the panel testified that on the basis of available scientific evidence, it is not feasible to identify the contribution of individual sources to an area affected by acid deposition. Furthermore, "while the relationship between sulfur emissions and total sulfur deposition is linear on a global scale, that is, what goes up must come down, one may not be able to predict what comes down regionally." Consequently, these scientists concluded, for a given reduction in emissions, "it is difficult to predict a reduction in deposition or acidification."

In January of 1982, the U.S. Department of Energy convened a workshop of scientists to examine the "source-receptor" relationship in acid precipitation. The technical panel concluded that "significant policy

guidance" is precluded by the current state of scientific knowledge regarding this relationship. As the GAO recently reported, "scientists studying these processes generally indicate that, while it appears clear that acid deposition comes from oxide emissions, the proper course of action to take is not yet clear, because we lack the necessary understanding of how the sequence of events operates."

Mr. Chairman, these considerations indicate to me that there is considerable diversity of opinion and uncertainty in the scientific community on the issue of acid precipitation. At this time it does not seem prudent to design a massive new regulatory program which, in light of the state of scientific knowledge, would be of dubious effectiveness.

The second point on which I would like to elaborate is that the Committee's proposal will disrupt the traditional coal market pattern in the United States, to the detriment of the Northern Appalachian and Midwestern coalfields. For example, recent projections developed under the auspices of the Office of Technology Assessent indicate that an acid precipitation control program, such as the one being proposed, would cause a redistribution of coal production among the coal producing regions of the nation. The effect of the proposal would be to increase the demand for low sulfur coal, while drastically diminishing (if not eliminating) the marketability of the nation's medium and high sulfur coal reserves. As a consequence, there would be shifts in production between high sulfur coal producing areas to low sulfur areas. Indeed, when compared to the projected levels of production for 1990 which would be expected if there were no new regulatory programs, it is estimated by OTA and others that the shift in production would be largely from the eastern coalfields to the western coalfields, especially Colorado.

Although there could be some increase within regions of some eastern states, Northern Appalachia and the Midwestern coal production would suffer production losses. The Edison Electric Institute has estimated that in 1990 Northern Appalachian coal production would be about 45 million tons less than it would have been under current law. In the Midwest, coal production is estimated to be 51 million tons less. Thus, these two regions of the nation would be producing 96 million tons less than they would have under current law. Northern West Virginia would be producing about 9 million tons less; Ohio would be producing 27 million tons less; and Illinois could be producing 38 million tons less. In other words, the coal industries in these states would be the big losers.

To put this into perspective, it has been estimated that coal production in Northern Appalachia and Midwestern coalfields would be about 329 million tons in 1985 under current law. However, if there were no SO2 restrictions—i.e, absent current law—production would have been about 423 million tons. Thus, the imposition of the current clean air standards for SO2 has meant a production displacement of 94 million tons.

Now recall that the Committee's proposal would mean a production displacement of 96 million tons. What this suggests to me is that the coal industry in Northern Apalachia and the Midwest will have to sacrifice another 96 million tons in 1990 with little assurance that it will contribute to cleaner air anywhere.

If these estimates are accurate, it will mean that employment will continue to be restricted in an industry that has already been hit hard by the current recession. In fact, the United Mine Workers has estimated that the imposition of an acid precipitation control program as severe as the current proposal could result in the loss of as many as 89,000 jobs in the coal industry. It would entail direct economic losses as high as $6.6 billion. It is important to point out that these losses would be suffered only by the Northern Appalachian and Midwestern coalfields.

Mr. Chairman, I am deeply concerned that the effect of the Committee's proposal will be to single out the Northern Appalachian and Midwestern states for additional economic hardship.

In order to appreciate the significance of the proposed acid precipitation control program for ordinary people living in the Midwest, we need to consider the impacts on consumer electric utility rates. In a recent analysis, ICF has estimated the change in electric utility rates that would be required in 1990 in order for utilities to recover capital costs associated with an acid precipitation control program. According to that analysis, several states in the Midwest had utility rate increases of over 10 percent. These same states are also currently facing high unemployment rates. In my own state of West Virginia, where unemployment is about 10.9 percent, the first-year electric rate increase would be about 6.3 percent. In Ohio, where unemployment is about 11 percent, electric utility customers would see their rates increase by 19.2 percent in 1990. Indiana, where unemployment is about 11.4 percent, would see electric rate increases in 1990 of 14.3 percent. Kentucky, where unemployment is about 9.8 percent, would see electric rate increases of 10.9 percent. In other words, Mr. Chairman, people in those states who have already been hit hard by the economic recession can also look forward to the prospects of significantly higher electric rates.

I would point out that these estimates of electric rate increases are probably understated, because they are based upon an ICF computer model which assumes that electric utilities will adopt a "least-cost" optimum compliance strategy. For a variety of reasons, this assumption has little or no grounding in the real world.

Mr. Chairman, there is one final point I wish to make, which has not been discussed by anyone. There has been no consideration given to the impact of the Committee's proposal on the export market for American steam coal. It has been estimated that, under normal market conditions, low sulfur steam coal commands a market premium of 30 percent over the price of high sulfur coal. That is, low sulfur coal is about $11 more expensive than high sulfur coal. An acid precipitation control program would enhance the demand for low sulfur coals which, in turn, would then command a market premium of an additional 30 percent, about $12 per ton. This could impair the competitive position of American steam coal in the world market. American steam coal already commands a price of about $4 per ton above the world price. With the prospects of significantly higher prices for U.S. coal, we might find potential customers in Europe and the Pacific Rim nations looking elsewhere for their coal supplies.

If this were to occur, the significant potential benefits to the American economy would be lost. In 1980 the value of all U.S. coal exports was $4.5 billion. It is estimated that by 1990 U.S. coal exports could have a value of $6 billion. These estimates, however, do not take into account the impact on demand of significantly higher U.S. steam coal prices as the result of an acid precipitation control program.

In closing, Mr. Chairman, let me say that I have been trying to point out the extent to which this issue represents a conflict between the nation's environmental goals, and our energy and economic goals. In the past we have been able to achieve a delicate balance between the need for maintaining and improving environmental quality and the need for increased energy supplies and economic growth. Public opinion polls consistently show that Americans overwhelmingly support protection of the environment. However, those same polls also show that Americans are just as concerned with such issues as jobs, inflation, energy, defense and tax burdens. I think the Senate can draw one conclusion from such data: We must recognize that environmental goals cannot be pursued in isolation from other goals. I hope that we can take that message to heart.

In light of these considerations, I am firmly convinced that my bill, S. 2027, represents the basis of a reasonable, balanced approach to the issue.

My bill requires the federal Acid Precipitation Task Force, established in Title VII of the Energy Security Act of 1980 (P.L. 96-294), to complete its study of the causes and effects of acid precipitation by June 30, 1985. That date is five years sooner than provided for in the Energy Security Act.

The federal government should have sound scientific information available to it on the complex relationships between sulphur and nitrogen-based emissions and acid precipitation before it attempts massive regulatory action. The federal study, accelerated by my bill to complete its work and submit a final report by June 30, 1985, will help provide the information required for a responsible approach to this problem.

I therefore hope that the members of the Committee will give careful consideration to my proposal.

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.

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982—CONFERENCE REPORT

Mr. BAKER. Mr. President, with the full knowledge that someone will perhaps reserve the right to object, I renew my request to proceed to the consideration of the conference report.

The PRESIDING OFFICER. Is there objection?

Mr. EAST. Reserving the right to object, I did not hear the request.

Mr. BAKER. Mr. President, we provided for the transaction of routine morning business until 7 p.m. I made a request that we proceed immediately

to the consideration of the conference report on the tax bill. There were several reservations of objections to that. The absence of a quorum was suggested, which ran until just now, until it was called off. I called it off, which I suppose closes morning business, and renewed my request.

So the request now pending before the Senate is a unanimous-consent request that the Senate proceed to the consideration of the conference report.

The PRESIDING OFFICER. Is there objection?

Mr. EAST. Reserving the right to object. I would like to inquire of the majority leader, had he considered the possibility of laying this over until tomorrow. The hour has gotten so late. We might dispose of it on tomorrow. I wondered if he had considered that option in view of the fact that the House has just adopted the conference report. The opportunity for us to reflect upon it at all has been greatly reduced. I inquire if the majority leader has considered that possibility.

Mr. BAKER. I do understand the concern of the Senator. It is now past 7 o'clock in the evening. Occasionally, things come along in the Senate which require our immediate attention. This bill is one of them. This conference report is so important in terms not only of its economic impact but also in terms of the overall economic policy of Government that we should move promptly. It is a privileged matter. It is a conference report of the most privileged sort under the Budget Act. The House has just acted upon it.

There is an adjournment resolution at the desk. Not that that should determine our course of action, but there is an adjournment resolution at the desk which provides for the House and the Senate to go out tomorrow or Saturday.

I would hope two things would happen. I would hope, first, that there not be an objection to my request that we proceed immediately to the consideration of the conference report so that it may be laid before the Senate.

I must say in all candor, however, that if and when that is done, my second request would be that the statutory time for debate on the conference report be reduced from 10 hours to either 1 or 2 hours. I would think 2 hours would be adequate, and I would hope for 1 hour equally divided; 2 hours would be reasonable, I think, under most circumstances.

The act, as the Senator knows, provides for 10 hours of debate. Beginning at 7 o'clock and given the interruptions that might occur, we could run all night, if we take advantage of the full 10 hours. I very much do not want to do that. I think the Members are tired and it would seldom serve a good purpose. That is our realistic alternative.

We still have the conference report on the supplemental appropriation bill to deal with. It is my intention to ask the Senate to turn to the consideration of that item early in the morning.

My somewhat long-winded answer to my good friend from North Carolina is that I have considered that and I must say reluctantly I do not feel it is feasible to postpone it until tomorrow. That is why I make the request.

Mr. EAST. I thank the majority leader. I will accede to the request. I will not object to it. I saw some advantages first in considering this on tomorrow.

I would like to make a parliamentary inquiry, if I might.

The PRESIDING OFFICER (Mr. BOSCHWITZ). The Senator will state it.

Mr. EAST. The majority leader referred to the fact that we are operating under the Budget Act in disposing of this matter. Is the majority leader correct on that point?

The PRESIDING OFFICER. This is the tax reconciliation conference report which comes under the act, that is correct.

Mr. BAKER. Mr. President, I thank the Senator for indicating he will not object. I say parenthetically that I did not move the consideration of this measure, which would have been the normal procedure under the Senate rules, because I wanted to make sure that Senators had an opportunity to object. But under the act I can also do that. Indeed, I believe I am correct in saying that a motion to proceed to the consideration of the conference report, even notwithstanding the other provisions, such as the report time or even to reduce the time for debate, would be a nondebatable motion at this time.

I would hope we could arrange this amicably and by unanimous consent.

I am grateful to the Senator for indicating that he will not object.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. Mr. President, I hope that the Senate will get on with its business.

Mr. STENNIS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. I would hope that the majority leader would press for action tonight. I would also hope that action can be completed within an hour or two. We have not been unaccustomed to staying on Thursday nights. The majority leader made that clear at the beginning of the year. I would not like to see an objection, because, under the provisions of the Budget Act, he could move and he would have a majority of the votes. He would have my vote.

There is no point in waiting until tomorrow. I simply want to say I hope the majority leader will press forward.

As to shortening the time, 1 hour or 2 hours, I think, would be sufficient, but maybe my colleagues on this side of the aisle would want more time. That question can be resolved once the matter is before us.

Mr. BAKER. Mr. President, I thank the Senator. I understand his situation. He has indicated to me privately and off the floor that he intends to vote against the conference report. I understand that. But I am especially grateful for his statement that he will support my motion, if necessary, to go forward with consideration of this conference report.

Mr. MATTINGLY. Will the majority leader yield?

Mr. BAKER. Yes, Mr. President, I yield.

Mr. MATTINGLY. I just want to make the point that there is not one undecided vote in this Chamber, so I do not see there is any time needed for debate.

I yield to the Senator from Kansas.

The PRESIDING OFFICER. The clerk will state the conference report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4961) to make miscellaneous changes in the tax laws, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of Aug. 17, 1982, pt. II.)

Mr. ROBERT C. BYRD. Mr. President, I yield my time to the distinguished Senator from Louisiana.

Mr. BAKER. If the Senator from Louisiana will yield to me, I had hoped to make a request at this time to move to reduce the time for debate on this measure.

Mr. LONG. I do not have the floor.

Mr. BAKER. I ask unanimous consent that the time for debate on this measure be reduced to 1 hour.

Mr. EAST. I object.

Mr. LEVIN. Reserving the right to object.

The PRESIDING OFFICER. Objection is heard.

Mr. BAKER. Mr. President, I ask unanimous consent that the time for debate on this measure be reduced to 2 hours equally divided.

Mr. EAST. I object, Mr. President. I shall be happy to explain my position. I am willing to move along with this in an expeditious manner, no question about that, but I would like to reserve

the right to object now on specific time limits.

The PRESIDING OFFICER. Objection is heard.

Mr. BAKER. Mr. President, I really hope that we can arrive at a time that Members will be happy with. I make one more request.

I ask unanimous consent that the time for debate on this matter be limited to 3 hours equally divided.

The PRESIDING OFFICER. Is there objection?

Mr. EAST. I would like to object, Mr. President, again. I do not anticipate any long delay here, but I would simply like to leave open the possibility of——

Mr. GOLDWATER. Will the Senator yield for a suggestion?

Mr. BAKER. Yes; I yield.

Mr. GOLDWATER. I suggest we go the full 10 hours.

Mr. BAKER. Mr. President, if I did not know my friend so very well, I would take that seriously.

Mr. METZENBAUM. Will the Senator yield?

Mr. BAKER. I yield to the Senator from Ohio.

Mr. METZENBAUM. Is it not the fact that, by majority vote, the majority leader can obtain a reduction in the number of hours? Are those not the rules?

Mr. BAKER. Mr. President, I believe that is correct.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. On a nondebatable motion, that time can be set at any time under 10 hours.

Mr. METZENBAUM. I thank the Senator.

Mr. BAKER. Mr. President, I am reluctant to do that. Before I do that, a parliamentary inquiry: Am I not correct that that motion can be made at any time during the pendency of the measure?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BAKER. Before I make that motion, I would like to pursue the matter a little. I suggest that the managers go forward with the debate. The Senators should know that before 8 o'clock, I intend to renew my motion and try to establish a lesser time for debate.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. BAKER. Yes, Mr. President.

Mr. ROBERT C. BYRD. Am I not correct in saying that any other Senator can make the same motion?

Mr. BAKER. Yes; indeed, Mr. President, any other Senator can make that motion.

Mr. ROBERT C. BYRD. May I say that while the majority leader has made such a promise, I do not make such a promise. I am not committed by such promise.

Mr. BAKER. I understand fully, Mr. President. There are cases when I would think of that as a usurpation of leadership right, but in this case I do not.

For the time being, Mr. President, why do we not proceed with the debate and I shall confer with my friends.

Mr. EAST. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I am happy to yield to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. EAST. Am I correct now that the conference committee report is before the Chamber?

The PRESIDING OFFICER. The Senator is correct.

Mr. EAST. Mr. President, I would like to make a point of order regarding the conference report.

The PRESIDING OFFICER. Will the Senator turn on his speaker?

Mr. EAST. I have it on. I think it had gotten turned off up there. I do not know.

If I may state my point of order:

Mr. President, I make the point of order that under the provisions of rule XXVIII, paragraphs 2 and 3, the conference report is out of order in that it contains material which is not a germane modification of subjects in disagreement, to wit: That the report contains a provision requiring a new set of information reporting requirements for certain businesses, and a tip allocation requirement.

I state in explanation of the point of order that the Senate struck out a similar provision from the Senate committee amendment to H.R. 4961, and that no such provision was contained in either the Senate-passed or original House-passed versions of the bill. Although the Senate-passed bill contained a provision dealing with the deductibility of business expenses incurred for meals and beverages, that provision dealt only with the issue of deductibility of business expenses. The provision included by the committee on conference deals with the allocation and reporting of income which in no way can be considered a modification of a provision dealing with deductions.

I further state in explanation of the point of order that the provision relating to the deductibility of business expenses appears under the heading, "Reduction in Certain Deductions and Credits," in the Senate-passed version of H.R. 4961. The provision on tip reporting and tip allocation contained in the report of the Committee on Finance on H.R. 4961 appeared under the heading, "Provision Designed To Improve Taxpayer Compliance." Likewise, these matters appeared in separate titles. The tip provision appeared in the Senate committee amendment in title III. It is thus clear that the committee on conference did not confine itself to modifying a matter in disagreement. Rather, it inserted new matter that had been approved at no time by either the Senate or the House.

I accordingly state that under the provisions of rule XXVIII, paragraph 2, the conference report is out of order and must be rejected in its entirety, since the House of Representatives has already acted thereon.

Mr. DOLE. Mr. President.

The PRESIDING OFFICER. The conferees went to conference with a complete substitute, which gives them the maximum latitude allowable to conferees. The standard is that matter entirely irrelevant to the subject matter is not in order. That standard has not been breached. The point of order is not well taken.

The Senator from Kansas.

Mr. EAST. Mr. President.

The PRESIDING OFFICER. The Senator from Kansas has the floor.

Mr. DOLE. I am happy to yield.

Mr. EAST. I would like to appeal from the ruling of the Chair and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. On an appeal, there is 1 hour of debate equally divided.

Mr. BAKER. Mr. President, who has control of the time on the appeal?

The PRESIDING OFFICER. The Senator from North Carolina and the Senator from Kansas or their designees.

Mr. BAKER. Will the Senator from Kansas yield to me?

Mr. DOLE. I am happy to yield.

Mr. BAKER. Mr. President, I hope we will not take an hour to debate the appeal from the ruling of the Chair. Would the Senator from North Carolina be willing to reduce the time?

Mr. EAST. I should be happy to reduce the time to 15 minutes to a side.

Mr. BAKER. Mr. President, I ask unanimous consent that the time for debate on this appeal be 30 minutes equally divided.

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

Who yields time?

Mr. EAST addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EAST. Mr. President, my purpose in raising this matter is that I think it goes to the question of the integrity of the legislative process; that in any dimension of the legislative process we ought to maintain, as well as we can—granted, reasonable minds will differ sometimes over whether we are moving the right way—the integri-

ty of the legislative process. We do know that under rule XXVIII, as I have indicated, paragraphs 2 and 3—Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senator will repeat his request.

Mr. EAST. I am requesting that we might have order in the Chamber.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator will continue.

Mr. EAST. Mr. President, my appeal again is offered in the spirit of trying to maintain the integrity of the legislative process and is not offered in the spirit of being dilatory or offered in the spirit of simply trying to slow down the final process of consideration of this matter, but we did deal with this matter in the Senate. We had made our position clear on it. The House never did act upon the matter. I submit that under rule XXVIII, paragraphs 2 and 3, where we are required to have a germaneness of subject matter and that modifications must meet that germaneness of subject matter requirement, this in fact does not do that. Or to put it another way, if you can tie these two matters together under some notion that they are both done under the roof of a restaurant, then I would submit that rule XXVIII has no vitality at all in terms of germaneness.

We had clearly and expressly in this Chamber rejected the idea on this matter of tip reporting, the feeling being this was an undue burden upon restaurants, restaurant owners, restaurant operations. It was simply placing an additional burden of paperwork and Government regulation and control upon them, and whatever relative benefit might come out of it was more than offset by the inconvenience placed upon them. We had specifically rejected that out of hand.

In the conference committee that was altered, and in lieu of it we now have this question of the deductibility of business expenses, the three-martini lunch problem. That was put in here on the floor. Then the matter went over to the conference committee, and they in fact then made the change back the other way. Thus, we are in the very strange position where neither Chamber ever agreed to the tip provision prior to conference, and in fact the Senate had expressly rejected it.

When the conference makes that modification, I submit it runs up against a very clear statement in rule XXVIII, paragraphs 2 and 3, regarding germaneness of subject matter, making a substitution, an alteration, an interchange, exchange, or whatever label you wish to put on it, of matters that are not germane and hence runs afoul of this rule.

It might appear to be a small matter, but again it is a matter of the integrity of the rulemaking process. It is a matter of the integrity of the rules of our own Chamber. More particularly, I do think, since we had expressly rejected this in our own Chamber, we do owe a certain degree of responsibility to see the matter through, and that includes then honoring the requirement of subject matter germaneness under rule XXVIII, paragraphs 2 and 3.

My point is—and I do not wish to delay this unduly and I will not—that if this is germane as a subject matter requirement under rule XXVIII, paragraphs 2 and 3, I submit that this rule then has no substance at all and in effect the conference committee now and henceforth would be under no real genuine germaneness requirement as regards subject matter.

As I had previously indicated, Mr. President, these provisions are in separate titles in the bill. They deal with very dissimilar matters. The only thing they have in common is restaurants. I submit that certainly could not be the subject matter requirement of germaneness in the rule. That could not certainly have been the intent of the rule. If so, the rule has no substance to it at all. You have merely the form of a rule with no substance to it, and hence I feel it does great violence to the integrity of the legislative process.

One of these provisions is taxpayers' compliance, the other is in a revenue measure, and so whether you look at it in terms of the physical location in the bill or whether you simply look at it in terms of comparing the subject matters in question, I do not see how one comes out having met this germaneness requirement.

I would certainly appreciate having this matter explained to me by someone, as to how it does in fact meet this requirement and why they think I am wrong in raising it, if they think it is a frivolous point.

I would happily entertain this opportunity to hear the explanation from anyone, Mr. President.

Mr. President, I will yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. 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. EAST addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EAST. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. EAST. Mr. President, in order that we might expedite this matter, I am willing on my own time to inquire of the distinguished chairman of the Finance Committee, or anyone else, how this is explained as having met this germaneness requirement of subject matter under the rule. There may be an explanation for it. It simply is not clear to me what it is. Aside from these events occurring under the roofs of restaurants, which I cannot believe is the touchstone of germaneness here, how does one justify this?

If I might put that inquiry to the distinguished chairman of the Finance Committee, I think it would expedite this and ultimately get a vote on the matter.

Mr. DOLE. Mr. President, I think the Chair properly ruled.

I repeat that for the purpose of consideration of a conference report, there are extremely broad rules on germaneness, much broader than the normal germaneness requirement which applies in the case of reconciliation bills or after cloture.

Any matter added in conference is germane if it is not entirely irrelevant to matters in Senate or House bills. The Senate bill as it passed the Senate contained a variety of provisions requiring or improving information reporting. The tip reporting requirements are part of the taxpayer compliance package and are not dissimilar to other expanded reporting requirements contained in the Senate bill.

The following are four areas where the Senate bill dealt with information reporting:

First was expanding reporting on interest and dividends.

Second, reporting of gross proceeds from broker transactions.

Third, reporting on payments made to independent contractors.

Fourth, reporting on State and local income tax refunds.

In addition, we increased penalties on reporting requirements.

So, Mr. President, we considered whether or not this was appropriate in the Congress itself. In fact, we discussed the very question raised by the distinguished Senator from North Carolina. We checked with the Parliamentarian and decided that we were following the proper course, and I am prepared to vote.

I yield back the remainder of my time.

Mr. EAST. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Six minutes and 55 seconds.

Mr. EAST. Mr. President, I am prepared to move quickly. If the Senator from Kansas, for whom I have the greatest admiration, wishes to move in that direction, I will do so.

To justify my position, lest some think I raised a frivolous point—I wish

to move on and to vote on it and have my colleagues resolve it—I will quote from the rule and ask my colleagues to reflect soberly on this, as to what they think it means and whether it meets that germaneness requirement.

In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees, it shall be in order for the conferees to report a substitute on the same subject matter; but they may not include in the report matter not committed to them by either House.

I submit, Mr. President, that that covered this situation.

Mr. DOLE. Mr. President, will the Senator yield on that point?

Mr. EAST. I yield.

Mr. DOLE. I think the subject matter is information returns subject to reporting of income. That is what the tip provision is. There are a number of other similar provisions. We were led to believe it complied with that rule.

Mr. EAST. Will the Senator repeat that, please?

Mr. DOLE. There are a number of provisions on information reporting, various types of income, in the compliance section. That is the subject matter. I just indicated four specific areas addressed in the Senate bill. Therefore, we believe this provision does comply with the rule referred to.

As I indicated, we were not unaware that this question might be raised. We think it is appropriate to raise it. So we checked it ourselves during the conference. Can we drop the provision on the business lunch, go back to tips, and still come back to the Senate without a point of order being raised? We were advised it was possible, on the basis of the Chair's ruling and the statement the Senator from Kansas just made.

Mr. EAST. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Four minutes and ten seconds.

Mr. EAST. I thank the Chair.

I continue reading from rule XXVIII:

They may, however, include in their report in any such case matter which is a germane modification of subjects in disagreement.

I am simply submitting that this subject was not in disagreement. Therefore, I think that by any reasonable reading of rule XXVIII, they have run afoul of it.

If the Chair's ruling is upheld, I submit that henceforth we have a precedent that germaneness of the subject matter under rule XXVIII, conference reports, in effect, is so broadly conceived as to be defined out of existence.

I think it will tend to weaken greatly the power of the respective Chambers and each Member thereof, because even though we expressly reject something—which we did in the case of tips—the conference committee henceforth will be in a position simply to make that alteration. I think it tends to elevate the conference committee to a power of a superlegislature, which is beyond the intent of Members of both Chambers. I think it does violence to rule XXVIII.

So, Mr. President, not wishing to unduly delay this, and assuming my colleagues can reflect on this and do what they think is proper—I believe I have requested the yeas and nays; have I not?

The PRESIDING OFFICER. Yes.

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

Mr. EAST. I yield.

Mr. DOLE. We want to make a record. I think the Senator makes a serious point.

As I recall, the distinguished Senator from Arkansas (Mr. PRYOR) offered the amendment to knock out that section. The Senate bill contained a penalty for failure to report tip income. We knocked out the reporting but did not knock out the penalty.

We were persuaded by the House conferees to restore the reporting, so that there was a part of the amendment that is still under consideration in the conference report. I submit that is another reason why we have not violated the rule.

Mr. EAST. Mr. President, in a desire to expedite this matter, I have stated my case. I hope I have stated it as well as I can and have made clear that it is not frivolous.

I yield back the remainder of my time, if the opposition does, and we can proceed to vote on my appeal of the ruling of the Chair on the germaneness of the subject matter question under rule XXVIII.

The PRESIDING OFFICER. All time has been yielded back. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. BAKER. Mr. President, will the Chair please state the question?

The PRESIDING OFFICER. Shall the decision of the Chair stand as the judgment of the Senate?

Mr. BAKER. A parliamentary inquiry. An "aye" vote sustains the ruling of the Chair. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Vermont (Mr. STAFFORD) the Senator from South Carolina (Mr. THURMOND), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Louisiana (Mr. JOHNSTON), is necessarily absent.

I also announce that the Senator from Florida (Mr. CHILES) is absent because of illness in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 27, as follows:

[Rollcall Vote No. 336 Leg.]

YEAS—68

Abdnor	Ford	Mattingly
Andrews	Garn	Metzenbaum
Armstrong	Goldwater	Moynihan
Baker	Gorton	Murkowski
Baucus	Grassley	Nickles
Bentsen	Hart	Nunn
Biden	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Percy
Brady	Hayakawa	Pressler
Byrd, Harry F., Jr.	Heinz	Quayle
	Inouye	Roth
Chafee	Jackson	Rudman
Cochran	Jepsen	Schmitt
Cohen	Kassebaum	Simpson
Cranston	Kennedy	Specter
D'Amato	Laxalt	Stennis
Danforth	Leahy	Stevens
DeConcini	Levin	Symms
Dodd	Long	Tower
Dole	Lugar	Tsongas
Domenici	Mathias	Wallop
Durenberger	Matsunaga	Weicker

NAYS—27

Boren	Exon	Melcher
Bumpers	Glenn	Mitchell
Burdick	Heflin	Proxmire
Byrd, Robert C.	Helms	Pryor
Cannon	Hollings	Randolph
Denton	Huddleston	Riegle
Dixon	Humphrey	Sarbanes
Eagleton	Kasten	Sasser
East	McClure	Zorinsky

NOT VOTING—5

Chiles	Stafford	Warner
Johnston	Thurmond	

So the ruling of the Chair was sustained as the judgment of the Senate.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the ruling of the Chair was sustained.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, will the Senator yield to me for a moment?

Mr. DOLE. Yes.

Mr. BAKER. Mr. President, if I could have the attention of the Senate, I would like to renew the unanimous-consent request with respect to the time for debate on this measure.

Mr. President, I ask unanimous consent that there be a period of 1 hour and 30 minutes, equally divided, for debate on this measure.

The PRESIDING OFFICER (Mr. HAYAKAWA). Is there objection?

Mr. SCHMITT. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. SCHMITT. Will the majority leader be willing to revise that request to 2 hours? This is an extremely important measure, as somebody has said. Everybody has made up their minds, as near as I can tell, but it would be appropriate, on a measure of this consequence, this particular change of economic direction, to make

sure that there was no semblance that we might be steamrolling.

Mr. BAKER. Mr. President, I really hope that nobody thinks that we are steamrolling this. We spent 1 hour and 3 minutes on this matter already. That is why I reduced the request from 2 hours to 1½. That is a 50-percent discount.

But I will not quarrel with the Senator from New Mexico if he feels that is a reasonable time. I amend my request to make it 2 hours, an hour to a side.

Mr. SCHMITT. I appreciate that. I do not intend to use the time, but I suspect others may wish to.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BAKER. I thank all Senators.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I might say to the Members, if I could have order for just a minute.

The PRESIDING OFFICER. May we have order in the Chamber so we may hear the Senator from Kansas?

Mr. DOLE. Mr. President, the Senator from Kansas does not intend to take the full hour unless there are requests for time on this side. I understand there may not be that many requests on the other side. So I would just caution Members not to be too far away. Hopefully we can finish this in an hour but if it takes a little longer, so be it.

Mr. President, may we have order?

The PRESIDING OFFICER. Senators will please conduct their private conversations outside of the Chamber. Let us have order in the Chamber so the Senator can be heard.

Mr. DOLE. Mr. President, I wish to extend my thanks to the President of the United States for his successful effort in the House of Representatives and my congratulations to the Speaker of the House of Representatives and the distinguished minority leader, Congressman MICHEL, for their valiant efforts this afternoon in moving this conference report back to the Senate, where I hope that, within 1 hour we can approve the conference report.

Mr. President, after many months of effort, we are finally prepared today to complete the first substantive congressional action to reduce the deficit this year. The conference report on H.R. 4961 now before the Senate follows closely on the Budget Committee reconciliation bill approved by both Houses on Wednesday. That bill reduced spending by about $13.3 billion over 3 years, a significant and much-needed step toward implementing the budget resolution for fiscal year 1983. The bill now before us, however, goes quite a bit further. Under the conference agreement on the Tax Equity and Fiscal Responsibility Act, spending will be reduced by $17.5 billion and revenues will be increase by $98.3 billion over the next 3 years. The deficit reduction provisions of this bill account for over 30 percent of the entire deficit reduction called for by the budget resolution.

A LONG ROAD

This legislation has been a long time in the making; it was not developed overnight. A few times last weekend, though, it did seem, as though much of the work was being done late at night; or early in the morning, depending on your point of view. But the long hours that have been devoted to this bill in recent weeks are only the culmination of a process begun early this year. In fact, the pedigree for the revenue provisions of this bill can be traced back to September 1981, when President Reagan proposed a package of loophole closings designed to raise $22 billion, plus additional spending reductions to cut the deficits projected due to the onset of recession. Those revenue proposals were not pursued at that time, but many of the same items were included in the fiscal year 1983 budget proposal President Reagan submitted to Congress in early February of this year. The Senate Finance Committee promptly began to review budget alternatives on both the spending and revenue side, with hearings on the budget beginning in late February and carrying through the middle of March.

Mr. President, during the course of those hearings it became clear that a major deficit reduction effort on both the spending and revenue sides was vitally necessary to insure a sustained economic recovery. Four distinguished economists who testified to our committee on February 24, while they disagreed on the specific deficit-reduction measures that ought to be taken, did agree on this basic point. Those witnesses were Dr. Martin Feldstein, who has been named for the post of Chairman of the Council of Economic Advisers; Dr. Joseph Pechman of the Brookings Institution; Dr. William Fellner of the American Enterprise Institute; and Dr. Allan Meltzer of Carnegie-Mellon University. These gentlemen represent a wide range of viewpoints cutting across partisan lines, so it has been clear for quite some time what Congress had to do if it wanted to be responsible and reassert control over our fiscal affairs.

I would add that our February and March hearings were only the first formal, public review of the budget problem. Long before that our staff—even before the President's budget was submitted—was at work reviewing possible spending reductions and sources of revenue, along with the Joint Committee on Taxation, the Congressional Budget Office, and others. At the same time the Budget Committees of both Houses were similarly hard at work.

Because there was a general consensus that the President's budget did not go far enough in reducing the deficit, an effort was made to forge a bipartisan consensus in Congress on a package of spending cuts and revenue increases, with primary emphasis on spending. That effort, while it proved less successful than many of us hoped, did prove important in laying the groundwork for the budget we finally adopted. The so-called gang of 17 meetings helped us sort out the options, understand where everyone stood, and give us a target to shoot for. Thanks to the leadership of the Budget Committees, we did finally adopt a budget in June that calls for $378 billion in deficit reduction over 3 years. By July 2 the Finance Committee had completed action on the present package, and this legislation was approved by the Senate early in the morning of July 23. Finally, at about 2 a.m. on August 15, we reached final conference agreement on the spending cuts and revenue increases—tax reforms, for the most part—that are now before us.

A BALANCED PACKAGE

Mr. President, we have come a long way in a very difficult year for the economy and for the Congress, and an election year to boot. We have, I believe, assembled a fair and sensible package of spending cuts and tax changes that tackle the deficit problem head-on without interfering with or underminging the fundamentals of the President's economic recovery program. This is not a step backward; it is a shift in emphasis that is the only way to guarantee continued momentum for the President's program of reducing the rate of growth of Federal spending, restraining the tax burden, building a strong defense, and insuring monetary restraint to keep inflation in check. Many of us believe those principles are still the key to an economic recovery that will last, creating real jobs and leading to higher productivity and stable growth. That is why it is so important that we approve this legislation now. It should have been done much earlier: but we now appear to be at a crucial turning point for the economy, and it is imperative that we do the right thing.

At the conclusion of my remarks I will ask to have printed in the RECORD a detailed summary of the spending reductions, tax reforms, tax compliance changes, and new revenue sources provided by H.R. 4961. I would, however, like to summarize at this time some of the major features of the bill as it emerged from conference.

Mr. President, on the spending side of the ledger we have agreed to changes with an emphasis on better allocation of program costs and administrative improvements, with minimal

impact on beneficiaries themselves. In fact, it should be noted that in the health area the conferees agreed to drop three provisions of the Senate bill that would have had a direct impact on beneficiaries. These are the proposed copayment for home health services, the increase in the part B deductible for physician services, and the 1-month delay for initial medicare benefits. In the conference agreement 73 percent of the cuts are out of reimbursements to providers of services; only 19 percent directly affect beneficiaries. If we also include all of the income security savings, the breakdown for this spending reduction package is 68 percent of savings from payments to providers, 19 of savings from beneficiaries, and 13 percent from employers and others, including various administrative savings such as improved error rates.

This is a fair and carefully considered package. It addresses the urgent need to bring burgeoning entitlement programs under control, but with concern and compassion for those who depend on these vital benefit programs. For example, 63 percent of the savings in the supplemental security income program come from tightening the retrospective accounting procedures adopted last year and from eliminating special Federal subsidies to a few States. Much of the rest comes from rounding and prorating benefits. What we are trying to do here, in short, is what we ought to do as legislators in any event: make these programs work better and more efficiently for our citizens, cutting bureaucratic overhead and improving administration.

Mr. President, at this point I would like to take the opportunity to clarify the intent of the conferees with respect to three provisions of the spending package, so that there can be no confusion with regard to these items.

REIMBURSEMENT OF PROVIDER BASED PHYSICIANS

While this provision has been slightly modified in conference, the intent in making this change remains the same. Under the amendment, the Secretary is required to differentiate those services that require a physician to personally perform in the diagnosis or treatment of a patient's illness from those activities that are of a general administrative nature. General administrative services—such as supervision of personnel who perform clinical laboratory tests—and those services that do not require a physician to perform in person are to be reimbursed as a hospital service on a cost basis. These distinctions will assure the appropriate source of payment, while continuing to reimburse physicians a reasonable amount for the services they perform. Our intention was not to penalize but rather to create some equity between the way we pay physicians generally and the way we pay those who are hospital based.

WORKING AGED

Medicare will become secondary for older workers who choose to remain covered under the group health plans provided by their employers. That provision produces program savings of $1,480 million while allowing older workers the option of rejecting the plan offered by their employers. The savings are realized because we assume employers would be prevented from offering a health insurance plan or option designed to circumvent this provision by inducing employees to reject the coverage offered other employees—those under age 65. The clear intent of this provision, however, is to continue to allow employers to offer limited coverage for those health care services wholly uncovered by medicare; outpatient prescription drugs, for example.

Again, I want to stress the basic point: Although the employer must offer private coverage to the elderly, the retention of private coverage is voluntary for the employee.

The medicare trust fund is rapidly approaching a period of time where expenditures will exceed income. It is only appropriate that we encourage beneficiaries to utilize private resources first, while making sure they receive no less than they would have under medicare.

SUBSTANTIAL SPENDING CONTROL

Mr. President, before I move on to briefly discuss the revenue provisions of H.R. 4961, I want to emphasize once again that this bill is a solid, significant step toward getting spending under control. The medicare savings in our bill alone exceed the total savings in the reconciliation bill for all other legislative committees that was just adopted. We are making real progress on containing the growth of health care programs. If you consider the savings contained in last year's reconciliation bill, together with the savings contained in the present bill, you see that in fiscal years 1983, 1984, and 1985 combined medicare and medicaid spending is reduced by $19.3 billion. Of this amount 75 percent is a result of the program changes provided by the bill now before us. This is a major shift in favor of fiscal restraint for programs that have, over the past decade, grown far faster than original cost estimates projected.

The same is true of other major programs in the jurisdiction of the Finance Committee: AFDC, supplemental security income, and unemployment compensation. While the savings in this area in H.R. 4961 are relatively modest, you have to remember that the 1981 reconciliation bill made major and lasting changes in those programs that provide large cumulative savings in the years ahead. Combining last year's reconciliation changes in these programs with the further modifications in the pending conference agreement, total savings are $15.5 billion over the fiscal years 1983, 1984, and 1985. I should add that the total outlay savings in H.R. 4961 are about $1 billion over our reconciliation instruction, as costed out by the Budget Committee. So, it cannot be said that we have not done a thorough job on the spending side in this legislation. There is of course always more to be done: But we will be back next year to continue the job, as we should.

REVENUE RAISING: TAX REFORM

Mr. President, the revenue provisions in this legislation have, of course, been much debated: much more so than the spending cuts, I might add. There probably is little point in extending the debate any further, but I would like to set out for the record at least a basic outline of the tax changes. A more detailed description of the revenue provisions will appear in the RECORD following my statement.

In the Finance Committee, and in the Senate, and in the conference, there was basic agreement that we should concentrate not on new taxes, or on undermining tax relief for working Americans, but on tax reform and improved compliance. Most of our bill, as President Reagan noted in his address to the Nation on Monday, is in these areas. The reasons for this are simple: We ought to make sure that everyone pays their fair share of tax before we try to collect more from those who already are fulfilling their obligations as citizens. Second, given our fiscal problems, we should take this opportunity to review provisions of existing tax law that may be obsolete, inefficient, unjustifiably generous to a limited group of taxpayers. That is what we have tried to do: I believe we have done a good job, although there is much more yet to be done.

TAX COMPLIANCE

A very large proportion of the new revenues to be raised under this bill—about $28 billion—comes from a series of measures to improve compliance with existing law. New information reporting and penalties do much of the job, existing withholding requirements are strengthened, and 10 percent withholding is imposed on interest and dividend income. In addition, a new allocation rule is provided to help collect tip income, an area where compliance is notoriously low.

Mr. President, I believe it is important that we have taken these steps to improve compliance. On March 5, when the Dole-Grassley compliance bill was first unveiled, there was a great deal of skepticism. Compliance is something people usually talk about, and go through the motions without having any real impact. By now I hope everyone knows that we were serious.

We do not believe it is fair to raise everyone's taxes while a minority of taxpayers gets away with evading their obligation to their fellow citizens. This package of compliance measures does not bridge the gap, but it does take us a long way.

Withholding on interest and dividends has been widely criticized. I believe the case for this provision has been made, not only by the President, but by the Members of the House and the Senate who have contributed to making this an equitable and effective change. In conference we agreed to delay this change until next July 1, to give everyone more time to gear up for the new system. In addition, we have provided an exemption for the first $150 of interest income for all taxpayers; a low-income exemption covering those whose previous year's tax liability was under $600 ($1,000 joint returns); and an exemption for the elderly, age 65 or over, whose tax liability does not exceed $1,500 ($2,500 for joint returns). This exempts all those over 65 with adjusted gross incomes in 1984 under $14,450 ($25,214 joint returns). So this provision has been carefully thought out, and it merely provides the same compliance tool for those with interest and divident income as now applies to those with wage income.

PENSIONS

In the act we have eliminated the distinctions in the tax law between retirement plans of corporations and retirement plans of self-employed individuals—so-called Keogh plans. These parity rules, which will allow equal contributions and benefits under both types of plans, will apply in 1984. However, for 1983, a corporation is allowed contributions for its employees that are higher than the permitted contributions under Keogh plans.

The act also provides rules to address certain limited cases where the principal purpose for which a personal services corporation is formed or availed of is to evade or avoid Federal income tax by securing significant tax benefits for an employee-owner. These rules are intended to overturn cases like *Keller* v. *Commissioner* (77 T.C. 1014 (1981)) where the corporation served no meaningful purpose other than to secure income tax advantages for the employee-owner. These rules (contained in new code section 269A) will apply beginning in 1983—1 year before the parity rules for retirement plans take effect.

I want to make it clear that under the conference agreement a personal service corporation will not be considered to be formed or availed of for the purpose of evading or avoiding Federal income tax solely because, for 1983, the qualified plan rules will permit higher contributions and other advantages for corporate employees. Thus, in applying section 269A, the Secretary of the Treasury will not take a corporation's retirement plan into account.

I also want to point out a printing error on page 631 of the statement of managers. The second full paragraph on that page provides:

> In some cases, the aggregate of a key employee's accrued benefit under an employer's defined benefit plans and annual additions under the employer's defined contribution plans may exceed 1.0 (as applied to the dollar limits) at the time the key employee becomes subject to an aggregate limit of 1.0. In such a case, the key employee is permitted no further benefit accruals under the defined benefit plans and no additional employer contributions under the defined contribution plans until (1) the aggregate of the key employee's accrued benefits and annual additions is less than 1.0 (as applied to the dollar limits), or (2) the aggregate limit for the key employee is increased to 1.25 (as applied to the dollar limits) under the bill. Of course, in no event are further benefit accruals permitted if the aggregate of the employee's accrued benefit and annual additions exceeds 1.25 (as applied to the dollar limit) or 1.4 (as applied under present law).

That paragraph is wrong. It would require that a key employee's aggregate limit in a top-heavy plan be immediately reduced from 1.25 to 1.0 by precluding future contributions or accruals. The paragraph is substantively incorrect and should have been deleted by GPO as instructed.

Although the conferees did decide to make this reduction to 1.0 (like the overall reduction from 1.4 to 1.25) immediately effective, they decided to provide a fresh start to insure that contributions or benefits provided under the prior law higher limits would not have such a drastic effect on future contributions or benefits. Accordingly, the conferees required the Secretary of the Treasury to prescribe regulations under which the numerator of the defined contribution plan fraction (as determined for the last plan year beginning before January 1, 1983) would be reduced (by an amount not exceeding this numerator) so that the sum of the fractions does not exceed the aggregate limit permitted under the conference agreement.

EQUITY IMPROVEMENTS

I have already noted that President Reagan proposed in his budget a series of significant loophole closings and measures to improve the equity of the Tax Code. This conference agreement raises over $24 billion from the President's proposals. In addition, we addressed other loopholes or overgenerous provisions which, while not raised formally by the administration, were a matter of concern to the Treasury as well as to Members. These additional equity improvements raise about $28 billion.

Mr. President, in both these areas we cut provisions that have helped companies evade paying a fair share of tax, and cut back preferences for both businesses and individuals with strengthened minimum taxes. The areas addressed include industrial development bonds, pension tax breaks, completed contract method of accounting, modified coinsurance, tax breaks for mergers and acquisitions, modifying and sunsetting safe harbor leasing, and a number of others. With respect to the medical deduction, a matter of concern to some in the version passed by the Senate, in conference we reduced the floor from 7 to 5 percent. We believe this is economically realistic but should not cause hardship.

USER FEES AND EXCISE TAXES

We have also agreed to increase the telephone excise tax to 3 percent for 3 years, and to double the cigarette tax for 3 years. Both of these provisions are temporary expedients; to be perfectly frank, we would have preferred to do the entire package without resorting to add-on taxes. That did not prove to be possible, but we should note that these are temporary changes, sunsetted after 1985; and that they are relatively modest increases. The higher cigarette tax would cost someone who smokes a pack a day about $2.40 more per month.

Finally, the bill raises the taxes that finance the Airport and Airways Trust Fund, as part of a broadly supported compromise to deal with the financing of the airport system and the FAA. In addition, taxes associated with specific spending—the unemployment tax and the medicare tax—are raised. In the case of the medicare tax, it is extended to Federal employees. This change has been the source of some confusion. In fact, we are also insuring that Federal workers receive an assurance of medicare coverage when they retire. This puts them on the same footing as other workers and shares the cost of financing medicare more equitably.

EXTENDED UNEMPLOYMENT BENEFITS

Lastly, Mr. President, the conferees agreed to a major addition to the Senate bill; a new program of extended unemployment benefits to aid unemployed workers during this period of economic difficulty. For the period between September 12, 1982, and March 31, 1983, up to 10 additional weeks of unemployment compensation benefits would be provided in States in which extended benefits are being paid or have been paid at any time since June 1, 1982. Up to 8 additional weeks would be provided where the extended benefit trigger rate equals or exceeds 3.5 percent, and up to 6 additional weeks of benefits would be provided in all other States. These extra benefits will be available to workers whose entitlement to State benefits or extended benefits ended on or after June 1, 1982, and who have exhausted benefits to which they are

entitled, have worked 20 or more weeks prior to applying for State unemployment compensation, and who continue to meet all other State and extended benefit requirements. The cost of this program will be covered by lowering the income thresholds for taxing unemployment compensation from $20,000 to $12,000 for single taxpayers, and from $25,000 to $18,000 for joint returns.

I would add that there is an urgent need for these additional benefits; in many States benefits are now being exhausted, and more will be used up in the weeks ahead. That is why it is important to approve this provision of our bill promptly.

In summation, Mr. President, this is a fair bill, a good compromise, even if it is not perfect. It is essential to sustaining the economic recovery program. It preserves the rate reductions and indexing that are so vital to working Americans. It spreads the burden of deficit reduction equitably, and it improves the equity of the Tax Code. The President has shown outstanding leadership to put this legislation through Congress. We owe it to him, and to the American people, to reaffirm that leadership by approving this conference agreement.

Mr. President, I ask to have included in the RECORD at this point a summary of revenue estimates of the tax provisions of H.R. 4961, and a descriptive summary of the spending reduction provisions included in the conference agreement.

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

SUMMARY OF REVENUE ESTIMATES

[Dollars in millions]

	1983–85 revenue effect	Percent
Compliance and collection:		
Administration proposals:		
Withholding on interest and dividends	$10,565	
Accelerated corporate payments	4,864	
IRS personnel	6,900	
Subtotal	22,329	22.7
Other proposals:		
Improved reporting, increased penalties, etc.	10,329	
Independent contractors	−303	
Subtotal	10,026	10.2
Total, compliance and collection	32,355	32.9
Elimination or reduction of loopholes and unintended benefits:		
Business:		
Administration proposals:		
Reduction of corporate preferences (including ITC limit)	3,023	
Construction period interest & taxes	2,940	
Tax-exempt bonds	863	
Completed contract	5,652	
Original issue discount & coupon stripping	938	
Life insurance	7,017	
Subtotal	20,433	20.8
Other proposals:		
ITC basis adjustment	4,394	
ACRS acceleration	1,541	
Leasing	7,937	

SUMMARY OF REVENUE ESTIMATES—Continued

[Dollars in millions]

	1983–85 revenue effect	Percent
Foreign oil income	1,146	
Possessions credit	1,102	
Mergers	2,135	
Targeted jobs credit	−1,324	
Subtotal	16,931	17.2
Total, business	37,364	38.0
Individuals:		
Minimum Tax	1,360	
Pension provisions	1,844	
Total, individuals	3,204	3.3
Total, loopholes and unintended benefits	40,568	41.3
Earmarked taxes on those responsible for specific spending programs:		
Administration proposals:		
Airport and airway	2,868	
Medicare—Federal employees	2,381	
Subtotal	5,249	5.3
Other proposals:		
FUTA	6,486	6.6
Total, earmarked taxes	11,735	11.9
Other revenue increases:		
Telephone tax ($6 per year for $25 monthly bill)	3,289	
Cigarette tax ($29.20 for 365 packs per year)	4,963	
Medical deduction	3,731	
Casualty deduction	1,400	
TAPS adjustment	389	
Miscellaneous	−109	
Total, other	13,663	13.9
Grand total	98,321	100.0
Memo:		
Administration proposals [1]	48,011	48.8
Other	50,310	51.2

[1] Administration revenue increase proposals in fiscal year 1983 budget would have increased revenues by $56.3 billion.

SUMMARY OF SPENDING REDUCTION PROVISIONS

I. HEALTH PROVISIONS INCLUDED IN THE CONFERENCE AGREEMENT

Medicare

Modify coverage of the working aged: Employers would be required to offer employees aged 65 through 69 the same health benefit plan offered to younger workers and medicare would be secondary payor to these plans.

Reimburse inpatient radiology and pathology services at 80 percent of reasonable charges: The special 100 percent reimbursement rate for inpatient radiology and pathology services would be eliminated. Such services would be paid for on the same basis as other physicians' services.

Repeal routine nursing salary cost differential: The differential factor paid to hospitals and skilled nursing facilities for inpatient routine nursing salary costs would be eliminated.

Payments for services of provider based physicians: The Secretary of HHS would be directed to prescribe regulations which would distinguish between the services of hospital-based physicians which are covered under medicare on a reasonable cost basis and those which are reimbursable on the basis of reasonable charges; and establish standards of reasonableness to be applied in each case.

Hold part B premium constant as a percentage of program costs: The part B premium would be increased on July 1, 1983, and on July 1, 1984, to a level which will result in premium revenues equal to 25 percent of program costs for aged beneficiaries.

Limit medicare reimbursement to hospitals: The current limits on medicare reimbursement to hospitals (i.e., the section 223 limits) would be extended and modified to include ancillary operating costs and special care unit operating costs; annual increases in the overall operating costs per case would be limited (for a period of not more than 3 years); the Secretary of HHS would be directed to develop methods under which hospitals, skilled nursing facilities and other providers could be paid on a prospective basis; the Secretary, at the request of a State, could allow medicare payment to be made under a cost control system in the State.

Require certain medicare regulations: The Secretary of HHS would be required to issue regulations to (a) eliminate the private room subsidy for hospitals, (b) establish single reimbursement limits for skilled nursing facility and home health agency services, (c) eliminate duplicate overhead payments for outpatient services.

Audit and medical claim review: The medicare contracting budget for fiscal years 1983, 1984, and 1985 would be supplemented by $45 million in each year to be spent specifically for audit and medical review activities.

Temporarily delay the periodic interim payments (PIP): Periodic interim payments to hospitals for the latter part of September 1983 would be delayed until October 1983. There would be a similar deferral of PIP payments from September to October of 1984.

Assistants at surgery: Reimbursement for assistants at surgery in hospitals where a training program exists in that specialty would be prohibited, except in the case of exceptional circumstances.

Ineffective drug provision: Payments for ineffective drugs under medicare part B and under medicaid would be prohibited.

Medicare payments to HMOs: Current requirements for contracting with health maintenance organizations (HMOs) would be modified by authorizing prospective reimbursement under risk sharing contracts with HMOs and other organizations at a rate equal to 95 percent of the Adjusted Average per Capita Cost (AAPCC).

Technical Corrections to Omnibus Budget Reconciliation Act of 1981

Hospice Care: Authorizes coverage for hospice care for terminally ill medicare beneficiaries with a life expectancy of 6 months or less.

Coverage of extended care services without regard to 3-day prior hospitalization requirement. Authorizes the Secretary of HHS to eliminate the 3-day prior hospital stay requirement for skilled nursing facility coverage at such time as, through reimbursement changes or other adjustments, he determines that such action will not lead to an increase in program costs and that it will not alter the acute care nature of the benefit.

Prohibiting recognition of payments under percentage arrangements: No cost incurred under a contract would be considered reasonable if determined as a percentage (or other proportion) of the provider's reimbursement. The provision would not apply where costs incurred under a percentage arrangement were subject to the limitation on reimbursement of provider-based physicians established elsewhere in the conference agreement.

Interest charges on overpayments and underpayments: Requires interest payments

with reapect to medicare overpayments. Similarily, the medicare program would be required to pay providers interest on underpayments.

Prohibition payment for Hill-Burton free care: Requires the Secretary to provide, by regulations, that the costs incurred by a hospital or SNF in complying with its free care obligation under the Hill-Burton Act would not be considered reasonable for purposes of medicare reimbursement.

Prohibiting payment for anti-unionization activities: Prohibits medicare reimbursement for costs incurred for activities directly related to influencing employees respecting proposed unionization.

Elimination "lesser of cost or charges" provision: The lesser of cost or charges provision of current law would not apply to a class of providers if the Secretary determines and certifies to Congress that elimination of the provision will not increase medicare payments to that class of providers.

Extending medicare proficiency examination authority: Extends to September 30, 1983, the authority of the Secretary of HHS to conduct a program to detemine the proficiency of health care personnel, including clinical lab personnel, who do not meet certain formal education requirements.

Retroactivity of regulations regarding access to books and records: Section 952 of Public Law 96-499, the Omnibus Budget Reconciliation Act of 1980, allows the Secretary of HHS or Comptroller General to have access to the books and records of subcontractors who supply hospitals or other providers with goods and services valued at $10,000 or more over a 12-month period. The provision would prohibit the regulations from being applied retroactively unless such regulations are issued in final form prior to January 1, 1982, preceded by a comment period of no less than 60 days.

Private sector utilization review: Requires the Secretary of HHS to undertake an initiative to improve medical review by intermediaries and carriers under medicare and to encourage similar review efforts by private insurers and other private entities.

Special part B enrollment without penalty: Requires a special open enrollment period under medicare part B for merchant seamen.

Medicaid

Allow nominal medicaid copayments: The prohibition against nominal copayments for mandatory services to categorically eligible medicaid recipients would be repealed except in the case of certain inpatient hospital and ambulatory services for children and pregnant women, for services provided to inpatients in medical institutions who are required to spend, except for a personal needs allowance, all their income for medical expenses, for categorically needy persons enrolled in an HMO, and for emergency services and family planning services.

Modify lien provision: States would be permitted under certain circumstances to attach the real property of medicaid recipients who are permanently institutionalized in nursing homes or other long-term care medical institutions.

Reduce medicaid error rates: States would be required to reduce their medicaid error rates to 3 percent.

Optional medicaid coverage of disabled children at home: States would be allowed to cover services for certain disabled children who are currently eligible only if institutionalized. The provision addresses cases like that of Katie Beckett, where previously medicaid was not available if the child received care at home.

Technical corrections to Omnibus Budget Reconciliation Act

Six-month moratorium on nursing home regulations: Prevents the regulations currently proposed by the Secretary regarding changes in survey and certification requirements for nursing homes from going into effect for six months.

Medicaid funding for American Samoa: Provides Federal funding for medicaid services in American Samoa.

Utilization and quality control peer review

Contract for utilization and quality control peer review: The Professional Standards Review Organizations (PSRO) program, would be repealed. The Secretary would be required to enter into contracts with peer review organizations for an initial period of 2 years, renewable biannually, for the purpose of promoting effective, efficient, and economical delivery of health care under medicare.

II. SENATE HEALTH PROVISIONS NOT INCLUDED IN CONFERENCE AGREEMENT

Medicare

Senate provisions not included in the conference agreement: The conference agreement does not include the provision relating to the one month delay in entitlement to medicare benefits; the five percent copayment for home health services; the increase in the part B deductible; the limitation on the physician fee economic index; the judicial review of decisions by the Provider Reimbursement Review Board.

Medicaid

Senate provisions not included in the conference agreement. The conferees did not agree to the following proposals: a provision to eliminate Federal matching for States paying the medicare part B premium for joint medicaid/medicare eligibles; a provision to allow States the option of continuing medicaid coverage for working families who are made ineligible for AFDC as a result of various earned income changes made by the Omnibus Budget Reconciliation Act of 1981.

AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROVISIONS

Rounding of eligibility and benefit amounts.—States would be required to round both their needs standards and actual monthly benefit amounts to the next lower whole dollar.

Proration of first month's benefit.—States would be required to pay benefits no earlier than the date an application is filed. Therefore, the AFDC benefit would be prorated from the date of application.

Elimination of uniformed services as basis for AFDC eligibility.—Absence from the home solely because of uniformed services would be excluded as a basis for AFDC eligibility.

Job search.—States would be given the option of requiring individuals applying for AFDC benefits to participate in job search while the application is pending. Continued job search would be required, after the application becomes effective, for not more than a total of 8 weeks each year (or 16 weeks in the first year).

Proration for shelter and utilities.—States would be allowed to prorate the portion of the AFDC grant for shelter and utilities for AFDC families living in households with other individuals.

Reduction of Federal match for payment errors.—The allowable error rate for AFDC would be 4 percent in fiscal year 1983, 3 percent in fiscal year 1984, and 3 percent in fiscal year 1985.

Exclusion from income of certain States payments.—States would be allowed to exclude from calculations of AFDC benefit amounts any payments made solely from State funds that are designed to compensate for lost income in the period before the new benefit amount can be calculated and paid.

Extension of time for States to establish a work incentive demonstration program.—States would be allowed two additional years in which to exercise their option to operate a WIN demonstration program (as provided in the 1981 Reconciliation Act).

Accounting method for income from certain state payments.—States would be allowed to continue to exclude from countable income, both in the month of receipt and in future months, certain special payments made by States to AFDC households.

Technical amendments to Title XX Social Services and Foster Care Program.—Several technical corrections to social services and foster care provisions of Public Law 97-35 were made.

The following proposals were not included: sanction for termination or reduction of employment; the inclusion and exclusion of specified individuals' needs and income (continuing eligibility of a parent, eligibility of a child, and counting income of unrelated persons); repeal of the emergency assistance program; and the treatment of earnings (earnings disregards, earnings from CETA youth jobs, gross income limitation, and the treatment of the earned income tax credit).

CHILD SUPPORT ENFORCEMENT PROVISIONS

Fee for services to non-AFDC families.—The law in effect prior to Public Law 97-35 would be restored which allows States to charge a reasonable fee for a non-AFDC collection and retain from the amount collected an amount equal to administrative costs not covered by the fee. As a State option, authority would be retained for States to collect from the parent who owes child or spousal support an amount to cover administrative costs, in addition to the child support payment.

Allotments from pay for child and spousal support owed by members of the uniformed services on active duty.—Allotments would be required from the pay and allowances of any member of the unformed services, on active duty, when he fails to make child (or child and spousal) support payments.

Reimbursement of State agency in initial month of ineligibility for AFDC.—States would be permitted to reimburse themselves for AFDC that would have already been paid for months before the support was collected and known to make the family ineligible. Thus, the family would not receive double payment for the same month, both in the form of AFDC and through receipt of the support collection.

Reduction in certain Federal payments under the Child Support Enforcement Program.—The Federal matching rate for State administrative costs would be reduced from 75 percent to 70 percent, effective October 1, 1982. Effective October 1, 1983, State child support incentive payments would be reduced from 15 percent to 12 percent and the Federal match for the costs of court personnel who perform child support enforcement functions would be repealed.

Technical amendments to Child Support Enforcement Program.—Several technical corrections in the Child Support Enforcement provisions contained in Public Law 97-

35 were made, including certain inaccurate references.

SUPPLEMENTAL SECURITY INCOME PROVISIONS

Prorate first month's benefit based upon date of application.—The first month's SSI benefit would be prorated from the date of application or the date of eligibility, whichever is later.

Round SSI eligibility and benefit amounts.—SSI monthly benefit and income eligibility amounts would be rounded to the next lower whole dollar. Rounding would take place after the cost-of-living adjustment had been made.

Coordination of SSI and OASDI cost-of-living adjustments.—The SSI and social security (OASDI) benefit increase would be coordinated so that at the time the cost-of-living adjustment is made, the recipient's SSI benefit would be based on her social security payment in the same month. Also, whenever the Secretary judges there to be reliable information on the recipient's income or resources in a given month, the SSI benefit in that month would be based on that information.

Phase out "hold harmless" protection.—Federal hold harmless payments would continue to be phased out, being reduced to 40 percent of what they would otherwise be in 1983, to 20 percent in 1984, with no "hold harmless" payments made in 1985 and future years.

Exclusion from resources of amounts set aside for burial expenses.—For purposes of determining SSI eligibility, burial spaces for an individual or members of his immediate family (subject to limits prescribed by the Secretary) would be excluded from countable resources. Burial funds of up to $1,500 each for the individual and his or her spouse would also be excluded if specifically set aside for this purpose. Such funds would reduce the value of excludable life insurance policies as would any amounts held by the individual in an irrecovable burial contract or other arrangement made to meet burial expenses.

The Secretary would be authorized to exclude, as income and resources, increases in the value of: (1) amounts set aside for burial expenses because of interest earned, and (2) pre-paid burial arrangements.

SSI pass-through requirement.—In order to meet mandatory pass-through requirements, a State would be allowed to shift from the aggregate spending option to the State supplementation payment level option so long as the State does not decrease its State supplementation payment below the level in the previous December.

Treatment of unnegotiated SSI checks.—The authority to credit States for unnegotiated SSI benefit checks which are "State supplementation only" checks would be clarified.

A provision to allow recovery of SSI overpayments from benefits payable under other programs administered by the Social Security Administration (Black Lung and OASDI benefits) was not included.

UNEMPLOYMENT COMPENSATION PROVISIONS

Round unemployment benefits to next lowest whole dollar.—The Federal 50 percent share of extended unemployment benefits would not be available on that part of extended unemployment benefit payments which result from a failure on the part of the State to have a benefit structure in which benefits are rounded down to the next lower dollar.

Reed Act funds.—The authority for States to use Reed Act funds for administrative purposes would be extended for 10 years. The provision would also permit States that have used such funds to pay unemployment benefits to reestablish a Reed Act account.

Exclusion from FUTA of wages paid to certain students.—Wages paid to certain full-time students would be exempt from FUTA tax: (1) students enrolled full-time in a work-study or internship program, regardless of age, for work that is an integral part of the student's academic program; and (2) students employed by certain summer camps (1983 only).

Extension of exclusion from FUTA of wages paid to certain alien farmworkers.—The provision of prior law that excluded wages paid to certain alien farmworkers from FUTA taxes, would be extended for two years, from January 1, 1982 to January 1, 1984.

Unemployment Compensation (UC) Financing.—The Federal unemployment tax (FUTA) wage base would be increased from $6,000 to $7,000 and the FUTA rate would be increased from 3.4 to 3.5 percent, effective January 1, 1983. (Employers in States with approved State programs would continue to receive the 2.7 percent offset credit under current law, so that the standard net Federal tax would be 0.8 percent.) Effective January 1, 1985, the FUTA tax rate would be increased to 6.2 percent (a permanent tax of 6.0 percent and a temporary extended benefit tax of 0.2 percent) with a credit of 5.4 percent. States that under current law allow certain specified industries to pay a non-experience based State unemployment tax rate that is below 5.4 percent, could provide for such industries to gradually reach the new 5.4 standard tax rate. Annual increases in the State unemployment tax rate for such industries could be limited to no less than 20 percent of the difference between the current rate paid by an employer and 5.4 percent.

Additional unemployment compensation financing provisions would:

(a) allocate 60 percent of total FUTA revenues to the Employment Security Administration Account (ESAA) and 40 percent to the Extended Unemployment Compensation Account (EUCA) in the Federal Unemployment Trust fund. Amounts allocated to EUCA which exceed the Federal share of extended benefit expenditures would be used to repay Federal general revenue advances. Upon repayment of the Federal general revenue advances to EUCA (and the elimination of the 0.2 percent temporary tax), 90 percent of FUTA revenues would be allocated to ESAA and 10 percent to EUCA, as under current law;

(b) permit States to make debt repayments out of their State trust fund accounts in lieu of further FUTA credit reductions provided the payments come from new funds generated through the State experience-rating system and/or benefit reductions;

(c) drop the present low additional credit reductions in the fifth year of delinquent State loans so that credit reductions continue at an additional 0.3 percent each year; and

(d) allow a State, under certain conditions, to reduce payments of interest on Federal unemployment loans to 25 percent of the amount due in any year, and thereby extend the payment of the total interest obligation over a four-year period. (Interest would be charged on any deferred amount.)

Treatment of certain employees of institutions of higher education.—States would be allowed to deny unemployment compensation benefits to non-teaching, non-research and non-administrative employees of colleges and universities during periods between academic years or terms, if there is a reasonable assurance that the individual will be employed by the institution at the beginning of the forthcoming academic year or term.

Short-Time compensation.—The Department of Labor would be directed to develop model legislation that can be used by States that wish to establish short-time compensation (or "worksharing") programs. The Department of Labor would also be directed to evaluate the operation and impact of any such programs implemented by the States and report its findings to Congress no later than October 1, 1985.

Additional weeks of unemployement benefits.—Additional weeks of unemployment compensation benefits would be provided to unemployed workers. Effective September 12, 1982, through March 31, 1982, up to 10 additional weeks of unemployment compensation benefits would be provided in States in which extended benefits (EB) are being paid or have been paid at any time since June 1, 1982. Up to 8 additional weeks of benefits would be provided in States in which the extended benefit trigger rate (i.e., the percentage of workers who are collecting State unemployment benefits) equals or exceeds 3.5 percent. Up to 6 additional weeks of benefits would be provided in all other States.

The additional benefits would be paid to unemployed workers whose entitlement to State benefits (i.e., benefit year) or extended benefits ended on or after June 1, 1982; and:

(a) who have exhausted all State, or State and extended benefits to which they are entitled;

(b) who have worked 20 or more weeks (or had the equivalent in wages as specified in the extended benefit program) prior to applying for State unemployment compensation; and

(c) who continue to meet all other State and extended benefit requirements.

Benefit and administrative costs of the program would be financed out of Federal general revenues.

Taxation of unemployment compensation benefits.—The income thresholds limiting the inclusion of unemployment benefits in adjusted gross income for Federal income tax purposes would be reduced from $20,000 to $12,000 for single taxpayers and from $25,000 to $18,000 for married taxpayers filing jointly. This change would apply to unemployment benefits paid on or after January 1, 1982.

The following proposals were not included: unemployment benefits for ex-servicemembers and interest on State unemployment loans transferred to the extended unemployment compensation account.

Mr. DOLE. Mr. President, as I said, we have been on this matter for a number of months and we have heard a lot of campaign rhetoric. We have not heard much discussion about the bill itself from those who oppose it. We have heard discussions that we should not raise taxes, and that we certainly should not raise taxes in an election year. My answer is that we are not, in effect, raising taxes. Most of this bill, 80 percent or 77 percent or a great majority of the percentage of this bill, is tax reform.

It has been a long road, but we are simply carrying out the provisions of the budget resolution. I would say to my colleagues that the Senate Finance Committee did not stand around looking for something to do and dream up a tax bill. We are carrying out our budget agreement. We believe we have carried out the budget mandate successfully and effectively. We have met the requirements of the budget resolution on the spending side and on the revenue side.

Mr. President, may we have order?

The PRESIDING OFFICER. May we have order so we may hear the Senator from Kansas? Private conversations will be moved to the cloakrooms so that we may hear the Senator from Kansas.

The Senator from Kansas may proceed.

Mr. DOLE. Mr. President, I know some will say we did not cut spending enough so we should not raise taxes. Well, under this conference report, we have cut spending. Spending is going to be reduced by $17.5 billion and we are going to increase revenues by $98.3 billion over the next 3 years.

The deficit reduction provisions in this bill account for over 30 percent of the entire deficit reductions called for by the budget resolution. We have been a long time in the making of this legislation. It was not developed overnight. A few times last weekend, though, it did seem as though much of the work was being done late at night or early in the morning, depending on your point of view.

But the long hours that have been devoted to this bill in recent weeks are only the culmination of a process begun earlier this year.

In fact, the pedigree for the revenue provisions of this bill can be traced back to September 1981—not this year, but last year—when President Reagan proposed a package of loophole closings designed to raise $22 billion, plus additional spending reductions to cut the deficit projected and to help offset the onset of a recession.

Those revenue proposals were not pursued at that time, but many of these same items were included in the fiscal year 1983 budget proposal, the one that President Reagan submitted to Congress in early February of this year. The Senate Finance Committee promptly began to review budget alternatives on both the spending and revenue side with hearings on the budget beginning in late February and carrying through the middle of March.

Mr. President, during the course of those hearings it became clear that the major deficit reduction effort on both the spending and revenue sides was vitally necessary to insure a sustained economic recovery. Four distinguished economists who testified before our committee on February 24, while they disagreed on the specific deficit reduction measures that ought to be taken, did agree on this basic point.

Those witnesses were Dr. Martin Feldstein, who has been named to the post of the Chairman of the Council of Economic Advisers; Dr. Joseph Pechman, of the Brookings Institution; Dr. William Fellner, of the American Enterprise Institute; and Dr. Allan Meltzer of Carnegie-Mellon University. They have wide and differing philosophies, but they all came down with the same result, that we had to do something.

And that continued through the so-called first round of budget discussions, involving, I think, the Gang of Five, five Republican Senators—the distinguished Senator from New Mexico, Senator DOMENICI; the distinguished majority leader, Senator BAKER; the distinguished Senator from Oregon, Senator HATFIELD; and the distinguished Senator from Nevada, Senator LAXALT—in a series of meetings trying to figure out some way to bring down the deficit, lower interest rates, and get people back to work.

After that effort, the next step was some 13 or 14 meetings of the so-called Gang of 17—Republicans, Democrats, administrative officials—who gathered on a day-to-day basis trying to reach some agreement on revenue increases and spending reductions.

I might say at that time there was almost an agreement to raise $122 billion in revenue over a 3-year period.

That was reduced to $98.3 billion by the budget resolution.

Mr. President, I am not here to apologize for this package. I am here not on the defense. I am here to suggest to Members on both sides of the aisle that we are near the moment of truth.

Do we want to reduce the deficit, do we want to continue the downward trend of interest rates, or do we want to signal to the financial markets and the people in our States that we really do not care, that we really have not quite enough courage to take this step, because some tax might affect someone in our constituency?

I would say that those who talk about tax increases, where you have not paid taxes at all but now you have to start paying taxes because of tax compliance, that is not a tax increase, and there is $30 billion of compliance in this measure.

We have also tried to bring some equity into the system. We have said in effect to those who put away $45,000 to $47,000 a year in pensions, tax free, that is too much. We are cutting food stamps, we are cutting medicaid. We are cutting social programs. The people at the bottom of the scale are making the sacrifices. What about the upper middle income and upper income American? When do they make a sacrifice?

Then we closed some loopholes, giant loopholes.

It seems to me, when you properly consider that, then I suggest that we have a pretty good bill. Call it a tax bill, call it a tax increase, call it a tax reform, call it anything you want, but vote for it. Vote for it because it is good policy.

I really believe we have met our targets and exceeded our targets on the spending side because of the concern of many Senators, including the distinguished Senator from Montana. We dropped many of the provisions that would have directly affected beneficiaries in the conference. We have solid spending reductions, I think about 18 to 19 percent, coming from beneficiaries, the great bulk coming from reducing reimbursement payments to physicians and reducing hospital payments.

We also decided that medicare will become secondary for older workers who choose to remain covered under the group health plan provided by their employers. That provision is going to save about $1.4 billion.

Mr. President, this legislation must be approved in the interest of sending a clear signal at the earliest possible time to people around this country that we are serious about our work.

Mr. President, I have additional information to submit at a later time, but at this time I will yield to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, almost exactly 1 year ago, the Congress passed and the President signed historic legislation to reduce the rate of growth in Government spending and reform our tax system. When Congress had finished its share of the job last August I took a plane home to Minnesota half expecting to be greeted by a crowd of people congratulating us on our accomplishments.

There was one person at the airport. And the only thing he wanted to say to me was, "When are you going to do something about getting the interest rates down?"

During the last 12 months people I see throughout Minnesota keep asking me the same question: "When are you going to get the interest rates down?"

And they have been asking a few other questions: "When are you going to do something to make the tax system more fair? When are you going to do something to create new jobs? When are your going to cut into that hugh Federal deficit? When are you going to re-do the abuses that crept into last year's tax bill?"

Mr. President, I expect that when I return to Minnesota for this year's August recess, the crowds at the airport will not be much larger or much

more enthusiastic than they were last year. But there is a big difference. Last year we only started the process of turning the country around. The bill we are considering tonight takes us another big step forward in an ongoing process of tax and spending reform.

If each of the items in this legislation came along as a separate bill, there are many I probably would not vote for. But as a package it is a good piece of legislation. It will create new jobs. It will spur new investment in basic industries. It will make our tax system more fair. And it will keep us on the right road to lower interest rates.

The arguments being raised against this conference report share two common flaws. First, they treat this bill in isolation, as an end in itself, as if it had no relation to overall economic policy and no relation to ongoing tax reform. Second, they proceed on the assumption that U.S. Senators have the luxury of being "100 percenters"—refusing to accept any legislation that contains any element that does not suit our individual fancies.

West of the Washington Beltway people understand that the world does not work that way. And the best way to puncture these misconceptions is to step back from the details of the bill for just a moment, and review the context in which it comes before the country. When Ronald Reagan was inaugurated as this Nation's 40th President, he warned the country that reversing 20 years of economic erosion would be neither a quick nor a painless process. And while in our hearts we hoped the President was wrong, we knew in our minds he was right.

Last year's historic tax and spending reforms came easily, as first steps usually do, and 1981 saw the beginnings of a dramatic reversal in the direction of Federal tax policy.

It was driven by the recognition that the tax system as presently structured was not conducive to work, to savings, and to investment. The reduction of marginal tax rates, the provision indexing inflation out of the Federal income tax, and the many specific provisions encouraging investment and savings all reflect this fundamental shift in policy.

If 1981 was the time to make the first effort at genuine tax reform in almost 50 years, 1982 was to be a period of reflection, adjustment, and refinement of the basic changes begun a year ago. But those thoughts proved to be false optimism. We had all underestimated the price this country was about to pay for two decades of overconsumption and overcommitment. And the roots of this evening's debate actually go back to February, when the President released a budget calling for deficits in excess of $700 billion over the next 3 years.

Those deficits were unacceptable by any criteria. Congress responded by forging a reconciliation budget that reduced these deficits by nearly $400 billion. The Senate proposed achieving those savings mainly through spending reductions; the House proposal called for higher taxes—$180 billion higher over the next 3 years.

The final compromise reached by the two Houses was a blend of both. It reduced the deficit by $378 billion—$279.5 billion through spending reductions and $98.5 billion through new tax revenues. In light of the way interest rates have held up over the past 6 months, I shudder to think what would have happened to the economy if that compromise had not been reached—or if Congress should fail to pass this bill and the other legislation required to meet these budget ceilings.

That is where the tax debate comes into the picture. When the Senate Finance Committee met in July it met to fulfill a specific mandate—draft legislation sufficient to raise the required $98.5 billion in new revenues over the next 3 years.

When the Republican members of the committee met in closed door session to consider how to accomplish that goal, we laid all possible choices on the table. We discovered very quickly that it was impossible to reach the $98.5 billion target simply by accepting revenue proposals we could all support. It was going to be necessary to adopt tax changes that some of us would not support under other circumstances—and the only question was "Which ones?" The committee began that sorting out process by adopting two general principles:

First, wherever possible, the committee would seek to collect taxes from those who owe them but are not paying, rather than levying new taxes on those who are complying with present laws.

Second, if present tax benefits had to be altered or repealed, the committee would seek to preserve tax benefits that applied to all businesses across the board, and alter only those provisions which grant special benefits to one group or company at the expense of others.

The conference report now before this Congress was assembled in line with these principles.

It is not, as some critics have called it, the biggest tax increase in history, It cannot be viewed in isolation from the rest of the President's tax program of which it is a very small part. We have all received more benefits from last year's tax reductions, savings incentives, and the resulting decline in the tax of inflation than we are being asked to return in this proposal.

Moreover, the President was right in pointing out that this bill does not levy $99 billion in new taxes. The bulk of the revenue it raises comes through compelling better compliance from taxpayers who owe taxes but are not paying them. A tax system that fails to force compliance by a small segment of society—usually the richest segment—is a system unfair to the great majority of working men and women who do comply. By improving compliance, this bill creates a tax system that is fairer, and a deficit nearly $45 billion lower. That is a fair deal for all Americans.

At the same time, this bill is not painless. Tax loopholes are closed, and some new taxes are levied. But let us be realistic—there is not any painless way to cut a $140 billion deficit. Everyone is going to have to feel some pain so we can avert the very real threat of indefinite economic stagnation. So far the brunt of the deficit reduction has fallen on some of the poorest elements in society, as so many of the appropriated programs have been cut back. But we are never going to complete the job until all segments of society—including defense, entitlements, and those who benefited the most from recent tax reforms—share in the burden.

No Senator should be foolish enough to believe we have the luxury of rejecting a basically sound bill simply because it contains one or two provisions we might personally disagree with. I am not ashamed to admit that I was the last Republican holdout on several of the provisions in this bill. There are portions of the package I disagree with and will work to modify next year. But I am also not ashamed to tell you that when no other way to meet the budget requirements surfaced, I voted with the committee to keep those proposals in the bill.

There are 100 Senators in this body and 435 Representatives in the House. Each of us would have assembled the bill in a slightly different way. But the fact that I might have constructed the tax bill differently if I had had the power to do so cannot change the reality that a failure to meet the $98.5 billion budget ceiling would have a catastrophic effect on interest rates, inflation and Federal borrowing.

This vote is being taken at a time when the impact of the President's program is beginning to take hold. For the first time in many months, there are some good economic signs. Interest rates have fallen rapidly, down more than 7 points from the peak levels inherited from the last administration. Inflation has been cut in half in just 12 months, and there are signs that the country is finally beginning to recover from the tragedy of this recession. Rejection of this conference report would shatter the confidence that has begun to grow in the financial community, confidence that has been months in the building. Even if this bill differs somewhat from our personal preferences, it is a sound bill,

and we cannot afford the risk of being 100 percenters.

The fact is that this bill meets the basic objectives of sound tax policy at this stage of the Nation's passage to tax reform.

It raises the revenue necessary to reduce the deficit and meet budget ceilings without doing harm to the budding tax reform begun last year. The individual rate reductions have been preserved, as has the essence of the accelerated cost recovery system.

It furthers those reforms in several areas, including the further changes made in IDB's and mortgage revenue bonds.

It corrects and adjusts policies made last year that are not in line with the overall thrust of tax reform, for example, by correcting those areas where ACRS was actually better than expensing.

It is also essential to recognize that our consideration of tax law changes in the Finance Committee this year added another important dimension to the goals of Federal tax reform. Besides shifting the tax penalties off workers, savings and investment, American taxpayers have—since ERTA—voiced a strong desire for fairness and equity as a goal of comprehensive tax reform. This bill is what its name implies—a tax equity bill. Its major thrust falls on upper income taxpayers. It imposes a minimum tax on large corporations that have utilized tax expenditures to escape their responsibilities to pay a share of this Nation's expenses. It raises millions of dollars in revenues by imposing a minimum tax requirement on the 200,000 millionaires who now avoid paying any taxes at all.

There are also specific provisions in this conference report that will benefit the country as a whole and Minnesota in particular.

The bill contains a provision I authored cutting out the abuses in safe harbor leasing, and focusing its benefits on the farmers and distressed industries that need the help the most. Estimates are that the provision will save or create tens of thousands of jobs in the steel, airline, and automobile industries.

I take great pride in the fact that we were able to exclude from the restrictions on tax-exempt financing contained in this bill those bonds to finance student loans and the construction of college facilities. In response to a continued reduction in Federal aid to colleges and college students, many States and colleges are compensating by selling tax-exempt bonds and loaning the proceeds to students who otherwise would not be able to obtain a higher education. Also, colleges are using those proceeds to finance the construction of new facilities and the improvement of existing structures. While applying the restrictions in this tax bill to such tax-exempt borrowing would have raised a small amount of revenue in the short term, the long-term consequences would have been devastating—in terms of both human and financial costs. The colleges of this country and their students are showing amazing resilience, creativity and energy in coping with the many difficulties they face. Saving a few dollars now at the expense of higher education is one of the costliest decisions we could have made. I am pleased that the Senate spared them the need to cope with one more difficulty by excluding student loan and college facility construction tax-exempt bonds from the restrictions in this tax exempt bill.

The bill also contains a provision I authored that will allow tax-exempt bonds to be used for district heating and cooling projects. Minneapolis already heats much of its downtown with a district heating system, and my amendment will facilitate its expansion. St. Paul is planning a district heating project, and the bill makes it far more likely that St. Paul can accomplish its goal.

The bill also corrects a loophole in Federal IDB legislation, enabling the city of St. Paul's Port Authority to proceed with an IDB issue needed to further the city's development program.

The bill extends the targeted jobs tax credit, and insures Minnesota's unemployed an additional 10 weeks of supplemental unemployment compensation—something I have been fighting for for more than a year.

These are significant accomplishments, and they are good reasons in their own right to support the bill.

This is, in short, a sound bill from any policy perspective. And in a real sense, Mr. President, the bill is a test of whether we have the courage of the convictions we so often preach to our constituents.

We all speak in ringing terms about our commitment to cutting the Federal deficit. But is that the kind of commitment we abandon when the path to a lower deficit, though a sound and fair path, is a little bit different from the one we might have preferred?

We thrive on the campaign rhetoric of tax equity and closing tax loopholes. But are we going to abandon that commitment when some of those loopholes affect a few of our own constituents?

And we speak so often in this Chamber of the need to support the President. Do we really mean that we will support him only when it is easy, or when his programs do not ask us or our political constituencies to share in some of the sacrifice?

This is not the last tax bill this Congress will consider. The movement toward tax reform will continue next year, and during the years following. I know as well as anyone in this Chamber that increasing taxes in an election year is a difficult thing to do. But we were not sent to Washington just to make the easy decisions. We have an obligation to lead public opinion and do what is right for the country. Passage of this conference report is the only way to meet the budget ceilings and I am going to vote yes. The stakes for the entire country are just too high to do anything else.

Mr. DOLE. I yield to the Senator from Rhode Island.

Mr. PELL. Mr. President, I shall vote in favor of the conference report on the Tax Equity and Fiscal Responsibility Act of 1982.

I support this legislation for several reasons:

First, this legislation provides for an extension of unemployment compensation payments for the jobless who have been unable to find new jobs during this severe and extended economic recession. This is extremely important at a time when our national jobless rate is 9.8 percent and it is very important in the State of Rhode Island where several hundred jobless persons exhaust their unemployment benefits each week and face the prospect of turning to welfare or charity to survive.

This legislation also is an essential part of an effort to narrow the huge gap between Federal revenue and spending, to bring Federal Government budget deficits under control. The bill will increase Federal revenues by nearly $100 billion during the next 3 years. Without this revenue increase, the Federal deficits which threaten to undermine any economic recovery will continue to grow.

I also support this legislation because it corrects some of the most serious mistakes made by the Congress when it passed the Economic Recovery Tax Act of 1981. That tax bill provided much-needed incentives for increased savings and investment, but in my view, the tax cut bill went too far and provided, in some cases, grossly excessive corporate tax cuts. The bill we are considering today corrects the worst of those mistakes, while preserving the justified tax reduction needed to promote sound economic growth and investment.

I am particularly pleased that this bill provides for restriction and ultimate elimination of so-called "safe-harbor" leasing, the provision of the 1981 Tax Act which permits corporations to buy and sell Federal tax credits. I was the principal sponsor of Senate legislation to repeal this unwarranted and unjustified corporate tax loophole and I am happy that this bill closes the loophole.

This tax bill also corrects some blatant inequities and flaws in our tax code. It eliminates a widespread abuse

in professional corporation pension plans and it corrects serious flaws in taxation of the life insurance industry.

Mr. President, from the outset of the current administration 18 months ago, I have been critical of its economic policy. I said at that time that I believed the administration's proposed tax cuts were too deep, its proposed cuts in spending for worthwhile Federal Government programs were too severe and its proposals for increases in defense spending were too large. I said at that time that these proposals ran a serious danger of creating huge budget deficits that would undermine our national economy.

The tax bill we are considering today is, in part, an admission by the administration that the huge tax cuts approved last year were too large and could hurt instead of help our economy by depriving the Government of needed revenues. This bill moves toward reestablishing a responsibile fiscal policy, toward providing the revenues needed to pay for essential Government services without huge Government deficits. I welcome this correction in the administration's economic policy.

I have said frequently that I want the President's economic program to succeed. All too frequently during the past 18 months, however, I have been compelled to vote against the President's economic policy proposals because I believe they were ill-advised. Today, I am happy to say I believe the President is right. This is basically a very good and very fair tax bill. The bill strengthens our economy by narrowing the budget deficit in the coming years and I will vote for the bill.

Mr. PERCY. Mr. President, I intend to strongly support the report before us. I commend the distinguished managers of this bill for the extraordinary hard work, and imaginative and creative work, they have put into it.

Mr. THURMOND. Mr. President, as my colleagues are well aware, Congress is moving toward consideration of the House-Senate conference report on the tax bill.

The news media has gone to great lengths to show that there is opposition to this bill from a variety of groups including lobbying organizations for businessmen and professionals.

I, for one, plan to support President Reagan on this issue despite that opposition because I firmly believe that this is no time to abandon our economic recovery program.

Today, I had the privilege of meeting with a group of officials from the National Association of Retail Druggists, an organization which represents more than 30,000 stores and the 18 million consumers who do business with them every day.

I was pleased to learn that this group has added its support to the tax bill, believing as I do that we must support the President if we are to have sustained economic growth and a reduction of interest rates. A great deal has been said about the opposition to the tax bill from independent businesses and the lobbying organizations representing them. It is refreshing to know that there are a great number of people who also support the tax bill because they know that is the only sure way, coupled with a program to steadily reduce Government spending, that we will get back on the track to a healthy economy and years of prosperity.

Mr. President, I ask unanimous consent that a statement of endorsement for the tax bill from the National Association of Retail Druggists be included in the RECORD.

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

The National Association of Retail Druggists, on behalf of America's independent retail pharmacists and our more than 30,000 stores and the 18 million consumers who do business with them daily, urge you to vote for the House/Senate conference report on the tax bill, H.R. 4961.

Through our efforts as the only organization registered with the Congress to represent the interests of independent retail pharmacy, many of you are personally aware of our concerns about the economy. As the owners of independent small businesses that you represent, who have been ravaged by the twin demons of inflation and interest rates, we took a long and hard look at the bill. Likewise, we reviewed proposed alternatives including minimum tax, surtax, excise taxes, as well as the repeal of the 1981 estate and gift tax reform or the 10 percent individual tax cut scheduled for July 1983.

Although those of us who are supporting the President and congressional leaders in this effort to revitalize the American economy have some reservations about the bill, we see the conference bill as the only available vehicle that could further reduce interest rates. NARD, however, does continue to oppose, as shortsighted, cuts in reimbursement for the cost-effective medicaid pharmacy program.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield to the Senator from Missouri.

Mr. DANFORTH. Mr. President, I would like to say a few words about the alternative minimum tax provisions agreed to by the conference committee. The House conferees proposed substantial revisions to this provision. We were able to reach an agreement which incorporates some of these changes. The differences between the Senate provision and the conference agreement are clearly described in the conference report. But I would like to point out a couple of changes the House conferees attempted to make but which were not agreed to.

First, the House proposal would have disallowed all deductions for charitable contributions. It was my position, and that of the other Senators in the conference, that this proposal was totally unacceptable, in fact, not even worthy of debate. Here we are asking the charitable organizations of this country to take on a greater burden in serving the needs of education, welfare, health care, and a wide range of other functions we have come to rely on the Federal Government for. How could we, at the same time, justify diluting the incentive for charitable giving? Charitable deductions, unlike most other itemized deductions, are already limited under current law. Further restrictions would have been regrettable; to have disallowed the deduction completely, as the House suggested, would have been disgraceful. I am pleased to inform my colleagues that the conference agreement makes no changes in this area, and charitable contributions remain deductible for minimum tax purposes, subject only to the same limitations which apply for the regualr income tax.

Second, the House conferees proposed disallowing the deduction for home mortgage interest for the minimum tax, unless the taxpayer had investment income of at least that amount. Again, I an pleased to point out that the conference agreement does not include that proposal. As under the Senate bill, for purposes of the alternative minimum tax, home mortgage interest remains fully deductible and only other interest is limited to the amount of investment income included in the minimum tax base.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I rise tonight because I am very proud. I am proud of a lot of things. I am thinking back to May 5 of this year. I did not think that night when the Budget Committee was marking up the budget resolution that we would get this far. We have gone through a lot, including negotiations with the White House. I will never forget the great conversation that I had with our President when I suggested that we could produce a budget resolution with $101 billion of new revenue. I suggested that we instruct and hope that the Congress would agree, that the Committee on Finance must produce $101 billion. The President listened and then in a few sentences said, "Go ahead. I will support it." Those who know him know he does not talk that way. He uses other, more typically "Great Communicator" phrases.

I did tell the press that night literally what he said.

I am proud that he has followed through. He has been marvelous in this support of this measure.

I am proud, too, of the Senate. The Senate voted the first budget resolution that contained about $106 billion in new revenue and a lot of budget cuts in it. I am proud of the action taken by those conferees from the House when the bill went over there. We compromised. We came up with $98 billion plus in revenue. We did not lose much of the budget cuts either.

We voted on that measure and that took a lot of courage.

Basically, I am proud of the courageous activity around here. Then it goes without saying that I could not be more proud than to be associated with such distinguished Senators as those on the Finance Committee. Those on my committee did what they had to do, but it is comparatively easy because we do not have to formulate the details. Those members of the Finance Committee and the members from the Ways and Means Committee in the House had to go off and produce a bill. Our committee produced that bill and we voted for it.

The House in the last 10 days or so through their committee conferred and produced another reconciliation bill.

Today I watched another series of courageous acts. I watched the Speaker of the House, and I watched the leader of the Republican Party there, and the chairman of the Ways and Means Committee and many others, and I was proud of what they said in support of the Tax Equity and Fiscal Responsibility Act. Then I anxiously watched the vote and I was proud to be part of the U.S. Congress again. I really was.

It is absolutely historic to see Members in both bodies, on both sides of the aisle less than 90 days before an election, vote yesterday to cut $13.3 billion. That was by a large margin here and by a large margin in the House. Why was I proud? Was that really courage?

Well, it was either courage or there has been some significant change in the way we do business around here. Maybe they are synomymous. Maybe it takes courage to do things differently than they had been done for decades in the past.

Who would believe we would vote a major change in the automatic cost of living just yesterday?

Who would believe that the Finance and the Ways and Means Committees would add another $16.8 billion in savings over 3 years in those uncontrollables that are within their respective jurisdictions? Without those savings, most of those programs would be growing at about 2½ or 3 times inflation.

I am proud that we have done that.

It does not make me proud just because our President said yes on May 5 and has been marvelous ever since, or that the Committee on Finance followed the instruction. If it were not good policy and the right thing to do, it surely would not make me proud. But I am absolutely confident that we are on the road to recovery.

I am absolutely confident that we are on the road to less Government, not more.

I am absolutely convinced that we are on the road to lower interest rates, lower service on the debt. These are the sign posts along the road to prosperity for millions of Americans.

I know of no other way to send a more dramatic signal to the people of this country than by what we have done and what I hope we do here tonight.

I know of no better way to send a message to the money markets that we are serious about getting the huge deficits under control and that we are doing it in a prudent and reasonable way.

I know of no better way that we could send a message that we are serious about a positive reduction in the deficits each year for the next 4 or 5 years. Hopefully, this will culminate in a balanced budget in the not-too-distant future. I would like to be chairman of the Budget Committee when that happens.

There are so many people to be proud of, Mr. President. I missed some as I discussed it. There were literally hundreds of hours in our leader's—HOWARD BAKER'S—office, with Senator DOLE, Senator HATFIELD, Senator LAXALT, figuring out what we could do and what we could get through. There were many others who are running for office, who have voted time and again on tough issues; first on the budget resolution, then on the tax bill and on reconciliation bills. Hopefully we will hang tough here tonight, and pass the conference report on the tax bill. It is one more necessary step if we are to achieve prolonged economic recovery.

None of these votes was easy. They were all hard votes. I am positive, as positive as I have ever been about anything in my life, that those votes were not in vain. To the contrary, Mr. President. If we do not vote this conference report in, I believe we have acted in vain for about the last 18 months.

Then I do not think anybody in the money markets of America or those wondering whether inflation is going to go wild again will have any reason to believe us. I just think they will say, "That is just some more talk up there. That is just more idle promises."

Well, the House did their job. I hope we do ours tonight.

Mr. President, this is a critical moment in our drive for fiscal responsibility. This is a critical moment for the Senate.

We have before us the Conference Report on H.R. 4961, The Tax Equity and Fiscal Responsibility Act of 1982. The question we face is as simple as it is difficult: Do we have the courage to vote for changes in taxing and spending patterns in an election year when the public good demands it?

I fervently hope the answer will be "yes."

We may have gotten a partial answer yesterday when the Senate voted 67 to 32 to adopt the conference report on the Omnibus Budget Reconciliation Act of 1982. I commend my colleagues for that action. I know it was not easy for many. But it was necessary.

Adoption of the conference report before us today is equally necessary. Together, these two actions would provide a clear signal that the Congress means to make the tough decisions that are required to achieve the economic goals we all seek.

I especially want to applaud the efforts of the distinguished chairman of the Senate Finance Committee, Senator DOLE. He and the members of this committee have produced deficit-reduction measures totaling $115.5. billion over the next 3 years. This is an extraordinary achievement. Laboring through many all-night sessions, they have put the common interest of all Americans ahead of the special interests.

This bill cuts spending by $16.8 billion over the next 3 years. It reforms the tax system to yield $98.3 billion in additional revenues over the same period. And it provides for a program of extended unemployment benefits that will pay for itself over 3 years. All these actions are necessary.

Our action yesterday on the Omnibus Budget Reconciliation Act brings the spending cuts in the two bills to $30 billion over the next 3 years.

Mr. President, I ask unanimous consent that a table showing the revenue and spending changes in this conference agreement be included in the RECORD at the conclusion of my remarks.

With the passage of this conference report, the Congress will show the country that we can remove tax loopholes while preserving the fundamental elements of the President's economic program. It will show the American people that Congress means to check the relentless growth in Federal spending. This bill is only one step along the path of fiscal restraint, but it is a very big step.

The necessity of this action should be evident to all. Never before has this country faced the possibility of annual deficits in the hundreds of billions. Never before have interest rates stayed so high for so long. These are

not just the results of a few policy mistakes but rather the products of a prolonged period of fiscal excess ranging over the past 20 years. Passing the conference agreement today is one of many steps Congress must take to restore the Nation's economic health.

Some recent developments show that if we regain control of Federal spending and reduce deficits, we can lay the groundwork for lower interest rates and economic recovery. The inflation rate has declined more rapidly in the past year than anyone thought possible. And now we find that interest rates are declining as well. Last Monday Treasury 90-day T bills sold at an interest rate of 8.6 percent, the lowest level in 2 years. Even Henry Kaufman is now predicting that intertest rates will decline dramatically. Such progress could be reversed if we fail to adopt this conference report.

Let us look now at some of this bill's major provisions.

MEDICARE

The conference report contains major reforms which will help slow the growth of medicare, saving $12.8 billion over the next 3 years. The bill contains many changes in health care provider reimbursements, including a sweeping reform of hospital reimbursements that for the first time gives hospitals a financial incentive to restrain their cost increases. These changes still permit medicare to grow more than 13 percent per year for the next 3 years.

MEDICAID

The bill saves $1.1 billion in medicaid over the next 3 years, by giving the States the flexibility to adopt small copayments and to recover part of the costs of long-term care. This still allows 9.6 percent growth per year in medicaid.

AFDC AND SSI

In the AFDC and SSI programs, savings of over $700 million are obtained by streamlining benefit calculations and asking States to reduce their error rates. This will have a negligible impact on the truly needy while providing an incentive for beneficiaries to work their way out of welfare dependency.

UNEMPLOYMENT BENEFITS

The conference report provides federally funded supplemental unemployment benefits to help the long-term unemployed for an additional 6 to 10 weeks. The bill provides funds to pay for these benefits by lowering the income threshhold at which unemployment benefits are taxed. This provision responds to instructions given by the Senate to the conferees during debate on S. 2774, the Omnibus Budget Reconciliation Act.

ADAP

The conference report provides for increased spending through fiscal year 1987 for the airport grants-in-aid (ADAP) program and for modernization of the air traffic control system. The bill also enables most of the Federal Aviation Administration's operating and maintenance costs to be paid by aviation users, rather than by general taxpayers. The needed improvements in the safety and efficiency of our Nation's airways will thus be supported by commercial airlines, general aviation users, travelers, and business.

TAXES

The primary emphasis of the tax provisions in the bill is reform. Of the $98.3 billion revenue increase, $70 billion, or 71 percent, involves closing special-interest loopholes and assuring that people who owe taxes actually pay them. We can no longer afford to allow some taxpayers to avoid paying the taxes they owe, nor can we permit business writeoffs which divert resources away from their most productive use.

Only 7 percent of the revenues raised in this bill fall upon individuals. All of the increases on individuals affect either very high income taxpayers subject to the minimum tax or the 20 percent of taxpayers who itemize and claim certain medical and casualty deductions. These structural changes in our tax laws make good sense whether we are in recession or recovery.

This bill, in combination with the 3-year tax cut of last year, keeps the individual tax burden essentially flat over the next 3 years. In addition, it equalizes the taxes on corporate America. It scales back special tax preferences, such as safe harbor leasing; the tax credit for companies locating in Puerto Rico; modified coinsurance; foreign tax havens for multinational oil companies; completed contract method; and certain provisions affecting banks. These provisions affect only a narrow range of industries who now benefit from special tax treatment.

The provisions which affect most corporations include the 50 percent investment tax credit basis adjustment and the acceleration of corporate tax payments. The scheduled increase in the ACRS depreciation for 1985 and 1986 has also been removed. These changes are necessary because the depreciation reductions made in last year's tax bill were simply too generous. They would have misallocated capital and thus reduced economic growth. Approximately half of the business tax reductions contained in the 1981 act still remain even after the changes in this bill.

A third of the increased revenues in this bill come from stopping cheating. This bill implements 10 percent withholding on interest and dividends and requires the reporting of tips. It is only fair that every effort be made to insure the collection of taxes owed.

Much has been made of the impact of the excise tax increases in this bill, especially the 8 cents a pack increase on cigarettes. This increase will amount to less than 50 cents a week for almost all smokers. These taxes have not been changed since 1951. Since that time inflation has reduced the real value of this excise tax by almost half, so in a sense we are only returning the level of taxation to what it used to be.

Each of us may have other measures which we would have liked to include. But it is important to set aside our own particular interests so that we may achieve the essential common goal of reducing the Federal deficit and getting interest rates down. The stock market increase of 39 points last Tuesday, a further substantial rise today, and the continuing reduction in interest rates this week are clear evidence that bold action on the part of the Congress and the President can have dramatic effects upon our economic health.

I urge my colleagues to continue the progress we have made by voting in favor of this bill.

Mr. President, I ask unanimous consent to have printed in the RECORD tables relating to the conference report.

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

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 (H.R. 4961)

EXPLANATORY NOTE

This table outlines the revenue and spending changes in the conference agreement on H.R. 4961, the Tax Equity and Fiscal Responsibility Act of 1982.

All numbers in this table have been prepared by the Congressional Budget Office based on the materials provided by the conference Committee.

Revenue increases and spending reductions are stated in terms of changes from the baseline estimates used in developing the First Budget Resolution.

This table does not include the "by-product" effects of the changes in revenues and spending in the conference agreement. Some examples of these "by-products" are (1) increases in budget authority for medicare due to greater interest earnings because of the recommended savings in benefit payments; (2) increases in budget authority and outlays for medicaid and food stamps due to the savings being recommended in medicare, AFDC, and SSI; (3) increases in budget authority for the unemployment trust fund that result from the recommended FUTA tax increases; and (4) increases or decreases in budget authority and outlays that result from the federal employees medicare tax.

Recommended authorization levels in H.R. 4961 are not included in this table. These amounts are not binding on the Appropriations Committee which will determine the actual levels of spending at a later date.

Direct spending increases recommended in H.R. 4961 (other than the "by-product" amounts discussed above) are netted against the savings in the bill only to the extent that they exceed the assumptions contained

in the First Budget Resolution, pursuant to previously announced Senate Budget Committee practice.

CONFERENCE AGREEMENT—TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 (H.R. 4961)

[In millions of dollars]

	Fiscal year—			
	1983	1984	1985	Total, 1983–85
Revenues:				
Individual income tax provisions	+272	+3,113	+3,106	+6,491
Business tax provisions	+5,422	+13,292	+16,497	+35,211
Compliance provisions	+3,365	+8,869	+8,660	+20,894
Pension provisions	+194	+780	+870	+1,844
Life insurance and annuities	+1,942	+2,155	+2,920	+7,017
Employment tax provisions	+1,904	+3,083	+3,577	+8,564
Excise tax provisions	+2,798	+4,009	+4,702	+11,509
Miscellaneous provisions	−38	−37	−34	−109
Revenue gain from additional IRS enforcement	+2,100	+2,400	+2,400	+6,900
Total revenue increase in H.R. 4961	+17,959	+37,664	+42,698	+98,321
Reconciliation revenue instruction	+20,900	+36,000	+41,400	+98,300
Spending:				
Medicaid:				
BA	−208	−364	−502	−1,074
O	−275	−364	−502	−1,141
Medicare:				
BA	−248	−472	−750	−1,470
O	−2,759	−4,267	−5,821	−12,847
AFDC:				
BA	−84	−95	−163	−342
O	−84	−95	−163	−342
SSI:				
BA	−116	−126	−144	−386
O	−116	−126	−144	−386
Child support enforcement:				
BA	−92	−141	−151	−384
O	−92	−141	−151	−384
Unemployment insurance				
BA	+85	−32	−21	+32
O	+79	−50	−49	−20
Savings bonds/debt management:				
BA	−329	−691	−858	−1,878
O	−329	−691	−858	−1,878
Airport and airway development [1]				
BA		+194	+312	+506
O		+39	+149	+188
Total spending reduction in H.R. 4961:				
BA	−992	−1,727	−2,277	−4,996
O	−3,576	−5,695	−7,539	−16,810
Reconciliation spending instruction:				
BA	−1,106	−1,444	−1,740	−4,290
O	−4,429	−5,564	−5,976	−15,969
Supplemental unemployment benefits:				
Increased benefits:				
BA	+1,939			+1,939
O	+1,939			+1,939
Offsets:				
Reductions in food stamps and AFDC:				
BA	−209			−209
O	−209			−209
Lower income tax threshold	−763	−734	−611	−2,108
Total effect on deficit	+967	−734	−611	−378
Effect on deficit:				
Revenues	−17,959	−37,664	−42,698	−98,321
Spending (outlays)	−3,576	−5,695	−7,539	−16,810
Supplemental unemployment benefits	+967	−734	−611	−378
Total effect on deficit: H.R. 4961	−20,568	−44,093	−50,848	−115,509
Reconciliation instruction	−25,329	−41,564	−47,376	−114,269

[1] Increase over First Budget Resolution assumption only.

Mr. DOLE. Mr. President, I yield to the Senator from California, then the Senator from Ohio, then the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, when the Senate considerd the tax bill last month, I voted against it. While I agreed that we are in desperate need because of the gigantic Reagan deficits, I believed there were better ways to generate the revenues we need to reduce the deficit and to pay for President Reagan's unprecedented escalation of defense spending.

I was concerned, too, about the severity and inequity of proposed cost savings in medicare, medicaid, and other programs.

What we have before us now is a somewhat different bill. Democratic alternatives like postponement of the third year of Kemp-Roth have not emerged, but this bill is better than the one that passed the Senate.

I remain concerned about the cost-saving provisions of the bill, although they are now less onerous.

I approve some of the current tax provisions, and oppose others.

Despite these reservations, however, I believe the revenues the bill will generate are essential to bring interest rates down and to otherwise alleviate the horrendous economic conditions spawned by Reaganomics.

What is at stake now, Mr. President? What is at stake now is the very credibility of Government to deal with a rising crisis, to manage the deficits we face, and to reverse the financially disastrous course the Reagan deficits are forcing upon the economy.

Failure of the conference report could further imperil our hopes for economic recovery. Failure could severely weaken our Government's ability to cope with rising unemployment, rising bankruptcies, rising foreclosures, rising misery, and rising fear.

Mr. President, I have not frequently supported President Reagan. We have different philosophies. We have different approaches to most of the vast, intricate, and intractable problems of our time. But when I think he is right, I will support the President. I think he is right now.

He is seeking to make a midcourse correction in his economic program, a correction of his own mistakes, his own misjudgments. We should not prevent him from making that correction.

This measure will not cure all the ills of our economy. Much, much more needs to be done. But let us begin tonight. Let us take the first step. Let us approve the conference report.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I promised the Senator from North Carolina he might be recognized next but does he mind if the Senator from Ohio goes first?

Mr. EAST. Mr. President, that is all right, if it would be possible for me to follow the Senator from Ohio.

Mr. DOLE. If it is all right with Senator METZENBAUM, it is possible for him to go before the Senator from Ohio.

Mr. EAST. I thank the Senator, Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EAST. I thank the Chair. I shall try to be as concise as I can.

I would like to indicate in this final debate for the public RECORD that I shall be voting against this conference report. I should like to outline briefly why I am doing so.

I appreciate the work that many of our distinguished colleagues have put into this measure and I appreciate that it is one of those things that fair-minded people can differ over. The state of the Nation's economy is one of the highest priorities, if not the top priority item, we have facing us at this point. It transcends party lines and it transcends ideology. We are all trying to accomplish the same end.

I simply dissent from the notion that the increasing of taxes in this form, in this report, makes the most decisive and effective contribution to the end we all seek; namely, reduced interest rates and a revitalized economy. Let me put it this way, Mr. President: I am convinced if we continue to increase taxes of this kind or if we put the third year of tax decrease back on, if we slash military sales, we are, in the near term and the long run, going to continue to have a serious problem of deficits in Federal spending in this country until we come to grips with what I think everybody knows is the fundamental problem—the entitlement programs.

The entitlement programs are the open end of the Federal budget over which we do not now have control. So increased taxes simply mean more money available for spending, but it does not come to grips with what I think is the unspoken word and unspoken understanding in this Chamber, that at some point after the election, after the turn of the year—I do not know when it will occur—this Chamber and our colleagues in the House will have to come to grips with the single biggest cause of hemorrhaging in the Federal budget; namely, the entitlement programs. Anything else prior to that, at best, perhaps as an assist, is helpful. But I say, Mr. President, it lulls us into a false sense of security that, some way or other, now, we have done all that needs to be done.

We are increasing revenue, we are increasing taxes. Yes, we may find some cuts in military sales. We may find some more here, there, and yonder. But again, I keep coming back, perhaps ad nauseam, to the basic problem we face in the Federal budget, the entitlement programs.

I have heard may responsible Members of this Chamber on both sides acknowledge that until we come to grips with that and deal with it decisively and responsibly, we cannot control Federal spending, we cannot keep the

deficits down, and we will not be able to keep interest rates down. That is supposedly what this tax increase is supposed to do—make a healthy contribution to getting interest rates down.

The final point I make, Mr. President, is that often we are told this is primarily tax reform. I understand that language and rhetoric becomes important. We are told it is primarily a matter of compliance and closing loopholes; that there are those provisions in here. I understand why that kind of language is used. But let us also be candid. There are new taxes in here. Revenue is being raised. Taxes are being levied. I will be candid. I have been very troubled about the doubling of the excise tax on cigarettes in this bill. It will have impact in my State and, frankly, in other States.

Here is the problem I raise with the cigarette tax. The cigarette tax has been one of the basic taxes that States have utilized in raising their own revenue. I find it somewhat at odds with the so-called New Federalism, giving greater responsibility back to the States and trying to get the tax base back to the States, when that is one of the areas that they have taxed very heavily, quite candidly, in recent years. Since 1951, the States have increased their excise taxes on cigarettes by 350 percent.

It is true that the Federal Government has not raised it since 1951 but we are now on the threshold of doubling it, which I think is unconscionable and unwarranted from the standpoint of Federal taxation. I do think it is contrary to the grains of the New Federalism, which means we try not to erode away the tax base of the States. If we are trying to get more responsibility and a broader tax base back to the States, we ought not to be taking away this tax, because at some point you will begin to kill the goose that laid the golden egg. Cigarette taxes in this country raise over $6 billion a year. At some point when you are going beyond revenue raising and approaching the point of simply being punitive to an industry, you will kill the goose that laid the golden egg. You will simply suppress sales. You will have less revenue. Ironically, this could not only be nonproductive as regards Federal revenue but I think it will have an effect on State revenues in the whole concept of the New Federalism.

My point is that there are new taxes in this bill. Cigarette taxes are new; taxes on small boats under 20 feet, that is new; telephone taxes, that is new; airlines, that is new. That is not compliance. Those are not loopholes. Those are new taxes. They are regressive taxes in that they are levied against those least able to pay.

I simply bring that out as a point that I think is worth stressing. It is not at all a matter of compliance and loopholes.

I conclude then, Mr. President, by reminding my colleagues that in the euphoria of the evening, when we are perhaps about to join the House in passing this measure and going home with a sense of accomplishment—and I do not belittle that—the day of reckoning still lies ahead in getting control of Federal spending via the entitlement programs. That is where we will ultimately be tested in terms of our sense of responsibility, and that includes, of course, returning integrity to the social security program so that those who are investing in it can make sure they get their return back. We have a lot of very serious work ahead of us. This does not bail us out. This merely defers that day of reckoning, and I remind my colleagues that day of reckoning is yet to come. I wish we had already come to grips with it, but we have not. We have done this as an alternative and we shall do some other things.

So it is not in a spirit of a desire to contribute to big deficits or high-interest rates or a continued weakening economy. To the contrary. I think we would have made the single greatest contribution to low-interest rates and a strong economy and lower deficits by hitting directly at the problem, namely, the spending side, and in particular the entitlement programs.

Mr. President, I appreciate the opportunity to speak on this matter, and I again wish to give my respects to the distinguished Senator from Kansas for whom I have the greatest personal regard. I simply disagree with him on this very important measure.

Mr. President, I will happily yield the floor.

Mr. LONG. Mr. President, I yield 10 minutes to the Senator from Ohio (Mr. METZENBAUM).

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I thank the Senator from Louisiana for yielding 10 minutes to me.

I rise, Mr. President, first to commend the leadership of the chairman of the Finance Committee on this measure because, in all fairness, he has taken on a very difficult assignment. He has brought forth a piece of legislation that unquestionably has a good deal of merit in it. Many of the issues that he tackled in order to provide the necessary revenue for this measure were not easy issues to zero in on, and I wanted to see him succeed.

As a matter of fact, when the bill was originally before the Senate, on an amendment to strike the provision dealing with withholding on interest and dividends, there were only two of us on this side of the aisle that saw fit to vote with him. That provided him the margin of victory, because the amendment was defeated 47 to 50. With respect to a motion to eliminate the increase of unemployment tax on employers, I again saw fit to support as one of two Members on this side of the aisle the Senator from Kansas. And again those two votes provided the measure of victory on a 47 to 50 vote.

I further saw fit to support him in his effort to defeat the motion to strike the provisions on tips. Although he did not succeed I did vote with him.

Having seen his efforts to move in the right direction in connection with many of the matters contained in this measure, on Monday of this past week in Ohio, I indicated publicly that I was seriously considering voting for the measure. I did so in part because the Senate had previously seen fit to adopt my resolution directing the tax bill conferees to provide additional assistance to unemployed Americans. I thought that that particular direction was important. I thought it was especially important for people in my own State who are very much in need of unemployment compensation.

UNEMPLOYMENT BENEFITS

The resolution called for two changes in current law: First, it specified that all States receiving extended benefits on July 1 would continue to receive them. Second, the resolution called for the establishment of a new program of supplemental benefits, providing between 10 and 13 weeks of additional eligibility over and above the extended benefit program.

The conference report on H.R. 4961 addresses some, but by no means all of these concerns. It does not go far enough.

Through March 31, 1983, it provides for a munimum of 6, rather than 10 weeks of supplemental benefits for all unemployed Americans.

For those who reside in high unemployment States, the extension is 8 weeks, with 10 weeks made available only to the States that have been the hardest hit of all.

But, Mr. President, the 1981 reconciliation bill made two crucial changes in the formula that triggers extended benefits: First, it changed the calculation formula determining whether a State is eligible for extended benefits; and second, it raised the actual trigger level for extended benefits.

As a result of these two changes, about 29 States have, or soon will, lose their eligibility for the 13-week extended benefits program. We are talking about States with persistently high unemployment—Alabama, Arkansas, Delaware, Indiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Vermont, Alaska, Arizona, California, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Montana, New Mexico,

North Carolina, Ohio, Oregon, Tennessee, Utah, the Virgin Islands, Wisconsin, and by some estimates, Mississippi and West Virginia.

Mr. President, I intended to offer an amendment to the debt ceiling bill which would have assisted these States by doing three things.

First, it changes the effective date for the termination of the supplemental benefits program from March 31, 1983 to the date upon which the national unemployment rate drops below 8.7 percent. That figure—8.7 percent—is the estimated unemployment rate for March 1983 as assumed in the first budget resolution.

Second, the amendment temporarily suspends the formula changes enacted last year that have inadvertently denied benefits to the neediest States. Restoration of the formula is tied to the achievement of an 8.7-percent unemployment rate.

Finally, the amendment suspends the higher insured unemployment rate trigger, which is due to take effect on September 25. This suspension will continue until unemployment falls below the 8.7 percent level.

Mr. President, I believe that this amendment at the relatively modest cost of $529 million, does what the Senate intended to accomplished on August 5.

I am disappointed that the tax conferees did not address these concerns. By not changing the trigger, many States including Ohio, will actually receive fewer weeks of benefits, due to last year's budget cuts. I will use every opportunity to correct this problem, and I urge my colleagues to support me in that effort.

But Mr. President, the fact of the matter is that the Senate conferees did not do that which the Senate had instructed them to do. In all fairness it is my understanding that the chairman of the Finance Committee did indeed make an effort to achieve that which he was directed to do by the Senate, a measure in connection with which he himself had cosponsored. He made a serious, conscientious effort to achieve it. Unfortunately, the objective which he saw fit to attain did not come to pass, and as a consequence many States, 29 to be exact, will be triggered off unemployment compensation benefits within the coming weeks and months. By reason of that fact, it makes it very difficult for me to support this bill.

I was seriously considering supporting this bill because it does close unproductive and costly tax loopholes. It restricts and eventually repeals safe harbor leasing. It reduces tax breaks which have benefited oil companies, and it eliminates some of the accelerated depreciation benefits which were too generous. Also, it improves taxpayer compliance.

But when the matter got to the conference committee, not only did it fail to do that which many of us felt it should do in connection with the extension of unemployment benefits for needy unemployed workers, but it also eliminated the existing $150 deduction for medical premiums which the Senate had only reduced to $100. In all fairness, the conference committee did reduce the amount by which medical expenses must exceed income from 7 to 5 percent of income, and continues to permit medical premiums to be calculated into that amount.

So we find in this instance one change in the right direction, the reduction from 7 to 5 percent, and another change, to eliminate the $150 deduction, a change in the wrong direction.

That change in the law will cost the taxpayer who itemizes his or her deductions more than $70 per year, a burden that I do not believe the average taxpayer is in a position to carry.

The fact that the conference committee saw fit to keep the excise tax on cigarettes at the double figure is a measure I did not approve of, but I thought I could live with it; and the tripling instead of the doubling of the telephone tax, which was the way the matter had left the Senate, was also a regressive move and provides an additional burden for the people of this country.

So this measure comes before this body not being all good, not being all bad. But in this Senator's opinion, the failure of the conferees to do that which the Senate had instructed them to do in connection with the extension of unemployment benefits makes this Senator conclude that, on balance, it does not warrant my voting for the measure. In all fairness, I do want to say again that the Senator from Kansas was not indifferent to the concerns that have been expressed on the Senate floor with respect to unemployed workers. It is a fact that the measure includes a 6- to 10-week extension, which helps some. But it does not mitigate the harm that is done by denying the 13 weeks of extended benefits, which is an entirely different kind of benefit, to the unemployed workers of 29 States.

On balance, I think the effort is commendable on the part of the chairman and the Finance Committee and those who worked on this measure; but, overall, this Senator cannot see fit to vote for it, and I intend to vote "no."

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

Mr. METZENBAUM. I yield.

Mr. DOLE. Mr. President, I thank the distinguished Senator from Ohio, because he did properly indicate his strong support in three very vital areas during the debate on this bill.

I also indicate for the record, because other Senators may have the same concern, that we believe, based on the sense-of-the Senate instruction, that we had a better proposal than did the House. We worked the greater part of 1 night on the unemployment compensation. We worked with Democrats and Republicans. We also worked with representatives of the AFL-CIO. When our proposal, in effect, was rejected and they offered their plan, we decided that rather than have a fight over it in the conference, we would accept it.

It did not do as much as the other version would have done, so far as the Senator from Ohio is concerned, but it did do more in other States. I guess the one big difference is that what we have done will not cost the States anything, will not cost the employers anything, but will benefit by $2 billion some 2 million unemployed Americans for periods of 6 to 8 to 10 weeks. We hope that will be acceptable to the Senate.

It was not precisely as we might have done had we not had another body to confer with, but we tried to carry out the sense of the Senate resolution offered by the Senator from Ohio and the Senator from New Mexico (Mr. SCHMITT).

Mr. METZENBAUM. Mr. President, as I said in my statement, I think that the Senator from Kansas did indeed make a good faith effort to achieve the objectives of the Senate, as instructed. Unfortunately, with the technical language and the problems concerning this subject, that did not result. But I do not in any manner suggest that there was not a good faith effort on the part of the leadership of this body.

Mr. LONG. Mr. President, I yield 5 minutes to the Senator from Massachusetts (Mr. KENNEDY).

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have already stated my decision to support the conference report on the tax bill.

The bill has been improved since it was last before us, particularly with regard to the medicare cuts, that would come directly out of the pockets of the elderly, and unemployment compensation.

On balance, it is the best bill we can now obtain in the midst of one of the worst economic situations in our history.

Let us be honest with each other and with the country about what this bill is—and what it is not.

First, it is a tax increase—but one that is fairer than last year's tax cut, since it asks the most of those wealthy corporations and individuals who can afford to pay more.

Second, it contains major tax reforms for which I and others have fought during many years. The Tax Code will be less unjust after the enactment of this bill. It eliminates the worst excesses in the depreciation writeoffs enacted last year—and it will end the most flagrant abuses of tax leasing.

Third, let us recognize that the bill before us will not end our economic problems; at best, it will only prevent them from getting worse. The failure of the bill would send the wrong message and could spark a full-scale economic crisis. But we must move further in the months ahead to correct the broader failures of administration policy, especially the continuing and disastrous reign of high-interest rates.

No one yearns to vote in favor of a tax increase. No Member of the Senate or the House—surely no voter in any State—loves a tax increase. But perhaps the action the House has taken today, and the action I hope the Senate takes tonight, will send a signal that we in Congress are at last ready to deal with our economic problems in a realistic and sensible way.

I voted against the Reagan-Kemp-Roth tax bill last year, and I hope this vote a year later spells the end of economic nonsense and easy political appeals of the kind which told us falsely that we could cut taxes, raise defense spending massively, and balance the budget—all at the same time. That was the mistaken assumption of Reagan-Kemp-Roth—which rested more on ideology than reality. In our hearts, how much we all wish now that we had rejected the excesses of that bill.

There is no economic magic cure; there are only hard decisions which must be made. With this decision, we can move closer to a balanced budget than we ever could by approving the empty and meaningless constitutional amendment which was drummed through this body 2 weeks ago.

On this tax bill, let us make the hard choice—which here, as it so often is, also happens to be the only right choice. On this issue, we can and must see beyond partisan tactics. On this issue, to paraphrase words once spoken by Thomas Jefferson, "We are all Republicans; we are all Democrats." In the spirit, let us write this bill into law—and in so doing, we will have met the challenge to put our country and our economy first.

I yield back the remainder of my time.

Mr. LONG. Mr. President, I yield to the distinguished minority leader, Mr. ROBERT C. BYRD.

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

Mr. President, the conference committee has worked long and hard to make the tax bill more fair to working Americans and to the elderly.

Unfortunately, the conference did not eliminate the most unfair provisions. This tax bill still means that the average taxpayer must pay more in medical expenses, before he can deduct them from his taxes. This tax bill still triples the tax on telephones. And together, these two provisions will add more than $7 billion to our taxes over 3 years.

The conference bill still increases the cost of medical treatment for the elderly, striking hard at those who most need medical attention and those who can least afford it.

Senate Democrats offered a plan to stop the tax increases and spending cuts aimed at working Americans, small business people, the elderly, and small farmers. We would have spared middle class taxpayers new telephone taxes, new cigarette taxes, new unemployment taxes and cuts in their medical and casualty loss deductions. We would have saved American middle class nearly $25 billion in increased taxes and medical bills by delaying the full 1983 tax cuts for those who make more than $78,000 a year, and partially delaying that final cut for those making between $46,500 and $78,000.

Those making $46,500 and under, annually, would still get the full 10 percent cut in July 1983 under the fairness amendment offered by Mr. BRADLEY, myself, and other Senators. Had that amendment been adopted I would have supported the bill's passage.

Mr. President, less then 8 percent of American taxpayers make more than $46,500 a year and only 1 percent of our taxpayers make more than $78,000 a year. To protect these very privileged individuals, this administration decided to impose nearly $25 billion in tax increases and health care cuts on the rest of the taxpayers.

This tax bill has been supported with great vigor by the administration. The tax increase is being fought for by the same President who addressed a joint session of Congress in this year's state of the Union, saying:

> I will seek no tax increases this year, and I have no intention of retreating from our basic program of tax relief . . . I will stand by my word.

I would like to take this administration at its word, but I cannot. This administration has flip-flopped. It has broken its promise not to raise taxes, and it is opposing the will of the American public, as demonstrated in today's Washington Post/ABC poll that found the people against this tax increase 54 to 37 percent.

We have heard the President say that this bill is necessary to balance the budget and to bring on economic recovery. But this is a far different story than the one he told us during the state of the Union. Then, he said:

> Raising taxes won't balance the budget; it will encourage more Government spending and less private investment. Raising taxes will slow economic growth, reduce production, and destroy future jobs. . . . So, I will not ask you to try to balance the budget on the backs of the American taxpayers.

Well, I agreed with the President in January, and unlike him, I am still against tax increases parading as a path to recovery and low deficits. Lasting reductions in Federal deficits can only come in the wake of strong economic growth and full employment. I have introduced a bill to bring deficits down and promote economic growth by reducing the level of interest rates to their traditional levels above the rate of inflation. This bill is cosponsored by 33 of our colleagues and is gaining recognition and support on both sides of the Capitol.

We must never forget that high interest rates are a direct cause of high deficits and that by lowering interest rates we can lower our deficits. This is true in two ways. First, high interest rates depress the economy, increase unemployment, and thereby cause both lowered tax revenues and higher spending for unemployment benefits. It has been conservatively estimated that each additional percentage point of unemployment adds $25 billion to the deficit. This, the 2.4 percentage points that the unemployment rate has climbed during the Reagan Presidency—from 7.4 to 9.8 percent—has increased our defict by $70 to $75 billion—about two-thirds of what the administration projects it to be in fiscal year 1983.

Second, high interest rates significantly increase the interest we must pay on our national debt. In fact, interest on the national debt is the fastest growing element of the Federal budget—faster growing, for example, than either defense spending or social security. Ten years ago, interest payments took up 6 cents of every dollar spent by the Federal Government. For 1983 those interest payments will have more than doubled, to 13 cents out of every Federal dollar.

Clearly, to lower interest rates would directly and dramatically lower our Government's annual deficits. We all want a balanced budget, and lower interest rates would be a vital first step.

Mr. President, we cannot accept the premise that the only answer for inflation is recession. This is not an either/or choice. We have had economic growth without inflation in this country, and we can have that again, but only if we pursue balanced, sensible policies that will lower interest rates.

This brings forward another serious problem with the tax bill before us. There have been many claims that the conference report before us contains provisions making additional unemployment benefits available to every State. Some have used that as a reason to support the bill, including

the President himself in his televised message.

Mr. President, there is no doubt that we have a terrible, tragic, unacceptable unemployment situation in this Nation. There also is no doubt that we must provide unemployment benefits for a longer period of time than current law allows in those States with the highest rate of unemployment. Last May I introduced legislation to do just that.

The conference report before us claims to do much for the unemployed, but for the great majority of States it is guilty of deceptive advertising. Before the conference began, Mr. President, the Senate voted 84 to 13 to request that the conferees address two major unemployment insurance issues: First, they were asked to remedy provisions in existing law that are causing States with high unemployment to lose eligibility for the existing second tier of benefits—"extended benefits." Second, they were asked to provide a third tier of "supplemental benefits" to last no less than 10 weeks nor more than 13 weeks.

The conference committee simply ignored the first of these two requests. As a result, by the end of December, the second tier—extended benefits for 13 weeks—will cease to be available in all but seven or eight States. My own State of West Virginia may well lose eligibility for these 13 weeks of benefits in December or thereafter, even if total unemployment there remains high.

The conferees did establish a supplemental benefits program, but its duration ranges only from 6 to 10 weeks, depending on the State's unemployment rate.

The net result, Mr. President, is that by the time December arrives, only seven or eight States will be eligible for more than 36 weeks of unemployment benefits—whereas 38 States have been eligible for 39 weeks at some point in the current quarter. For at least 30 States, that is a reduction in duration of benefits—not the increase the Senate unequivocally said it believed is necessary.

Yet, another major flaw in the bill's unemployment insurance provisions is the fact the 6 to 10 weeks of supplemental benefits it establishes will expire on March 31 of next year—no matter how high the unemployment rate is in the Nation or in any individual State. After that point, only five or six States will be eligible for more than 26 weeks of benefits.

Mr. President, the unemployment insurance provisions of the conference report are a thin, watery salve being applied to a gaping wound. They are completely insufficient. They are unacceptable. I do not believe this Congress—either the House or Senate—will settle for these provisions as the sum and substance of our efforts to help the 10.8 million unemployed persons in this Nation and their families.

Without question, these provisions give absolutely no incentive or reason to vote for this conference report.

For the reasons I have stated I am against the tax increases in this bill aimed at our working men and women. I oppose this bill reluctantly, because I think there are some important loophole closings here, but they do not outweigh the unfairness of imposing new taxes on working Americans to spare those better able to afford a delay in new tax cuts.

We have heard that this tax bill is not the largest tax bill in peacetime history. We have heard that it is hardly any tax increase at all. In fact, we are almost led to believe that this tax bill is devoid of tax increases.

Doubling the tax on cigarettes from 8 cents to 16 cents is certainly a tax increase.

Tripling the tax on telephones is certainly a tax increase.

Raising the tax on airplane tickets by 60 percent and adding a 5 percent tax on airfreight, and a $3 tax on all international travelers, are certainly tax increases.

Small businessmen are having their taxes increased on unemployment insurance.

When we raise the minimum medical expenses a family must suffer before any deductions can be taken from 3 to 5 percent, that is certainly a tax increase.

It is a tax increase when we raise the minimum casualty loss a family must endure before deductions are available from $100 to 10 percent of their income.

Let us not kid ourselves, or the American people on this. This bill raises taxes. This bill raises taxes on middle class and lower class working men and women, small business people, the elderly, and the veterans, and it raises them on the theory that new taxes will help us balance the budget and escape from a recession. It is a faulty theory, and I reject it.

I do not believe that this bill is entirely bad. I do not believe that people should ever escape paying their fair share of taxes, nor do I believe that businesses should be faced with negative tax rates when they are making healthy profits. But the unfair aspects of this bill, in my judgment outweigh the small progress made against outrageous loopholes. I will vote against this bill.

I yield back the remainder of my time.

Mr. LONG. Mr. President, I yield myself about 3 minutes.

Mr. President, I wish to make a few comments this evening on the spending reduction provisions in the bill.

When the Senate passed the budget resolution, it directed the Finance Committee to come up with 3-year spending cuts totaling $23 billion. The conferees, however, required the Finance Committee to achieve only $16 billion in savings even though the budget totals still assume savings above $20 billion.

The tax bill conference report now before us purports to achieve 3-year spending cuts totaling $17 billion. This is slightly more than the reconciliation instruction but it is only about three-fourths of the savings needed to meet the actual budgetary targets underlying the budget resolution. And on a basis comparable to the spending cut provisions as they passed the Senate, the conference report would achieve only $13 billion of comparable savings.

As one of the conferees on this bill, I am well aware that it was difficult to obtain House agreement to even as much savings as it does contain.

In addition not achieving the full savings needed to meet our budgetary goals, this legislation was considered in a manner which raises serious concerns. As has happened before, the reconciliation process which was designed to help balance the budget has been used to expedite consideration of proposals to increase Federal spending. In this case, there was an even more troubling departure from the usual legislative procedures. An attempt was made to use this procedure to repeal savings enacted last year by introducing into the conference matters which had not been considered by either the House or the Senate.

Last year, the administration proposed to reduce spending by eliminating certain expensive features of the welfare programs. These were not cuts in the level of assistance provided to families on welfare but rather changes to eliminate elements which make it difficult for families ever to free themselves from welfare dependency. In addition to the strong support of the administration, these proposals were recommended by the Committee on Finance and approved as a part of the 1981 reconciliation package by both the House and Senate.

In the conference on this bill, the House conferees insisted on considering a proposal to restore those provisions which were eliminated by last year's legislation. The proposal made by the House conferees could not by any stretch of the imagination have been considered a proper matter for the conference. It was not in either the House-passed bill or the Senate amendment. It had not been considered by the House or Senate in this or any other legislation—indeed the only House and Senate action on the matter went in exactly the opposite direction from this proposal.

But the House conferees insisted that the Senate conferees violate the rules of conference to consider this matter which had not been committed

to their consideration by either House. I cannot recall any similar situation occurring in the past where House conferees wanted the Senate conferees to accept a controversial matter involving significant cost and contrary to the most recent established position of both House and Senate.

In order to avoid agreeing to these costly House provisions which were not within the scope of conference, the Senate conferees had to agree to another provision reducing funding for the child support enforcement program—also language which had passed neither House of Congress. The House position, in effect, was that the Senate conferees must either accept provisions which would expand the welfare program or agree to a cut in the one Federal program which is most effectively aimed at reducing the welfare program by requiring parents to support the children they have deserted. Given this choice, the Senate conferees reluctantly accepted a reduction in Federal funding of the child support enforcement program.

This change in the child support program will prove to be a mistake. Although it achieves a theoretical savings in Federal funds by reducing matching for State costs, it will ultimately cost the taxpayers money by allowing more parents to abandon their children to welfare. This program, since its enactment in 1974, has been the most effective of all Government programs to aid children. Under the AFDC program, the Federal Government generally must put up $1 for every $2 that is provided in aid; the rest of the cost is also borne by the taxpayer through his State taxes. Under the child support program, for every Federal dollar spent, $4 in support is collected for children—most of this is paid by the parents of the children, not by the taxpayer.

It is unfortunate that the procedure followed for this bill forced the Senate conferees to deal with matters which had not been considered by either House. I believe this is a very dangerous precedent which undermines important traditions in our constitutional structure. The rules of conference are designed to permit expeditious resolution of the differences between matters adopted by the two Houses. They are not intended to provide a means for enacting legislation which has not been adopted by either House.

I believe it would be appropriate for the Senate to review the procedures associated with reconciliation bills to see whether changes might be desirable before we act on another reconciliation bill.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, I yield 10 minutes to the Senator from Ohio (Mr. GLENN).

Mr. GLENN. I thank the distinguished floor manager.

Mr. President, last year I voted for and in favor of the President's tax package when it was before us. I sincerely hoped it would work.

We had tried on the Democratic side to modify that package to make it a less massive tax cut. We failed. And having exhausted all our remedies, many of us voted for it hoping very sincerely it would work for the benefit of our country.

Mr. President, it has not worked, and it has turned into such a charade this year that I no longer can support it, and I rise to oppose the legislation before us.

I think it is important that we review the chronology of the past year. I know that many of the speakers this evening have already talked about the details of the proposal that they agree with or do not agree with, but I think it is important we put the chronology of the last year into the RECORD so we can see exactly what we have done.

Last year the President's tax cut encompassed some one-fourth reduction in revenue over a 3-year period while increasing spending. But we were assured if we did that, that just as soon as we did there would be such a business euphoria, there would be such investment, that the program would come out with a plus on revenues because increased business in this country would result in more revenues coming into the Federal Government.

That program did not work. That euphoria did not occur. The projected Federal deficits, however, went up and up and up. The financial markets reacted accordingly, and real interest rates went up and went up until it became a matter of great concern to the Congress of the United States.

If the press reports during the past year were correct, the concern became so great that basically the Republican leadership in the Senate and in the House went to the President about reducing that third-year tax cut so we would not run up such large Federal deficits.

The President would not give in, would not budge an inch. So the leadership here took action which they thought was appropriate and decided on their own tax increase to make an effort to balance the deficits that were hitting the $150 billion to $160 billion per year level.

The President came out, as I understand from press reports, first solidly opposed to this tax increase and now supports it as being absolutely vital. So, Mr. President, we stand in the position here of seeing the ridiculousness of this economic progam. We passed a tax cut last year mainly to have a beneficial effect on business. Now we turn around and have a tax increase that takes it out of the hides of businesses that the first bill was designed to help. At the same time, we see the President leading a balanced budget amendment rally on the steps of the Capitol, which he should be glad he does not have now or we would be in more trouble than we are in. So the record of what happened over the last year seems to be very clear.

A tax cut was absolutely essential last year; a tax increase seems to be absolutely essential to the President this year. I guess we should ask will the real administration policy stand up and stop playing charades.

Mr. President, Monday night President Reagan addressed the Nation on television to urge support for this year's tax bill. I want to take this opportunity to respond to his remarks.

The President justified his support of this year's tax bill on the grounds that it will reduce interest rates and put more Americans back to work. This is simply not true. This year's tax bill does not reduce projected deficits enough to make any significant impact on interest rates. In spite of the $99 billion in revenues collected by this measure, CBO estimates that our deficits over the next 3 years will exceed $450 billion, almost adding half again onto the national debt. The massive deficits will keep interest rates high and will continue, not end, our unemployment problems.

The President defended keeping indexation in the Tax Code on the grounds that inflation is a tax from which the Government profits. He neglected to mention that the most taxing problem facing American businessmen, workers, and consumers is high interest rates, not inflation. These high interest rates will be perpetuated by indexation. Indexation will contribute nearly $80 billion to deficits for 1985, 1986, and 1987; combined with the third year of the individual tax cut, it will place us $235 billion further away from attaining a balanced budget by 1987.

The President complained to his critics that it has been only 10 months since the first phase of his program went into effect. This is misleading. The business tax cuts Congress enacted were made retroactive to January 1, 1981; the President's deregulation program has been in effect for more than a year; his budget cuts have been in place since last October; the Federal Reserve has given him the tight money policy he wanted since his first day in office; and the President, himself, last year promised that as soon as his package was enacted—1 year ago, August 4—a wave of confidence would wash over our economy and recovery would immediately follow.

The President urged us to evaluate his economic recovery program by looking at the record. Start with inter-

est rates—the basic cause of the present recession. He points to the nominal interest rate and noted that it is declining. And he is right, the nominal interest rate has declined. But, as any investor or consumer can tell you, it is the real interest rate—the difference between the nominal interest rate and the rate of inflation—that affects the cost of doing business or making installment purchases. The President neglected to mention that the real interest rate is at its highest level in history. For him to suggest that interest rates are lower today than when his program went into effect is misleading.

The President pointed out that double-digit inflation has been cut in half and he is right. But he failed to mention that that reduction has come as a result of economic policies that have thrown 3 million Americans out of work. In my home State of Ohio, double-digit inflation has been replaced by double-digit unemployment.

The President reported that real earnings are increasing, but he failed to mention that half of this increase comes from inflation adjustments in social security and other Government payments or that factory payrolls continue to decline. He noted that personal savings are increasing, but he failed to mention that the share of personal savings absorbed by Federal borrowing to finance Government debts is increasing at an even faster rate. According to Manufacturers Hanover Trust, borrowing by the Federal Government, Government agencies and Government guaranteed loans will consume at least 75 percent of all new, net savings in 1983 and 1984. This means less, not more, money in the pool for capital investment. It means higher, not lower, interest rates.

The President concluded his report on his economic recovery program by saying "it hardly looks like a program failed to me." Well, to paraphrase Al Smith as the President did," Let's really look at the entire record."

Current and projected deficits will increase the Federal debt by nearly 50 percent over the next 4 years, Federal spending as a percentage of gross national product is at the highest level since World War II, real interest rates are higher than at any time since 1932, unemployment lines are longer than at any time since 1938, real farm income is at its lowest level in American history, the rates for business bankruptcies and bank failures are the highest since the Great Depression. Housing starts, auto sales, and industrial plant capacity utilization rates are at the lowest levels in decades.

This is the record of Reaganomics—an economic program that has disrupted rather than stimulated our economy.

As the President admits, our biggest problem is unemployment and the main obstacle to getting people back to work is high interest rates. The President says that "interest rates should be lower than they are" and blames their persistence on the psychological problems of pessimism and fear in the money markets. I agree, he could not be any closer to the truth.

There is pessimism and fear on Wall Street and Main Street because the President's supply side economic programs threw fear and gloom into the hearts and minds of businessmen and consumers. They realized, as even the most thickheaded supply side economist must now understand, that you cannot massively cut revenues and increase spending without causing massive deficits, high interest rates, and widespread unemployment.

They realized that the massive deficits created by last year's tax cuts could not be balanced by reductions in nondefense spending—even though Congress actually gave the President more budget cuts last year than he requested—$37 billion versus $35 billion. They realized that these deficits would continue long into the future and that they would sustain interest rates so high that the prospect of profitable investment would disappear. They realized that without the prospect of profitable investment, job opportunities would diminish and unemployment would continue to worsen. Sadly, all this has come to pass and the future is bleak.

A loss of confidence permeates our economy. Whether your point of view is that of Wall Street, Main Street or the union hall—the future appears uncertain. And this uncertainty is killing our hopes and turning dreams into nightmares. Rather than moving boldly to implement plans and realize ambitions, Americans are hunkering down and hedging their bets; postponing investments and forgoing purchases—all the while searching for a hopeful sign, a promise of economic stability and moderation on which they can plan their future.

And what do Americans find when they turn to Washington? Instead of believable programs, they hear false promises. They see their President, who last year cut taxes and reduced revenues by one-fourth over a 3-year period—while increasing Federal spending—now unwilling to admit that his program went too far and has not worked out as forecast; unwilling to make the midcourse corrections every American would understand in light of the enormous deficits that are now projected; unwilling to admit that this year's bill is the largest tax increase in our Nation's history, disguising it instead as revenue reform; yet actively leading a rally on the Capitol steps for a balanced budget amendment he should be glad he does not have or we would all be in even more economic troubles than we are.

They hear their President juggle statistics of economic recovery while they see their hopes for employment and a home of their own dashed on the rocky terrain of high interest rates. They hear their President urge support of a tax reform bill that he promises will "reduce deficits and interest rates" and they see a tax bill which fails to address the most important problem of Reaganomics—inequitable, massive tax cuts for individuals which are the real cause of enormous deficits and resultant high interest rates. They hear him vow to prevent Government from profiting by inflation and they see a tax bill that reduces the tax reductions for medical expenses—unavoidable costs that have risen faster than income or insurance coverage of most Americans. They hear him stress the importance of personal savings and they see a tax bill that withholds income on interest and dividends. They hear the President proclaim the safe port of economic recovery while they see their fortunes sinking in the icy waters of triple-digit, billion-dollar deficits.

The President's message and his new tax bill perpetuate the cruel hoax of Reagonomics. They promise a balanced budget and economic prosperity while adding to our national debt and casting the dark shadows of joblessness across our land. When we look at the record, as the President asked us to do, the statistics for unemployment, bankruptcies, real interest rates, and massive projected deficits clearly report the failure of the President's program. But these cold statistics understate the grim reality of Reaganomics—shattered dreams, broken spirits, and a growing loss of faith in the leadership of our country.

Mr. President, we cannot rekindle the dreams of homeownership by tinkering with tax preferences, we cannot nourish the hopes of jobless Americans with higher unemployment taxes, and we cannot restore faith in our leadership by issuing more false promises. We need plain speaking, not clever communicating, to address the loss of confidence in our future. We need bold leadership, not half-way measures, to revive our economy.

For these reasons, I cannot abide the President's message and I cannot support H.R. 4961.

The PRESIDING OFFICE (Mr. WALLOP). The time yielded to the Senator has expired.

Mr. GLENN. I urge my colleagues to vote against this proposal.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. I yield 5 minutes to the Senator from Massachusetts (Mr. TSONGAS).

Mr. TSONGAS. I thank the Senator from Louisiana.

President Reagan's political history is one of rabid adherence to partisan advantage. Time and time again when initiatives were proposed by Democratic Presidents, Ronald Reagan rushed forth in opposition. When President Carter proposed the Panama Canal Treaty, it was Ronald Reagan who ran around the country trying to defeat it. When Jimmy Carter signed the SALT Treaty, it was Ronald Reagan who helped destroy its chance of passage. When the Democrats proposed modifications to the original tax bill that got us into this mess, Ronald Reagan told them to go to hell. His tenure in office has been marked by the most partisan rhetoric this Capital has seen in my political lifetime. He is a partisan whose instinct is to push to the ideological limits. Now that instinct has gotten him in trouble, and he wants the Democrats to bail him out. What this long public record deserves is an equal dose of partisanship. The temptation among Democrats to respond in kind is very strong. The issue however, is not what Ronald Reagan deserves—it is what the country deserves. And what the country deserves from the Democrats is more than Ronald Reagan-type behavior.

If the Democrats in the House were as partisan and ideological as Ronald Reagan, the bill would have been defeated by a three to one margin. That did not happen. Despite Ronald Reagan's long record of joyous beating up on House Democrats, including TV ads that ridiculed TIP O'NEILL, they came to his defense in the country's time of need. They put country before party and so must we.

There were many Members of this body who voted for the original Kemp-Roth tax bill, knowing that it was a shaggy dog, because they feared the wrath of a dogmatic President. They were wrong; he was wrong; but it was the country that paid the price. Millions of people have lost their jobs; thousands of businesses have gone bankrupt; and the human suffering is untold—and now it is time to begin the long road back. When the smoke clears, I would hope that President Reagan, upon quiet reflection, will understand the difference between the instinct that seeks to dominate and vanquish, and the instinct to lead and unite. He above all should remember the slogan at the Republican convention: "Together—A New Beginning." Together, Mr. President—it is a simple word and it is about time you remembered what it means.

Anyone can be a partisan—that is easy. Being a President and all that implies requires a higher standard. Starting today, I think it is time for a new beginning together. In that spirit, I will vote for the tax bill.

Mr. DOLE. Mr. President, I thank the distinguished Senator from Massachusetts for that last line in particular.

The PRESIDING OFFICER. Who yields time?

Mr. SCHMITT. Will the Senator from Kansas yield me 10 minutes?

Mr. DOLE. Mr. President, I yield 7 minutes to the Senator from New Mexico.

Mr. SCHMITT. Mr. President, I first of all wish to compliment the Republican leadership, including the President, who were behind this bill. I think that clearly from the standpoint of the technical progress of the measure through committee, through the Senate, into conference and now through the House that there is no question that they have shown superior technical activity.

I can understand how they got themselves into this position. I sympathize with that. In fact, maybe I assisted in that process with my support of the budget resolution.

I did support that budget resolution, on balance, even though the tax provisions might have been met in other ways. They have tried to live up to the mandates of the resolution. But, unfortunately, Mr. President, the tax increase bill that they have put before the Congress makes no economic sense, in my judgment, either for the country or for New Mexicans.

This has been clear to me at least ever since it was passed by the Senate Finance Committee. However, as the distinguished chairman knows, I did support the Republican leadership with a vote to continue to try to make something of this measure in conference with the House. I should note that all of my Democratic colleagues voted against this bill as it left the Senate. Now many have had a change of heart. We might ask why. Maybe, Mr. President, it is because it is really what some of them wanted all along.

In spite of efforts to delete the worst provisions of this on the floor and in the House-Senate conference, the bill remains a bad bill.

There is no historic justification for raising taxes at the bottom of a recession.

There is no economic justification for raising taxes in hopes of putting people back to work.

There is no personal justification for adding several hundred dollars to the individual tax burden, directly or indirectly, of millions of middle-income Americans.

If this bill were just the reform of existing tax inequities that it is touted to be, I could support it. Unfortunately, it is far more than that.

The bill would raise taxes on all Americans whose tax burden was reduced just last year. I cannot support such an action.

I was one of the few Republicans who publicly supported the President's original fiscal 1983 budget proposals. They were consistent with the new fiscal course we had set in 1981 and had tolerable deficits in comparison to our total GNP and the growth of that GNP which the new tax cuts would stimulate.

Mr. President, that fiscal course is bearing through and we should stick with it.

Now we are asked to change course before our destination is in sight.

The tax increase bill we are asked to support is not just a reform, "sock it to the rich and big corporations" measure. It is also a reversal of all we have stood for for years. It is the dream bill of the Democratic leadership of the Congress.

This bill will raise the taxes, either directly or indirectly, that middle Americans must pay. It will wipe out the effects of the third year of the personal income tax cut for many working Americans.

This bill will raise the cost of small business activities to the point where more workers will be laid off, not hired.

This bill is exactly the wrong medicine at the bottom of a recession. We should be encouraging savings and investment, not taxing it. We should be cutting the costs of running a small business, not raising them.

An analysis of what the provisions of the tax bill conference report would do to the middle American taxpayer is worth close examination.

In the name of forcing compliance by a few, the bill would penalize honest taxpayers by requiring the withholding of taxes on savings income. It is estimated that the cost to savers due to reduced interest compounding and loss of reinvestment would be $1.7 billion to $2 billion annually. The cost of compliance that will be passed on to the consumer would be at least $1.5 billion per year plus a new paperwork nightmare.

The bill would reduce deductions allowed for medical expenses by the average taxpayer. The amount of nondeductible medical expenses paid by a middle-income taxpayer would increase by about $350 from $500 to $850. The $150 deduction for medical insurance premiums would be abolished.

Uninsured casualty losses would be deductible only to the extent that the total losses exceeds 10 percent of adjusted gross income. Current law provides for the amount of loss in excess of $100 to be fully deductible. This change virtually repeals the deduction for casualty losses. The nondeductible cost of personal property losses will rise dramatically, and fall especially hard on middle income taxpayers.

The bill would raise excise taxes on telephones, aircraft fuel, and other broadly used articles in domestic commerce. The effect is to add at least an-

other $100 a year of taxes, direct or indirect, on the average man or woman in this country.

The bill would undermine private pension plans potentially affecting 6½ million Americans and eliminating $5 billion to $10 billion in annual capital formation.

The bill would take the first step toward forcing Federal workers into the social security system without fixing that system so it will work for all retirees. The cost to a Federal worker making $22,000 will be over $280 in 1983 and over $310 in 1985.

The bill would change the business tax cuts enacted last year for small and large businesses but particularly onerous on small businesses, thus discouraging and confusing investment needed to form new jobs.

The bill would discourage new investment in mineral and energy activities at exactly the wrong time for the country and for my own home State of New Mexico and its employment and revenue needs.

The bill would discourage new hiring and encourage layoffs by all businesses by raising Federal unemployment taxes. The additional tax paid by employees would increase by $41 in 1983 and hit $231 in 1985. And that is for a medium-income employee in the Federal work force.

In total, Mr. President, the so-called Tax Equity and Fiscal Responsibility Act is a retreat from the policy of reduced Government taxation and spending that the American people elected most of us to pursue. I supported that policy last year and I intend to continue to support that policy by voting against the unwarranted tax increases contained in the conference agreement.

I supported that policy last year and I intend to continue to support that policy by voting against this unwarranted tax increase that is contained in the conference agreement. Must this bill pass? I think not. Whatever happens, we will go on. We will keep trying. We will eventually, Mr. President, do the right thing.

The PRESIDING OFFICER. Who yields time?

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

Mr. JEPSEN. Mr. President, this is perhaps the most difficult vote I have ever cast as a Member of the U.S. Senate.

It is a classic case of "damned if you do and damned if you don't." We either raise taxes or have higher deficits. Neither prospect is desirable.

In point of fact, the reason we are faced with this dilemma is because we have been unable or unwilling to do what we should have done in the first place: Cut spending. Just since I have been a Member of this body—a relatively short time, I might add—Federal spending has gone from about 21 percent of our Nation's gross national product to close to 24 percent in the coming fiscal year. If we had simply kept the burden of spending from rising we would be close to a balanced budget. But we did not and this is why we are here today.

I would feel a lot better about casting a yes vote for this legislation if the $99 billion increase in taxes contained in it were likely to achieve a balanced budget. If that were the case I would not be quite as concerned as I am about some of the specific provisions of this tax bill. As it is, I am left with the feeling that we are imposing a substantial cost on the American people without the likelihood of a corresponding benefit. A balanced budget would be the payoff which justifies this extreme action. Unfortunately, the latest reestimate of revenues for the next fiscal year shows that this tax increase will merely make up the revenue which has been mysteriously lost since the last estimate was made.

This brings me to a point which disturbs me very much about this whole process: We are never dealing with hard numbers. We are always talking about estimates and projections that are just as soft and flakey as they can possibly be. Every Member of this body knows the frustration of casting some tough vote to cut or restrict funding for some program he believes in only to find out the next day that some yo-yo from OMB or CBO or someplace else has reestimated the deficit up again by $5 or $10 billion. Frankly, I do not have the slightest faith in these numbers, but unfortunately we end up guiding our actions by them anyway. And this bill we are voting on today is about as loaded with phony numbers as any bill I have ever seen. Let me elaborate:

One of the principal revenue-raising items in this legislation is tax withholding on interest and dividends. According to the committee report we are supposed to raise some $5 billion per year from this provision because some smart guy at the IRS or the Joint Committee on Taxation or someplace concluded that this amount of tax is currently due as a result of current law and is not being paid. Personally I do not believe this for a minute. These dividend and interest payments are already being reported to the IRS and I think the estimate of underpayment is grossly exaggerated. But there the numbers are in black and white in the committee report and who is to dispute them?

But there is another side of the coin which is not shown in the Joint Committee's revenue estimate: The cost to financial institutions of instituting this withholding and the cost to taxpayers of lost interest they could have earned on the withheld taxes. Remember, the IRS pays no interest on the money that is withheld from our paychecks and they are not going to pay interest on dividend and interest withholding either. So if you have $1,000 per year withheld from interest and dividends you are losing the interest you would have earned on this $1,000 if it had remained in your bank account instead of the Treasury's. And this cost is not insignificant. My staff on the Joint Economic Committee estimate it to be as much as $2 billion per year.

Now I know that there are supposed to be exemptions in this legislation for the poor and the elderly, but realistically how can we expect financial institutions to figure out who is exempt and who is not. I think this whole idea is just crazy and will be an administrative nightmare. I voted to delete it when the issue came up earlier this month and I am very sorry to see that the conference retained it. In fact, I would not be at all surprised if we end up having to undo this provision when the outcry from the people hits us after financial institutions start the withholding.

Another thing about this bill which bothers me is the phony spending numbers in it. For example, there is an assumption that we are going to save some $15 billion a year in interest payments because of the reduction in the deficit and its impact on financial markets. In other words, we reduce the deficit, this reduces interest rates and interest payments, which further reduces the deficit. Using this line of logic all we have to do is reduce the deficit $1 and let the compounding effect I described take care of everything.

What I see lacking from this legislation is the hard cuts in entitlements. These so called untouchable programs are the real source of our problems. We enacted these programs and indexed them to the inflation rate and the unemployment rate so that they go up without any action on the part of the Congress. Again, I would feel a lot happier about casting this vote if I thought we were making some real progress in controlling these entitlements by permanently restraining their growth. We should have done it last year and if we had we would only have had to cast that hard vote once and we would not be here now.

In closing, Mr. President, I have grave reservations about this legislation. We ought to be cutting spending instead of raising taxes and we ought to be casting a vote for permanent spending reductions instead of using phony numbers to make people think that is what we are doing. I feel bad about this vote: We either raise taxes or have higher deficits. What a choice.

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

Mr. DOLE. I yield 2 minutes to the Senator from Oklahoma.

Mr. NICKLES. I thank the Senator.

Mr. President, after long and careful consideration, I have decided to vote against the $98 billion tax increase which also includes about $15 billion in entitlement cuts. This decision was reached after some difficulty because of my respect and admiration for President Reagan and because I believe we must balance the budget as soon as possible.

Upon examination of the reconciliation proposals now before us, we are confronted with spending cuts of approximately $28 billion and tax increases of $98 billion over 3 years. The balance of the $280 billion in spending cuts called for under the first budget resolution is supposed to be made up of about $85 billion in appropriated reductions over the next 3 years, $13.6 billion in additional cuts, which may not be made, $108 billion hoped-for reductions in interest expense, and an estimated $47 billion in administrative and management savings, which I hope will take place. In the final analysis, the only definite changes are a $28 billion spending reduction and $98 billion tax increase over 3 years, a ratio of about 3 to 1. In other words, a ratio of $3 in tax increases for $1 in spending reductions.

It is my belief that we must balance the budget, but we must look at the source of the problem—either we are spending too much or taxing too little. I do not believe that Americans are undertaxed today. I do believe that we continue to overspend. We are presently spending $3,300 for every man, woman and child in this country.

The problem is not due to the Reagan administration. The problem lies with the Congress and its unlimited desires to spend someone else's money for which Congress has had a relentless appetite for the past 20 years.

I do believe we must do everything within our grasp to reduce Federal spending, not increase taxes, in order to balance the budget.

Mr. LONG. I yield to the Senator from Alabama.

Mr. HEFLIN. Mr. President, currently there are techincal statutory rules—such as section 46(f)(8)—prescribing the extent to which accelerated depreciation deductions and the investment tax credit may be considered in setting rates for a regulated company. These rules are applicable to the election to claim an investment tax credit of 8 percent or 4 percent without a reduction in the cost basis for depreciation with respect to regulated companies.

In my opinion, the election to claim or not to claim a lesser investment tax credit without a basis reduction is within the sole discretion of the regulated company. Further it is my opinion, that no regulatory authority may impute additional depreciation to such regulated company which elects the 10 percent or 6 percent ITC and reduced basis. The Internal Revenue Service has been contacted about this and there is no disagreement from that agency with my opinion.

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

Mr. LONG. I yield 10 minutes to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, when this body approved the Economic Recovery Tax Act 1 year ago, claims were made that it would release almost magical powers and propel our economy into an unprecedented boom. Unfortunately, that did not happen. Instead, the contradictory mix of tight money and loose fiscal policy pushed us into the highest unemployment and the deepest recession in 50 years. That is where we are right now, and the people wonder if we have confidence in our own actions and a vision for our economic future. Our sense of uncertainty cast a shadow over all the industrialized and Third World countries whose futures are inextricably bound up with our own.

In today's economically interdependent world, our actions take their toll on the economies of friend and allies. No nation can insulate itself from shocks experienced continents away, in faraway countries such as Poland, or in neighboring countries such as Mexico. When our policies wreak havoc with the economies of our trading partners, that, too, comes back to haunt us. Foreign demand for U.S. goods slackens. That puts Americans out of work. The dollar may appreciate to all-time highs. But that makes foreign products cheaper, giving them a distinct advantage in our markets. Even more disturbing, an international recession threatens to unleash powerful forces for protectionism abroad and isolationism at home—forces that if not soon checked threaten peace and prosperity worldwide.

Laying the foundation for renewed confidence in our own Government's ability to manage and to lead is therefore of paramount importance. The stability of our international financial institutions and indeed, of the world economic order, may hang in the balance.

But restored confidence will not materialize from a single act of the U.S. Congress. It will only evolve gradually from cumulative demonstrations that we know what must be done over the long haul. And it will require repeated evidence that we are willing to make the tough choices involved in translating mere knowledge into effective action.

Approving the Tax Equity and Fiscal Responsibility Act is but one of many steps we must take if we are to nurse our economy back to health and to renew confidence in Government's wisdom and commitment.

Mr. President, I say this because I think it is important to put the legislation now before us in its proper context. Once again, extraordinary claims are being made on both sides. Proponents argue that if this bill is not enacted, our economy will be catapulted into the abyss. Opponents insist that adoption of this bill will put the final nail in the economy's coffin. These are both extremes. Overblown claims are dangerous. They either raise hopes that cannot be fulfilled, or they create despair that is its own undoing

Our economic situation is serious, to be sure. And, it can be repaired only if we are willing to bring our fiscal and monetary policies back into balance and to demonstrate the sense and courage to correct past excesses—whether they be in runaway spending or excessive tax reductions. We only complicate the task ahead if we are less than forthright in estimating how long the recovery will take and how much discipline will be needed

Economic recovery demands that we get control of Government deficits. This in turn requires less spending and increased revenues. I voted to cut spending when I voted this year for the reconciliation bill. I will vote now to raise revenues by supporting this tax bill. But I do so without illusions that this legislation is a panacea.

All in all, Mr. President, I think the bill before us is a significant improvement over the one the Senate passed last month. As I said when I voted against that bill, I believed that important parts of the spending cuts were unfair and unsound. The original Senate bill would have increased out-of-pocket health care costs for millions of Americans who need skilled nursing care in their homes, who visit a doctor, or purchase a medical appliance. I was especially troubled by the prospect of copayments for home health care. Imposing new charges for these services would only encourage the poorest, oldest, and sickest members of our society to resort to more and lengthier hospital stays, thereby making the whole medicare program more costly. I also thought the provision shifting the costs of these medicare programs to the States was unwise and unfair. And I felt that some of the changes to the AFDC program were simply unnecessary for a nation that, for all its difficulties, is still among the richest in the world. Particularly troubling was the elimination of the entire emergency assistance program. Eliminating waste, fraud, and abuse in welfare programs is one thing. Relegating the neediest members of our society to abject poverty, however, is another. I found that unacceptable.

Fortunately, these provisions that most disturbed me about the Senate bill were deleted in conference. Thus, the bill before us is much improved.

I also objected to some of the act's tax provisions. I felt that while parts of the bill merit the label "tax reform," other parts would unfairly and unnecessarily burden low- and middle-income taxpayers. These are the very groups hardest hit by the recession and least able to insulate themselves from its effects.

The conference committee made some much needed corrections. Interest and dividend withholding has been delayed for 6 months until July 1, 1983. In addition, all interest payments under $150 were exempted. There are exemptions for about 90 percent of the elderly and all low-income citizens. Financial institutions were granted an escape hatch if compliance created an undue burden.

The floor for deducting medical expenses was reduced from 7 to 5 percent of adjusted gross income. This should ease the burden on those facing high medical bills.

Finally, the act now provides a much-needed $2 billion temporary unemployment compensation supplemental benefit package. This provision will help a million workers who have exhausted their benefits under existing programs to get through these difficult times. The benefits under this program will be available in every State beginning in mid-September.

Even so, I still have some reservations about this bill. I wonder if its architects are prepared now to acknowledge the origins of the serious problems confronting our economy. Yet understanding their cause is essential to developing sustainable, effective solutions for the long haul. Last year, Congress adopted a 3-year tax cut that reduced Federal receipts by $750 billion over a 5-year period. We also voted to increase defense spending by $150 billion, while cutting nondefense spending by only $135 billion. Taken together, these actions committed us to a highly stimulative fiscal policy at a time when inflation was widely perceived as the primary threat to our economic well-being.

To counter the inflationary thrust of its tax and defense policies, the administration urged, and the Federal Reserve implemented, an unprecedentedly tight monetary policy. This in turn has produced the record high interest rates that have choked off growth and laid the foundation for economic stagnation at home and abroad.

All the bill before us does is to take a few modest steps toward correcting the exceeses in last year's tax bill. Yet these steps are necessary and that is why I will vote for this legisation.

But future progress requires that we learn from our past mistakes. We must acknowledge that we would be much better off today if we had reduced spending in 1981 and limited ourselves to a 1-year tax cut that would have benefited rich and poor alike. Interest rates, deficits and unemployment would be lower and economic growth higher. Only by facing up to past errors can we avoid deluding ourselves into settling for shortrun solutions to what are in fact longrun problems.

At the same time, I am encouraged that this bill corrects at least some of ERTA's excesses. Hopefully, this signals that those managing our economy will take a new and more promising direction in the coming months. Perhaps it even signals understanding that it is not just cutting tax rates that is important. What matters most is the way we cut tax rates. There is no free lunch. We cannot afford to lower rates unless we close loopholes at the same time. Failing to recognize that got us into the budget mess we are in today. If and when we can acknowledge this, we will be on the way toward a new tax policy that guarantees Americans the fair and efficient tax laws they need and deserve.

In closing, Mr. President, let me once again stress that we will not restore economic health, nor will we renew confidence in Government, without making difficult political choices. The mismatch between economics and politics that characterized last year's legislative agenda has brought about the present recession. Worse, that mismatch threatens to feed on itself until some big, perhaps even catastrophic, event jolts us into a painful confrontation with reality. The bill before us is not a cure-all. We should vote for it soberly for much more remains to be done.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I yield 3 minutes to the distinguished Senator from Iowa (Mr. GRASSLEY).

Mr. GRASSLEY. I thank the chairman for yielding.

Mr. President, the Senate has labored with great determination so that we might finally consider the Tax Equity and Fiscal Responsibility Act of 1982. No detail has escaped our analysis. We have literally dissected every section and subsection in order to determine the impacts of these many provisions on the Nation's economy. The chairman of the Senate Committee on Finance is to be commended for his persistence and care for details during the last several months when the various provisions were in the process of refinement.

I am pleased that I have been able to work closely with the chairman on the Dole-Grassley tax compliance sections of the act. There is perhaps no section in this legislation that has suffered more seriously from distorted or misguided analysis. The record on compliance should once again be clarified.

The goal of this entire section of the Tax Equity and Fiscal Responsibility Act is to step-up efforts to collect the taxes already owed the Government from those people who have been successful in avoiding paying their fair share. In my view, it is imperative that we collect taxes from those people before we start raising taxes on all honest taxpayers. This portion of the bill includes such measures as information reporting on stock and securities brokers, and on corporate bearer bonds and Treasury bills which currently escape such information reporting.

Additional provisions such as a penalty for substantial understatement of income tax, increased penalties for failure to supply a taxpayer identification number and for failure to file an income tax form all illustrate the growing awareness that increased efforts must be made to collect unpaid taxes.

Although a great deal of attention has been focused on the tip reporting requirement the conferees restored to this bill, I must stress the broadness of the measures contained within the section of the conference report that deals with compliance. It would be a great injustice to describe this bill as targeting the waiters and waitresses of the Nation while letting higher income individuals manipulate our tax code to their advantage. The problem with taxpayer compliance is not concentrated at the lower end of the income scale, and the provisions of this specific section of the bill reflect the need to collect taxes from upper-income individuals who are in a far better position to shelter their income from the tax collector.

I worked hard with Senator DOLE to come up with a compliance bill that was fair and that addressed a serious problem. It was very gratifying to see the Senate Finance Committee, and subsequently, the House and Senate Conferees include the bulk of the compliance provisions within the Tax Equity and Fiscal Responsibility Act. I encourage my colleagues to look beyond some of the unfavorable and largely unjust criticisms of the compliance measures, and examine the compliance section on its merits. I am hopeful they will agree with me that these changes are indeed necessary to restore faith to our tax system, and to return a sense of fairness to the tax code.

I am also pleased to note that the conferees agreed to include taxpayer protections in the conference report which I have long felt were necessary to prevent the Internal Revenue Service from unfairly inflicting financial harm to delinquent taxpayers in its efforts to collect overdue taxes. By accepting these provisions sought by my distinguished colleague from the House, Representative RANGEL, and myself, I feel that many of the major complaints echoed by delinquent tax-

payers have been heard by this body and addressed in a responsible fashion. During hearings which I conducted in the Subcommittee on Oversight of the Internal Revenue Service last year, testimony revealed the frequent sluggishness on the part of the IRS in releasing liens to private property of delinquent taxpayers after they finally pay off their overdue taxes. In this conference report, provisions were adopted which will require the IRS to release such liens within 30 days after payment of Federal tax obligations. In addition, concerns were expressed in my hearings as to irregularities in the sale of private property by the IRS to satisfy an individual's tax liability. Under the conference protections, the IRS will be required to notify delinquent taxpayers 10 days in advance by certified or registered letter before seizing or attaching a levy to private property. The time during which taxpayers can redeem property which has been sold by the Government to satisfy their tax liability will be extended, which I feel is particularly helpful during the current recession. Under the conference report provisions, taxpayers will be provided an extension from 120 to 180 days to repurchase such property. Lastly, these reforms will protect taxpayers from unjust financial loss when their property has been wrongfully sold by the IRS. Current law allows taxpayers to recover sale proceeds of property wrongfully sold by the IRS, however, such proceeds may be less than fair market value of the property. This measure will change current law to allow the taxpayer to collect the greater of the fair market value of the property or the sale proceeds.

I am also gratified to note that the conference report retains a provision based on legislation which I introduced earlier this year to encourage youth employment during the summer months. Youth unemployment has risen to 22 percent this summer, with unemployment among black youths approaching a straggering 45 percent, five times the rate of all workers. High youth unemployment threatens the economic survival of many families, epecially as the number of one-parent families with children continues to rise. This tax provision will offer employers who hire qualified, low-income youth a tax credit increase from the current 50 percent to 85 percent of the first $3,000 earned. Effective from May to Septemer, 1983, the credit is limited to qualified youths 16 or 17 years of age, who fill substantially full-time slots without displacing other workers. I feel that this tax credit expansion is a cost-effective way to increase the productivity of our workforce and assist our disadvantaged youth in entering the job market and economic mainstream.

One final provision I would like to comment on is the retention of the fixed purchase price option for farmers and farm implement dealers when engaged in leasing transactions. The farm implement provision was jeopardized during debate on the broader "safe harbor" leasing modifications, and I am grateful that the conferees realized the importance of the fixed purchase price option to this Nation's farm community. Under this provision, an individual will be allowed to lease $150,000 of farm implement equipment annually with a fixed purchase price option. This measure is exceedingly important to cash poor farmers in this time of economic uncertainty.

I could not have supported any bill which did not address the real culprit in our deficit problem, and that is the rapid increase in the level of Government spending. The bill reported out of the conference committee reduces spending over the next 3 years by $17.5 billion, which meets the budget reconciliation orders agreed to earlier by this Chamber. In my view, the spending reductions are essential to restoring faith to our financial markets and demonstrating that Congress is serious about reigning in the growth of Government. While the need to reduce spending is urgent, we must insure that any such reduction is done in a fair and evenhanded manner, and protects those individuals who merit Government assistance. I believe the bill reported out of the conference committee accomplishes both of those goals.

The conferees agreed to a number of provisions to restrain the growth in medicare expenditures, which have been increasing much faster than the rate of inflation over the past years. The bulk of the savings achieved in this bill are associated with the medicare program. Important strides were made in controlling the spiraling medicare costs attributable to the current hospital reimbursement procedures. These efforts to control costs are critical to the long-term health of Federal health programs. Furthermore, I am pleased to see that the conferees agreed to a provision requiring the Secretary of Health and Human Services to develop a plan for prospective payments for hospitals and skilled nursing facilities.

Various changes in the medicaid, AFDC, and supplemental security income programs also signal gains in streamlining the multiplying expenditures for health and income maintenance programs. The conferees took great efforts to maintain benefits for deserving individuals, and also included provisions targeted to encourage a more efficient administration of State and Federal programs.

One final portion of the bill on which I would like to comment is the extension of unemployment benefits for those unemployed workers whose entitlement to State benefits will shortly expire. This is no doubt a grave time in history for many American workers, and I am glad the conferees found it appropriate to extend some relief to those individual. It is a serious problem, and the conferees are to be commended for recognizing and addressing the problem in an expeditious manner.

I am sure all of us have some reservations about specific portions of the bill. However, given our current economic condition, action needs to be taken, and taken immediately. This bill demonstrates that Congress is serious about narrowing our deficit through a combination of spending reductions and tax reform measures.

I support this conferense report, and urge all of my colleagues on both sides of the aisle to do the same.

Mr. President, I would like to spend the rest of my 2 minutes visiting with the chairman of the committee on the flat-rate tax resolution that was left out in the conference committee. I have a letter I ask unanimous consent to have printed at this point from Secretary of the Treasury Donald Regan, stating that they are involved in a study and that they expect that to be completed very quickly, and that it should be completed in time for the hearings that we are going to have.

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

THE SECRETARY OF THE TREASURY,
Washington, D.C. August 19, 1982.

Hon. CHARLES GRASSLEY,
U.S. Senate,
Washington, D.C.

DEAR CHUCK: I am aware of your interest in the flat tax concept and I ageee with you that this is a matter that must be studied very carefully.

I wanted to let you know that the Department is currently studying a simplified income tax system. This study will take into account the complexities of the existing income tax system with a view toward expanding the current base and lowering present rates.

I will be pleased to share with you and your colleagues the results of this study upon completion.

With best wishes.

Sincerely,

DONALD T. REGAN.

Mr. GRASSLEY. Mr. President, may I ask, the Senator does have hearings scheduled?

Mr. DOLE. Yes, Mr. President.

Mr. GRASSLEY. Just because the flat-rate resolution was left out does not signify any less interest in moving ahead with it, as chairman of the committee, or any less emphasis as far as the Secretary of the Treasury completing that study?

Mr. DOLE. No, Mr. President. In fact, we had hoped to have hearings early in September, but now we have been on this bill for some time. Cer-

tainly by the end of September, we will be having hearings in our committee on the flat-rate tax.

There were two studies, as I recall, in conference and it was determined to eliminate both studies, particularly the flat-rate study, because we were assured by Treasury that we would have it in any event; it would be available in time for the hearings in September.

Mr. GRASSLEY. I thank the chairman. I want him to know how much I appreciate his leadership in that area and the extent to which he has been helpful to me in helping to incorporate some of my ideas into this tax legislation.

Mr. DOLE. Will the Senator yield?

Mr. GRASSLEY. Yes.

Mr. DOLE. I compliment the Senator from Iowa, because when you start adding up the dollars in new revenues, there are about $30 million in compliance.

As I recall, in March, the Senator from Kansas and the Senator from Iowa had a press conference. I am sure a lot of people left that press conference saying, "Well, this is another dog-and-pony show for home consumption." Yet here, some months later, we have most of those compliance provisions in this bill. If this conference report is adopted, they are going to become effective. I thank the Senator from Iowa for his role in that effort.

Mr. GRASSLEY. I thank the Senator. I yield back the remainder of my time.

Mr. LONG. Mr. President, I yield 2 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I rise today to announce my support for the conference committee's report on H.R. 4961, the Tax Equity and Fiscal Responsibility Act. Mr. President, the tax bill has presented me with one of the most difficult decisions I have had to make since entering the Senate.

Each of us must decide what we believe is right.

The people of Montana sent me here, giving me their trust, to exercise my best judgment.

These are extraordinary times that demand extraordinary action. A great writer once suggested that the hotest places in hell are reserved for those who, in times of great crisis, maintain their neutrality.

These are times of crisis.

Over 10 million Americans, including 50,000 Montanans, are out of work.

We face $100 billion deficits. High-interest rates are crippling the economy.

In some parts of Montana, which depend on the housing industry, unemployment has reached 30 percent.

Mr. President, to reduce the deficit and lower interest rates, we must make difficult decisions. Adoption of this conference report will help reduce interest rates and help restore American confidences in the economy.

Congress needs to make responsible, but not Draconian, cuts in spending.

Congress needs to take a good hard look at the tax code, a duty we cannot escape, no matter how great the temptation to take the easy way out.

Look at the facts:

The tax code is littered with a hodgepodge of subsidies, loopholes, credits and shelters. In 1967 there were some 50 of these provisions. Today there are over 100, and the cost to the Treasury is $270 billion a year.

By 1987, according to the Joint Tax Committee, the cost will rise to an astounding $450 billion a year.

That is real money. That is the stuff budget deficits are made of. That is the stuff high-interest rates rates are made of. That is the stuff unemployment is made of.

Moreover, there has been an alarming growth in the underground economy. According to the IRS, in 1980, some $90 billion in taxes were owed but not paid. Tax cheating is on the rise, and the hard-working, law-abiding people have a right to be angry.

We do not have a Republican economy, or a Democratic economy, but an American economy.

We do not have unemployed Democrats or unemployed Republicans, but unemployed Montanans and Americans.

This bill is not a panacea. It is one of many difficult steps that must be taken.

Montanans understand the problem. They want action, and will sacrifice, as long as the sacrifice is fair. I believe the tax bill is one important step on the long road to economic recovery. The people outside Washington, Mr. President, are confused. They are the people who sent us here and have waited patiently for action, but their patience has run out.

Mr. President, over the past several months, I have listened to the arguments of various groups who oppose one portion or another of this legislation. I have sympathized with many and agreed with some. Needless to say, there are portions of the tax bill that I do not like. But no legislation is perfect.

By and large, I believe that the bill is fiscally responsible. I believe it is a sound beginning to meaningful tax reform. I believe it is necessary, however politically difficult, for the good of the nation.

THE TAX PROVISIONS OF H.R. 4961

Half of the $98 billion in revenue raised by this bill comes from eliminating abusive tax loopholes. Safe harbor leasing—the selling and buying of corporate tax breaks—is one obvious example. Leasing is sharply restricted next year, and it is repealed altogether as of January 1, 1984.

Another 30 percent of the bill's revenues come from improved tax compliance measures. The bill picks up revenue from people who legally owe taxes but do not pay them. If we are to make the tax code simpler and fairer for everyone, then we must insure that those who legally owe taxes pay them. This bill is a big step in that direction.

Roughly 17 percent of the bill's revenues will come from individuals. However, most of that will come from high-income taxpayers. Less than 10 percent of the revenue burden of this bill will come from middle-income taxpayers. Better than 90 percent of the revenues raised in this bill will not come from the wallets of middle-income Americans.

Mr. President, this bill is a step toward meaningful tax reform. And I hope that we will contiune to make the Tax Code simpler, fairer, and more equitable for all Americans. In that way, we can begin to restore fairness to the Tax Code and trust in the Government.

This bill is fiscally responsible. It is a substantial and necessary moderation of President Reagan's economic program. It eliminates many of the abusive and unintended loopholes included in last year's tax act. It will reduce the projected deficit. At the same time, it does not cut back on legitimate incentives for economic investment.

Mr. President, I shall have more to say on this bill and on tax reform in the coming days and weeks. In the meantime, I ask unanimous consent that a summary of the tax provisions in H.R. 4961 that appeared in the New York Times be inserted at the end of my statement.

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

(See exhibit 1.)

MEDICARE

Mr. BAUCUS. Mr. President, I have devoted a great deal of time and energy this year trying to prevent cuts in medicare benefits and to enacting badly needed reforms in this program.

Health care costs are rising at an astronomical pace. So is the cost of the medicare program. The question is why? Is it due to spendthrift senior citizens? Are the elderly being wasteful and causing these costs to rise? No.

The real reason is that hospital costs are rising. Doctors' fees are increasing. The cost of medical equipment, drugs, laboratory tests, and supplies is skyrocketing.

Since early this year, I have been waging a battle to defeat proposals that I thought would not solve the fundamental causes of the price escalation in the medicare program. I fought these proposals in the Finance Committee, on the floor, and in conference.

Mr. President, I am still unhappy about the cuts in medicare in this bill. Federal medicare expenditures will be cut $13.2 billion over the next 3 years, including provisions that will cost beneficiaries $1.6 billion.

I believe my efforts saved beneficiaries millions of dollars, but I'd be much happier if I had defeated several proposals in this bill. As it is, however, we were able to remove some very objectionable provisions.

We eliminated the increase in the part B deductible. The part B premium increase was sunseted after 1985, and the home health copayments provision was also eliminated.

Congress also committed more money to auditing medicare claims. A relatively small investment in auditing pays big dividends in increased savings and improved efficiency.

Now we must make sure sufficient funds are appropriated to carry out our intentions.

Section 101 of the bill also is encouraging. The changes in the way medicare reimburses hospitals are painful—but necessary to contol outlays for hospital care. I look forward to working with Senator DURENBURGER in the next few years to develop prospective rate reimbursement for medicare.

In the past, small hospitals have been penalized by the medicare reimbursement system. Section 101 specifically exempts small rural hospitals with fewer than 50 beds from these section 223 limits. Thus, our Nation's small rural hospitals, which have proportionately higher fixed costs than large urban or metropolitan hospitals, will not be threatened.

I admit there is a lot in this bill that I oppose. All beneficiaries are going to pay increased costs. But I am pleased that the cuts are not as bad as those first proposed by President Reagan and adopted by the Senate Finance Committee.

The increase in the premium and other costs is the price we pay to avoid such provisions as delaying initial eligibility for medicare, physician reimbursement provisions that would have had a terrible impact on beneficiaries, increasing the part B deductible, home health copayments, and other proposals that were rejected by the Finance Committee, the Senate or the conferees.

I believe the benefits of supporting this bill outweigh the costs. That is why I have decided to vote for this bill.

EXHIBIT 1

[From the New York Times, Aug. 15, 1982]

WASHINGTON, Aug. 15—Following are the main provisions of the $98.3 billion tax bill agreed to by House and Senate conferees early this morning. The bill, which will affect individual taxpayers and businesses differently, remains to be passed by both the House and the Senate.

I. Effects on Individuals

Withholding on interest and dividends: Beginning July 1, 1983, financial institutions, and other businesses will be responsible for withholding 10 percent of interest and dividends earned by individuals. Exceptions would be made for individuals receiving less than $150 a year in interest and for persons 65 or older who paid less than $1,500 of tax in the previous year (or $2,500 on a joint return).

This provision is expected to raise nearly $12 billion in revenues over three years, the most significant part of the Government's efforts to improve tax payments under existing laws.

Capital gains: The conference rejected Senate efforts to shorten the capital gains holding period to six months and to permit indexing of investment assests for tax purposes. The holding period will remain one year.

Medical deductions: Beginning next year, taxpayers will no longer be permitted to take a separate deduction for premium payments for health insurance, although those costs would still be included in the calculation of total medical costs. Under current law, taxpayers who itemize their deductions could deduct one-half of their premium payments, up to a maximum deduction of $150.

Also effective in 1983, deductions for medical costs would be allowed only to the extent that they exceed 5 percent of adjusted gross income, up from the 3 percent level that now exists. However, the requirement that costs of prescription drugs must exceed 1 percent of adjusted gross income to be deducted would be removed in 1984, allowing these costs to be added to the pool of other medical costs.

These changes will save an estimated $3.8 billion over the next three years.

Casualty deductions: Uninsured casualty lossed not involving business would be deductible begining in 1983 only to the extent that the total of losses exceeds 10 percent of adjusted gross income. Furthermore, each casualty loss may be deducted only to the extent that it exceeds $100, as under current law. This measure is expected to bring in $1.4 billion in revenues over three years.

Individual minimum tax: Under current law, high income individuals who would otherwise pay little or no tax are subject to two different minimum taxes. The bill would repeal the so-called add-on minimum tax, and it would expand the existing alternative minimum tax.

Under the alternative minimum tax, the definition of income to be taxed would be expanded to include items that were taxed under the add-on tax and also benefits gained from special tax treatment of incentive stock options, interest and dividends not taxed under the $100 exclusion and the untaxed interest earned on "All Savers" certificates.

For individuals, the tax rate to be applied to income subject to this tax would be 20 percent on all amounts greater than $30,000 (for couples filing joint returns, $40,000).

Public utility dividend reinvestment plan: The conference rejected Senate efforts to repeal the favored tax treatment applied to the reinvestment of utility dividends.

Excise taxes on cigarettes: The Federal tax on cigarettes, which was last increased in 1951, would rise to 16 cents a pack, beginning in 1983, from 8 cents currently. This would increase Federal revenues by $5 billion over the next three years.

Excise tax on telephone services: The federal tax on telephone services, currently 1 percent, would be tripled to 3 percent for 1983–85 and then fall to zero. This would raise $2.8 billion over three years.

Pensions: The bill would change the overall limits on contributions and benefits available under pension plans. For defined benefit plans, the maximum dollar limit on benefits would be lowered to $100,000 from $136,425. The maximum sum that could be contributed to defined contribution plans would be reduced to $30,000. These new limits, first effective in 1983, would not be increased until 1986 at which point they are to be adjusted for cost-of-living increases.

On Keogh plans for the self-employed, the maximum permitted contribution would be increased gradually from the present $15,000 limit. The figure would rise to $20,000 in 1983, $25,000 in 1984 and $30,000 in 1985. However, tougher rules governing loans from pension plans would also be instituted.

II. Effects on business

Business meals: The conference rejected the Senate's proposal that businesses be allowed to deduct only half of the costs of most business meals.

Restaurant tips: Restaurants with more than 10 employees would be required to report their gross income to the Internal Revenue Service as well as figures for charge receipts and the tips recorded on them. Employees would generally be assumed to earn tips equivalent to 8 percent of the restaurants' income. This provision would take effect on April 1, 1983.

Accelerated depreciation: The bill would repeal the further acceleration of depreciation scheduled for 1985 and 1986, thus dropping a major provision of last year's tax bill.

The savings to the Government will be $1.5 billion in 1985 as well as $10 billion in 1986 and $18 billion in 1987.

Investment tax credit: Businesses are currently allowed to depreciate the full amounts of their investments, even where they also benefit from tax credits. Under the new provision, effective in 1983, the amount that can be depreciated would be reduced by one-half of the amount of available credits. This would include investment tax credits, energy credits and credits for certified historic structures.

An investment tax credit of 10 percent, for example, would mean that a business could no longer depreciate 100 percent of the cost of the project, but only 95 percent (100 percent less one half of 10 percent).

Businesses would be allowed to retain full depreciation, however, if they are willing to reduce the tax credit they are using by 2 percentage points. This will primarily benefit businesses that are currently unable to use their investment credits.

There will be transition rules to protect some companies that have already ordered equipment.

Also, beginning in 1983, the amount of tax liability that could be offset by investment tax credits would be reduced. Taxpayers would be allowed to apply their investment tax credits against the first $25,000 of tax liability plus 85 percent of the amount greater than $25,000. Currently, 90 percent is allowed.

These provisions would save the Government $5.1 billion over three years.

"Safe harbor leasing": Provisions in last year's tax law that permit companies to sell unused tax credits to other companies would be repealed after 1983. Before then, changes would be made reducing the value of the tax benefits. Also, tax treatment of

traditional leasing, known as leveraged leasing, would be liberalized beginning in 1984.

Acceleration of corporate tax payments: In making quarterly estimated payments of taxes, businesses would be required to reach 90 percent of their liability for the year, rather than the 80 percent level now required. Companies would be penalized at only three-fourths of the normal penalty rate on amounts that pass the 80 percent mark but fail to reach 90 percent. To ease the burden on companies with large seasonal variations in income, a company would not be penalized if its payments were in line with the average of its annualized income over the previous three years. The measure, which takes effect beginning in 1983, would raise more than $4 billion.

Construction period interest and taxes: The bill would require corporations to capitalize construction period interest and taxes for nonresidential real property. These capitalized costs would be amortized over a 10-year period. This provision would raise $3 billion over three years.

Completed contracts: Companies would be sharply restricted in their ability to defer taxes on longer-term contracts. The Treasury has been instructed to issue regulations. This provision, aimed mainly at defense contractors and the aerospace industry, would raise $5.7 billion over three years.

Independent contractors: The bill would establish tests to determine whether employees are independent contractors. Independent contractors are not subject to withholding on income and also benefit from being treated as self-employed for Social Security taxes. Direct sellers and real estate agents would be specifically excepted from this rule.

Corporation tax preference cutback: Certain corporate tax preferences would be cutback by 15 percent. These include percentage depletion for coal and iron ore, bad debt reserves for financial institutions and interest on debt used to carry tax-exempt securities acquired after 1982.

Mergers and acquisitions: Certain tax benefits that are currently available when two companies merge and their assets are restructured would closed off. Partial liquidation of assets often results in capital gains or losses to shareholders. Now the company doing the liquidation does not have to recognize these gains or losses. Under the new rules, which take effect Sept. 1, 1982, the corporation would have to recognize these gains or losses, with some exceptions. Some mergers already in progress would be protected from these new rules.

Tax-exempt bonds: Issues of tax-exempt bonds will be required to file quarterly reports to the Internal Revenue Service. Furthermore, owners of property financed by tax-exempt bonds will not be eligible for accelerated depreciation of their property. There would be some exceptions, however, for institutions such as nursing homes and municipal waste disposal facilities.

Also, beginning in 1986, it would no longer be possible to issue "small-issue" tax-exempt industrial development bonds, which had allowed many businesses to finance plants on a tax-exempt basis.

The bill would loosen some of the restrictions on mortgage revenue bonds. Purchasers of homes financed through these bonds would be permitted to buy slightly more expensive homes than currently allowed. Also, tax-exempt bonds could be used to finance cooperatives and other multifamily dwellings.

Life insurance taxation: The tax breaks currently available to life insurance companies through the use of co-insurance, in which one company sells part of its risk to another company, would be ended. This would be retroactive to Jan. 1, 1982.

Original issue discount bonds (including zero-coupon bonds): The tax advantages now available on these bonds would be eliminated. Companies issuing these bonds would be forced to reduce the rate at which they take tax deductions for interest paid to bondholders. The rule would apply to bonds issued after July 1, 1982, but some issues after this date would be exempt if a binding commitment existed.

Puerto Rico: The conference generally accepted the Treasury's proposal on taxation of companies operating in Puerto Rico. The measure would limit the tax advantage available to these companies, but by less than the Senate had proposed.

Generally, companies would still be allowed to shelter investment income earned in Puerto Rico (mostly interest payments), but the amounts that could be sheltered would be reduced. Most companies, however, would not be affected by the tighter limit.

Also, the operating income that these companies could protect from United States taxes by transferring patents and similar intangible property to Puerto Rico would be substantially reduced, particularly in the pharmaceutical and electronics industries.

These changes, which would be effective January 1983, would raise $1.2 billion over three years, compared with the $2.7 billion the Senate proposal would have raised.

Alaskan oil: Oil companies bringing oil out of Alaska would be forced to pay higher "windfall profit" taxes on that oil, because a provision known as the TAP adjustment would be eliminated. This adjustment involves the calculation of the cost of moving the oil from the North Slope by the Trans-Alaska Pipeline to the Alaska port of Valdez.

Foreign oil and gas income: A tighter fence would be place around income from oil and gas extracted in foreign countries so that excess foreign tax credits could not be used against taxes on other foreign income.

Targeted jobs tax credit: Tax credit for hiring the hard-to-employ would be extended for two more years and would apply to individuals who begin work before 1986.

Mr. BAUCUS. Mr. President, I think we should support this bill for one simple reason. That is because the country needs it. Interest rates are coming down. The stock market is beginning to go up. American confidence is beginning to rise. I think it is imperative. In fact, I think we in the Senate have a duty to bite the bullet, swallow the pill, and do what we think is right for the good of the country.

I compliment my friends on the other side of the aisle because they are, in the main, swallowing their pride to some degree, biting that bullet, by passing the bill which does, in the main, raise some taxes in an election year. It is very much against the grain of Members on the other side of the aisle.

This bill, too, is a tacit admission that we need a midcourse correction in Reaganomics, that there are some problems with Reaganomics. In fact, the President's strong support of this bill is an admission that we do need changes. I compliment him for noticing that and acting on that conviction.

Mr. President, we on our side of the aisle, too, should be courageous. We should join in the bipartisan effort. We should support the President. We should not vote against this bill just because the President is supporting it and those on the other side of the aisle have, in the main, fashioned this bill. There are some problems with the bill, there are some other problems, but it is my judgment that this bill will help bring interest rates down.

Further, it will give the right signal to the country. It will show Americans that we in Congress are acting courageously, in a bipartisan way, we are not playing politics and in fact, we are trying to get our country moving again.

Conversely, if we do not pass this bill, we will see that stock market take a nosedive that significantly surpasses the increase in the market that has taken place in the last couple of days.

I suggest, I urge, I implore the Members of the Senate to vote for the bill, because I think it is the right vote. If we search our consciences, we will know it is best for this country.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield to the Senator from Rhode Island.

Mr. CHAFEE. One minute, Mr. President.

I commend the chairman of the Finance Committee and commend the House for approving this conference report. I hope the Senate will approve this conference report. It is the right thing to do.

As the distinguished Senator from Montana mentioned, what are the alternatives? Suppose we do not pass this.

Mr. President, I hope all my colleagues will join in support of the conference committee.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, at this point in the RECORD, I ask unanimous consent to have printed a summary of the spending provisions and a summary of the individual income tax provisions of this measure so that those Members who will be seeking information and other Members who consult the CONGRESSIONAL RECORD for information will have a summary in brief form of the spending reductions as well as the individual tax revenue measure.

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

SUMMARY OF SPENDING REDUCTION PROVISIONS

1. HEALTH PROVISIONS INCLUDED IN THE CONFERENCE AGREEMENT

Medicare

Modify coverage of the working aged.—Employees would be required to offer employees aged 65 through 69 the same health benefit plan offerd to younger workers and medicare would be secondary payor to these plans.

Reimburse inpatient radiology and pathology services at 80 percent of reasonable charges.—The special 100 percent reimbursement rate for inpatient radiology and pathology services would be eliminated. Such services would be paid for on the same basis as other physicians' services.

Repeal routine nursing salary cost differential.—The differential factor paid to hospitals and skilled nuring facilities for inpatient routine nursing salary costs would be eliminated.

Payments for services of provider based physicians.—The Secretary of HHS would be directed to prescribe regulations which would distinguished between the services of hospital-based physicians which are covered under medicare on a reasonable cost basis and those which ae reimbursable on the basis of reasonable charges; and establish standards of reasonableness to be applied in each case.

Hold part B premium constant as a percentage of program costs.—The part B premium would be increased on July 1, 1983, and on July 1, 1984, to a level which will result in premium revenues equal to 25 percent of program costs for aged beneficiaries.

Limit medicare reimbursement to hospital.—The current limits on medicare reimbursement to hospitals (i.e., the section 223 limits) would be extended and modified to include ancillary operating costs and special care unit operating costs; annual increases in the overall operating costs per case would be limited (for a period of not more than 3 years); the Secretary of HHS would be directed to develop methods under which hospitals, skilled nursing facilities and other providers could be paid on a prospective basis; the Secretary, at the request of a State could allow medicare payment to be made under a cost control system in the State.

Require certain medicare regulations.—The Secretary of HHS would be required to issue regulations to (a) eliminate the private room subsidy for hospitals, (b) establish single reimbursement limits for skilled nursing facility and home health agency services; (c) eliminate duplicate overhead payments for outpatient services.

Audit and medical claim review.—The medicare contracting budget for fiscal year 1983, 1984, and 1985 would be supplemented by $45 million in each year to be spent specifically for audit and medical review activities.

Temporarily delay the periodic interim payments (PIP).—Periodic interim payments to hospitals for the latter part of September 1983 would be delayed until October 1983. There would be a similar deferral of PIP payments from September to October of 1984.

Assistants at surgery.—Reimbursement for assistants at surgery in hospitals where a training program exists in that specialty would be prohibited, except in the case of exceptional circumstances.

Ineffective drug provision.—Payments for ineffective drugs under medicare part B and under medicaid would be prohibited.

Medicare payments to HMOs.—Current requirements for contracting with health maintenance organizations (HMOs) would be modified by authorizing prospective reimbursement under risk sharing contracts with HMOs and other organizations at a rate equal to 95 percent of the Adjusted Average per Capita Cost (AAPCC).

Technical corrections to Omnibus Budget Reconciliation Act of 1981.

Hospice Care.—Authorizes coverage for hospice care for terminally ill medicare beneficiaries with a life expectancy of 6 months or less.

Coverage of extended care services without regard to 3-day prior hospitalization requirement.—Authorizes the Secretary of HHS to eliminate the 3-day prior hospital stay requirement for skilled nursing facility coverage at such time as, through reimbursement changes or other adjustments, he determines that such action will not lead to an increase in program costs and that it will not alter the acute care nature of the benefit.

Prohibiting recognition of payments under percentage arrangements.—No cost incurred under a contract would be considered reasonable if determined as a percentage (or other proportion) of the provider's reimbursement. The provision would not apply where costs incurred under a percentage arrangement were subject to the limitation on reimbursement of provider-based physicians established elsewhere in the conference agreement.

Interest charges on overpayments and underpayments.—Requires interest payments with respect to medicare overpayments.

Similarly, the medicare program would be required to pay providers interest on underpayments.

Prohibiting payment for Hill-Burton free care.—Requires the Secretary to provide, by regulations, that the costs incurred by a hospital or SNF in complying with its free care obligation under the Hill-Burton Act would not be considered reasonable for purposes of medicare reimbursement.

Prohibiting payment for anti-unionization activities.—Prohibits medicare reimbursement for costs incurred for activities directly related to influencing employees respecting proposed unionization.

Eliminating "lesser of cost or charges" provision.—The lesser of cost or charges provision of current law would not apply to a class of providers if the Secretary determines and certifies to Congress that elimination of the provision will not increase medicare payments to that class of providers.

Extending medicare proficiency examination authority.—Extends to September 30, 1983, the authority of the Secretary of HHS to conduct a program to determine the proficiency of health care personnel, including clinical lab personnel, who do not meet certain formal education requirements.

Retroactivity of regulations regarding access to books and records.—Section 952 of P.L. 96-499, the Omnibus Budget Reconciliation Act of 1980, allows the Secretary of HHS or Comptroller General to have access to the books and records of subcontractors who supply hospitals or other providers with goods and services valued at $10,000 or more over a 12-month period. The provision would prohibit the regulations from being applied retroactively unless such regulations are issued in final form prior to January 1, 1982, preceded by a comment period of no less than 60 days.

Private sector utilization review.—Requires the Secretary of HHS to undertake an initiative to improve medical review by intermediaries and carriers under medicare and to encourage similar review efforts by private insurers and other private entities.

Special part B enrollment without penalty.—Requires a special open enrollment period under medicare part B for merchant seamen.

Medicaid

Allow nominal medicaid copayments.—The prohibition against nominal copayments for mandatory services to categorically eligible medicaid recipients would be repealed except in the case of certain inpatient hospital and ambulatory services for children and pregnant women, for services provided to inpatients in medical institutions who are required to spend, except for a personal needs allowance, all their income for medical expenses, for categorically needy persons enrolled in an HMO, and for emergency services and family planning services.

Modify lien provision.—States would be permitted under certain circumstannces to attach the real property of medicaid recipients who are permanently institutionalized in nursing homes or other long-term care medical institutions.

Reduce medicaid error rates.—States would be required to reduce their medicaid error rates to 3 percent.

Optional medicaid coverage of disabled children at home.—States would be allowed to cover services for certain disabled children who are currently eligible only if institutionalized. The provision addresses cases like that of Katie Beckett, where previcusly medicaid was not available if the child received care at home.

Technical corrections to Omnibus Budget Reconciliation Act.

Six-month moratorium on nursing home regulations.—Prevents the regulations currently proposed by the Secretary regarding changes in survey and certification requirements for nursing homes from going into effect for six months.

Medicaid funding for American Samoa.—Provides Federal funding for medicaid servıces in American Samoa.

Utilization and quality control peer review

Contract for utilization and quality control peer review.—The Professional Standards Review Organizations (PSRO) program, would be repealed. The Secretary would be required to enter into contracts with peer review organizations for an initial period of 2 years, renewable biannually, for the purpose of promoting effective, efficient, and economical delivery of health care under medicare.

II. SENATE HEALTH PROVISIONS NOT INCLUDED IN CONFERENCE AGREEMENT

Medicare

Senate provisions not included in the conference agreement.—The conference agreement does not include the provision relating to the one month delay in entitlement to medicare benefits; the five percent copayment for home health services; the increase in the part B deductible; the limitation on the physician fee economic index; the judicial review of decisions by the Provider Reimbursement Review Board.

Medicaid

Senate provisions not included in the conference agreement.—The conferees did not agree to the following proposals; a provision to eliminate Federal matching for States paying the medicare part B premium for

joint medicaid/medicare eligibles; a provision to allow States the option of continuing medicaid coverage for working families who are made ineligible for AFDC as a result of various earned income changes made by the Omnibus Budget Reconciliation Act of 1981.

AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROVISIONS

Rounding of eligibility and benefit amounts.—States would be required to round both their need standards and actual monthly benefit amounts to the next lower whole dollar.

Proration of first month's benefit.—States would be required to pay benefits no earlier than the date an application is filed. Therefore, the AFDC benefit would be prorated from the date of application.

Elimination of uniformed services as basis for AFDC eligibility.—Absence from the home solely because of uniformed services would be excluded as a basis for AFDC eligibility.

Job search.—States would be given the option of requiring individuals applying for AFDC benefits to participate in job search while the application is pending. Continued job search would be required, after the application becomes effective, for not more than a total of 8 weeks each year (or 16 weeks in the first year).

Proration for shelter and utilities.—States would be allowed to prorate the portion of the AFDC grant for shelter and utilities for AFDC families living in households with other individuals.

Reduction of Federal match for payment errors.—The allowable error rate for AFDC would be 4 percent in fiscal year 1983, 3 percent in fiscal year 1984, and 3 percent in fiscal year 1985.

Exclusion from income of certain States payments.—States would be allowed to exclude from calculations of AFDC benefit amounts any payments made solely from State funds that are designed to compensate for lost income in the period before the new benefit amount can be calculated and paid.

Extension of time for States to establish a work incentive demonstration program.—States would be allowed two additional years in which to exercise their option to operate a WIN demonstration program (as provided in the 1981 Reconciliation Act).

Accounting method for income from certain state payments.—States would be allowed to continue to exclude from countable income, both in the month of receipt and in future months, certain special payments made by States to AFDC households.

Technical amendments to Title XX Social Services and Foster Care Program.—Several technical corrections to social services and foster care provisions of Public Law 97-35 were made.

The following proposals were not included: sanction for termination or reduction of employment; the inclusion and exclusion of specified individuals' needs and income (continuing eligibility of a parent, eligibility of a child, and counting income of unrelated persons); repeal of the emergency assistance program; and the treatment of earnings (earnings disregards, earnings from CETA youth jobs, gross income limitation, and the treatment of the earned income tax credit).

CHILD SUPPORT ENFORCEMENT PROVISIONS

Fee for services to non-AFDC families.—The law in effect prior to Public Law 97-35 would be restored which allows States to charge a reasonable fee for a non-AFDC collection and retain from the amount collected an amount equal to administrative costs not covered by the fee. As a State option, authority would be retained for States to collect from the parent who owes child or spousal support an amount to cover administrative costs, in addition to the child support payment.

Allotments from pay for child and spousal support owed by members of the uniformed services on active duty.—Allotments would be required from the pay and allowances of any member of the uniformed services, on active duty, when he fails to make child (or child and spousal) support payments.

Reimbursement of State agency in initial month of ineligibility for AFDC.—States would be permitted to reimburse themselves for AFDC that would have already been paid for months before the support was collected and known to make the family ineligible. Thus, the family would not receive double payment for the same month, both in the form of AFDC and through receipt of the support collection.

Reduction in certain Federal payments under the Child Support Enforcement Program.—The Federal matching rate for State administrative costs would be reduced from 75 percent to 70 percent, effective October 1, 1982. Effective October 1, 1983, State child support incentive payments would be reduced from 15 percent to 12 percent and the Federal match for the costs of court personnel who perform child support enforcement functions would be repealed.

Technical amendments to Child Support Enforcement Program.—Several technical corrections in the Child Support Enforcement provisions contained in P.L. 97-35 were made, including certain inaccurate references.

SUPPLEMENTAL SECURITY INCOME PROVISIONS

Prorate first month's benefit based upon date of application.—The first month's SSI benefit would be prorated from the date of application or the date of eligibility, whichever is later.

Round SSI eligibility and benefit amounts.—SSI monthly benefit and income eligibility amounts would be rounded to the next lower whole dollar. Rounding would take place after the cost-of-living adjustment had been made.

Coordination of SSI and OASDI cost-of-living adjustments.—The SSI and social security (OASDI) benefit increase would be coordinated so that at the time the cost-of-living adjustment is made, the recipient's SSI benefit would be based on his or her social security payment in the same month. Also, whenever the Secretary judges there to be reliable information on the recipient's income or resources in a given month, the SSI benefit in that month would be based on that information.

Phase out "hold harmless" protection.—Federal hold harmless payments would continue to be phased out, being reduced to 40 percent of what they would otherwise be in 1983, to 20 percent in 1984, with no "hold harmless" payments made in 1985 and future years.

Exclusion from resources of amounts set aside for burial expenses.—For purposes of determining SSI eligibility, burial spaces for an individual or members of his immediate family (subject to limits prescribed by the Secretary) would be excluded from countable resources. Burial funds of up to $1,500 each for the individual and his or her spouse would also be excluded if specifically set aside for this purpose. Such funds would reduce the value of excludable life insurance policies as would any amounts held by the individual in an irrevocable burial contract or other arrangement made to meet burial expenses.

The Secretary would be authorized to exclude, as income and resources, increases in the value of: (1) amounts set aside for burial expenses because of interest earned, and (2) pre-paid burial arrangements.

SSI pass-through requirement.—In order to meet mandatory pass-through requirments, a State would be allowed to shift from the aggregate spending option to the State supplementation payment level option so long as the State does not decrease its State supplementation payment below the level in the previous December.

Treatment of unnegotiated SSI checks.—The authority to credit States for unnegotiated SSI benefit checks which are "State supplementation only" checks would be clarified.

A provision to allow recovery of SSI overpayments from benefits payable under other programs administered by the Social Security Administration (Black Lung and OASDI benefits) was not included.

UNEMPLOYMENT COMPENSATION PROVISIONS

Round unemployment benefits to next lowest whole dollar.—The Federal 50 percent matching share of extended unemployment benefits would not be available on that part of extended unemployment benefit payments which result from a failure on the part of the State to have a benefit structure in which benefits are rounded down to the next lower dollar.

Reed Act funds.—The authority for States to use Reed Act funds for administrative purposes would be extended for 10 years. The provision would also permit States that have used such funds to pay unemployment benefits to reestablish a Reed Act account.

Exclusion from FUTA of wages paid to certain students.—Wages paid to certain full-time students woud be exempt from FUTA tax: (1) students enrolled full-time in a work-study or internship program, regardless of age, for work that is an integral part of the student's academic program; and (2) students employed by certain summer camps (1983 only).

Extension of exclusion from FUTA of wages paid to certain alien farmworkers.—The provision of prior law that excluded wages paid to certain alien farmworkers from FUTA taxes, would be extended for two years, from January 1, 1982 to January 1, 1984.

Unemployment Compensation (UC) Financing.—The Federal unemployment tax (FUTA) wage base would be increased from $6,000 to $7,000 and the FUTA rate would be increased from 3.4 to 3.5 percent, effective January 1, 1983. (Employers in States with approved State programs would continue to receive the 2.7 percent offset credit under current law, so that the standard net Federal tax would be 0.8 percent.) Effective January 1, 1985, the FUTA tax rate would be increased to 6.2 percent (a permanent tax of 6.0 percent and a temporary extended benefit tax of 0.2 percent) with a credit of 5.4 percent. States that under current law allow certain specified industries to pay a non-experience based State unemployment tax rate that is below 5.4 percent, could provide for such industries to gradually reach the new 5.4 standard tax rate. Annual increases in the State unemployment tax rate for such industries could be limited to no less than 20 percent of the difference between the current rate paid by an employer and 5.4 percent.

Additional unemployment compensation financing provisions would:

(a) allocate 60 percent of total FUTA revenues to the Employment Security Administration Account (ESAA) and 40 percent of the extended Unemployment Compensation Account (EUCA) in the Federal Unemployment Trust Fund. Amounts allocated to EUDA which exceed the Federal share of extended benefit expenditures would be used to repay Federal general revenues advances. Upon repayment of the Federal general revenue advances to EUCA (and the elimination of the 0.2 percent temporary tax), 90 percent of FUTA revenues would be allocated to ESAA and 10 percent to EUCA, as under current law;

(b) permit States to make debt repayments out of their State trust fund accounts in lieu of further FUTA credit reductions provided the payments come from new funds generated through the State experience-rating system and/or benefit reductions;

(c) drop the present law additional credit reductions in the fifth year of delinquent State loans so that credit reductions continue at an additional 0.3 percent each year; and

(d) allow a State, under certain conditions, to reduce payments of interest on Federal unemployment loans to 25 percent of the amount due in any year, and thereby extend the payment of the total interest obligation over a four-year period. (Interest would be charged on any deferred amount.)

Treatment of certain employees of institutions of higher education.—States would be allowed to deny unemployment compensation benefits to non-teaching, non-research and non-administrative employees of colleges and universities during periods between academic years of terms, if there is a reasonable assurance that the individual will be employed by the institution at the beginning of the forthcoming academic year or term.

Short-Time compensation.—The Department of Labor would be directed to develop model legislation that can be used by States that wish to establish short-time compensation (or "worksharing") programs. The Department of Labor would also be directed to evaluate the operation and impact of any such programs implemented by the States and report its findings to Congress no later than October 1, 1985.

Additional weeks of unemployment benefits.—Additional weeks of unemployment compensation benefits would be provided to unemployed workers. Effective September 12, 1982, through March 31, 1982, up to 10 additional weeks of unemployment compensation benefits would be provided in States in which extended benefits (EB) are being paid or have been paid at any time since June 1, 1982. Up to 8 additional weeks of benefits would be provided in States in which the extended benefit trigger rate (i.e., the percentage of workers who are collecting State unemployment benefits) equals or exceeds 3.5 percent. Up to 6 additional weeks of benefits would be provided in all other States.

The additional benefits would be paid to unemployed workers whose entitlement to State benefits (i.e., benefit year) or extended benefits ended on or after June 1, 1982; and: (a) who have exhausted all State, or State and extended benefits to which they are entitled; (b) who have worked 20 or more weeks (or had the equivalent in wages as specified in the extended benefit program) prior to applying for State unemployment compensation; and (c) who continue to meet all other State and extended benefit requirements.

Benefit and administrative costs of the program would be financed out of Federal general revenues.

Taxation of unemployment compensation benefits.—The income threshholds limiting the inclusion of unemployment benefits in adusted gross income for Federal income tax purposes would be reduced from $20,000 to $12,000 for single taxpayers and from $25,000 to $18,000 for married taxpayers filing jointly. This change would apply to unemployment benefits paid on or after January 1, 1982.

The following proposals were not included: unemployment benefits for ex-servicemembers and interest on State unemployment loans transferred to the extended unemployment compensation account.

BRIEF SUMMARY OF TAX PROVISIONS OF H.R. 4961

A. INDIVIDUAL INCOME TAX PROVISIONS

Individual minimum tax: The bill consolidates the add-on minimum tax with the alternative minimum tax, adds several new tax preferences to the minimum tax, restructures the treatment of itemized deductions in the minimum tax, establishes a flat 20-percent tax rate and increases the minimum tax exemption from $20,000 to $30,000 for single persons and $40,000 for married couples.

Casualty loss deduction: The bill provides that nonbusiness casualty losses are only deductible to the extent they exceed 10 percent of adjusted gross income.

Medical expenses deduction: The bill increases the floor under medical deductions for 3 percent of adjusted gross income to 5 percent. It repeals the separate deduction for one-half of health insurance premiums up to $150. It eliminates the 1-percent-of-income floor on deductions for drugs and limits that deduction to prescription drugs and insulin.

B. BUSINESS TAX PROVISIONS

Corporate tax preferences: The bill scales back the following corporate tax preferences by 15 percent: percentage depletion for coal and iron ore, excess bad debt reserves of financial institutions, interest incurred by financial institutions to carry tax-exempt obligations acquired after 1982, DISC, section 1250 recapture on real estate, rapid amortization of pollution control facilities, intangible drilling costs of integrated oil companies (which would be amortized over 36 months) and mining exploration development costs. This cutback applies only to corporations.

Investment credit limit: The percent of tax liability which taxpayers may offset by the investment tax credit is reduced from 90 percent to 85 percent.

Basis adjustment for investment credit: The basis of assets, which is used to compute cost recovery deductions and capital gain or loss, is reduced by one-half of the amount of the regular, energy and historic structure investment tax credit.

Accelerated depreciation: The bill repeals the acceleration of depreciation currently scheduled for 1985 and 1986.

Construction period interest and taxes: Interest and taxes attributable to the construction period on nonresidential real estate owned by a corporation will be capitalized and written off over 10 years.

Safe-harbor leasing: The bill repeals safe-harbor leasing after 1983. For the period between July 1, 1982, and January 1, 1984, a restricted form of safe-harbor leasing is put into effect. After 1984, a liberalized form of prior law leasing is permitted.

Foreign oil and gas: The bill provides rules under which companies with foreign oil and gas extraction income will not be able to use tax benefits from that income to reduce their taxes on other kinds of oil-related income and under which oil companies will be taxed on the oil-related income of their foreign subsidiaries.

Possessions corporations: The bill contains a series of rules to limit the extent to which businesses can use operations in U.S. possessions to avoid tax by transferring intangibles to their possession subsidiaries and by allowing passive income to accumulate in a possession.

Industrial development bonds: The bill provides several restrictions on industrial development bonds including a sunset of the small issue exemption after 1986. Investments financed with IDBs would, with certain exceptions, be limited to straight-line depreciation.

Mortgage subsidy bonds: The bill liberalizes several of the rules restricting the issuance of mortgage subsidy bonds for both single family and multi-family houses.

Mergers and acquisitions: The bill makes a number of changes in the rules relating to partial liquidations, stock redemptions, stock purchases and other provisions relating mergers and acquisitions. These are designed to reduce the tax benefits which now arise from mergers and acquisitions.

Completed contract method of accounting: The bill revises the rules for determining which costs are currently deductible and which must be allocated to long-term contracts. Exceptions are provided for small construction contractors.

Original issue discount bonds: The bill eliminates the tax benefits associated with original issue discount, or zero coupon, bonds.

Coupon stripping: The bill eliminates the special tax treatment now afforded stripping of coupons from bonds.

Targeted jobs credit: The bill extends the targeted jobs credit for 2 years, makes the credit available for summer employment of economically disadvantaged 16 and 17 year olds, and makes several administrative changes.

Accelerated corporate tax payments: The bill increases the percent of tax liability which corporations must cover with estimated tax payments from 80 to 90 percent.

C. COMPLIANCE PROVISIONS

Withholding on dividends and interest: The bill imposes 10 percent withholding on dividends and interest, similar to the withholding which now applies to wages. Exemptions are provided for people over 65 whose income (not including exempt income like social security) is less than about $22,000 for a married couple, and there is an exemption at a lower level of income for individuals below 65.

Other compliance provisions: The bill includes a number of changes designed to improve taxpayer compliance. These include additional reporting requirements, changes in penalty provisions, modifications of voluntary withholding on pensions, partnership audits, and various taxpayer safeguards.

D. PENSION PROVISIONS

The bill reduces the limits on contributions to, and benefits from, tax-qualified pension plans. The limit for defined contribution plans is reduced from $45,475 to

$30,000 per year, and the limit on annual benefits in a defined benefit plan is reduced from $136,425 to $90,000. The indexing of these limits is suspended until 1986. Limits are placed on loans from retirement plans. Rules are provided to achieve parity between corporate and noncorporate pension plans. A $100,000 cap is placed on the estate tax exclusion for annuities. Finally, there are modifications in the rules relating to retirement plans for church employees, State judicial retirement plans, profit-sharing plans for disabled employees, and group trusts. A nondiscrimination rule is added for employer-provided group term life insurance.

E. TAXATION OF LIFE INSURANCE COMPANIES

The bill makes a series of changes in the tax treatment of life insurance companies and annuities. The Modco provisions of present law are repealed, and the formula for revaluing preliminary term reserves is changed. In addition, a number of provisions are adopted to reduce insurance company taxes for a 2-year stopgap period. There are also new rules relating to annuity contracts and (for 2 years) flexible premium contracts.

F. EMPLOYMENT TAX PROVISIONS

Independent contractors: The bill provides that real estate agents and direct sellers will be treated as self-employed persons and extends the moratorium and interim relief provisions relating to independent contractors.

Federal unemployment tax: The wage base subject to the Federal unemployment tax is increased to $7,000 and the Federal tax rate to 3.5 percent.

Medicare coverage of Federal employees: The bill subjects Federal employees to the hospital insurance portion of the social security tax and makes them eligible for Medicare.

G. EXCISE TAXES

Airport and airway taxes: The bill reauthorizes the airport and airway trust fund through 1987 and reinstates (with some modifications) aviation excise taxes which were reduced in 1980.

Telephone tax: The bill increases the telephone tax to 3 percent for the years 1983 through 1985 and terminates the tax after 1985.

Cigarette excise tax: The bill increases the cigarette excise tax by 8 cents per pack through September 30, 1985.

Windfall profit tax: The bill repeals the special windfall profit tax adjustment for transportation costs applicable to Alaskan oil and clarifies the exemption for Alaskan native corporations.

H. MISCELLANEOUS PROVISIONS

The bill contains the following miscellaneous changes in the tax law:

(a) Extension of the exclusion for National Research Service Awards.

(b) Tax-exempt status for certain amateur athletic organizations.

(c) Modification of the provision denying deductions for payments to foreign government officials.

(d) A technical change permitting use of annual accrual accounting for partnerships growing sugarcane.

(e) Modifications for the provision awarding reasonable attorneys' fees in civil tax cases where the government's position was unreasonable.

(f) Modification of the definition of a lending or financial business under the personal holding company tax.

(g) Additional refunds of the excise tax on buses.

(h) Modification of the rules under which veterans organizations may qualify for tax-exempt status.

(i) A revision of the rules limiting the disclosure of tax information in nontax criminal investigations.

(j) Authorization for the Secretary of the Treasury to vary the investment yield on savings bonds and to issue additional long-term debt.

(k) Relief for the Jefferson County Mental Health Center.

(l) Modifications of the New Jersey general revenue sharing allocation.

(m) Modifications to the Communications Act of 1934 facilitating the movement of VHF television stations to States which do not currently have such stations.

I. REVENUE EFFECT

The bill is expected to raised $18.0 billion in fiscal year 1983, $13.7 billion in 1984 and $42.7 billion in 1985.

Mr. ARMSTRONG. Mr. President, for most of the year, cynics who have observed the budget process have predicted failure for efforts to cut spending, curtail growth of entitlements, and raise revenue. They observed repeatedly that this was an election year and the task force set before Congress was a difficult one politically.

The prevailing wisdom has been that governing amid huge budget deficits could not be done. After all, six Republican Senators of the committee writing the tax increase bill were up for reelection, as were 33 Senators and all of the House of Representatives. Election-year jitters would, the cynics said, scare off efforts to cut spending $300 billion and raise $100 billion in revenue. Over and over again, it was predicted that when push came to shove, the committees, the Senate, the House, and the President would quit, or worse, settle for repealing President Reagan's third year 10-percent tax cut.

Well, the cynics were wrong. Congress for the first time in years fulfilled its principal task—writing and implementing a budget for the National Government. Congress has enacted a budget resolution and the implementing legislation that will help reduce the $600 billion in deficits now projected for the next 3 years. With reduced deficits and less government presence in the capital markets, there is every assurance interest rates will fall, the economy will prosper, the unemployed will return to work, new ventures will form, business will expand, and Americans will be able to afford new homes.

In considering the Tax Equity and Fiscal Responsibility Act of 1982, Congress today votes on the third and final segment of the budget process. This bill is, of course, the most significant and controversial component—alternatively ballyhooed as either the greatest tax increase or the greatest tax reform in American history. Its real significance is neither. What this bill represents, in essence, is that Congress finally admits that deficits do matter, and that the fiscal irresponsiblity of the past two decades brought high inflation, high interest rates, a sick economy, high tax rates, and international disrespect. By endorsing this legislation, and the other components of the budget resolution, the House Senate Democratic and Republican leadership unanimously endorse the twin concepts of fiscal responsibility and deficit reduction.

After a decade serving in Congress while fighting its leadership that has increased the national debt from $398 billion to more than $1.2 trillion, I cannot begin to express my sheer though delighted amazement. If the current attitude prevails, and in the future governs countless congressional and Presidential decisions, the economic recovery so long promised will actually materialize and endure.

For years, deficit spending has been intellectually, but never politically, discredited. With passage of the budget resolution, its implementing budget reconciliation bill, and now with this pending bill raising $100 billion in revenue and reducing entitlement programs, deficit spending is now at last politically discredited. I cannot underscore the significance. Congress has suffered for two decades with the delusion that we can spend ourselves into prosperity. Now, Congress has reversed itself, not just words, but with action: Economic prosperity is accomplished through balanced budgets.

I am delighted with this new attitude—especially if it prevails. I must admit to some cynicism, however. After all, it is just 2 months before election, and the populace has said in no uncertain terms that it wants, no demands, Washington to get its head out of the sand, and get spending under control. My hope is that Congress retains the budget balancing fervor after the election. Based on the congressional track record, my fear is Congress will not.

Congressional sincerity on this issue is incredibly important. Let we say on the floor what I have heard muttered over and over again in the cloakroom. There is concern that the spending restraint provided in the budget resolution may not ever materialize because the spending cuts are either phony, or soft, or require Presidential implementation of further action by Congress. Besides, skeptics say, Congress has yet to pass any of the required appropriations bills for the coming year.

Mr. President, like so many in this body and in the House of Representatives, the major reason I am voting for the tax portion of this bill is because of the spending reductions it accompanies. The Nation's drastic economic problems, caused by two decades of

gross fiscal irresponsibility, urgently require reduction of Federal budget deficits at the earliest possible time and a balanced budget within the near future. Although I personally feel that the budget resolution does not go far enough toward deficit reduction, it offers the best available prospect for achieving fiscal integrity and, thereby, restoring the Nation's economic health. Under the circumstances, I feel obligated to support certain parts of the budget package which would otherwise be anathema. I therefore will support the conference report on the Tax Equity and Fiscal Responsibility Act of 1982. By supporting this conference report, I am also committing myself, as is Congress, to full and complete implementation of the path toward a balanced budget.

This conference report fulfills the mandate imposed by the congressionally enacted budget resolution. It amends once sacred domestic entitlement programs in compassionate and reasonable ways at the same time saving taxpayers $18 billion over the next 3 years. For example, the bill reduces Federal subsidies for administrative errors, requires benefits to be paid on the date of eligibility and not before, makes uniform the reimbursement schedules for medicare service providers, ends AFDC benefits for those who refuse to work or reject a bona fide job offer, and other similar reforms.

These reforms are important, but I emphasize they are only a step in the right direction. The $18 billion cut is only a small part of the $549 billion that Federal entitlement programs—not counting social security retirement or disabilty—will spend the next 3 years. Further review is necessary to identify additional savings, and they will require congressional enactment.

The tax portion of this bill is also noteworthy in that it meets the budget resolution revenue targets without repealing, delaying, or modifying the third year of President Reagan's multiyear tax cut program. By retaining the third year, Congress has elected to put in the wallets and purses an additional $560 for the typical American family.

The revenue targets were achieved under the skillful leadership of Senator BOB DOLE, the Finance Committee chairman. He and his staff scoured the Tax Code to find every possible loophole that needed tightening and that would raise substantial revenue. This tax bill includes provisions that:

No longer permits multibillion dollar defense contractors to pay little or no taxes on record earnings.

Repeals a loophole used by the insurance industry to escape taxation, and at the same time, modernizes antiquated tax laws governing the industry.

Partially ends another loophole in which business received double tax benefits for new equipment purchases.

Authorizes the taxes and finances the spending necessary to update the Nation's airports and airways.

Increases taxpayer compliance at a time when $120 billion in Federal revenue remains uncollected because of outright tax cheating.

Makes critically needed reforms of over-generous provisions permitting corporations to "sell" unused tax benefits.

Scales back provisions permitting some corporations to defer tax payments for as long as 10 years.

The tax bill is not perfect. It includes provisions that I predict will require rethinking and revision, including the provisions governing pensions, acquisitions and mergers, and interest and dividend withholding. This tax bill was written under incredibly tight time deadlines, and pressure to raise revenue, and in a tense, confrontational atmosphere. Now that there is an overwhelming consensus that spending restraint and revenue increases are necessary to reduce deficits and thereby interest rates, I predict there will be a willingness on both sides to make adjustments in light of unforeseen or unreasonable requirements.

Finally, Mr. President, I commend the personal leadership of BOB DOLE. I dare say that without Senator DOLE, the Congress today would not be reducing future deficits by $400 billion. How we got where we are today is an interesting story, and one laced with irony. The origin of this bill is the infamous "Gang of 17" budget discussions early this year that attempted to achieve a budget compromise among President Reagan, House Democrats, and Senate Republicans. That effort failed—yet, strangely, all have since endorsed the deficit reduction bill crafted by Senator DOLE. It was BOB DOLE who recognized the vital importance of reducing deficits, and committed himself to reducing them.

I commend him for his perspicacity, intelligence, political intuition, and guts.

Mr. DOLE. Mr. President, I yield 2 minutes to the Senator from Wyoming (Mr. WALLOP).

Mr. WALLOP. Mr. President, I thank the chairman. I urge Senators to put aside territorial fears, perhaps put aside election year jitters and take a careful look at what may be good for the country.

This legislation has not been arrived at as an easy decision on the part of any Senator, let alone those who sit on the Finance Committee. This has achieved bipartisan support for the simple reason that it is good for America.

Mr. President, nobody likes the difficult task of doing what is necessary to restore this country to a position of economic soundness through some difficult housekeeping measures, whether that be raising revenues or reducing expenditures,

This bill and this conference report contains a large dose of both. It is not possible for a country to continue to borrow and borrow and borrow and spend as if there were no tomorrow.

Mr. President, we woke up and found that tomorrow was here. Those who are responsible and care about America, those who are responsible and care about those who are out of work, those who are responsible and care about the continued decline in interest rates so that homebuilders can get back to building houses again, so that farmers can make a living in agriculture again, so that this country can restore some of its lost vitality, should take a close, hard look at this bill and do something which is not only courageous but correct.

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

Mr. WALLOP. Mr. President, I ask for 1 additional minute from the Senator from Kansas.

It is all very easy to cut and run for cover when there is a large measure of misunderstanding as to what this bill does abroad in the land. I say to Senators who harbor these misconceptions that they have the obligation to know what is in this bill and to the extent that they do not and cannot make the argument for it on behalf of the country, that is the extent to which their constituents perhaps ought to look to them for a little more accountability.

Mr. President, I urge my colleagues to vote for this bill. I urge my colleagues to do what is right for the country and to put aside a little bit of election year cowardice in the process.

Mr. LONG. Mr. President, I yield to the Senator from Hawaii (Mr. INOUYE).

Mr. INOUYE. Mr. President, when the budget and tax bills as proposed by President Reagan were before us last year, I voted for them even though I questioned the economic assumptions underlying them because I and many of my constituents believed that the President deserved a chance to implement his polices. I explained at length that my vote was not an endorsement of his policies but only an effort to enable him to pursue his economic programs.

The President got virtually everything he wanted—not every single item—but every major proposal was approved by the Congress. The only major adjustment in his tax program was a scaling down of the cuts from an immediate 30 percent to 25 percent over 3 years.

The President's tax cut program was the largest multiyear reduction in U.S. history. Between 1981 and 1986, busi-

ness and individual taxes will have been reduced by $749 billion. The Nation was promised that the benefits would begin immediately. Speaking to the Congress on March 10, 1981, President Reagan claimed, "Our tax proposal will, if enacted, have immediate impact on the economic vitality of our Nation."

The President now suggests that we must raise taxes to reduce the very deficits for which his program is largely responsible. The supply-side illusion has given way to a sober assessment of the impact of his economic proposals. The fiscal 1983 deficit is now estimated at $115 billion by the OMB and, more realistically at between $140 and $160 billion by the Congressional Budget Office, with a possible out-year deficit by fiscal year 1985 of $200 billion. Investment, far from booming, has actually declined.

These horrendous figures far exceed the deficits incurred under former President Carter, whose last full year in office saw a deficit of $73.8 billion. The President cannot continue to blame former President Carter for the fiscal year 1983 deficit while accepting the credit for the decline in inflation. An administration theoretically committed to conservative economic policies will preside over the worst 4-year total deficit in American history.

The 1981 tax cut bill, the so-called Economic Recovery Tax Act, was deliberately skewed in favor of the rich. Budget Director David Stockman confessed in his now infamous Atlantic magazine interview that supply-side economics is nothing but the old trickle-down theory in new clothes. The inequities created by the 1981 tax act are startling.

By cutting taxes across the board and reducing the maximum tax rates, the act gave 40 percent of the individual savings to only 5 percent of taxpayers. A taxpayer earning $15,000 would save taxes of $604 between 1980 and 1984, while a taxpayer earning $150,000 annually would save $21,952 in taxes.

The inequities of that act would only be enhanced by this tax increase bill, H.R. 4961, which is now being marketed as tax reform. Who will suffer under this tax bill? Low- and middle-income taxpayers would not benefit, for it does not cut marginal tax rates. Upper income taxpayers would not necessarily pay more because marginal tax rates for them are not increased. Instead, much of the increase would fall on those least able to afford the extra taxes or the extra costs of compliance with this measure. A significant part of this bill's revenues—up to an estimated 30 percent—would be raised from lower and middle income taxpayers.

Cigarette taxes would rise from 8 to 16 cents per pack. For a two pack per day smoker, this would amount to more than $58 a year. The excise tax on telephones would treble from 1 percent to 3 percent.

Taxes on air travel would rise 60 percent, from 5 to 8 percent on passenger tickets. The tax on noncommercial aviation fuel would jump from 4 cents per gallon to 12 cents, while the expired 5-percent tax on freight waybills and $3 tax on international departures would be restored. Citizens of Hawaii traveling round trip to the west coast would be forced to pay $6 in international departure taxes, while those traveling on to other mainland destinations, such as students, tourists, and family visitors, would also have to pay the increased ticket tax.

Excise taxes are justifiably called regressive, for they strike hardest at ordinary citizens, and there are few citizens in Hawaii who do not smoke, use the telephone, or travel by air.

The wealthy may not have to absorb these taxes. Corporate executives or professionals can bill their businesses or clients for travel and telephones, while well-to-do individuals can usually write off these expenses as business deductions. I am not against the rich because I believe that the capitalist system must contain incentives for the talented to innovate and succeed, but I do suggest that sacrifices in these difficult times be spread evenly and fairly throughout society.

Another example of unfairness in this bill is the new tip income reporting requirement which would compel restaurant employers to report an assumed tip income of 8 percent of gross receipts as imputed income to their employees. This proposal is grossly unfair and raises questions about how gratuities in nonpublic facilities are to be treated. For example, in one Honolulu club, the bills of members are aggregated at the end of the year, and each member is then urged to make an employees payment based on his or her total expenditures. Is this gratuity a gift or income?

Restaurant employees were singled out even though they are not the only workers who receive tips. Will the IRS now go after beauticians, cab drivers, shoeshine boys, porters, maintenance employees, entertainers, and others? I cannot underemphasize that restaurant employees are generally among the lowest paid employees in our society. I am certain that this bill is anything but a tax reform measure to them.

Although I generally feel that the health provisions of this bill are reasonable and fair, I am distressed by the extent to which we are being asked to direct our Nation's hospitals to bear far more than their appropriate share of our national effort to curtail ever escalating health care costs. We are proposing to cut approximately $7.5 billion from them over the 3-year period. This is more than a minor reduction.

I was especially saddened to see the proposed elimination of the current medicare 5 percent nursing salary cost differential payments. In my judgment the anticipated $330 million savings over the next 3 years will in the long run be very costly. This is not the time to send a message to our Nation's professional nurses that their services are not necessary. We are currently facing a major shortage of nursing personnel, especially in our Nation's hospitals. Why should we cut back on funds for their services? Who will be expected to pick up these costs?

Similarly, it is patently unfair to individual families in these days of ever-escalating health care costs to eliminate the present $150 deduction for half of one's health insurance premiums and to raise the floor for deductible medical expenses from 3 percent to 5 percent of adjusted gross income. Section 213 of the Tax Code, the medical expense deduction provision, has been available to individuals since 1942. During the Senate deliberations, the floor manager of the Senate bill, Senator George, in response to a direct question as to whether there was any proposed relief for individuals who had incurred long-term obligations responded on October 10, 1942:

> As far as individuals are concerned, no relief is proposed except as provided under the Victory tax . . . We did one thing in the bill to which I should call attention, and I think it an important matter; we allowed a deduction, in computing the tax of all taxpayers, of expenses for unusual medical costs . . .

At that time the committee provided for 5 percent of net income floor. I am sincerely sorry that we have now apparently decided to retreat 40 years. In 1976, more than 19 million Americans claimed deductions under section 213 for a total of $21.1 billion. This item may not be of interest to our business community, but it is very important to individual families.

It is most unfortunate that the conferees decided to reduce the Federal matching commitment for State child support enforcement programs from 75 percent to 70 percent. They recommended that the child support incentive payments should be reduced from 15 percent to 12 percent, with the Federal matching for the costs of court personnel to be totally repealed. In these times of trying economic conditions, we should increase, not decrease, our Federal assistance to programs that address the needs of these vulnerable children.

The conferees' decision to repeal the Professional Standards Review Organization (PSRO) program was also most unfortunate. Although their proposal for consolidation of existing PSRO review areas and the development of new performance contracts

for utilization and quality control peer review may on its face have some validity, I personally feel that our basic PSRO legislation was quite sound. Those entities already in place should have been given more responsibility for insuring that only high quality health care was being provided. Very few of us really understand the complexities of the medical care that we or our loved ones receive, and it is very much in our national interest to insure that every opportunity is made available for our health care providers, of whatever discipline, constantly to review the overall quality of care being delivered by their peers.

I was quite pleased, however, to see that the conferees have agreed to begin coverage for hospice care under medicare and further that they have recommended that the Government of American Samoa will finally be able to develop a truly culturally sensitive medicaid program. I have strongly supported both of these latter initiatives for some time.

If this bill is rejected, we have far preferable alternatives in our efforts to cut Government expenditures and reduce the deficit. Specifically, we can begin to control defense spending as Budget Director David Stockman suggested last year in his Atlantic interview. For fiscal year 1983, he recommended privately to the President reductions totaling $18 billion in budget authority and $11 billion in outlays, while still leaving intact all major new weapons systems and a vastly increased conventional weapons armory.

I would go even further and recommend the termination of several expensive, cost-ineffective weapons that are failing to fulfill their assigned mission or can be replaced by less costly, better substitutes.

For example, a needlessly expensive weapon, the F-18 Hornet, would cost $2.45 billion in fiscal year 1983 and a total of $20 billion. This costly plane can be outperformed by less expensive, well-tested fighters such as the F-4—which costs about one-eighth as much as the F-18—or the A-7.

Cancellation of the cumbersome, fragile M-1 tank would save $440 million in fiscal year 1983 and a total of $6.4 billion. Replacement of the Bradley infantry fighting vehicle would save $790 million next year, and $9.7 billion overall. This new personnel carrier costs eight times more than the vehicle it replaces without delivering the promised performance.

These are only a few examples of weapon systems which could be easily canceled without impairing the effectiveness of our armed services, and these savings could be duplicated throughout the Defense Department.

Finally, a simple deferral of the reduction in the third year would more than make up for the revenue which would be raised in this bill. In 1983, the rate cuts will result in a revenue loss of $66 billion, climbing up to $105 billion in 1984. Yet, President Reagan has stoutly refused to contemplate this simple step even though the supply side miracles of vigorous economic expansion and investment have not materialized.

The tax increase bill is not totally without merit for there are certain desirable improvements which I could support if it were not for the regressive features. The increase in the minimum tax and the changes in the safe harbor leasing provisions are both desirable features, and my vote should not be interpreted as being against genuine tax reform.

Having reviewed the provisions of this bill, I have decided to vote against passage of the conference report. I urge the President and the committees to produce a bill that would first, contain true tax reform; second, defer the 10-percent reduction planned for 1983; and third, avoid the imposition of taxes on our already hard-pressed lower and middle income taxpayer. I would also urge the Congress to delete the expensive, wasteful weapons which have bloated the defense budget beyond reasonable need and which have actually undermined the combat effectiveness of our Armed Forces by burdening them with overly complex technology. I am voting against this bill in the hope that we enact a fair tax bill that truly addresses the serious fiscal problems of this country and finally sets us on a course of economic revitalization.

Mr. MITCHELL. Mr. President, I rise to speak in opposition to the passage of the conference report on H.R. 4961, the Tax Equity and Fiscal Responsibility Act of 1982.

I intend to vote no on final passage because in the final analysis this bill fails to meet the standard implied in its title: It neither restores nor establishes equity in the way it allocates its cuts. And it is not the most fiscally responsible way to raise additional revenues.

There are far better ways to solve our budgetary problems. Some of the tax provisions before us are sound and worthy of support, as the President and others have said. I supported and voted for a number of them when the bill was before the Finance Committee. But on balance, the entire bill does not represent an equitable or responsible step in the resolution of our budgetary problems.

Last Monday evening, when the President spoke to the Nation about this tax bill, he urged Americans not to consider this bill in isolation, but to examine it in the context of the entire economic program.

I agree that this is the proper perspective from which to examine this measure. And from that perspective, the measure fails to correct the flaws that have become evident in last year's program.

One of the most fundamental failings in both this bill and in the economic program is the unfair way that the spending reductions and tax cut have been slanted. I am pleased that some of the worst inequities in the original bill were alleviated in the conference. But sufficiently unfair cuts remain to warrant rejecting this measure.

The bill will cut $17 billion over 3 years in programs serving the health needs of all our elderly, the health needs of the poor, and the basic Federal program which provides a floor under income for the poorest of the poor—old, blind, and handicapped people who are not covered by social security or insurance programs and who have no way to become self-supporting.

The bill before us makes a $386 million reduction in the basic supplemental security income program. This program serves people whose age and disabilities are combined with poverty. People who have more than $1,500 in assets cannot participate in this program. It is, in reality, the most fundamental support for the most needy in our society—the destitue elderly.

The bill contains major cuts in medicare—cuts which will be made up in two ways. Hospitals will either be forced to increase health care costs for other patients, or they will seek direct payment from medicare recipients. Even though the conference version of the bill eliminates some authority for directly increasing out-of-pocket costs to the elderly, the higher costs will ultimately come from other taxpayers or the elderly themselves.

Despite the claim that the social safety net would not be eliminated for those in our society most dependent on society's support, this bill continues to make cuts directed at the elderly and others who are unable to protect themselves against lost income and reduced services. That is simply unfair.

The most controversial provisions in the bill, of course, are those raising taxes.

Some of these provisions are, as they have been characterized, more in the nature of tax reforms than tax increases. But it is incorrect to characterize virtually the entire bill in that fashion.

The bill raises unemployment taxes by $6.6 billion over 3 years. At a time when small businesses, in particular, are struggling to maintain operations, such an additional tax cost is unwise. Small businesses are not responsible for the increase in unemployment.

The excise tax increases are not reforms: they simply raise regressive sales taxes on average-income Americans. They further accentuate the shift in tax burden from those with

the highest incomes to those with middle incomes.

The funds raised by withholding taxes on interest and dividends earned are, by the Treasury's own admission, largely a speed up in taxes which would ultimately have been paid. That does not represent either reform or increased compliance. It is simply a form of forced earlier compliance.

But the central feature of last year's tax reduction—the Kemp-Roth across-the-board cut, which has contributed the most to the shifting of the tax burden, has been protected against any and all change.

Last year I voted to change that proposal to a fairer one. That effort failed and the President got exactly the economic program for which he asked.

This year, it is obvious that the economic recovery program has failed, not only to produce a recovery, but even to sustain our economy at the level it was operating last July, when 7.1 percent of working Americans were jobless. Today, 9.8 percent of working Americans cannot find a job, and a million more have given up the hope of doing so.

Surely, when the centerpiece of a program fails, it is sensible to admit that failure and change it.

The administration has now tacitly admitted that last year's tax cut was too big. So this year, it is supporting a partial restoration of that lost revenue. This is a circular way to proceed.

It would have made more sense and provided a better direction to recognize that the Nation could not afford the third year of the tax cut while we were in a recession and to defer it—not repeal it—until the economy recovered. That course was argued last year and again this year. It received no serious consideration by the administration either time.

So we remain locked into a 3-year tax cut we cannot afford. And most importantly, it is a tax cut structured to shift the burden of taxes to the middle and lower income people of this Nation in pursuit of a misguided theory that the economy can only improve if only taxes on the wealthy can be reduced enough.

Ironically, the very same middle and lower income Americans were being eagerly advertised by the administration throughout this June as the key to recovery. They, it was said, would create a surge of buying with their tax cut, which would serve to revive demand and help put Americans back to work.

The average family of four, earning $20,000 gained about $275 a year from the tax cut. This is around $5 per week. Those earning less, of course, received much less. Contrary to the President's assertion, a $400 per year average tax saving is not what the average family received at all.

The fact is that middle-income Americans and lower income Americans were not fairly treated when the tax relief was proposed and have not been fairly treated by its continuation in its present form.

When higher taxes from inflation and social security payroll taxes are taken into account, the tax cut will have a lasting benefit which disproportionately favors the upper income. Last year's across-the-board tax cuts, which superficially promised fairness by giving everyone the same percentage reduction in income taxes, delivered far more relief to the highest income, and much less relief to ordinary Americans. Taxpayers earning over $50,000 per year, who pay one-third of income taxes, will receive almost two-thirds of the net tax cut. Those making under $50,000, who pay two-thirds of income taxes, will only receive one-third of the net tax reduction.

A family of four earning $20,000 will, by 1984, be paying 16.1 percent of its income in Federal taxes if its earnings keep up with inflation, because the combined effect of higher social security taxes and inflation will still result in a higher tax liability. Ironically, before the tax reductions, that same family of four was paying just 16.2 percent of its income in Federal taxes.

A family of four with an income of $30,000 was paying 18.4 percent of its earnings in Federal taxes in 1980. After the effects of the tax cut the higher social security taxes and inflation have occurred, in 1984, that family will owe 18.8 percent of its income to the Federal Government—an increase.

By contrast, a family earning $100,000 will receive a real tax cut, over and above the effect of higher social security taxes, which affect only the first third of its income, and over and above the effects of inflation. That family will receive a tax cut of nearly $2,300, in 1980 dollars.

This was an unfair tax distribution last year. It remains unfair this year.

The administration has belatedly acknowledged that the 1981 tax cut was too large to be comfortably afforded. The unfair elements of that tax cut are predictable, and are widely acknowledged. Surely the most effective as well as the most fair way to raise the revenues needed to help offset the cost of that tax cut would be to defer the cut for those most able to afford a delayed tax cut—those fortunate enough to have high incomes.

The tax increases in this bill are coming mainly at the expense of working families: The excise tax increases take proportionately more from lower incomes. The increased limit on medical deductions eliminates one of the few deductions millions of Americans can use except for those with truly huge medical bills.

When that factor is considered in context—and the context is last year's tax cut—then it is clearly best to reject this unfair measure.

I do not reject this bill without having an alternative. One alternative which is clearly preferable and which I strongly supported when the tax increase was being debated, was the proposal by Senator BRADLEY, which would have asked those earning $46,000 to $50,000 per year to accept a delay in getting part of their final 10 percent installment of the tax cut, and would have asked those with incomes above $50,000 to accept a delay in all of their 1983 tax cut. That alternative would have allowed us to eliminate several of the tax increases which are most regressive, including the increased taxes on telephones and cigarettes and the cutback in the medical and casualty deductions. It would also have allowed us to eliminate the unemployment tax increase, which will have its heaviest effect on small businesses.

That alternative would have protected the tax cut for 75 percent of all Americans, without imposing directly higher taxes on them in other forms, as this bill does. It would have made the shared cost of tax raising and spending cuts more equitable. Unfortunately, this alternative was rejected.

During the debate I offered an alternative which, without changing the total cost of the tax cut itself, would at least have changed its distribution so that more of the relief would have gone to middle-income taxpayers. That alternative too, was rejected.

The bill before us does not further the cause of tax equity. Rather, it continues the unfair policy of spending cuts from those who can least afford them and tax increases for those who are already paying their fair share. I do not believe that such a bill deserves support, and I will not vote for it.

WHY THE TAX BILL IS UNFAIR

Mr. PROXMIRE. Mr. President, it is called the Tax Equity and Fiscal Responsibility Act of 1982. And to some extent that description is true. It closes some of the more blatant loopholes in the Tax Code that the Congress generously provided last year. Some of these issues, such as individual and corporate minimum taxes; treatment of discount and striped coupon bonds; partial reform of safe harbor leasing; reductions in corporate tax preferences; modifications in the completed contract method of accounting; mergers and acquisitions incentive reductions; and foreign oil and gas income are proper and prudent changes in our complex system of taxation.

But all is not equity and fairness in this bill. Take withholding on interest and dividends as an example. This, the largest single compliance feature of

the bill, will add as much as $3.2 billion in administrative costs and lost interest on American taxpayers. This is not to mention the hundreds of millions of forms that will have to be filled out, filed, and processed to grant the various exemptions and to catalog the actual withholding. This alone justifies a new title for this bill as the redtape and paperwork bill of 1982.

Food establishments will be required to report tip income equal to 8 percent of gross receipts for their employees unless, of course, the employees already have reported their tip income by that amount. How will the managers know who has reported what? Imagine the paperwork that will be generated to allocate the tip receipts by each employee.

There was an opportunity to improve this bill but the Senate did not take it. Amendments were offered to redistribute the benefits and obligations of our tax system so that those Americans in the low- and middle-income class could have shared more in the benefits of reduced taxation and be called upon to provide less by way of revenue. We could have reduced the burden of this tax bill on small businessmen, on the elderly, on the sick and infirm, on those using our phone system and at the same time leave a cushion of $3 billion to reduce the deficit. We could have redistributed the benefits of lower taxes to middle and lower income Americans. But each attempt to do so, the Bradley and Mitchell amendments, were defeated.

The defeat of these amendments makes this tax bill skewed in favor of those in the very highest income categories while asking the middle and lower income classes to foot the bill.

Add to this the scandalous situation involving tax deductions for certain illegal foreign bribes. Under present law, taxpayers may not deduct payments to foreign governments or employees if those payments would be illegal under U.S. law. The conferees decided that payments made illegal under the Foreign Corrupt Practices Act would remain undeductible but that other payments, which would be illegal under U.S. law, could be deducted by U.S. corporations. Thus we have the situation that a U.S. corporation makes a payment overseas which ordinarily would be illegal under U.S. law and it now can receive a deduction on its tax form. Think of it, U.S. taxpayers will be subsidizing foreign bribes that would be illegal under U.S. law if they occurred here. But since they occurred overseas, they are deemed legitimate tax deductions.

I do not think many U.S. citizens will be happy with thinking that their fair share of the U.S. tax burden will be increased because some U.S. corporation can now deduct what would be an illegal bribe on their taxes.

We have just told the U.S. corporate community to go ahead and make as many "grease" payments and facilitating payments and customs bribes as they want because Uncle Sam and the rest of American taxpaying public is going to grant them a big, fat subsidy. Make no mistake about it, this is a subsidy for illegal bribes—courtesy of the U.S. taxpayer.

There is so much more that could be done with this tax bill to change its impact on the average taxpayer and make it a fair reform vehicle. The leasing provisions could have been closed more tightly. Adjustments should have been made to require integrated oil companies to include disallowed intangible drilling costs in the basis of their property. Other oil and gas tax reforms should have been addressed.

But this did not come to be and consequently I cannot support this bill.

SECTION 207(e)(2)(A)

Mr. HATCH. I understand that during the course of the conference committee deliberations on the construction period interest and taxes provision of the bill, there was some discussion of the requirement in section 207(e)(2)(A) of the bill that approval from a governmental unit has been requested in writing by the taxpayer regarding the construction of a hospital, nursing home, hotel, or motel.

As the author of that requirement, it was my intention, clearly stated on the floor of the Senate when I introduced the amendment adding section 207(e)(2), that a written request for governmental approval did not have to be submitted by any particular date, but only pursuant to the normal course of events. There is no uniform timetable for the submission of these requests. They will vary according to the nature of the project and the nature of the governmental approval concerned.

It was specifically not my intention to require the taxpayer to make a request for an approval by July 1, 1982. Rather, it was my intent that eligible taxpayers qualify who can establish that first, a written plan was in existence on July 1, 1982; second, the project actually commenced is consistent with that plan as evidenced by a submission to a governmental unit in the ordinary course which is based on that written plan; and third, construction is commenced before January 1, 1984. The sole purpose of the governmental approval requirement is to corroborate that the written plan in existence on July 1, 1982, can be specifically identified with the ultimate construction project approved by the governmental unit or units concerned.

I would like the distinguished Senator from Kansas to confirm that this is the intention and understanding of the conferees.

Mr. DOLE. I thank the distinguished Senator from Utah for this opportunity, and I do confirm that his intention regarding this provision was the understanding and intention of the conferees. The Senator's inquiry has been very helpful in assuring that our understanding of your amendment was consistent with your intent and that the statute will be interpreted and applied in that manner.

Mr. LONG. Mr. President, I would like to clarify the scope of the authority granted to the Internal Revenue Service to provide guidelines for reducing the allocation, if any, from 8 percent of receipts to a lesser amount for certain establishments. I understand that the Internal Revenue Service is authorized both to provide general rules for reducing the minimum percentage of reported tips in specifically defined and justified circumstances and to provide administrative procedures for a case-by-case determination of lower amounts.

Mr. DOLE. The Senator from Louisiana is correct; both general rules for appropriate cases and case-by-case procedures may be provided.

Mr. LONG. Mr. President, I would like to confirm that the Senator from Kansas understands that the Internal Revenue Service will cooperate with the affected institutions and employees in making its required study of tip compliance.

Mr. DOLE. It is our fervent hope that the Internal Revenue Service will continue to enjoy and draw upon the full cooperation of employers and employees alike in this industry in making this study. As the Senator from Louisiana knows, it is that cooperation which has made possible the improvement of this legislation in conference over prior proposals. And it is that cooperation, including the anticipated publication of these new requirements by the employers and union, that will do so much to make this new law work.

Mr. LONG. Mr. President, I want to clarify the operation of the tip allocation rule. Is it the Senator from Kansas' understanding that allocation would be required only if voluntary employee reporting does not reach an 8-percent level, and that employees to whom allocations are made need include only those customarily tipped employees to whom allocations are made, including employees who receive tips indirectly through tip pooling or tip sharing?

Mr. DOLE. That is my understanding.

Mr. ROTH. Section 214(e) of the conference report amends paragraph 6 of section (103)(b) by adding at the end thereof a new paragraph entitled, "(O) Restrictions on Financing Certain Facilities." May I ask the distinguished Senator from Texas if he con-

curs that in our discussions in the conference it was specifically agreed that the language "retail food and beverage services" is meant to apply only to establishments such as restaurants and bars where the primary purpose of the establishment is the service of food already prepared for consumption and that such language would not apply to grocery stores, supermarkets, convenience stores, or other such establishments engaged principally in the sale of grocery and other items?

May I also ask the distinguished Senator if one of the reasons that convenience stores which incidentally may offer the service of prepared foods or drinks would not be prohibited by this amendment from obtaining IDB financing since the service of prepared foods or drinks in those establishments would not constitute 25 percent of the primary activity of the entire establishment?

Mr. BENTSEN. The gentleman from Delaware is correct. The amendment to section 103(b)(6) is intended to apply only to restaurants and bars and that the language referring to "retail food and beverage services" is not intended to apply to grocery stores, supermarkets, convenience stores, or other such establishments engaged in the sale of grocery or other items.

Mr. DANFORTH. I wish as a conferee on the Tax Equity and Fiscal Responsibility Act, H.R. 4961, to associate myself with the remarks of the Senators from Delaware and Texas.

Mr. LONG. I wish as a conferee on the Tax Equity and Fiscal Responsibility Act, H.R. 4961 to associate myself with the remarks of the Senators from Delaware and Texas.

SENATOR HAYAKAWA STATEMENT ABOUT ADAP PORTION OF TAX BILL

Mr. HAYAKAWA. Mr. President, I would like to mention some matters that particularly concern my State. First, the Mojave Airport, which is operated by the East Kern Airport District, has a very special and important role in our Nation's aviation system. It is extensively used by civil aviation manufacturers to test aircraft and their components, particularly in the general aviation sector. The airport has attracted numerous businesses involved in flight testing and has generated substantial employment.

In light of the importance of Mojave Airport to aviation, I believe the FAA should give serious consideration to the Mojave Airport's request for ADAP funds.

The other problem of concern to me is the Burbank-Glendale-Pasadena Airport. It has a terminal building and other facilities located within the zone—known as the primary surface area—adjacent to the runway that is supposed to be clear of all such obstacles under current FAA airport design standards.

The ADAP bill specifically provides that "the safe operation of the airport and airway system will continue to be the highest aviation priority." Further, it provides that "all airport and airway programs should be administered consistent with" the section of the FAA act which specifies "the assignment and maintenance of safety as the highest priority in air commerce * * *" there can be no question that safety is to be the highest priority in the administration of the ADAP program. It should also be clear that projects to correct a preexisting violation of primary surface area are, to the extent they are otherwise eligible, the kind of safety-related efforts which should be accorded that statutory priority for safety.

Mr. MATTINGLY. Mr. President, I rise today to oppose this bill, H.R. 4961, to raise taxes by $98.3 billion over the next 3 years. I do so because this bill—I sincerely feel—is wrong and that it is the wrong economic policy at this time. And it is the wrong message for this Senate and this Congress to send the American people.

Mr. President, I know I will be joined by Members from the other side of the aisle in opposing this bill. But my reasons for opposing this bill have nothing to do with partisan politics. My reasons for opposing this tax increase have to do with the heart of the economic policy debate on the floor of this Senate over the past 18 months. Were we serious about reducing the size of Government, cutting spending, and cutting taxes as the means to economic recovery and renewal in our country? Are we going to pay attention to the popular mandate of the last national election? Or were we just kidding when we passed President Reagan's economic recovery program last year. Is it the truth that this body really does not care what the people of this country want? Is it the truth that we intended all along to continue down the same old road, pursue the same old failed policies, and the public be damned?

I do not have to remind my fellow Members how the people of their States feel about this tax increase. You all know how your mail and phone calls are running. Phone calls to my offices, both here in Washington and back in Georgia, are running 2 to 1 against. The mail in my office is running 5 to 1 against. I do not have to remind my fellow Members of the poll that appeared in this morning's paper. If anyone in this body seriously believes that the people of this country feel the answer to our economic problems is a tax increase, they have been hiding in a closet. Are we to tell the people back home that they are too dumb to know what is good for them? Personally, I will take the wisdom of the working men and women of Georgia over the wisdom of Washington any day of the week.

Mr. President, let me remind this body what we did here only 10 short months ago. We enacted a tax cut. We cut the tax rates on individuals and businesses as a part of the President's economic recovery program. We cut taxes to return incentives and encouragement to individuals and businesses to save, invest and create jobs. We did that because it was realized that years of spiralling Federal spending and taxes had given us the highest inflation and the highest interest rates in history. Now we are told that 10 months is long enough. Now the economy needs a tax increase.

The fact is President Reagan's program is working. In less than 2 years we have cut inflation by two-thirds. In less than 2 years interest rates have been cut from 21 percent to 14 percent. Real income, the real worth of the paychecks in the hands of the working people of this country, increased last month by a greater amount than any time during the past 2 years.

We are told we need a tax increase in the middle of a recession to insure that needed spending cuts are continued in the future. That is a joke. There has not been one dime of reduction in the Federal budget during the 97th Congress. When this Congress came into office in 1981 the Federal budget for that fiscal year stood at $657 billion. Projected 1983 outlays currently stand at $777.5 billion, and that is after the so-called spending cuts. Unless my arithmetic is off, that is an increase of more than $100 billion. Almost the exact amount of this tax bill.

We are told that we need this tax increase to reduce the deficit. Let me quote President Reagan on this subject. On May 20, the President made the following statement to a group of businessmen:

> We do not have a trillion dollar debt because we do not tax enough; we have a trillion debt because government spends too much. Simply raising taxes will not do the trick. It is well to remember that in the last 5 years taxes went up by more than 200 percent, and we still had in those 5 years the largest string of deficits in our history.

Let us be honest here. The purpose of this tax increase is to fund more spending.

Mr. President, we are even told that this tax bill is not really a tax increase at all. We are told it is not even the largest tax increase in history. But the fact is if it walks like a duck, quacks like a duck, and looks like a duck, it must be a duck. And this, my friends, is a duck. It is true this is not the largest tax increase in history. It is the second largest behind the Carter administration's $122 billion social security tax increase. But the worse part is that both of these tax increases will

hit the American taxpayer at the same time in the middle of a recession.

And finally, we are told, that we must support this tax increase out of loyalty to President Reagan. That if the President loses his ability to lead we will not be able to continue to make the kind of policy changes we must have to turn our country around. Well, I do not mind saying that I have been one of the President's most consistent supporters in this body. I was No. 10 out of 100 in support of the President last year. And I expect to be as high or higher on the list of the President's supporters this year. In fact, I have a better record of supporting the President than a lot of those here in this body who have been waving the loyalty banner for this tax bill.

And it is because I believe in the President and his program, and because I share in his mandate to turn the tide against more government, more spending, and more taxes, that I cannot vote for this bill.

Mr. President, we do need to reduce the Federal deficit. But we need to do so by cutting Federal spending. Not by raising taxes. I, for one, did not come to Washington to vote for more taxes. I hope a majority of my colleagues in this body will join me in support of the Reagan economic recovery program and vote against this bill.

Mr. THURMOND. Mr. President, although I strongly disagree with some of the particular provisions in this revenue-raising legislation and have reservations about other specifics, I have concluded that this package, taken as a whole, is necessary. Thus, I shall lend my support to passage of the conference report for three basic reasons.

First, it is my belief that passage of this bill is essential to reducing the projected Federal deficit for fiscal year 1983 and the following years. The expectation of massive Federal deficits, which would result in a huge drain on the capital markets by Federal borrowing, is perhaps the biggest hindrance to a further reduction of interest rates and a sustained economic recovery.

Fortunately, it appears that interest rates are finally headed down to more reasonable levels. Indeed, the prime rate has dropped by over 7 points from the historic high levels that prevailed when President Reagan assumed office. Most economists and financial market analysts are now predicting further declines in the prime rate, to be followed by a drop in rates charged consumers on loans for automobile and other durable good purchases, and also on home mortgages. As interest charges subside, this will help give a broad-based boost to the economy that will help put people back to work.

These are our hopes and expectations, but they will not be realized if Congress fails to act now and in the future to reduce the budget deficits. This legislation will help to trim deficits by between $98 and $99 billions over the next 3 years. Moreover, it will accomplish that goal without jeopardizing the investment incentives and across-the-board tax relief for individual taxpayers enacted last August.

A second important reason why I am supporting this bill is that it fulfills a commitment made by Congress and the President earlier this year when we adopted the budget blueprint for fiscal year 1983 and the following 2 years. Under the budget resolution approved in June and endorsed by President Reagan, Congress agreed to enact legislation that would reduce the Federal deficit by approximately $380 billion over the next 3 years. Most of the deficit reductions—about $280 billion—are to come from cutbacks in spending, but a portion must be achieved through increasing tax revenue.

My preference would have been for greater emphasis on spending reductions and less emphasis on the tax side of the budget. However, it was necessary to reach an accommodation in order to pass a budget, and the resulting compromise directed the tax-writing committees to produce this revenue enhancement bill. The economic health of our Nation depends on decisive congressional action to trim the Federal deficits, and the budget resolution calls for almost $3 in spending cuts for every $1 of revenues raised by this tax bill. In my judgment, this is a reasonable tradeoff and an acceptable price to pay in order to get much greater and critically needed spending restraint.

Indeed, the legislation before the Senate in this conference report is not just a tax bill. Also included are savings of some $17.3 billion over the next 3 years in several entitlement programs whose cost was spiraling out of control. Again, that is not as much as we needed, but I know the distinguished chairman of the Finance Committee, Mr. DOLE, and the Senate conferees did the best they could in bargaining with the House conferees, who were less willing to cut spending. Together with the omnibus reconciliation bill cleared for the White House on Wednesday, savings approximating $30 billion through fiscal year 1985 will be achieved. Further, substantial curtailments must be achieved in the appropriation bills and through management initiatives by the administration, if the outlay savings goals established in the budget resolution are to be met.

The third reason why I believe this legislation is deserving of support is that it achieves most of the necessary revenue increases through improved compliance with existing tax laws and closing down of loopholes which have been used by some individuals and corporations to avoid paying their fair share of the tax burden. It should be emphasized, Mr. President, that this bill does not contain an across-the-board tax increase. In fact, it carefully preserves the 3-year, 25 percent tax reduction for individuals, reduction in the marriage tax penalty, much-needed estate tax relief, and most of the capital investment incentives for businesses enacted as part of the President's Economic Recovery Tax Act last year.

For the most part, the typical wage earner will feel little or no effect from this legislation. There are, however, a number of genuine tax reforms in this bill that are needed to broaden the tax base, improve the fairness of the tax system, and insure that honest taxpayers do not have to bear the burden imposed by those who, through various tax avoidance schemes, have not been meeting their obligations as citizens to help support their government through taxes.

Mr. President, as I emphasized at the outset, I support the necessity of this measure as a means of curtailing the impending budget deficits, which are otherwise frighteningly high. That is not to say, however, that I endorse each of the provisions in the bill, for there are some that I believe are unwise and unjustified. For example, I strongly opposed the doubling of the cigarette excise tax because of the adverse effect this particular increase may have on the tobacco industry, which is so important to the economy of South Carolina and the Nation. I regret that the conferees were unable to shift part of this increase to alcoholic beverages, as I had proposed unsuccessfully in an amendment on the Senate floor.

I am also concerned about the impact of tax withholding from interest and dividends on investors and on depository institutions. This burden will be cushioned, however, by the several exceptions built into the bill for small savers with accounts yielding less than $150 per year, for about 90 percent of the elderly, and all low-income individuals, and by postponing the effective date of this provision by 6 months until July 1, 1983.

Mr. President, I had also expressed strong reservations during Senate consideration of the bill about the pension plan provisions of this legislation. I regret that the conferees did not hold firm against further changes desired by several liberal Members of the other body. It is my understanding that the distinguished manager of the bill is willing for the Finance Commitee or the appropriate subcommittee, to hold hearings for the purpose of reviewing the impact of these provisions, and that he also will recommend to the IRS that the effective date of the provisions designed to overrule the Keller case be delayed until January 1,

1984. I shall be pleased to work with him and the committee to remove any inequities and preserve incentives for these pension and profit-sharing plans.

The conferees did add a program of supplemental unemployment compensation, which I support and feel is necessary due to the recession. This will provide an additional 10 weeks of benefits for jobless workers in South Carolina and other States to help them and their families until they are able to find employment.

Mr. President, this bill is certainly not perfect. I hope the Finance Committee will carefully scrutinize the wisdom of its various provisions and be prepared to make necessary changes in the months ahead. However, I believe it is needed and is the price we must pay for a healthier economy. I hope the Senate will join the House in approving it.

Mrs. HAWKINS. Mr. President, I rise in opposition to the conference report on H.R. 4961, the so-called Tax Equity and Fiscal Responsibility Act of 1982. This is not a new position for me. When the Senate debated a similar version of H.R 4961 in late July, I opposed that bill, too. I will vote against this conference report for five reasons. First, the report calls for $13 billion in medicare cuts principally by imposing revenue caps on hospitals and restricting payments to doctors which treat medicare patients. This combination will put additional financial pressure on public service hospitals already on the brink. And equally dangerous, it will slow dramatically the spread of lifesaving technologies.

Hospitals that already do not have CAT-scanning devices already in place, for example, will not be able to introduce them for use on medicare patients. While CAT scanners are now the primary diagnostic tool used to save the lives of many private patients, they are expensive. Hospitals that use them for the first time in 1984 will breach the revenue caps established by this bill. All recent improvements in medicine, if expensive, will likewise face serious impediments to their introduction in hospital settings. It was for this and similar reasons that Congress defeated an analogous proposal put forward by President Carter in the 96th Congress. This reason was sound then and it is sound now.

Second, the tax portions include five major proposals which are especially objectionable. They are: increasing the telephone excise tax to 3 percent, nearly doubling the unemployment tax, imposing 10 percent withholding on dividend and interest income, raising the threshold from 3 percent to 5 percent of adjusted gross income for those with high medical expenses while eliminating the $150 deduction for medical insurance, and eliminating the casualty loss deduction except for those who, due to robbery, fire or accident, have losses exceeding 10 percent of adjusted gross income. All these provisions will hurt real people, and they raise $25 billion of the $98 billion raised by this bill over 3 years.

Third, I question the wisdom of raising taxes during a recession. The last President who tried to raise substantial amounts of revenue to balance the budget during a recession was Herbert Hoover. The results of his strategy should give us all cause before we argue that the way to encourage economic expansion is to raise the level of Federal taxes, as a share of GNP, even higher than the record levels already in existence. Net revenues are therefore likely to be lower than we think, since the economy will be weaker than it would be otherwise.

Fourth, I would like to address the question of fairness. Certain provisions included in H.R. 4961 do improve equity by closing loopholes and insuring that more people pay their fair share. However, the revenues raised by these provisions should be used to pay for long-overdue tax reduction proposals, including two recommended by the administration—tuition tax credits for parents who send their children to private schools and tax relief for business that invest in "enterprise zones." Instead, the additional revenue will be used to finance additional spending.

Finally, some argue that tax increases are needed to eliminate large projected deficits. Their analysis fails to note the dramatic impact unemployment and interest rates have on the deficit, under existing law. If the unemployment rate were 6 percent, instead of 9.8 percent, the budget would now be in surplus, and ways to lower taxes further would dominate discussion on fiscal policy.

The impact of interest rates on the deficit is also large. Over $700 billion in Federal securities are now held by the public. If the average interest rate or these securities were lowered by 5 percent, Federal spending would fall by more than $100 billion over 3 years, an amount larger than that raised under the tax provisions of H.R. 4961.

Finally, unemployment and interest rates are determined as much by monetary policy as by fiscal policy. Changes in monetary policy can and do impact on unemployment and interest rates swiftly. Therefore, we should not move to make permanent changes in fiscal policy until the options for revising monetary policy are explored.

For all these reasons, I will vote against this conference report.

Mr. BUMPERS. Mr. President, this is a difficult vote. On the one hand, some provisions in this bill are long overdue, and the Senator from Kansas must be commended for biting the bullet and standing up to some powerful special interests that oppose controversial provisions of this bill. The bill phases out the so-called leaseback provision Congress adopted just last year. This is the provision that allows some of the largest and wealthiest corporations to buy and sell tax breaks they cannot use. The whole notion of selling unusable tax breaks is anathema to me, and I applaud the conferees for deciding to eliminate this tax giveaway for leases entered into after December 31, 1983.

The bill also contains additional unemployment benefits for millions of unemployed individuals who are victims of the most serious economic crisis this Nation has experienced since the Great Depression. Under the formula in the bill, unemployed persons in Arkansas, for example, who have exhausted their other benefits, will be entitled to an additional 10 weeks of benefits if this bill passes. For the thousands of unemployed in Arkansas, this will help buy groceries, pay the rent, and catch up on overdue bills. With the Arkansas unemployment rate approaching 10 percent, and with over 20,000 workers in Arkansas having exhausted their regular unemployment benefits, the inclusion of these additional benefits in this bill certainly makes it more attractive to me.

On the other hand, Mr. President, I am convinced that this bill contains more bad than good. It will increase the redtape involved in dealing with the Internal Revenue Service and will impose an unfair burden on some employers. It will also impose what I consider to be unnecessary tax increases on consumers.

Mr. President, I have stood on this floor more times than I can count and argued that we cannot even approach fiscal responsibility unless we postpone or repeal a part of the $750 billion tax giveaway we passed last summer. That was the largest tax cut in history, and it went to the wealthiest Americans, those who needed it the least. The person who makes $100,000 a year got a $7,000 tax break. People in my State who earn a median income of $16,000 got a $242 tax break. Meanwhile, that huge tax cut is making it impossible for us to even come close to balancing the Federal budget in the foreseeable future.

So, only 1 year after we gave away $750 billion to the wealthiest Americans, we are forced to come back and pass new tax increases much of which will fall heaviest on those who got the least last summer. There is a better way, Mr. President, and many staunchly conservative economists agree on what should be done. We should postpone the 1983 tax cut, and in so doing we would save at least $76.3 billion. We would not be taking away something that the American

people are already enjoying, and we would not be creating the bureaucratic nightmare that some of the provisions of this bill may cause.

Mr. President, even if this bill passes and becomes law, we will be faced next year, and the next, with the need to increase taxes again in order to deal with the huge budget deficits caused mainly by last year's tax giveaway. A much simpler solution is to undo some of the evil we created last year rather than thinking up new kinds of taxes. We will be like a dog chasing its tail until we face up to the irresponsibility of last year's tax cut.

Finally, Mr. President, we are in the process, on the urgent insistence of the President, of increasing defense authorization for 1983, by $37 billion, much more than all the much-heralded cuts in medicaid, medicare, student loans, school lunches, immunization, and a host of other worthy programs. Until we recognize that defense is not sacrosanct and insulated from scrutiny, there will be no balanced budget.

Again, Mr. President, I want to commend the Senator from Kansas for his leadership. I oppose this bill with regret. Senator DOLE in many ways had his hands tied because of the President's unwillingness to agree to the postponement or repeal of portions of the tax cut we passed last year. Senator DOLE has shown a high degree of statesmanship in tackling the next-to-impossible task of raising revenues in an election year.

I want to assure my colleagues that I intend to continue to work for responsible tax reform. But I cannot support a tax increase that leaves in place inequities less than a year old while increasing redtape and the burdens of complying with our already complicated tax laws.

Mr. DECONCINI. Mr. President, I voted against H.R. 4961 when it passed the Senate last month. At that time, I did not see how it was possible to reconcile the largest increase in taxes in history with the most severe economic contraction in the postwar period. In addition, I found the massive expansion in the bureaucratic power of the IRS which is at the heart of the so-called compliance provisions of the bill extremely disturbing. No other agency inspires more fear and loathing than the "Infernal" Revenue Service. To augment its regulatory authority so enormously in the name of "revenue enhancement" is, in my judgment, unwise if not dangerous. A statement detailing some of my major concerns with respect to the bill as passed by the Senate appeared in the RECORD July 22, and I ask unanimous consent that it be reprinted in the RECORD at this point.

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

STATEMENT OF SENATOR DECONCINI

Mr. DECONCINI. Mr. President, I intend to cast my vote against final passage of H.R. 4961, the 1982 medicare cut and tax increase bill.

This is not an easy vote. I have spent many hours pondering what is the proper course for me to take—proper for the people of Arizona and proper for the Nation as a whole. In the final analysis, however, the issue comes to this: Is this legislation the right way to partially offset what will be the largest deficit in American history? The answer is "No."

Unfortunately, the administration which entered office with high hopes and the full backing of the American people has faltered in its economic policies. The 1980 election put us all on record in favor of fiscal responsibility, and most especially a balanced Federal budget. The administration convinced itself that this could be accomplished by simultaneously increasing defense spending, and decreasing taxes.

The result of these actions has been a massive recession which still shows no real signs of abating and Federal deficits far in excess of those contemplated in previous years. Now, the administration has decided that the deficits created by its own policies are intolerable and asks Congress to pass the largest peacetime tax increase in history.

The rational approach to fiscal matters should have been to decrease taxes commensurate with decreases in Federal spending. Many of us in Congress have asked the President to reconsider the original tax cut bill and to phase in those cuts as the Federal budget can absorb them. That still remains the proper course of action.

The bill we have before us today will strike a powerful blow against middle-income Americans, although it seeks to masquerade as a bill which closes corporate loopholes.

The tax increase bill will double the excise tax on telephone service, an action that will have special impact on Arizonans in light of recent and very substantial increases in telephone rates.

The tax increase bill initiates the withholding of dividends and interest payments to individuals at great cost in paperwork for financial institutions like savings and loan companies which are already going bankrupt because of the deteriorating economic stiuation. It will also impact on retired persons who rely upon their interest and dividends to make ends meet. I fought this proposal when it was advanced by the Carter administration and its advocacy by the Reagan administration has not affected its total inappropriateness.

The tax increase bill dramatically increases the total amount of medical expenses a family must incur before they can be taken as a deduction. It also reduces from $150 to $100 the amount of insurance premiums that can be deducted, an action that will impact upon practically every single filer of an itemized return.

The tax increase bill will double—from 8 to 16 cents—the Federal excise tax on cigarettes. Whatever one's views on the harm that may accrue from smoking, this type of tax penalizes only the poor and middle-income persons.

The tax increase bill raises the wage base upon which business—including hard-hit small business—will have to pay FUTA—Federal Unemployment Tax Act. It also increases the FUTA tax rate.

The tax increase bill reverses some of the capital information—that is, productivity enhancing—changes in depreciation allowances enacted last year which I cosponsored.

The tax increase bill also substantially reduces the basis upon which the investment tax credit is calculated, further reducing the incentives to invest in our undercapitalized economy.

The tax increase bill does close some corporate tax loopholes, but leaves hundreds of others wide open. First, it is totally deceptive to believe that closing these loopholes will not affect average taxpayers. Taxes are a cost of doing business, and businesses will simply pass them on. So, we will all pay in the long run.

Second, the selective closing of loopholes is a mixed blessing. It is a process whereby Congress decides that this loophole is better than that loophole and therefore it penalizes or rewards businesses according to who had the best lobbyists. The rational approach to the terrible problem of our Tax Code—the approach which I have sponsored in S. 2147—is to scrap the present system in favor of a broadbase flat rate tax. It eliminates all loopholes for individuals and corporations and applies a reasonable tax on all income. This would provide the Government with sufficient revenue and restore basic equity to a system whose fundamental unfairness has gotten out of hand.

The time, Mr. President, when the administration and Congress will have to acknowledge that this Nation's fiscal affairs are in disarray is close upon us. We are like helpless bystanders trying to stop massive hemorrhaging with band-aids. The American people—certainly the people of Arizona—are tired of the deceptions and false promises. They do not want "pie in the sky" promises; they do not want free lunches; they do not want what is not rightfully theirs.

However, they do demand that their elected representatives place commitment to the country above the empty rhetoric of campaign promises and election strategies. They want commonsense, common decency, and common fairness to be the rule and not the exception.

First, the present tax system must be fundamentally transformed to meet the dual needs of revenue raising and equity. The flat-rate tax is the best way to achieve this. Second, we must pass a constitutional amendment requiring a balanced Federal budget as a means of forcing Government to live within its means in the face of constant political temptations. Third, we must keep our taxes as low as possible without going into national debt by adopting rational, not irrational, fiscal policies.

In the meantime, Mr. President, I find the 1982 tax increase bill unacceptable. I proposed that we reduce the deficit by cutting certain Federal programs, like foreign aid. We cannot continue to take and take from the American people while we open our Treasury to foreigners. Generosity and altruism have their place, but our obligations are to our own citizens first. And, those citizens, Mr. President, are suffering from unemployment, high interest rates, poor productivity, a lack of capital investment, a decimated housing industry and an unprecedented number of bankruptcies.

When there are alternatives to raising taxes at a time of extreme economic hardship, we owe it to those we represent to pursue those alternatives. If we can cut foreign aid, eliminate waste, reduce the number of trips Government officials take and the number of cars the Government

buys, we should. Raising taxes should be a method of last resort, not a substitutte for making difficult decisions about the size, role and function of the Federal Government.

I cannot in good conscience support a measure which increases taxes or American working men and women by $100 billion at a time when many millions are out of work and are experiencing the desperation of shattered dreams.

Mr. DECONCINI. Mr. President, the month that has elapsed since Senate action, has witnessed little, if any, improvement in general economic conditions. Almost 11 million Americans are now out of work and the national unemployment rate is approaching double digits for the first time in recent memory. In Greenlee County, Ariz., the unemployment rate stands at 59 percent. Let me repeat that, Mr. President. Fifty-nine percent of the labor force in Greenlee County is without gainful employment. And that story is duplicated in county after county, and community after community across my State and the length and breadth of this land. Moreover, Mr. President, from the first of this year to August 5, over 14,000 businesses have turned belly up. The business bankruptcy rate is over 400 a week. Industrial output has fallen almost 16 percent below last year and 30 percent of our industrial capacity—our mines and factories—is currently idle.

And so, Mr. President, the economic environment has not changed for the better since the Senate considered this legislation. And I regret to say that neither has the bill itself. The conference report before us, far from rectifying the flaws in the Senate-passed version, simply reaffirms, and in all too many cases, exacerbates its worst tendencies. It retains a regressive reliance on excise taxes. It dilutes or repeals many of the savings and investment incentives that are central to a genuine supply-side policy. It proliferates the special rules, arbitrary distinctions, and general administrative complexity and opaqueness that have brought the existing tax system into well-deserved public disrepute. There is, in short, no reason to change my original judgment on this measure. It is still the wrong answer to our fiscal and economic woes.

Finally, Mr. President, I cannot bring myself to support a measure that seeks, in effect, to reduce the Federal deficit by shifting the costs of essential medical services to the poor and the elderly. An increase in the part B medicare premium when the costs of health care are skyrocketing and the economy is severely distressed is just plain unfair. People who have worked hard all their lives and paid into the social security and medicare systems should not have to pay for the policy miscalculations and fiscal profligacy of their Government. The same is true for those who are forced by economic or other circumstances to depend on medicaid. While I strongly support efforts to improve the administration of these programs and reduce State error rates, I do not believe it is fair to cut back on real services and impose a new set of copayments on people who are already having a very tough time making it—especially under such trying economic circumstances.

And so, Mr. President, I will vote against this bill and I hope that a majority of my colleagues will vote their conscience, or at least their better judgment, and defeat it. We can do better. And nothing short of our best efforts will serve if we are to restore the kind of economic stability and fiscal soundness this country deserves.

Mr. HELMS. Mr. President, I had not intended tonight to comment on this tax bill as the Senate moves toward what I presume will be final passage of it. But some of the remarks in this Chamber tonight prompt the observation that originated, as I recall, with Will Rogers who once said something to the effect that "It ain't the things that people don't know that hurt them, it's the things they know that just ain't so."

It has given me concern to hear the disdainful comment tonight about what is popularly known as supply-side economics. In earlier days, before the notion became prevalent that we could somehow spend ourselves into prosperity by confiscating the earnings of the people, they did not call it supply-side economics. It was called the free-enterprise philosophy.

But by whatever name—supply-side economics or the free-enterprise philosphy—its is not a matter of its having been tried and failed. It has not been tried.

Ronald Reagan has not been allowed by this Congress to cut Federal spending. At best, Congress has nervously agreed to reduce somewhat—but only somewhat—the rate of increase in Federal spending.

If Congress had been willing to bite the bullet last year, and do what all of us must surely have known was absolutely essential, there would not tonight be any need, nor any excuse, for this tax bill. Interest rates would have been down, unemployment would have been down, and the Nation's productivity would have been up.

So this compromise tax bill is now before us. We shall see in the weeks and months ahead whether it will cause a significant decline in Government spending. We shall see whether the Wall Street Journal was correct when it described this legislation as "an exercise in economic idiocy."

I watched the vote earlier today in the House of Representatives, and it was an interesting coalition—an intriguing collection of bedfellows. The same is true here this evening. Senator HARRY BYRD calculated the other day that this bill, when all the smoke and mirrors are pushed aside, is $4 billion worse than the original bill passed by the Senate, $4 billion worse in terms of increased spending. That may explain why some Senators who voted against the bill in late July will tonight vote for it. The final rollcall will disclose that assessment.

I shall not dwell in the obvious inequity of the excise tax increase on cigarettes. I confess to being provincial about that—in terms of my objection to it. Here we have the spectacle of the cigarette tax being doubled—while the tax on beer, wine, and liquor remains untouched. I proposed a fair and equitable compromise, which the able Senator from Kansas agreed was fair and equitable. I proposed that the excise tax on all of these products be increased by 25 percent. That would have amounted to a 2-cent-per-package increase in the cigarette tax, perhaps a 5-cent increase in the tax on a six pack of beer, a few cents increase on a bottle of wine, and maybe as much as 24 cents on a fifth of whiskey.

It is my understanding that the Senate conferees were willing to agree to my proposal, but that the House conferees rejected it. That is the kind of inequity to which I cannot be a party. If there is to be a tax bill, it should be fair.

Beyond that, I will not discuss in great details my personal evaluation of this measure. And certainly I will not be critical of those who put it together. They have worked hard, and I accord them no less good faith than I would hope they accord me.

But somewhere, somehow, it seems to me that we have lost our sense of history. We have not tried to examine the past in search of a light to guide us down the rocky pathway we must travel, because, Mr. President, if we had searched the history of this and all other nations, we would not have found one instance wherein a tax increase in time of recession was successful.

All of us must pray that this will be then one time when a tax increase will work beneficially. At the same time, surely we can acknowledge privately, if not publicly, that excessive Government spending creates deficits, and that deficits are the consequence of bad economic policies. That is why a tax increase in time of recession is certain to increase the deficit instead of lower it.

We will see whether increasing taxes will not depress economic conditions through reduced incentives, and whether this will not mean smaller-than-expected revenues. Slower economic growth will cause entitlement expenditures to explode—and remember: The budget deficit increases by

$25 to $28 billion for every 1 percent increase in unemployment.

Mr. President, over four-fifths of the recent estimated increase of the deficit was caused by a deteriorating economy, not by the Reagan tax cuts. Therefore, our problem is a lack of growth, not a lack of revenues.

The logic behind the proposed tax increase is contrary to every respected school of economic thought. I cannot think of a single group—from monetarists to Keynesians to classical supply-siders—that would recommend raising taxes in the middle of a recession. Yet that is exactly what is being done.

Massive tax hikes and policies of austerity in the midst of a recession are not without historical precedence. From 1930 to 1932, Herbert Hoover pursued a policy course that included massive tax increases. Mr. Hoover and his advisers were hopeful that the budget could be balanced and economic expansion unleashed. Mr. Hoover held the view that deficits were the crucial issue—he ignored the factors that would provide for growth. Thus he followed an extremely tight monetary policy, disregarding the massive inflows of gold to the Treasury which should have caused the Federal Reserve to increase the money supply, and Congress raised taxes massively.

Does that strike a familiar chord?

History makes clear that this not only failed to balance the budget, it also set into motion the most severe economic depression in this Nation's history. Today our policymakers are following a frighteningly similar course. We are ignoring growth, we are mesmerized by deficits and we are pursuing a monetary policy that is causing liquidations and deflation in basic commodity prices.

Let me quote from speeches by President Hoover in April and May of 1932 when he was lobbying for his income tax increase. He said that:

> The fundamental contribution to the stability of the situation is the obvious acceptance by everybody that the budget must be balanced . . . The most imperative need of the nation today is a definite and conclusive program for balancing the budget. Uncertainty is disastrous . . . If such a program should be agreed to by the leaders and members of both Houses it would so far to restore business, employment and agriculture . . . The continued downward movement in the economic life of the country has been particularly accelerated during the past few days . . . There can be no doubt that . . . the long continued delays in the passage of legislation providing for such reductions in expenses and such addition to revenue as would balance the budget . . . have given rise to doubt and anxiety as to the ability of our Government to meet its responsibilities.

After the 1932 tax increases passed, the economy took a nosedive. No one could ignore the dire situation, but the President responded with pleas for further tax increases in order to balance the budget. In an address to Congress on January 17, 1933, Mr. Hoover said:

> The increase in revenues enacted at the last session have not had the results hoped for because of continued economic stagnation. The income of the Government for the next fiscal year . . . is likely to fall short under present . . . conditions.

Unfortunately, the President adhered to this economic logic and called for even further tax increases to balance the budget. Later on in the same speech he said,

> No matter how rigid economics may be it is obvious that the Budget cannot be balanced without a most substantial increase in revenues.

President Hoover concluded his address with a passage that could have been used in support of the present bill:

> The balancing of the budget is one of the essential steps in strengthening the foundations for recovery. Capital expenditures are a very important item in our economic life. There can be no doubt that there is an enormous accumulated demand for equipment and replacements of all kinds if long-time funds could be obtained cheaply and if confidence were restored. For some time now long-time funds have not been available for the public at reasonable rates. The retirement of the Federal Treasury from the market as a borrower, the balancing of the Federal Budget and the refunding operations necessary to bring the Government into better balance would have a stimulating effect, would vitalize our entire credit structure and produce one of the conditions essential to continued recovery.

It was said in 1932 that we must balance the budget in order to end Government "crowding out" of the credit markets so as to lower interest rates in order to spur recovery. But when taxes were raised the economy stagnated and revenues declined. Some people would say that the much maligned Laffer curve effect had taken place—that tax increases had so reduced incentives that the economy stagnated and the budget could not be balanced, because revenue declined.

Lowering barriers to exchange and reducing the tax burden to promote growth and prosperity has been called Reaganomics. The view that higher taxes in the midst of a recession is the path to prosperity has been called by some Hoovernomics, and, until very recently, has been discredited and rejected by all schools of economic thought. By opposing this tax increase I am alining myself with the supporters of Reaganomics in opposition to those who see only austerity as a policy alternative. Though economists will disagree on many issues, one thing is undisputed: The last time we implemented Hoovernomics we experienced the most catastrophic economic calamity in our Nation's history.

Mr. President, a growing economy with a high savings rate can handle a large deficit. A stagnating economy cannot. If we adopt policies that are conducive to savings and growth, a temporary deficit is much less a threat to the economy. Tax rate changes have a proven effect on personal savings rates. From 1963 to 1967, when tax rates were reduced by 30 percent, savings rose at a rate of 51 percent. Then a 10-percent tax surcharge was imposed in 1968 and 1969, and the savings rate dropped by 21 percent. Each time, the savings rate changed two to three times the change in tax rates. Such a savings rate change in response to the rate cuts enacted last year would lead to an increase in savings of roughly $100 billion by 1984. Such a dramatic increase in the savings pool will have a dampening effect on interest rates regardless of whether or not there is a deficit.

Nations that have prospered have adopted economic policies that are conducive to growth—low tax rates and minimal barriers to exchange. While I certainly do not condone deficits, I do suggest that we should not try to eliminate it by adopting policies that will strangle productive activity. Higher taxes is the kind of "cure" sure to kill the patient.

Tonight in this Chamber, Mr. President, a number of references—critical references—have been made about the big tax cut of 1981. But the 1981 tax cut has turned out to be no tax cut at all. It was, in fact, a net tax increase of $7 billion, if the austerity advocates have their way—as the chart below demonstrates.

Mr. President, I ask unanimous consent that a chart showing tax revenues be printed in the RECORD at this point.

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

[In billions of dollars]

	Fiscal year—			Total
	1983	1984	1985	
Tax increases due to inflation and social security	50	78	110	238
Finance Committee's recommendations	20.9	34.2	43.9	99
Total tax increases	70.9	112.2	153.9	337
Personal income tax reductions [1]	70.1	113.6	146.56	330.26
Net tax increase (+), tax cut (−)	+.8	−1.4	+7.34	+6.74

[1] Rate cuts, marriage penalty, indexing.

Source: Senate Budget Committee.

Mr. HELMS. Mr. President, I could go on, but the hour is late. Suffice it to say that I wish I could agree with the optimism that some have expressed about this bill. I hope that they will prove to be correct—and that I will be proved wrong.

I wish I could in good conscience support the measure, but I cannot. I must cast my vote in opposition.

Mr. DOLE. The bill would apply the new stripped-bond provisions to bonds issued and stripped prior to the effective date of July 1, 1982. It has been

suggested that the provisions apply only to bonds stripped after the effective date, just as the original issue discount provisions apply only to instruments issued after the effective date. That was not our intent. However, we intend to consider this suggestion at the appropriate time and if it has merit to include in appropriate legislation a provision grandfathering instruments that were stripped prior to July 1, 1982, so that current law will continue to apply to such instruments.

Mr. STEVENS. Mr. Chairman, it is my understanding that a calculation of gross food and beverage receipts from a hotel or roadhouse would include all charges to the room, but the calculation of aggregated charged tips would not include tips related to those charges. Is that correct?

Mr. DOLE. I am pleased to clear up an ambiguity in the conference report. The Senator is correct. Only gross food and beverage charges to a room—whether consumed in a restaurant, bar, or in a guest's room, would be included in gross receipts—not aggregate charged receipts. Tips on such amounts would not be included.

Mr. DODD. Mr. President, I have a question concerning section 260(b) of the bill, relating to life insurance company taxation. This provision relates particularly to the deduction for certain amounts credited under group pension contracts. It has come to my attention that some life insurance companies issue single premium group annuity contracts, which are sold to allow an employer in a merger, bankruptcy, or other situation to fix permanently the liability for vested employee benefits. Under these contracts, interest is not explicitly credited each year; rather, the price, or premium, for each contract is established primarily by competition, without the identification of a specific interest amount. In this type of situation, where the life insurance company cannot actually determine the exact amount credited under the contract, I understand that this provision of the bill permits the taxpayer to take into account, as an amount credited to policyholders, interest based upon reasonable estimates reflecting the facts and circumstances involved in pricing the contract.

Mr. DOLE. I agree with the gentleman's interpretation of the bill. I also understand that the Treasury will issue regulations to provide further guidance in this and similar situations.

Mr. BENTSEN. I wish to invite the chairman's attention to section 266 of the bill, which enacts new section 101(f) of the code. Paragraph (2)(E) of this new provision concerns the computation of adjustments to the guideline premiums for universal life insurance. It states that if the death benefits or rider benefits are changed after issue of these policies, adjustments will need to be made, upward or downward, when the change becomes effective. Mr. Chairman, I understand that such adjustments are only to be made in two situations: First, if the change represents a previously scheduled benefit increase that was not reflected in the guideline premiums because of the so-called computational rules; or second, if the change is initiated by the policy over to alter the amount or pattern of the benefits. Is this correct?

Mr. DOLE. That is my understanding. I would also note that these adjustments may be computed in the same manner as the initial guideline premiums, but based on the change in the amount or pattern of the benefits and the insured's attained age at the time of the change. Of course, the Treasury may determine in regulations that some other method of computing adjustments is to be used instead.

Mr. HAYAKAWA. On July 23, 1982, I offered an amendment to the Tax Equity and Fiscal Responsibility Act of 1982, H.R. 4961, which was adopted by my colleagues. This legislation amended the transitional rules under section 4943 of the Internal Revenue Code providing the Ahmanson Foundation with a limited extension of the time within which it must dispose of stockholdings in H. F. Ahmanson & Co., the holding company of Home Savings of America, the largest savings and loan association in the United States. It allowed the Ahmanson Foundation to avoid sales of H. F. Ahmanson stock at significantly depressed prices. It is my understanding that during consideration of the conference report, the conferees though it best this language not be included in H.R. 4961.

Mr. DOLE. The Senator is correct. At the unrelenting insistence of the House conferees, all provisions dealing with private foundations were deleted from the bill.

Mr. HAYAKAWA. It is also my understanding that it was agreed on both sides that hearings will be held to review the problems caused by the divestiture requirement applicable to all private foundations, including the Ahmanson Foundation.

Mr. DOLE. The Senator is correct again. Senate Finance Committee hearings will be scheduled at an appropriate time to consider the issue of private foundation divestiture, including the problems faced by the Ahmanson Foundation.

Mr. HAYAKAWA. I would ask that the Senator continue to consider this matter carefully.

Mr. DOLE. I will keep the Senator's concerns in mind.

Mr. HAYAKAWA. I thank my distinguished colleague.

Mr. CRANSTON. Mr. President, I understand that the provisions regarding the financing of rental housing through industrial development bonds have been amended to provide a definition of low- and moderate-income persons that determines who would be eligible under the program. It appears that there is concern that State housing finance agencies and other local issuers may not be able to continue to provide interim financing through loans by the Farmers Home Administration under the section 515 rural rental housing program. I am very concerned that the viability of this program will be threatened if such issuers are unable to provide interim financing for these projects. It is my understanding that the Secretary of the Treasury would not be forbidden from permitting such projects to be financed under the provisions of subparagraph (a) of section 103(b)(4) of the code provided that the definition of individuals of low and moderate income used for such purposes is determined by the Secretary of the Treasury in a manner consistent with determinations under section 8 of the Housing Act, except that the percentage of median gross income which qualifies as low or moderate income shall be 80 percent.

I want to ask the chairman of the Senate Finance Committee and manager of the conference report if my understanding is correct.

Mr. DOLE. Mr. President, I appreciate the opportunity to clarify this point. The Senator from California's understanding is correct.

Mr. PACKWOOD. It is my understanding that, under present law, a pension plan may enter into an investment program which includes investment in home mortgages fully secured by real estate, and not by participants' plan benefits.

However, the conference report at page 620 seems to indicate that there is a blanket prohibition against these investments when a mortgage may be related to a home of an officer, director, or owner. That was not the intention of this Senator. Does the language on page 620 of the conference report intend to change current law with respect to whether loans to these persons are permissible plan investments?

Mr. DOLE. No, it is not intended to change current law in this respect. As I understand the requirements of ERISA, loans which benefit officers, directors, or owners, or their beneficiaries, may be subject to restrictions as "prohibited transactions." This conference report does not change these rules.

The statement of managers at page 620 notes that certain mortgage investments made by a pension plan will not be treated as loans to plan participants which this legislation limits. The language there relating to loans to an officer, director, owner, or his

beneficiary should not be interpreted to introduce or create a bar on treatment of loans to these persons as plan investments. However, this does not change the rules that prohibit certain loans to officers, directors, or owners.

Mr. PACKWOOD. Mr. Chairman, as you know, at the very end of the conference on this legislation we decided to move the effective date for withholding on interest and dividends from January 1, 1983, to July 1, 1983. However, we did not make the same change in the effective date for pension withholding, which, in some cases, could be more difficult to implement by January 1. Therefore, it is quite important that the Secretary of the Treasury exercise his authority under the act to provide pension payors with expeditious and liberal relief from the withholding requirements for the first 6 months of 1983.

Is it the chairman's understanding that the Secretary can and should follow such a policy in issuing regulations and considering applications to delay the application of the pension withholding requirements?

Mr. DOLE. Yes, it is. The legislation provides the Secretary of the Treasury with the authority to delay application of the pension withholding provision where a payor is unable to comply without undue hardship. It is the understanding of this Senator that the "payor" in this provision may be an insurance company or a bank which may administer a large number of individual pension plans. The determination should be made on a case-by-case basis for each payor, but in making this determination of undue burden, the Secretary should be satisfied that the payor has made a good-faith effort to retrieve necessary information from employers whose plans it administers.

Mr. PACKWOOD. I thank the Senator.

Mr. LONG. Mr. President, I yield to the Senator from South Carolina.

Mr. HOLLINGS. Mr President, on August 13, 1981, President Reagan signed into law the biggest tax cut in American history. Flush with sparkle and promise, the President told us that the 5-year, $750 billion revenue reduction would, at last, flatten the high deficits, and make possible a return to the great days of prosperity.

We were told economic recovery was on the way. We could look forward to increased savings, said the President, and more investment capital at lower rates of interest. There would be more jobs, greater productivity, and all of that was to happen because the Kemp/Roth tax package was the great elixir of economic growth.

Those were euphoric times. And they lasted exactly 6 weeks before the President went on national television in September to say he needed another $22 billion in revenue enhancements in order to meet his goal of a balanced budget by 1984. So it took just 42 days before the country found out that the Kemp/Roth elixir was just snake oil in a fancy bottle, and we had drunk too much.

Last year's high hopes were dashed in a hurry. Now, in August of 1982, the hopes seem high again. The stock market soared 39 points on Tuesday, and traded 133 million shares yesterday. Interest rates have taken a sudden plunge. But, remembering last year's 6 week flipflop, I wonder where we will be 6 weeks from today, especially if Congress approves the biggest tax hike in American history, an increase President Reagan seems to want as badly as the record tax cut he wanted just 1 year ago.

Last year's Kemp/Roth tax package haunts every corridor of the economy, and has deprived us of the chance to mount a realistic attack on the Federal deficit. No matter what we have done in the effort to curtail spending, it has not—and cannot be—enough to catch up with the beheading of revenues because of Kemp/Roth.

With the projected revenue loss of $750 billion over the next 5 years, it is clear that further spending cuts alone cannot achieve a balanced budget. In 1985, defense will cost $300 billion, social security $200 billion, health $100 billion, veterans $25 billion, and the increased cost for interest on the national debt—$140 billion. We are bound to have $765 billion in spending during fiscal 1985, but the expected revenues are only $760 billion.

If we eliminated food stamps—completely wiped out the program—if we closed the Department of Agriculture, Commerce and Interior and stopped all their programs; if we eliminated the courts, the Congress and the FBI; in short, if we, dismantle all the rest of the Federal Government, we would still have a deficit.

So, rather than setting off a boom in the economy, the Kemp/Roth tax reduction has inflicted despair at the very time that the American people need hope.

I am not here to question the President's good intentions. Like everyone else, he wants the country back on its feet. Kemp/Roth, however, has bent the economy to its knees, and that is something the President has not been able to fully grasp. The President's strong support for a tax increase is at least a belated admission that we cannot fight deficits with the revenue arm tied behind our backs. But while the tax bill now before us has its virtues, it is not the kind of adequate or equitable package we need so that more economic surgery will not be needed later.

On the positive side, this bill closes some loopholes. It does away with the obnoxious safe-harbor leasing provision.

But there are many negatives. The bill raises the floor on itemized medical deductions to 5 percent. It includes interest and dividend withholding provisions that tend to discourage savings at the very time that increased personal savings are needed. It penalizes the development of technology. It removes revenue resources from the States. But the largest negative feature of this tax bill is a provision that is not even in it: It obscures the fact that we are still faced with persistently high and totally unacceptable Federal deficits.

This tax bill does not set us on a new course. It leaves us flying blindly and blithely through a mountain range of deficits. We need to get our bearings. We need the political willpower and the economic commonsense to adopt a flight plan toward budgets balanced by spending restraint and prudent revenues.

We must move immediately to forgo the third year installment of the Kemp/Roth tax cut. That would bring in some $74 billion without enacting a tax increase, but just by freezing tax schedules as they are.

Next, we need to look clearly at defense spending. In the last 2 years, we have increased defense spending by a total of $74 billion. Instead of rushing to throw money at the defense industry in the misguided belief that the dollars can be converted overnight into an improvement in national security, we should stretch that out over a longer period. We cannot afford to make actual cuts in defense spending. Neither can we afford to threaten the rest of the economy by accepting exorbitant increases. If we agree to a 3-percent real growth in national defense spending, that still leaves us a $23 billion increase for next year, a level of spending that exceeds President Carter's when adjustments are made for recent rates of inflation.

More than anything else, we must finally face up to the problems in our entitlement programs. What we need to do, and what I have been trying to persuade my colleagues is necessary, is to momentarily freeze the cost-of-living increases and cap them off at 3 percent. It has been done elsewhere—in city halls, in State capitals, and among members of organized labor—where necessary and temporary restraint has been applied to wage increases.

The ideas I have just described are at the core of a program I have offered on several occasions throughout this year. I will do it again, not because I am ornery or because I am a member of a political party different from the President's, but because we genuinely need a firm, fair, and effective approach to the deep trouble we are in.

It is not necessary that the President eat humble pie and reverse his program in total. I am not asking that at all. I share the President's view that we must turn down the spending thermostat. I agree we need to restrain government intrusion. But if the President is truly serious about restraint, then it is essential that he practice it himself.

The wild ride the economy has been on has not served any of us very well. The Reagan program running full out, has not cut the budget deficits, has triggered massive unemployment, and, while the recent genuflection in interest rates is welcome, there is nothing to suggest that it is long term, or related in any way to the President's economic program.

If the events this week on Wall Street tell us anything at all, it is that the economy is dangerously vulnerable to little nudges, to isolated events, to the opinions of highly visible economists. This week tells us we have an unstable economy, made even more uncertain by shifting signals. One day, the distinguished chairman of the Senate Finance Committee expresses disappointment in the President's economic program; the next day the President tells us we should be willing to pay the price for keeping the program going. One morning the President's top advisor, Jim Baker, admits the economic plan is not working as advertised; the same night President Reagan tells us he is not going to change it.

We need to change gears, and we had better do it soon. This tax bill does not do that. It obscures our real problems, and I will not support it.

Mr. LONG. I yield 2 minutes to the Senator from Michigan.

Mr. RIEGLE. I thank the Senator for yielding.

Mr. President, we have enormous economic problems in the country with our main requirement to get people back to work and deal in a fundamental way with our problems. I do not think this tax increase package gets that job done. I think it will create the illusion that we are making progress and thus postpone real action for some months, to the real peril of this country. So I will be voting against this tax increase because I think it is the wrong measure to take at this critical time.

THE PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, if there is no further request for time, I am prepared to yield back.

Mr. DOLE. Mr. President, I would just like to take 2 or 3 minutes.

How much time does the Senator from Kansas have?

THE PRESIDING OFFICER. Four minutes, 31 seconds.

The Senator from Kansas.

Mr. DOLE. Mr. President, as we prepare to vote on this measure, I thank all Senators and members of their staffs, Treasury representatives, the staff of the joint committee, our own Finance Committee, on both sides of the aisle, and all the others who have been working night and day for the past month, I might say, to bring us to this point.

Obviously, if we lose, it will be a disappointment—not really a personal disappointment, but I think a disappointment to many Americans who expect more from the Senate and from those who are privileged to sit in this body. I think the vote will be very close. I think it will be favorable. If it is unfavorable, then I hope that someone will come up with a solution. We will go back and visit some taxes that we overlooked the first time in an effort to bring in more people and make it more palatable to more people.

I say, finally, that if someone is concerned about spending reduction, 60 percent of it in the reconciliation process is in this bill. We exceeded the budget resolution in spending reductions. If Senators are looking for tax reform, for closing loopholes, it is in the bill.

Yes, we increased the telephone tax an average of 54 cents a month. If you smoke 200 packs of cigarettes a year, that is $16 more under our bill. We reinstated an airplane tax that we have had until 2 years ago.

We can make all the speeches we want about those great taxes and how they are bad for the American people, but so is unemployment, so are high interest rates and so are big deficits bad for America. I do not suggest for one moment that this bill is perfect or that it is the answer to all America's ills, but I do suggest that if we reject this conference report, after the House passed it today and after the Senate passed the bill once, then we send exactly the wrong signal to those who are looking to us for appropriate action.

Mr. President, as we near what I hope will be a successful conclusion to a long and difficult struggle, I again commend the Speaker of the House of Representatives, the distinguished ranking minority leader, Congressman MICHEL, Congressman CONABLE, and DAN ROSTENKOWSKI, and others on the House side, for their courageous leadership.

In my own view, having managed the tax bill last year when we were giving away money, I must say that the President's action this year in supporting necessary revenue increases in my view is much more courageous than it was last year. It takes a practical, pragmatic leader to make difficult decisions, and the President has made those difficult decisions.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. LONG. I yield back the remainder of my time.

Mr. SCHMITT. Mr. President, if the Senator will withhold for just 30 seconds, the last few speakers have indicated that some of us who oppose this bill are less than knowledgeable, less than patriotic in that opposition. We disagree. That is the bottom line. We disagree. If this bill does fail, we will in fact offer alternatives. There are plenty of alternatives or we would not be in this position today.

Mr. DOLE. Let me say that I do not intend to indicate that. I do not believe the Senator from Kansas has. But I do believe, having gone through the process, if we all wrote our own tax bill, we would have a great time. There would be 100 tax bills on the Senate floor, and we would each have a perfect bill. But I must say that this bill was put together in the Senate Finance Committee, passed on the Senate floor and improved in conference. It comes back now for a final approval by the Senate.

I am prepared to accept that verdict.

Mr. SYMMS. Will the Senator yield?

Mr. DOLE. I yield.

Mr. SYMMS. I thank the Senator for yielding.

I rise in support of this conference report.

I would like to make a few comments with regard to the section of this conference report relating to the completed-contract method of accounting.

I am concerned that under the accounting method changes for long-term contracts, a contract which is not expected to be an extended-period long-term contract could, unintentionally, become an extended-period long-term contract because of unforeseeable circumstances which a reasonable businessman could not anticipate based on prior experience with similar long-term contracts or events which are beyond his control. For example, strikes, unanticipated soil failures, litigation between the parties to the contract, litigation by third parties, defaults by subcontractors, owner-caused delays such as failure to make progress payments or provide access to the construction site, unusual delays in delivery of materials or supplies, change orders exending contract duration beyond 36 months which could not be anticipated, delays due to zoning or permit applications, and delays caused by Government agencies as in the acceptance of environmental impact statements are the types of events which could turn a contract into an extended duration contract if they are not foreseeable.

Also, it would seem that the mobilization and insignificant preparatory costs weeks or months prior to actual

physical construction should be treated as bidding costs.

I do believe, however, that those concerns can be addressed during the regulatory process. It is my hope that prior to the formulation of the regulations all concerned parties could consult on this matter.

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

The VICE PRESIDENT. Without objection, it is so ordered.

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

Mr. LONG. I yield back the remainder of my time.

Mr. DOLE. I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the conference report. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida (Mr. CHILES), is absent because of illness in the family.

The VICE PRESIDENT. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 337 Leg.]

YEAS—52

Abdnor	Durenberger	Packwood
Andrews	Garn	Pell
Armstrong	Gorton	Percy
Baker	Grassley	Pressler
Baucus	Hart	Quayle
Boschwitz	Hatch	Roth
Bradley	Hatfield	Rudman
Brady	Hayakawa	Simpson
Chafee	Heinz	Specter
Cochran	Jepsen	Stafford
Cohen	Kassebaum	Stevens
Cranston	Kennedy	Symms
D'Amato	Laxalt	Thurmond
Danforth	Lugar	Tower
Denton	Mathias	Tsongas
Dodd	Matsunaga	Wallop
Dole	McClure	
Domenici	Murkowski	

NAYS—47

Bentsen	Goldwater	Metzenbaum
Biden	Hawkins	Mitchell
Boren	Heflin	Moynihan
Bumpers	Helms	Nickles
Burdick	Hollings	Nunn
Byrd, Harry F., Jr.	Huddleston	Proxmire
	Humphrey	Pryor
Byrd, Robert C.	Inouye	Randolph
Cannon	Jackson	Riegle
DeConcini	Johnston	Sarbanes
Dixon	Kasten	Sasser
Eagleton	Leahy	Schmitt
East	Levin	Stennis
Exon	Long	Warner
Ford	Mattingly	Weicker
Glenn	Melcher	Zorinsky

NOT VOTING—1

Chiles

So the conference report was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The majority leader is recognized.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, there will be no more record votes tonight. The Senate will convene at 9 a.m. tomorrow.

Several Senators addressed the Chair.

The VICE PRESIDENT. The Senator from Arizona seeks recognition.

Mr. DECONCINI. I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, we cannot hear what the Senator is saying. May we have order?

The VICE PRESIDENT. The Senator will suspend.

Will the Senate be in order? The Senator from Arizona is speaking.

The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, the Senate is still not in order.

The VICE PRESIDENT. The Senator makes a valid point. The Senate is not in order.

Mr. ROBERT C. BYRD. Mr. President, the Senate is still not in order.

The PRESIDING OFFICER (Mr. MATTINGLY). Will the Senate please come to order. Those who wish to talk please retire to the cloakroom.

VHF TELEVISION FOR NEW JERSEY

Mr. BRADLEY. Mr. President, I am extremely pleased that tonight also marks the successful conclusion of one of the chief legislative battles I have fought since coming to the U.S. Senate. With the enactment of tonight's legislation, New Jersey will no longer be one of only two States in the country which has no VHF commercial television station.

For 3½ years, I have tried, through both the administrative and legislative routes, to get a television license reallocated to New Jersey. I deeply appreciate the support I have received from my colleagues in that effort. Four times the Senate has passed amendments I have offered to reallocate a license to my State. Yet, until tonight, those efforts have been stalled.

To those who do not live in New Jersey, this problem may not seem as serious as those in our State know it to be. Last year, for example when we had a drought so severe that water was rationed for most of the residents of our State, the New York television stations gave little meaningful coverage to the problem. New Jerseyites did not learn from those New York stations how to conserve water or what the daily changes were in water use regulations.

And the out-of-State stations do not cover daily events of importance to those who live and work in our State. As a result, New Jerseyites know more about what is happening in New York and Philadelphia than they do about important occurrences in Trenton and the rest of the State.

My amendment, which was ultimately accepted by the House conferees, will remove the impediments which currently discourage an existing licensee in either New York or Philadelphia from voluntarily seeking to move to New Jersey. Under current law, that request would automatically trigger an action to open up that license to new applicants. In other words, the license would automatically be at risk to the current licenseholder. This makes it very unlikely that anyone would voluntarily offer to move to New Jersey.

This amendment will direct the FCC to renew the license of any current VHF TV licenseholder in a State that has more than one VHF TV station who applies to move that license to a State that has no commercial VHF television station.

It is my hope that an application will shortly be made. One station has already expressed a desire to move to New Jersey.

Under the provisions of my amendment, the reallocation of a license to New Jersey will mean that the licenseholder will move its studios and offices to New Jersey and operate in New Jersey for the benefit of the people in our State.

While I have consistently indicated that I will take no part in any effort to determine who will hold a New Jersey license, I intend to carefully monitor the development of any New Jersey station to insure that it is responsive to the needs of my State. This station will not be a New Jersey station in name only. It will serve the people of New Jersey.

Mr. President, we all recognize the tremendous impact that telecommunications has on our lives, on our children's education, on our ability to understand each other's needs. No longer will New Jersey suffer from the lack of this very important tool. I am grateful that tonight signals a new day for the people of my State.

Mr. BAKER. Mr. President, I understand the distinguished manager of the bill has certain details to attend to at this time, before I make arrangements for tomorrow.

CORRECTIONS IN THE ENROLLMENT OF H.R. 4961

Mr. DOLE. Mr. President, I call up House Concurrent Resolution 398, which is at the desk.

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

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 398) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 4961.

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

The concurrent resolution (H. Con. Res. 398) was agreed to.

Mr. DOLE. That makes some printing and technical corrections.

The PRESIDING OFFICER. The Senator is correct.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. BAKER. Mr. President, could I have the attention of the Senate for a moment?

The PRESIDING OFFICER. Will the Senate please come to order so the majority leader may proceed.

Mr. BAKER. Yes. I ask unanimous consent, Mr. President, when the Senate completes its business today it stand in recess until the hour of 9 a.m. tomorrow.

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

ORDER OF PROCEDURE TOMORROW

Mr. BAKER. Mr. President, on tomorrow after the recognition of the two leaders under the standing order, it is anticipated that the Senate will be asked to proceed to the consideration of the supplemental appropriations conference report.

The supplemental conference report is the last item of must business that must be transacted before we can pass the adjournment resolution. The House will be in session tomorrow awaiting our action on the adjournment resolution. Mr. President, I hope it will be possible to proceed to the consideration of that matter by unanimous consent.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business to extend not past the hour of 10:30 p.m. in which Senators may speak for not more than 3 minutes.

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

THE BUS DEREGULATION CONFERENCE REPORT

Mr. PACKWOOD. Mr. President, it had been my hope—and I talked with the distinguished minority leader—to bring up the bus deregulation conference report tonight. He has indicated he would like a rollcall vote but, as I understand it, there will be no more rollcall votes.

Mr. BAKER. That is correct. There will be no more rollcall votes tonight.

Mr. PACKWOOD. So I will not push it tonight. I can assure the minority leader that this will not harm the small communities. The problem has been taken care of in the House, and the distinguished chairman of the House committee, Mr. HOWARD, is in the Chamber tonight. I will defer to the minority leader.

I would like to bring it up tomorrow. We may have to have a rollcall vote.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. PACKWOOD. Yes.

Mr. ROBERT C. BYRD. The bill, when it passed the Senate, would threaten bus service for at least 39 West Virginia communities. I have not had an opportunity to look at the conference report. I would not want to say at this time that I definitely will ask for a rollcall vote. I may be willing to have a voice vote. I may be willing to have a voice vote even if I vote "no." But I will reserve my rights until tomorrow to ask for a rollcall vote.

Mr. PACKWOOD. I understand perfectly, and I appreciate the Senator's consideration.

Mr. ROBERT C. BYRD. The Senator will be assured I will not hold up the conference report.

IN MEMORY OF JACK GILES

Mr. HEFLIN. Mr. President, I have the sad duty of informing the Senate of the death of Jack Giles of Huntsville, Ala.

Jack Giles played an invaluable role in the progress of the Alabama Space and Rocket Center in Huntsville. He had been actively involved with the Alabama Space Science Exhibit Commission since 1965, and served as chairman of the commission since 1970, the year the Alabama Space and Rocket Center opened. Jack worked diligently for the betterment of the space center, and was a key figure in the development of a $16 million expansion program for the center.

Jack's dedication and concern for his community and State is evidenced by the many years he devoted to public service. The former attorney was appointed as director of the State department of industrial relations by former Gov. George Wallace in 1963. In addition, he served as a Huntsville city judge, president of the Huntsville Bar Association and a Madision County Circuit Court registrar.

The native Alabamian was an all-state football player at Huntsville High School. He attended Auburn University and earned his law degree from the University of Alabama. Jack chose to interrupt his college years and enter the military during World War II, where he served as captain of engineers under General Stillwell in the Burma theatre.

A devout Christian, Jack was an elder and former trustee of the Central Presbyterian Church in Huntsville. In addition, he was a retired lieutenant colonel in the Alabama National Guard and a member of the Troy State University Board of Trustees.

I wish to express my deepest sympathy to Jack's family. Survivors include his wife, the former Majorie Brown; two sons, Jack Giles, Jr., of Huntsville and Tom Giles of Birmingham; three daughters, Mary Grace Giles and Phyllis Giles of Huntsville, and Judy Moon of Birmingham; three sisters, Mrs. Sara Poole of Petersburg, Va., Mrs. Molly Goodloe of Richmond, Va., and Mrs. Dolly Stevenson of Birmingham.

Jack has served his family, his State, and his country well. His presence will be greatly missed by those who dearly loved him, and also by those whose lives he touched during his great service to our society.

NATIONAL FIREFIGHTERS WEEK

Mr. HEFLIN. Mr. President, I would like to rise in support of Senate Joint Resolution 227, concerning the commemoration of the week beginning September 20, 1982, as National Firefighters Week. It is certainly appropriate that these brave men and women be honored in this way.

Firefighting has been characterized as the most dangerous occupation in this country. More than 120 firefighters died in the line of duty last year, and countless others were injured. These courageous people risk life and limb every day while protecting the lives and property of other Americans. In fact, we may proudly say that American firefighters are the finest and bravest in the world; their skill and professionalism are evidenced by the fact that America suffers less property damage per fire than does any other country in the world.

Besides serving to honor our firefighters, National Firefighters Week will be a golden opportunity to increase public awarnesss about fire. Despite the valiant efforts of our firefighters, America experiences an inordinately high number of fires per capita, primarily because of the lack of public awareness about fire.

I urge my colleagues to support this resolution honoring our brave firefighters, and I call upon the general public to become actively involved in National Firefighters Week.

THE FLAT-RATE TAX

Mr. LONG. Mr. President, I ask unanimous consent to have printed in the RECORD an article published in the Washington Post in connection with the flat-rate tax.

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

[From the Washington Post, July 13, 1982]

FLAT-RATE TAX WOULD HELP THE RICH

Many persons have asked what I think of proposals to replace our progressive rate income tax system with a so-called flat rate income tax.

My answer to them is simple: "If you're rich you'll love it; if you're not rich, look out!"

A pure flat-rate income tax would eliminate all deductions and tax everyone at a single rate. For example, with a flat rate of 10 percent, a $20,000-a-year worker would pay $2,000 in federal income taxes, while a person with a $200,000-a-year income would pay $20,000. Our "progressive" system permits deductions and taxes individuals at rates ranging from 12 to 50 percent, depending on income. This system is based on the principle that those with large incomes should pay a higher percentage than those with low incomes.

Advocates of a flat-rate tax have correctly argued that our present system is complicated and in need of simplification. The question is whether it is justifiable to shift the tax burden from the rich to the middle- and low-income taxpayers in the name of simplicity.

In my view, simplification of the tax system and flat rates are completely separate issues. If it is desirable to close loopholes in order to reduce tax rates, that can be done without the massive shift in tax burden involved in a flat-rate tax. I am concerned that some proponents of a flat-rate system are using simplification as a convenient slogan to justify big tax cuts for the rich at the expense of middle- and lower-income taxpayers.

Much of the support for a flat-rate tax is inspired by the belief that "fat cats" use loopholes to avoid paying their fair share of taxes under the present system. But what constitutes a loophole is in the eye of the beholder. I doubt that many middle-income homeowners consider their home mortgage interest deductions a "loophole." But how do the millions of taxpayers who do not own their homes view this deduction?

Other deductions—or loopholes—that would be eliminated by a flat-rate tax include charitable and church donations, consumer installment interest, state and local taxes, union dues, medical bills, moving expenses, alimony and educational expenses.

Employer-paid fringe benefits, such as health and life insurance, pension contributions, subsidized parking and educational expenses, would be subject to full taxation. Also subject to immediate taxation would be the gain a homeowner makes when he sells his home. At present, homeowners are permitted to defer tax payment on the sale of their homes if they purchase new ones of equal or higher value within a certain period.

Congress' Joint Committee on Taxation recently reported how an 11.8 percent flat-rate tax on adjusted gross income would affect taxpayers. Using adjusted gross income figures for 1984, the Joint Committee found that the amount of taxes paid by persons with incomes below $30,000 would increase by percentages ranging from 12.8 to an astronomical 1,259. However, taxes for those earning more than $30,000 a year would decrease by amounts ranging from 5 percent to 53.2 percent.

In studies on flat-rate taxes, the Congressional Research Service found that under present law, taxpayers with adjusted gross incomes below $30,000 a year pay 41 percent of the total of federal income taxes raised from individuals. However, if a flat-rate tax of 15.5 percent were imposed, that same group of moderate- and low-income taxpayers would end up paying 58.2 percent of all individual federal income taxes.

Sponsors of some of the flat-rate bills attempt to remedy the built-in inequities of this type of system by allowing some deductions, by increasing the personal exemption allowance, by exempting low-income persons from all taxes and by imposing several—rather than a single—tax rates. All that most of these modifications do is reduce the degree of unfairness in an inherently unfair system. I know that once one type of deduction in a flat-rate tax system is allowed, Congress would be unable to resist the pressure for numerous other deductions.

Justice and fairness require that those who make large amounts of money should pay a higher rate of tax on income than middle- and low-income families. It seems totally unfair to have a person earning $15,000 a year paying the same rate as someone making $1 million.

I strongly support reducing taxes and simplifying our income tax system, and have worked to do so for many years. Our efforts toward simplification made it possible last year for 40.7 percent of the taxpayers to file their income taxes on the so-called short form, which usually can be completed in less than an hour. Another sign of progress in our efforts at tax simplification is the fact that 79 percent of taxpayers in 1980 chose *not* to itemize their deductions. Further work toward simplification is needed, and I intend to continue to push for a simpler and fairer tax system.

I am not arguing that the concept of a flat-rate income tax should be ignored. In fact, I favor giving this idea a thorough study, as the Senate Finance Committee is scheduled to do this year.

Perhaps a way can be found to structure a flat-rate income tax system that will be fair to all. But until such a system is found, the flat-rate income tax will *not* have my support.

AMERICA'S TOWN OFFICIALS TO HOLD EDUCATIONAL CONFERENCE IN WASHINGTON, D.C.

Mr. DURENBERGER. Mr. President, close to 1,000 town officials will be in Washington, D.C., the week of September 6 to take part in the 1983 educational conference of the National Association of Towns and Townships (NATaT). This event is the biggest town meeting in the Nation.

Mr. President, I know that you and our colleagues here in the Senate will want to join me in extending our warmest greetings to the distinguished members of this nationwide federation of State associations and individual community members representing approximately 13,000 units of local government throughout the country. I would also like to commend to you the following officers, directors, and advisors of NATaT. These officials are carrying on the tradition of our Nation's Founding Fathers by promoting cooperation between all levels of government, and by providing economical, effective, and efficient local government services to millions of Americans in small, rural, and suburban communities:

OFFICERS

President, Ed. K. Krueger, Wisconsin Towns Association; First Vice President, George H. Miller, Township Officials of Illinois; Second Vice President, Michael H. Cochran, Ohio State Association of Township Trustees and Clerks; Secretary/Treasurer, B. Kenneth Greider, Pennsylvania State Association of Township Supervisors; and Immediate Past President, Robert R. Robinson, Michigan Townships Association.

BOARD OF DIRECTORS

Wiifred Johnson, Indiana Township Trustees Associations; Floyd D. Snyder, Association of the Towns of the State of New York; Don Misener, South Dakota Association of Townships; David Russell, Connecticut Council of Small Towns, Ervin Strandquist, Minnesota Association of Townships; James Totten, New Jersey Association of Towns and Townships; North Dakota Township Officers Association; and Jean Levesque, ex officio, National Association of Smaller Communities.

ADVISORY COUNCIL

Bob Bergland, President, Farmland-Eaton World Trade; Landrum Bolling, Distinguished Research Professor, Georgetown University, Consultant, Council on Foundations; Herrington Bryce, President, National Policy Institute; Daniel Elazar, Director, Center for the Study on Federalism; Orville Freeman, President, Business International, Inc.; Leigh Grosenick, Director, Graduate School of Public Administration, Virginia Commonwealth University; Robert Hawkins, President Sequoia Institute; Barry Wellar, University of Ottawa, Canada. Executive Director: Barton D. Russell.

Mr. President, these officials and the other delegates to NATaT's national conference are coming to Washington, as their conference theme states, to make their voices count. As a Senator from the State of Minnesota, where there are more than 1,800 townships, I understand the concerns that these men and women are bringing with them and their need to make their voices heard here in Congress, in the White House, and with the Federal agencies.

All they ask is equal treatment with their urban counterparts on the Federal level: A fair share in the Federal budget for programs that help them provide sorely needed services and facilities that create jobs in their communities; equal access to block grants that are going to the States to administer; less Federal redtape that creates a disproportionately heavy burden for small towns and townships; and a fair share of general revenue sharing. In this regard, NATaT is extremely interested in the renewal of this vital program, which expires next year.

The national association is also working hard to gain representation for towns on the prestigious Federal Advisory Commission on Intergovernmental Relations, a deficiency that would be remedied by legislation that

I have the honor of sponsoring in this Congress.

Mr. President, these are some of the issues that NATaT's conference delegates will be discussing and debating during the association's 1983 Make Your Voice Count conference. I know that you will want to join me in applauding their efforts to make their voices count and take part as fully as possible in our federal system of government.

With your permission, I would like to insert at this point in the RECORD the following information on the town system of local government, which has encouraged our citizens to play a vital role in the life of their communities and to help shape the direction of their government.

TOWNSHIPS—THE VITAL LINK

The township was the first form of local government to be adopted in America, brought to the continent by settlers from England. First established in Massachusetts around 1620, township government moved west as the country grew, and today serves nearly 63 million people.

Townships were originally known as the Nation's rural form of government. This is no longer completely true, as a number of townships have developed characteristics and problems similar to urban communities.

Townships and other small communities differ from State to State, but most are governed by an elected board or council which often consists of a mayor or supervisor, a clerk, and several officials called trustees or selectmen. Most town governments administer a wide variety of vital services such as fire and police protection, water and sewer systems, construction and maintenance of roads, emergency medical care, and aid to the poor.

To this day, small town governments reflect the values of our Founding Fathers. The town meeting is still held in many areas of the country, providing citizens with the opportunity to participate directly in the affairs of their community.

A VOICE FOR TOWNS IN THE NATION'S CAPITAL

When NATaT was first established, towns and townships formed the cornerstone of its membership. Today, the association has expanded to reach across the country to small communities of all types.

The National Association of Towns and Townships is a nonprofit organization offering technical assistance, educational services, and public policy support to local government officials from more than 13,000 small communities across the country. Through its Washington, D.C., headquarters, the association conducts research and develops public policy recommendations to help improve the quality of life for rural people. NATaT's educational conferences, training workshops, and specialized publications help small town officials cope with and manage change in their communities.

As the voice of small town America in the Nation's Capital, NATaT is a highly respected authority on rural community development matters.

NATaT receives numerous requests from Congress, the White House, and the Federal agencies to provide the town perspective as national policy legislation, and regulations are being formulated. NATaT represents the town point of view on a broad range of governmental matters from infrastructure needs to general revenue sharing to the Federal paperwork burden.

One of the most important educational services NATaT offers town officials is the national educational conference, attended by hundreds of local officials every year. Every event is designed to help local leaders learn how to be more effective in administering their local governments and providing vital services to their constituencies.

Conference events include workshops on a wide range of local government topics, general sessions addressed by executive branch officials and key Members of Congress, a legislative exchange between local leaders and Members of Congress on Capitol Hill, and exhibits on local government products and services that seldom reach small rural communities.

Another key element of NATaT education program for small town leaders is the National Community Reporter, the association's bimonthly news journal. The Reporter is the only regular national source of information and ideas exclusively for town officials. Topics range from community and economic development to tested small town management and planning techniques.

In addition to these elements of the association's education program, NATaT offers its members a free information clearinghouse, which distributes a wealth of information on problem-solving resources and other hard-to-find information for small jurisdictions.

Many local officials look to NATaT for information and advice on Government grants-in-aid, technical support, and community improvement programs that will work in their localities. Through its technical assistance program, NATaT helps local leaders find cost-effective solutions to their most pressing community development problems, and guides them through the often bewildering maze of Government rules and regulations.

The National Association of Towns and Townships also works with other major public interest groups on matters important to officials in small rural and suburban communities. Through this type of cooperation, the association helps insure that smaller local governments will remain a vital, effective voice in our Nation's federal system of government.

Mr. President, I know you will agree with me that townships represent a vital system of local government, particularly today when many Government responsibilities are being shifted to the State and local levels. These local forms of government continue to provide outstanding service to millions of Americans and to serve as a crucial link in the intergovernmental system.

It is indeed a pleasure for me to seek this national recognition and to join with you and our colleagues in welcoming delegates to the annual conference of the National Association of Towns and Townships to our Nation's Capital and to salute small town officials everywhere for their commitment and hard work on the local level.

COUNTDOWN ZERO: NUCLEAR TESTS AND THE HUMAN FALLOUT

Mr. CRANSTON. Mr. President, I want to call to the attention of my colleagues the recent publication of a book, "Countdown Zero," which, by focusing on the experiences of the authors, Thomas H. Saffer and the late Orville Kelly, as they participated in this country's nuclear testing program, provides a very personal and useful perspective on the subject of the effects of the use of nuclear weapons.

This book is a moving account of U.S. troops who already may be victims of the horrible force of our nuclear arsenal. The authors, along with 250,000 other nuclear test participants who were guinea pigs in the Government's nuclear weapons tests, were exposed to health risks that may have lasting, sometimes fatal effects. Although I cannot endorse all of the authors' views, the book provides a valuable perspective on an important and tragic problem confronting our Nation.

Recently, the New York Times Review of Books published a review of "Countdown Zero." Because I intend to ask that this review be printed in the RECORD, I want to make one point of clarification. The legislation that the reviewer discusses in the early part of the review was enacted last year as section 102 of Public Law 97-72. The effect of this law is that veterans exposed to radiation from nuclear devices are now eligible to receive health care from the VA for diseases and disabilities that may be related to their exposure without regard to their disability having been adjudicated as service connected or their ability to pay for the needed care. The statutory provision permits care to be denied, if the veteran is not otherwise eligible for it, only when there is evidence that

the condition resulted from some cause other than radiation.

Mr. President, I ask unanimous consent that the August 1 review of "Countdown Zero," by Blanche Wiessen Cook be printed in the RECORD.

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

[From the New York Times, Aug. 1, 1982]

THE LEGACY OF ATOMIC TESTING

("Countdown Zero," by Thomas H. Saffer and Orville E. Kelly; Introduction by Stewart L. Udall)

(By Blanche Wiesen Cook)

The 1950's are remembered by many as a time of air-raid drills during which people were told to stand in hallways or "take cover" beneath their desks. Nelson Rockefeller wanted to build fallout shelters all over America, and neighbors wondered if God would forgive them if they barred their friends or enemies, or bridge or canasta partners, from their backyard bunkers. The still partly classified Killian Report, "Meeting the Threat of Surprise Attack" (prepared by President Eisenhower's Science Advisory Committee, chaired by Dr. James A. Killian and submitted in February 1955), announced: "The public will need indoctrination to accustom themselves to the fact that low levels of radiation can and must be lived with. Radiation must be a phenomenon that is universally accepted." Lewis Strauss ran the Atomic Energy Commission and talked blandly of the temporary and minor inconvenience of radiation; Dr. Edward Teller's thermonuclear (hydrogen) bombs were tested and described as new, different and very clean.

Although the myth of the harmless atom continues to be official government policy, it has actually been laid to rest again and again. According to California Senator Alan Cranston, there are 80,000 published articles on the cancer risks of low-level ionizing radiation exposure. But when Senator Cranston introduced legislation in 1981 to extend veterans' health benefits to the victims of nuclear experiments during the 1950's, William H. Taft 4th, general counsel for the Department of Defense, protested. He objected that Senator Cranston's bill created "the unmistakable impression that exposure to low-level ionizing radiation is a significant health hazard." Mr. Taft condemned this "mistaken impression" as potentially "damaging to every aspect of the Department of Defense's nuclear weapons and nuclear propulsion programs. The legislation could adversely affect our relations with our European allies, impact upon the civilian nuclear power industry, and raise questions regarding the use of radioactive substances in medical diagnosis and treatment."

"Countdown Zero" answers the Department of Defense more personally and more accessibly than any other single volume. Senator Cranston's bill was introduced in response to the case histories of 14 atomic veterans presented by the widow of former Sgt. Maj. Orville E. Kelly, who died in 1980 at age 49 from malignant lymphoma, cancer of the lymph glands. Before Orville Kelly died, he and Thomas Saffer wrote of their own experiences and collected the testimony of many of the servicemen who were assigned to witness or participate in one or more of the 235 announced United States atmospheric nuclear tests conducted between 1945 and October 1958, when President Eisenhower declared a moratorium that drove weapons tests underground.

An estimated 250,000 servicemen and 150,000 civilians participated in the atmospheric tests. Some, like Thomas Saffer, participated in war games in which they were ordered to "attack" the blast site immediately after detonation. Rifles raised, bayonets poised, hundreds of troops were to charge ground zero from less than two miles away. Many, dazed, nauseated and blinded by dust from the explosion, wandered within a few hundred yards of ground zero. For 17 years, nuclear experiments involved the activity of military personnel, exposed to the awesome force of the blast, the heat, the turbulence and the metallic smell and taste of the elements found in fallout. They bore witness to atomic explosions many times the power of the bombs that leveled Hiroshima and Nagasaki—without protective clothing and without information of any kind. They were assured there was no danger. They were dusted off with brooms and told to shower. Now, as they sicken and die, they are denied medical benefits by the Veterans Administration. They have been told their illnesses are not service-related.

Written out of anguish and rage, "Countdown Zero" describes the experiences of atomic veterans, reveals the government's continuing cover-up of the full extent of the 1950s tests and makes clear the seriousness of their medical legacy. It also recounts the founding of the National Association of Atomic Veterans. The Association, organized by Orville and Wanda Kelly, locates veterans, provides legal and personal support and works to achieve medical benefits for the thousands of veterans now struggling against cancer, neuromuscular diseases and leukemia, as well as the genetic defects that have already damaged the lives of many of their children and grandchildren.

This is not a definitive book. It covers much the same ground as Michael Uhl and Tod Ensign's "G.I. Guinea Pigs" (1980), a well-researched and more thorough analysis of the Pentagon's exposure of United States troops to atomic radiation and the herbicide Agent Orange. Leslie J. Freeman's "Nuclear Witnesses: Insiders Speak Out" (1982), Howard L. Rosenberg's "Atomic Soldiers: American Victims of Nuclear Experiments" (1980) and Harvey Wasserman and others' "Killing Our Own: The Disaster of America's Experience with Atomic Radiation" (1982) have added significantly to our knowledge of this subject. But Mr. Saffer and Mr. Kelly present the fullness of their lives, lives of courage and caring in the face of an official disregard for the health and well-being of men who considered themselves above all the patriots and defenders of this culture.

On June 24, 1957, 23-year-old Thomas Saffer, a second lieutenant in the United States Marine Corps, knelt down in a trench that was to protect him from a nuclear blast called Priscilla. He was told to close his eyes and shield them with his left forearm. Trained and educated at the Virginia Military Institute to be "a citizen-soldier," he neither doubted nor questioned his superiors. Inspired by the words of Gen. Stonewall Jackson, "You may be whatever you resolve to be," Lt. Saffer had resolved to be an outstanding officer. Bolstered by a swagger stick and an "attitude of gung-ho guts and glory," he became platoon leader of the Fourth Marine Corps Provisional Atomic Exercise Brigade, assigned to Nevada for "combat maneuvers using atomic bombs as offensive weapons." His superior officers considered nuclear war inevitable. Lt. Saffer and his troops were to create a team of nuclear warriors who would triumph and prevail. They were repeatedly assured there was no danger, "because the 1957 test series marked the advent of the 'clean' bomb."

Mr. Saffer, who reached the rank of captain before leaving the Marine Corps, received many of the details for this book through the Freedom of Information Act. Unfortunately, many of the relevant documents were destroyed in a mysterious fire that raged out of control on July 12, 1973, on the top floor of a Federal-records storage building in St. Louis. Over 17 million records relating to Army and Air Force personnel were incinerated, including the files of many atomic veterans. Mr. Saffer's research did, however, recover startling examples of the military's slovenly approach to these experiments. When, for example, Gen. Alfred Gruenther, commander of NATO, asked in March 1955 how in fact United States troops were to be protected from fallout during the course of the planned atmospheric tests, he received a memo from the Joint Chiefs of Staff that explained, "Although a great deal is unknown about fallout, the problem is a manageable one." When Saffer arrived in Camp Desert Rock, Nevada, he was handed an information bulletin that explained, "The sun, not the bomb, is your worst enemy at Camp Desert Rock."

According to Mr. Saffer, the Pentagon's safety standards differed from those of the Atomic Energy Commission's Division of Biology and Medicine, which warned that troops should be seven miles from ground zero during a nuclear blast. During the 1952 tests, troops in trenches were positioned as close as four miles to the blast site. Between 1952 and 1957, they were "moved closer and closer to the actual detonation, tentatively at first, but later without caution." The Army's official Infantry School Quarterly assured military radiological-safety officers that in combat their "troops can move into or leave an exposed area a few minutes after an air burst. A soldier is not a casualty until he requires treatment. Even though he has been exposed to a lethal dose of radiation, he can perform his combat mission until symptoms appear."

Mr. Saffer describes his first reaction to a nuclear blast, positioned as he was in a trench two miles from ground zero, wearing a gas mask, a helmet and fatigues: "I heard a loud click. Immediately, I felt an intense heat on the back of my neck. A brilliant flash accompanied the heat, and I was shocked when, with my eyes tightly closed, I could see the bones in my forearm as though I was examining a red x-ray." The earth gyrated violently and Mr. Saffer was thrown from trench wall to trench wall as he was showered with dust, dirt and rocks. "A light many times brighter than the sun penetrated the thick dust, and I imagined that some evil force was attempting to swallow my body and soul. I thought the world was coming to an end."

Mr. Saffer's first blast experience was with a 38-kiloton bomb. He wondered, "Whose decision was it to place us only two miles from such a vengeful creature?" Scientists viewed the explosion through thick glass windows in a concrete and steel control tower ten miles from ground zero. Some noted that Priscilla was the most ethereal and wondrous sight they had ever seen. The fireball was mesmerizing as it changed color, and the mushroom top of the cloud

rose to 40,000 feet. Men close to ground zero took off their gas masks and watched "transfixed." But Mr. Saffer was also discomforted by a metallic taste in his mouth and an offensive smell, like that of an overheated electrical unit, that would not go away. Then a "column of dark, powdery dust . . . spread like a dark pall over the entire area." The fallout was like ash and burned holes in his green fatigues. At that point, Mr. Saffer and his men boarded armored personnel carriers for a bumpy ride that would take them within 300 yards of ground zero, where they were to inspect the equipment placed there before the blast. Of course, much of it, including tanks and trucks, had simply vanished or been vaporized. The ground was hot beneath his boots.

His "decontamination" began as soon as he was returned to Camp Desert Rock. A Geiger counter was passed over his body. He was told nothing. "Two men with brooms brushed at me from either side. The dislodged dust stung my eyes and burned my nostrils." A shower had to wait until after lunch. Mr. Saffer washed his hands before eating.

By 1957, the fallout debate raged internationally. But the Atomic Energy Commission supported continued tests, the Los Alamos and Livermore Laboratories insisted on the tests' significance and the subcontractors depended on them. In June 1957, Dr. Edward Teller, Dr. Ernest O. Lawrence of the Livermore Laboratory and Lewis Strauss persuaded President Eisenhower to promote a "clean bomb" test series. Actually, the series of 34 tests conducted in Nevada, "designed to reduce radioactive fallout," determined in part the effectiveness of Teller's new thermonuclear device.

According to Mr. Saffer, this series, called Plumbbob, was a media manipulation "to defuse public pressure." The Plumbbob shot he witnessed up close, code-named Hood, was definitely the dirtiest in the series and was five times larger than the Hiroshima bomb. Assigned to a trench three miles from ground zero, Saffer wondered, "If a much smaller bomb detonated at nearly the same height killed 150,000 Japanese, then why or how are 2100 of us expected to survive. Were we leathernecks supposed to be immortal?" Mr. Saffer, undoubtedly grateful that there was no city to collapse about him, doubted the wisdom of those in command for the first time. Nevertheless, after the blast, he dutifully led 900 of his Marines into the dust storm to charge a hill slightly to the left of ground zero. Two Marine companies moved on foot to within 400 yards of the blast site—a distance officially labeled "safe."

The Nevada experiments were followed in 1958 by the Hardtack I series. Much larger bombs, some in the megaton range, were exploded in the Pacific. In addition to the citizens of the islands chosen as test sites, 20,704 servicemen experienced these blasts. As in the Nevada tests, they were neither physically prepared for nor informed of the dangers of their duties. They watched the blasts in shirt sleeves and shorts.

Sgt. Maj. Orville Kelly, 27, was assigned to command Japtan Island in the Eniwetok Atoll. At first, he was pleased. Born in Iowa, he had long dreamed of traveling to a coral island of blue-green waters, fabulous snorkeling and endless palm beaches. And Japtan was, Kelly thought, "the most beautiful island of the atoll." His description of the moral and emotional breakdown of life on that island is devastating. There was nothing to do but wait, and to witness the bombs. For seven months, they waited. Then the men in Kelly's company walked to the edge of the lagoon 22 times in 16 weeks to observe the blasts, each with its own name: Butternut, Koa, Holly, Magnolia, Linden, Sequoia, Dogwood, Fig.

Each blast followed a pattern, and each time the men endured the searing heat, the penetrating light, the shock waves and winds and the changing colors of an unknown force. One member of Kelly's group, Morris Friberg, recalled that the first time he stared into that "violet ionized air," his conscience asked, "Does God really want this?" The men drank too much. Some became deranged. Some were denied the psychological services they requested. They were told not to eat the fish they caught, but they ate the coconut crabs and drank the water from the lagoon.

Fig was the last shot in the series. On Oct. 30, 1958, President Eisenhower declared a moratorium on United States atmospheric tests. Later tests in Nevada were conducted underground. But the long, silent death that trailed the thousands of atomic veterans who participated in these experiments was under way. Today Mr. Saffer suffers from the debilitating effects of a neuromuscular disease. Kelly died on June 24, 1980.

When Orville Kelly's cancer was finally diagnosed accurately, he vowed to have a remission so that he could "become an expert, and bring national attention" to the plight of all atomic veterans. "In the end," he wrote, "I want to see a world free from the menace of nuclear warfare. If people learn what a supposedly harmless level of radiation did to servicemen like me, perhaps they will begin to understand the urgency of uniting to stop senseless nuclear weapons proliferation." In the process, he and Wanda Kelly founded the National Association of Atomic Veterans. They contacted thousands of veterans who had suffered severe depressions, undiagnosed physical maladies and general upheaval at work and at home; and they contacted thousands of widows of veterans who had died of cancer, leukemia and a disease that took the form of premature "old age." After seven years, Kelly won his case and received veteran's medical benefits. Today Wanda Kelly is director and Thomas Saffer is deputy director of N.A.A.V.

In May 1982, an unpublished Department of Defense document, "Fiscal Year 1984–1988, Defense Guidance," made national headliness. The 125-page report projected strategy for the future that included nuclear war fought "with many exchanges" over a protracted period of time. Continued promises of survival and victory in a nuclear war are being challenged by the global protests of citizens increasingly informed by a growing mountain of literature, highlighted recently by Helen Caldicott's "Nuclear Madness: What You Can Do," "Protest and Survive," edited by E. P. Thompson and Dan Smith, Jonathan Schell's "The Fate of the Earth" and the monumental study by a panel of Japanese physical and social scientists. "Hiroshima and Nagasaki: The Physical, Medical, and Social Effects of the Atomic Bombings." "Countdown Zero's" contribution to this literature is personal and immediate. This harrowing book—with its catalogue of official cruelty, dishonesty and contempt for life—underscores how unprepared we are for our entrance into the nuclear age.

AMENDMENTS TO THE CLEAN AIR ACT

Mr. BAKER. Mr. President, I want to congratulate the chairman and members of the Committee on Environment and Public Works on being in the enviable position of having reported out a comprehensive set of amendments to the Clean Air Act today. The task of developing changes to the act has been a long, difficult process which required study and decisions on a number of complex, technical issues.

The committee's exhausting deliberations over the past 18 months have necessitated the development and clarification of many ideas, concepts, and programs. I commend all the participants in this process—Members, staff, industry, and government representatives, and members of environmental and public interest groups—for achieving this first giant step in the legislative process. This successful journey through the legislative process was based upon the involvement and contribution of such interests, and I appreciate their inputs.

It is my hope that the bill will come to the Senate floor for full consideration this session. I will work hard to see that the amendments are taken up this year and will cooperate fully with the chairman, members of the committee, and all Senators, to achieve passage of amendments to the Clean Air Act this year.

THE RETIREMENT OF GEN. DAVID C. JONES, CHAIRMAN OF THE JOINT CHIEFS OF STAFF

Mr. LEAHY. Mr. President, this summer, Gen. David C. Jones retired as Chairman of the Joint Chiefs of Staff of the United States. Much has been said already about General Jones' background. I ask unanimous consent to place in the RECORD the official biographical material relating to General Jones.

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

GEN. DAVID C. JONES

General David C. Jones was appointed Chairman of the Joint Chiefs of Staff, Department of Defense, on June 21, 1978. He was reappointed to a second two-year term in 1980. In this capacity, he served as the senior military adviser to the President, the National Security Council, and the Secretary of Defense. Through the commanders of the unified and specified commands, he was also responsible for executing the decisions of the National Command Authorities regarding worldwide readiness and employment of combat forces of the United States Army, Navy, Air Force, and Marine Corps. He served eight years as a member of the Joint Chiefs of Staff, the last four as the Chairman.

Drawing from a widely varied career, General Jones brought to his position a wealth of experience and knowledge of national se-

curity affairs, the diverse U.S. Defense Establishment, and our defensive alliances with other nations. His domestic and overseas assignments have included operational, staff, and command positions in strategic, tactical, training, and Allied organizations. He is a command pilot.

In combat, General Jones was assigned to a bombardment squadron during the Korean War and accumulated more than 300 hours on missions over North Korea. In 1969, he served in the Republic of Vietnam as Deputy Commander for Operations and then as Vice Commander of the Seventh Air Force.

General Jones has had extensive experience in dealing with the leaders of many nations. His intimacy with the North Atlantic Treaty Organization (NATO) alliance and its complex multinational defense structure is based on a range of assignments which cover the spectrum of planning and operational responsibilities, culminating with duties as Commander in Chief of the United States Air Force in Europe (USAFE). Concurrently, he was Commander of the Fourth Allied Tactical Air Forces. General Jones also has been deeply involved in working out mutual security problems with nations of the Middle East and Southwest Asia.

In addition to his military duties, General Jones actively serves a number of civilian public-service organizations. In 1981, President Reagan appointed him to the Board of Governors, American Red Cross. A member of the Board of Directors for Youth Services, U.S.A., Inc., a national youth agency, General Jones has long supported this organization's development activities aimed at making meaningful opportunities available for all young people. He is also a member of the Council on Foreign Relations; the Washington Policy Council of the International Management and Development Institute (IMDI); and the Center for the Study of the Presidency; and is Co-Chairman, Awards Committee, American Academy of Achievement. General Jones has been awarded numerous decorations from foreign governments honoring his accomplishments in international security affairs. Among the numerous civilian awards honoring his public service are the Tuskegee Airman Gold Medallion and the designation as Educator of the Seventies by the Education Magazine, and recipient of the Theodore Roosevelt "Rough Rider Award," the highest award that can be given by the State of North Dakota to a current or former citizen of the State. He also received the National Guard Bureau Eagle Award and the Air National Guard Meritorious Service Award, the highest awards which can be presented by each organization.

General Jones was born in Aberdeen, South Dakota in July 1921. He graduated from high school in Minot, North Dakota, and attended the University of North Dakota and Minot State College until the outbreak of World War II. He volunteered for the Army Air Corps in January 1942 and received his commission and pilot wings in February 1943. A graduate of the National War College, General Jones was awarded an honorary doctorate of human letters from the University of Nebraska at Omaha in 1974; an honorary doctorate of laws degree from Louisiana Tech University in 1975; an honorary doctorate of human letters degree from Minot State College in 1979; and an honorary doctorate of laws degree from Boston University in 1980.

General Jones is an avid jogger and racquetball player. He is married to the former Lois M. Tareel of Rugby, North Dakota. They have three children: Susan, Kathy and David.

DECORATIONS AND AWARDS

Department of Defense Distinguished Service Medal with three oak leaf clusters.
Army Distinguished Service Medal.
Air Force Distinguished Service Medal with two oak leaf cluster.
Legion of Merit.
Distinguished Flying Cross.
Bronze Star Medal.
Air Medal with one oak leaf cluster.
Air Force Commendation Medal.
Air Force Outstanding Unit Award.
American Campaign Medal.
Asiatic-Pacific Campaign Medal.
World War II Victory Medal.
Army of Occupation Medal (Japan).
National Defense Service Medal with one bronze service star.
Korean Service Medal with two bronze service stars.
Vietnam Service Medal with three bronze service stars.
Air Force Longevity Service Award Ribbon with eight oak leaf clusters.
Grand Cross of the Royal Order of St. Olav (Norway).
National Order, Republic of Vietnam, 5th Class.
Republic of Vietnam Air Force Distinguished Service Order, 1st Class.
Grand Cross, 2nd Class of the Order of Merit (Federal Republic of Germany).
National Order of Security Merit (Tong-Il) (Republic of Korea).
French Legion of Honor, Grade of Commander.
Air Force Order of Merit with Grade of Grande Official (Brazil).
Venezuelan Air Force Cross, 1st Class.
Venezuelan Legion of Merit Inter-American Aerial Brotherhood Degree of Officer.
Italian Knights of the Grand Cross.
Japanese First Class Order of the Rising Sun.
Wisam Al Ghomhoria First Stage (Decoration of the Republic of Egypt).
Highest Commander of the Order of Honor (Greece).
Yugoslavian Air Force Pilot Wings.
Swedish Knights Grand Cross of the Order of the North Star.
Colombian Antonio Ricaurter Aeronautical Order of Merit.
Republic of Vietnam Cross of Gallantry with palm.
United Nations Service Medal.
Republic of Vietnam Campaign Medal.

ADDITIONAL AWARDS

Gold Medal Educator of the Seventies, Education Magazine, 1976.
The Jimmy Doolittle Fellowship Award, Air Force Association, September 1977.
The Maxwell A. Kriendler Memorial Award, Irongate Chapter (New York). Air Force Association, April 1978.
Golden Plate Award, American Academy of Achievements, June 1979.
Tuskegee Airmen Distinguished Achievement Gold Medallion Award, December 1979.
American Defense Preparedness Association Meritorious Service Award, May 1981.
Gold Medal "For Extraordinary Service" to the Awards Council, American Academy of Achievements, June 1981.
H. H. Arnold Award, Air Force Association, September 1981.
Nathan Hale Award, Reserve Officers Association, October 1981.
North Dakota Hall of Fame, May 1982.
North Dakota "Rough Rider" Award, May 1982.
Ira Eaker Fellowship Award—AFA, May 1982.
National Guard Bureau Eagle Award, June 1982.
Air National Guard Meritorious Service Award, June 1982.

Mr. LEAHY. The official material, impressive though it is, does not do enough credit to him. I had the privilege of serving in the Senate during much of General Jones' tenure both as Chief of Staff for the Air Force and as Chairman of the Joint Chiefs. I knew him both through my service as a member of the Senate Armed Services Committee, service on the Senate Appropriations Committee, and on the Senate Select Committee on Intelligence. Far more importantly, however, was the chance to get to know David Jones as a person and as a friend.

Mr. President, we often forget about the number of highly dedicated, strongly motivated, and extremely qualified people in our Government. General Jones certainly fits all of these categories. It is because of people like him that our military remains the finest in the world and because of the foresight of people like him that we can hope to avoid the kind of wars that would be not only devastating for us as a country but quite possibly for all of humankind.

I will miss my good friend as he enters retirement. At this time, everyone in the Senate should pause to consider deeply his proposals for revamping of the Joint Chiefs of Staff. He made these proposals for his successors and with the kind of objectivity available to one leaving his position of authority. Notwithstanding his career, I feel perhaps his greatest service will be in the future if we follow his proposals.

The whole proposal is so important that I intend to ask unanimous consent that the RECORD contain it but some of the editorials and analyses printed about it.

I do not believe I have ever asked the Senate to print this much material regarding an individual during the 8 years I have served here. But then I have known few people in Government of General Jones' quality or few proposals this important.

I ask unanimous consent that the attached material be made part of the RECORD.

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

CITATION TO ACCOMPANY THE AWARD OF THE DEFENSE DISTINGUISHED SERVICE MEDAL (THIRD OAK LEAF CLUSTER) TO DAVID C. JONES

General David C. Jones, United States Air Force, distinguished himself by exceptionally distinguished service as Chairman, Joint Chiefs of Staff, from February 1981 through June 1982. During this critical period, General Jones demonstrated the

highest degree of leadership and dedication in shaping national security policy and building our military forces. His personal efforts in developing a United States power projection strategy and posturing the forces required to carry out that strategy; his key role in averting a major crisis in the Middle East; and his strong leadership of our joint and combined forces have demonstrated to all nations that we remain dedicated to peace but fully able to protect our interests should the need arise. The distinctive accomplishments of General Jones culminate a distinguished career in the service of his country and reflect great credit upon himself, the United States Air Force and the Department of Defense.

WHY THE JOINT CHIEFS OF STAFF MUST CHANGE

(By General David C. Jones)

I have been a member of the Joint Chiefs of Staff for nearly eight years and its Chairman for most of the past four years, and have thus served as a member of the Joint Chiefs under four Presidents and four Secretaries of Defense. During this time, and before, many good men have struggled very hard to make the best of the joint system, and most, if not all, have experienced a great sense of frustration in dealing with both large and small problems.

Much of this frustration comes from having to cope with legislative and organizational constraints which reflect concerns of the past, inhibit attempts to meet the rapidly changing demands of today's world, and violate basic leadership and management principles. Yet, despite many studies that have periodically documented problems with this military committee system and made cogent recommendations for improvements, the system has been remarkably resistant to change. Committees can serve as useful purpose in providing a wide range of advice to a chief executive or even in making some key policy decisions, but they are notoriously poor at running anything—let alone everything.

Although I recognize the very strong and persistent headwinds, I could not leave office in good conscience this summer without making a major effort to illuminate the real issues once more and hopefully wrest some substantial changes. Most of the problems and some of the approaches I will address have been discovered—then reburied—many times in the past 35 years. The difference this time is that the proposals for improvement are coming from someone inside the system who for many years has been in the best position to understand the causes and consequences of its shortcomings. In formulating my approach, I have been helped by a group of senior retired officers who are in a better position than those now serving to step aside from long-standing Service positions and objectively assess the joint system.

The watershed for development of a permanent interservice system was the crisis atmosphere surrounding our entry into World War II. The British had established a committee of the heads of their military services in 1923. When intensive military consultation with the British commenced after Pearl Harbor, it soon became apparent that we too needed some such system, not only to assure smoother dealings with the British but also to coordinate our own national war effort.

The Joint Chiefs of Staff was established informally by President Roosevelt in February 1942. The White House appointments calendar suggests that the President met with the Chiefs as a body frequently during 1942, but primarily with the Chief of Staff to the President in the remaining three years of the war. For the most part, the Chiefs, along with their British counterparts, directed largely separate wars through three geographic commands which were essentially divided by Service. General Eisenhower commanded Europe while Admiral Nimitz and General MacArthur commanded separate theaters in the Pacific. Strategic planning was conducted on the basis of direct guidance: Put first priority on Europe, use the nation's full resources to support coalition efforts to defeat the enemy forces, and compel the Axis governments to surrender unconditionally. In many ways, it was a simpler world. But as the biographies of many World War II leaders reveal, the joint system established then did not work very well: Service partisanship and inadequate coordination resulted in innumerable delays on many critical issues.

As the war drew to a close, an exhaustive debate ensued on how to organize the postwar military: the Army favored, but the Navy opposed, a highly integrated system. Many at that time believed that the Army would dominate any integrated system. The Air Force, then still part of the Army, supported integration, but was primarily interested in becoming a separate Service.

COMPROMISE FINALLY REACHED

After nearly two years of studies, committee reports, and presidential interventions, the National Security Act of 1947 emerged as a compromise between those who favored full Service integration and those who feared centralization of military authority. The Act created a loose confederation among the military Services and a Secretary of Defense who initially had little authority. Amendments in 1949, 1953, and 1958 served to strengthen the Secretary's authority and to expand the size and purview of his staff, but as far as the joint system was concerned, the changes were much more marginal. The role of the Chairman was formalized, the Joint Staff was expanded, and the chain of command from the President and Secretary of Defense to the combatant commands was clarified.

Even modest changes, however, created great controvesy. During part of the period the amendments were being addressed, I was aide to General Curtis LeMay, then Commander of the Strategic Air Command, and I had many opportunities to observe the intense debate which took place not only in Washington but throughout much of the military. Only from such a vantage point was it clear how strong the pressures for preserving Service autonomy remained.

President Eisenhower, writing in 1965, said he had reminded his associates on signing the Defense Reorganization Bill of 1958 that it was just another step toward what was necessary. I believe he would be disappointed that further steps have not been taken.

Since 1958, there have been many recommendations for fundamental revisions of the system but few changes in its statutory framework. In 1978 the Commandant of the Marine Corps was made a full member of the Joint Chiefs by law, but this primarily codified what has already become practice. Essentially, despite major changes in the world on which I will comment later, we have had 24 years—and in many ways 35 years—without fundamental revisions of the joint system, a system which in effect represents arrangements developed in a patchwork way during World War II.

HOW WE OPERATE

At the top of that system are the Joint Chiefs, appointed by the President and confirmed by the Senate. By law, we are the principal military advisors to the President, the Secretary of Defense and the National Security Council.

As a body, we are responsible for reviewing and developing ways to improve the state of military readiness, assessing threats to our security interests and idenfifying the forces required to meet those threats. We supervise but do not command the senior Combatant Commanders (the Commanders of European Command, Pacific Command, Atlantic Command, Southern Command, Readiness Command, Strategic Air Command, Aerospace Defense Command, Military Airlift Command, and the Rapid Deployment Joint Task Force; some of these have multiple services involved and some a single service). We maintain an elaborate command, control, and communications system which provides the links to and within our combat forces worldwide. We also consult with foreign military leaders and provide military representation to arms control negotiations teams.

Four of the members of the Joint Chiefs are the military heads of their individual Services who, except in time of war, are restricted to a single four-year term. Since 1947, nearly 50 officers have held the office of Chief of one of the four Services. A Service Chief is not only a full member of the Joint Chiefs of Staff but also is the leader of his uniformed Service. As its principal military spokesman, the Service considers him the guardian of its professional interests, standards, and traditions.

The fifth member of the Joint Chiefs, and the only one to devote all of his time to joint affairs, is the Chairman. Although outranking all other military officers, the Chairman does not exercise command over the Joint Chiefs or the Armed Forces but acts as an advisor, a moderator, an implementer, and an integrating influence whenever possible. A Chairman is appointed for a two-year term and may be reappointed one time, except in wartime when unlimited two-year reappointments are allowed.

MORE INFLUENCE BUT LESS CONTROL

After four years as a Service Chief and now on my fourth year as Chairman, I have found a Chairman generally has more influence but less control than a Service Chief. Whereas a Service Chief can draw on significant institutional sources of formal authority, the Chairman's influence must be derived primarily from his effectiveness in personal relationships. His position provides the opportunity to meet with the leadership of the nation, but it is his professional competence, his ability to present well-thought-out and broad-based arguments, and his performance as a team player in grappling with difficult questions of national priorities that determine his degree of influence. The Chairman's only institutional advantage is his status as the one senior military official whose sole responsibility encompasses the entire spectrum of defense.

The Joint Chiefs are supported by a Joint Staff which is significantly limited by law in terms of size—it is dwarfed by the Service and Secretary of Defense staff—and the tenure of officer assignments. Except for urgent matters, a joint action is traditionally handled by assigning the issue to a Joint Staff action officer who meets with compa-

rable level representatives from the four Service staffs. The pressures at this point create a greater drive for agreement than for quality: the process usually results in extensive discussion and careful draftmanship of a paper designed to accommodate the views of each Service—at least to the extent of not goring anyone's ox.

Then the paper works its way up through a series of such committees to a group composed of the Service Operations Deputies (three-star positions on each Service staff) and the three-star Director of the Joint Staff. These individuals—who normally attend the meetings of the Joint Chiefs—can approve a routine paper, but refer any substantive issue or unagreed upon matter to the Chiefs. As would be expected, papers produced by such a multiple committee process are often watered down or well waffled, although not as badly as Dean Acheson judged when in his 1969 memoirs he wrote of the Joint Chiefs orgainzations: "Since it is a committee and its views are the result of votes on formal papers prepared for it, it quite literally is like my favorite old lady who could not say what she thought until she heard what she said."

When there is not time for this elaborate staff process or even to convene the Joint Chiefs, I must take action and consult with my colleagues later. The most extreme example would be that of direct attack on the United States. The Soviets have a number of submarines on alert off our Atlantic and Pacific coasts which could deliver nuclear warheads on Washington and other targets in a very few minutes. If an attack were made, our warning sensors would pick up the launches within seconds and reports would reach Washington and other key points almost immediately. The general or admiral on 24-hour duty in the National Military Command Center would at once notify me as well as others. I would then recommend a course of action to the President and Secretary of Defense, and would implement the presidential decision without delay.

THE LIBYAN INCIDENT

At the other end of the spectrum are incidents such as the one last year when a Libyan pilot fired a missile at our Navy fighters over the Gulf of Sidra and our pilots responded by downing two of the Libyan planes. I was notified immediately and in turn informed the Secretary of Defense. I then proceeded to the National Military Command Center in the Pentagon to determine what further action, if any, was required. The need to respond to crises and incidents such as this one requires that I be immediately available, a requirement to which I have long been accustomed.

The more routine actions are considered each week in three regularly scheduled Joint Chiefs meetings in which operational as well as policy issues are addressed. When in Washington, the first responsibility of a member of the Joint Chiefs of Staff is to attend all of these meetings, but because of our worldwide responsibilities we must be gone a considerable amount of the time. The Vice Chief of Staff substitutes when a Service Chief is absent but since the Chairman is not allowed a deputy (a major weakness which I will address later), the senior Service Chief in attendance chairs the meeting when I am away. My experience has been that one or more substitutes attend about three-quarters of the meetings, a situation that results in a lack of continuity.

By law, if we cannot reach unanimous agreement on an issue, we must inform the Secretary of Defense. Such splits are referred to the Secretary a few times a year, but we are understandably reluctant to forward disagreements so we invest much time and effort to accommodate differing views of the Chiefs.

IMPORTANT RELATIONSHIPS

The Joint Chiefs must maintain many constructive external relationships, the most important of which derives from our role as the senior military advisors to the civilian leadership, particularly the Secretary of Defense and the President. We meet with the Secretary and Deputy Secretary of Defense each Tuesday to discuss joint matters as well as attend other meetings with them during the week. As Chairman, I meet privately with the Secretary and his Deputy each day and participate with them in interagency discussions.

Traditionally, Presidents have met with the Chiefs as a body only on a few occasions. More often we send memoranda to the Secretary of Defense and request that they be forwarded to the President. Any Chief has the right to ask for an individual appointment or correspond directly with the President, but this right has also been exercised very rarely.

The main contact with the President comes when I participate as the Joint Chiefs' representative in National Security Council meetings. Such meetings are scheduled frequently by President Reagan, who has used the National Security Council forum more than any President since Eisenhower. I have the full opportunity at these meetings to express to the President the corporate views of the Chiefs as well as my personal views on any matters, regardless of whether the Chiefs have addressed them. I also have the opportunity to express such views below the presidential level as a member of various interagency and defense working groups such as the Military Manpower Task Force, the Defense Resources Board and the Armed Forces Policy Council.

Next to advising the President and the Secretary of Defense, the Joint Chiefs' most important responsibility is the requirement to oversee the Combatant Commands. In meeting this responsibility, it is essential to nurture a close relationship with the commanders through long-standing personal contacts and frequent communications as well as visits to the field. The Service Chiefs are also responsible to their Secretaries for organizing, equipping, and training the forces assigned to the Commands.

Responsiveness to Congress is another important responsibility of the Joint Chiefs. The Secretary of Defense and I normally appear together before eight congressional committees—many times each year before some of them. Service Chiefs also have hearings before several committees, particularly those concerned with Service budget matters. And the Joint Chiefs occasionally will appear as a body, as we did during various arms control hearings. Extensive questioning of every action of the Defense Department is the norm during hearings as well as in detailed written questions addressed to us throughout the year.

Whenever military officers appear at a congressional hearing, we are expected to respond fully to questioning, even when asked for personal views about matters on which we may disagree with the position of the Administration. I have responded to unsolicited questions with personal views at variance with the decisions of the civilian leadership on a number of occasions, the most recent of which concerned my reservations on the basing decision for the MX Intercontinental Ballistic Missile. I believe our system is unique among the nations of the world in airing such disagreements. A number of years ago, when I explained this aspect of U.S. military-congressional relations to a head of government of one of our allies, he responded that one of his military officers would be fired if he gave a view other than the official position to his parliament. The U.S. civilian leadership throughout the years has understood and even supported the military's responsiveness to congressional questions so long as our comments have been made in good faith and neither solicited nor intended to circumvent a decision. I have found that senior officers have generally been sensitive to this responsibility.

Finally, it is important for the Joint Chiefs to work very closely with our friends and allies since we simply cannot go it alone in today's world. I meet with my NATO counterparts on at least four occasions each year, and with officials from many other countries somewhat less frequently.

These important external relationships take a great deal of time, but it is the cumbersomeness of the committee processes that constrains our ability to produce the best joint military advice. One of the presidentially directed studies of the joint system, the 1978 "Steadman Report," concluded that the advice provided personally (usually orally) by the Chairman and the Service Chiefs was of high quality but that the institutional products (the formal position papers) were not found very useful.

CONSTRAINTS ON ADVISORY ROLE

Despite the institutional constraints, however, we have managed to make some joint program improvements over the last few years. Much of the credit for whatever progress has been made must go to my colleagues on the Joint Chiefs. The nation has been, and continues to be, well served by these competent, hard-working officers. Some of the improvements are:

Development of a broader joint exercise program to include mobilization practice;

Establishment of a Joint Deployment Agency to integrate deployment plans and activities;

Integration of our land and sea transportation systems;

Redirection of the Industrial College of the Armed Forces to achieve better understanding of mobilization;

Revamping of our joint education system to include establishment of research centers at the National Defense University, in conjunction with the Secretary of Defense, to help us take fresh looks at defense problems;

Organizational adjustments for better integration of the joint command, control, and communications system;

Establishment of the Rapid Deployment Joint Task Force to improve our capability to deploy and operate forces in Southwest Asia and as a mechanism to develop and exercise integrated operations by elements of all four Services;

Increasing the Combatant Commanders' opportunity to influence resource decisions, to include appearing before the Defense Resources Board.

Involving the Service Chiefs in specific joint issues when visiting the field in order to report findings and recommendations at a Joint Chiefs meeting.

PERSISTENT SHORTCOMINGS

While the above represent some important and helpful changes in interservice programs, such progress has been limited primarily to issues which only marginally affect important Service interests. However, unless the basic long-term shortcomings of the system are corrected, the severity of their consequences will continue to increase as the national security environment becomes ever more complex. We need to spend more time on our war-fighting capabilities and less on an intramural scramble for resources.

In my view, the basic causes of our most serious deficiencies can be divided into two categories: personnel and organization.

Personnel. There is inadequate cross-Service and joint experience in our military, from the top down. The incentives and rewards for seeking such experience are virtually nonexistent. And the problem is compounded by the high degree of turbulence in key positions.

We do not prepare officers to assume the responsibilities of membership on the Joint Chiefs as well as we should. I include myself in this judgment, even though I was fortunate in having an unusually diversified background before becoming a member of the Joint Chiefs. In my many years in the Air Force I have been assigned to bombers and fighters, command and staff, Washington and field tours. I had attended the National War College, an institution designed to prepare military officers and foreign policy civilians for joint and interagency duty. I had been an aide to an unusually competent commander, General LeMay, and he taught me much; his initial guidance to me was, "You are in this job to learn first and serve second and do not mix those priorities." I had 10 years overseas in Japan, Vietnam, and Europe, including direct involvement in two wars. And in my last overseas assignment I had two jobs—as U.S. air commander with geographic responsibility stretching from Norway to Iran, and concurrently as a NATO air commander with coalition responsibility for air forces of a number of nations.

However, I still lacked two major ingredients of a fully rounded experience when I was appointed Chief of Staff of the Air Force. I had begun service in the Army and had maintained close contact with that Service even after the Air Force became independent. But my contact with the maritime forces—the Navy and the Marines—was limited. I had visited and had participated in joint exercises with maritime forces, but still did not have as deep an understanding of their strengths and weaknesses, their doctrines and traditions, as I would have liked. Unfortunately, my experience in this regard is far from unique: Few Navy or Marine officers have substantial experience with the Army or Air Force, and vice versa.

EXPERIENCE GAPS ARE COMMON

The second gap in my experience is also far too common among officers who assume key positions in the joint system (both on the Joint Chiefs and as Combatant Commanders): I had never served on the Joint Staff or in the headquarters of a Unified Command. And frankly, I have found from my own experience that serving on the Joint Chiefs as head of a Service does not necessarily make an individual a truly joint officer. My perspective changed when I became Chairman and was immersed every hour in joint problems. But as Air Force Chief, while I prided myself on my joint attitude, and believed that some fundamental changes were needed, I must confess that I was very reluctant—as were the other Service Chiefs—to accept any infringement on Service autonomy on individual issues.

Most newly assigned officers arrive on the Joint Staff or a Unified Command staff from a Service-oriented career with little interservice experience and inadequate preparation for joint duty. In the case of the Joint Staff, the problem is compounded by statutory limits—restrictions which do not apply to the Service and Secretary of Defense staffs. For example, public law (10 USC 143) states that:

"The tenure of members of the Joint Staff . . . except in time of war . . . may [not] be more than three years."

"Except in time of war . . . officers may not be reassigned to the Joint Staff [in] less than three years" unless the Secretary of Defense waives this restriction, which he may do for no more than 30 officers.

Furthermore, officers come from and return to their Services, which control their assignments and promotions. The strong Service string thus attached to a Joint Staff officer (and to those assigned to the Unified Commands as well) provides little incentive—and often considerable disintentive—for officers to seek joint duty or to differ with their Service position in joint deliberations. Indeed, it is hard to argue that Joint Staff duty is a path to the top. With the exception of Army General Earle Wheeler, not a single Director of the Joint Staff or one of its major components has ever become Chief of his Service or Chairman of the Joint Chiefs of Staff.

NEED FOR BETTER CONTINUITY

We have many outstanding officers on the Joint Staff who work very hard under very difficult conditions with few rewards. It is no wonder that many retire while on, or soon after leaving, the Joint Staff, or seek early release for a more rewarding job. The three-year limit on assignments—when coupled with our reluctance to stand in the way of good people attempting to move to Service jobs that may further their careers—results in a turnover of the Joint Staff of a little more than two years. Better continuity is required.

Organization. In the Joint system we not only have the advantages and all the disadvantages typical of committees, but our problems are futher compounded by the "spokesman-statesman" dilemma that a Service Chief encounters. This is especially true when the issue of distribution—of resources or of missions—is raised. Time after time during my years as a member of the Joint Chiefs, the extraordinary difficulty of addressing—let alone gaining the Chiefs' agreement on—the distribution of constrained resources has been driven home to me. A Service Chief finds himself in a very tough position when asked to give up or forego significant resources or important roles and missions: both because his priorities have been shaped by his Service experience, and because he must be the loyal and trusted leader of a Service whose members sincerely believe their Service deserves a greater share of constrained resources and of military missions—and the control thereof.

Service Chiefs do differ from the position of their Service staffs on occasion, but to do so too often and particularly on fundamental issues is to risk losing the support essential for carrying out Service responsibilities. One former Chief relates that during a joint meeting, a Service action officer (a major) handed him a note which said, "General, under no condition can you agree to the third paragraph." This incident is representative of a phenomenon which has often been called "the tyranny of the action officer." However, that phrase tends to obscure a significant point: The major was expressing the viewpoint of a large and often unforgiving bureaucracy.

We in the defense business share the problem which afflicts most of corporate America—the difficulties inherent in long-range planning. Today's business leaders are of course well aware of the problems of accurately predicting the future and developing successful strategies to improve long-range profitability—and creating incentives within constituencies to address the long term. Those of us responsible for defense planning must contend with the same problems, as well as further complications stemming from the lack of a readily calculable "bottom line," the buffetings of political and social disturbances anywhere on the globe, and a high degree of resistance to change.

Any institution that imbues its members with traditions, doctrines, and discipline is likely to find it quite difficult to assess changes in its environment with a high degree of objectivity. Deep-seated Service traditions are important in fostering a fighting spirit, Service pride, and heroism, but they may also engender a tendency to look inward and to perpetuate doctrines and thought patterns that do not keep pace with changing requirements. Since fresh approaches to strategy tend to threaten an institution's interests and self-image, it is often more comfortable to look to the past than to seek new ways to meet the challenges of the future. When coupled with a system that keeps Service leadership bound up in a continuous struggle for resources, such inclinations can lead to a preoccupation with weapon systems, techniques, and tactics at the expense of sound strategic planning.

Despite valiant efforts to improve strategic planning in the Pentagon, we are often faced with intense pressures to spend most of our time addressing immediate issues. Those pressures are particularly great with regard to budget actions: Sometimes we are addressing three Budget documents at a time. For example, in the fall of 1981 we were working with Congress on the fiscal year 1982 budget (well after the fiscal year had started), preparing the 1983 budget for submission to Congress in January 1982, and doing long-range planning for the following five-year budget period (1984–1988). The work with Congress obviously took budgetary precedence, and at the same time, big and small crises (Poland, El Salvador, Libya, the Middle East, etc.) were rippling through Washington with increased frequency. Under such conditions, it takes strong discipline to avoid being a total captive of the urgent.

NEEDED CHANGES

The shortcomings outlined above have been with the joint system for too long and the need for correction is more urgent now than at any time. Since we live in an era in which conflicts could erupt regionally or globally much more quickly than in the past, we must build our military strength without delay—and we must be able to integrate our military forces with great efficiency.

It is clear to me that the fundamental problem is not with individuals but is an organizational one. I have been a close observ-

er or a direct participant in joint activities for more than 20 years. During that time there have been six Chairmen and dozens of Service Chiefs and the basic problems have continued regardless of who has been in a specific chair.

As a minimum, we need changes in three specific areas:

(1) Strengthen the role of the Chairman. Many areas cannot be addressed effectively by committee action, particularly when four out of five committee members have institutional stakes in the issues and the pressure is on to achieve unanimity in order to act. It is unreasonable to expect the Service Chiefs to take one position as Service advocates when dealing in Service channels, and a totally different position in the joint areas. Such matters should therefore be removed from addressal by the Joint Chiefs as a body.

To the extent that an inter-Service perspective is needed on distribution issues, that perspective could be better provided by the Chairman in consultation with the Combatant Commanders. This in turn would require the strenthening of the Unified Commander's role with respect to his Service Component Commanders who command the forces and report both to the Unified Commander and the Service Chief. Under the current system the Service Component Commander's attention is often drawn more to Service issues than to inter-Service co-ordination problems. In other areas—such as joint operational and long-range planning, crisis management, and a number of routine matters—neither the Service Chiefs nor the Service staffs need participate at the level of detail in which they are involved today.

Furthermore, the Chairman should be authorized a deputy. It is an anomaly that the military officer with the most complex job is virtually the only senior—and in many cases not so senior—officer who does not have a deputy. This causes substantial problems of continuity when individual Service Chiefs, who spend only a fraction of their time on joint activities, stand in for the Chairman in his absence. Second, the Chairman needs assistance, particularly in insuring the readiness, improving the war planning, and managing the joint exercising of the combatant forces.

I would also recommend that, at least until there is far more cross-experience and education among all four Services, the Chairman and the Deputy Chairman should come from the two different groupings (one a Navy or Marine officer and the other an Army or Air Force officer.)

TIME DEMANDS COULD WORSEN

I am convinced that without some such revised role for the Chairman and less reliance on cumbersome committee processes, the very great demands on the time of a Service Chief will continue and perhaps even worsen. President Eisenhower recognized this problem and when he transmitted his final reorganization plan to Congress in 1958, he stated:

"This situation is produced by their having the dual responsibilities of chiefs of the military services and members of the Joint Chiefs of Staff. The problem is not new but has not yielded to past efforts to solve it."

Unfortunately, the approach Eisenhower then advocated—having a chief delegate major portions of his Service responsibilities to his Vice Chief (with the hope that this would overcome many of the joint problems)—has not worked either, as the subsequent 24 years of experience have shown. I for one, would also like to see the Service Chiefs be able to spend more time as the leaders of their Services in improving the combat capabilities of their units and in managing the spending of the billions of dollars in the Service budgets.

There is great wisdom in having the Joint Chiefs of Staff act as senior military advisors to the President and Secretary of Defense of certain key issues. But without a stronger role and better support for the chairman, the work of the Joint chiefs is likely to remain too dispersed, diluted, and diffused to provide the best possible military advice or to insure the full capability of our combatant forces.

(2) Limit Service staff involvement in the joint process. As mentioned before, the Service staffs dwarf the Joint Staff, with many of the Service officers duplicating the work of the Joint Staff. There are two basic problems. First, the Service staff involvement is a cumbersome staffing process and second, the Service Chiefs receive their advice on joint matters from their Service staffs.

There are some advantages to having Service staffs involved in the joint process, but we should abolish the current system in which each Service has almost a de facto veto on every issue at every stage of the routine staffing process. President Eisenhower noted 23 years ago that "these laborious processes exist because each military department feels obliged to judge independently each work product of the Joint Staff." The situation has not changed. The role of Service staffs can and should be reduced to providing informational inputs—the result would be a better product and fewer officers needed on the Service staffs.

When a Service Chief acts on a Service matter he should receive advice from his Service staff, and when he acts on a joint matter he should receive his advice from the Joint Staff; however, since the beginning of the joint process, Service Chiefs have relief almost exclusively on their Service staffs in preparing for joint meetings. It is unreslistic to expect truly inter Service advice from a staff comprised of officers from only one Service. The Joint Staff can and should provide such advice.

(3) Broaden the training, experience and rewards for joint duty. Finally, more officers should have more truly joint experiences at more points in their careers—and should be rewarded for doing so. There should be more interchange among Services at the junior ranks, as Eisenhower strongly advocated, and preparation for joint assignments should be significantly upgraded. The joint educational system should also be expanded and improved. (Along these lines, one innovative idea that is being addresed is to have all newly appointed generals and admirals attend a common course of joint education.) An assignment to the Joint Staff or to a Unified Command headquarters should be part of an upward mobility pattern rather than a diversion or end of a career, as has been the case so often in the past. It is difficult to see how present patterns can be changed, however, without some influence by the Chairman on the selection and promotion of officers. Also, the statutory restrictions on service on the Joint Staff should be removed.

Despite the magnitude of the task, I am encouraged by the willingness of my colleagues to address the issues and by the support of the Secretary of Defense and others in the Administration on the need for change. Furthermore, I sense a different mood in Congress than that shown in the forties and fifties when large and powerful elements strongly protected Service autonomy.

I am working hard in my final months as Chairman to bring about the necessary changes. More specifically, I have underway a course of action which addresses, first, recommendations to my colleagues on changes which are within the authority of the Chiefs, and second, recommendations to the Secretary of Defense and the President on other changes, to include specific proposals for legislative action.

CHANGES FORCED FROM OUTSIDE

Such change never comes easily. As the Navy approached its major reorganizations at the start of the century, Admiral Mahan concluded that no Service could agree to give up sovereignty, but would have to have reorganization forced upon it from outside the organization.

The Services have an understandable desire to protect organizational interests, to preserve their sovereignty, and to conserve hard-won prerogatives. Nevertheless, we cannot escape the fact that our national security today requires the integration of Service efforts more than at any time in our history. To attempt to achieve meaningful integration only through the existing committee system is to leave it at the mercy of well-proven institutional counterpressures. I believe we can find a middle ground which draws on the strengths of the separate Services and of having Service Chiefs as members of the Joint Chiefs, while at the same time making the changes necessary to strengthen our joint system. If not, major surgery will be required.

A MILITARY BOARD OF DIRECTORS

The Joint Chiefs of Staff, if viewed as the military board of a government corporation, would provide some striking contrasts to organization and management principles followed in the private sector: Board consists of five directors, all insiders, four of whom simultaneously head line divisions—reports to the chief executive and a cabinet member—supported by a corporate staff which draws all its officers from line divisions and turns over about every two years—line divisions control officer assignments and advancement (there is no transfer of officers among line divisions)—Board meets three times a week to address operational as well as policy matters, which normally are first reviewed by a four-layered committee system involving full participation of division staffs from the start—at 75 percent of the Board meetings, one or more of the directors are represented by substitutes—if the Board can't reach unanimous agreement on an issue, it must—by law—inform its superiors—at least the four top leadership and management levels within the corporation receive the same basic compensation, set by two committees consisting of a total of 535 members—and any personnel changes in the top three levels (about 150 positions) must be approved in advance by one of the committees.

ROOTS OF THE PROBLEM

The roots of enforced diffusion of military authority can be traced to a period which precedes the founding of the republic. The Continental Congress distrusted standing armies and military heroes, and even with George Washington in command, established multiple checks on his authority. The

principles of the separation of powers and civilian control over the military have appropriately become deeply embeded in our culture, both in law and in custom as well as in the attitudes of our military professionals.

In many cases, however, the mechanism erected to exercise such controls has had the unintended effect of permitting—and often promoting—serious organizational deficiencies. As our military institutions evolved, the various military subbureaucracies attempted to establish as much independence as possible. As a result, by the end of the nineteenth century, both military departments—War and Navy—were riddled with semiautonomous, often intractable fiefdoms: branches, corps, departments, bureaus, and so forth. By the time we went to war with Spain in 1898, conditions were ripe for reform, but as is so often the case, it took near military disaster in the conduct of the war to provide the impetus within the Army and Navy to move toward better integration within the Services. The Army, despite much opposition, created a Chief of Staff position in 1903; after several intermediate steps, the Navy created the position of Chief of Naval Operations in 1915. Insititutional resistance was still great, however, and it would take decades before centralized authority had shifted to the Chiefs of the Services.

Both the Army and the Navy began World War II with authority and responsibility diffused. The Army still had a large number of semiautonomous agencies with little effective coordination below the Chief of Staff level. Immediately after Pearl Harbor, General Marshall streamlined the Army by reducing the number of officers reporting directly to him from 61 to six. In December of 1941, the Navy had split responsibility in Washington with Admiral Stark as Chief of Naval Operations and Admiral King as Commander-in-Chief of the U.S. Fleet. A few months later, much of that problem was solved when Admiral King assumed both jobs.

Interservice cooperation developed even more slowly. Before technological developments began to blur the boundaries between sea and land warfare, the Services had evolved independently into distinctly different organizations with separate policies and traditions. Competition rather than cooperation was the standard. This evolution resulted in four organizations which even today gravitate quite naturally to two groups of shared traditions and experiences: a maritime grouping (Navy and Marine Corps), and a primarily land warfare grouping (Army and later Air Force).

[From the Washington Post, Feb. 18, 1982]

THE JOINT CHIEFS NEED A REAL CHIEF

(By R. James Woolsey)

Gen. David C. Jones, chairman of the Joint Chiefs of Staff, has done the country a service. A few months before his retirement this summer he has published a proposal for a thorough revamping of the Joint Chiefs. It is high time.

The weakness and lack of influence of the Joint Chiefs is one of the Pentagon's less well-kept secrets. Of course, each of the chiefs, except the chairman, is the head of one of the four military services as well, and in these roles they are far from weak or ineffective.

Therein lies the problem. In dealing with most of the normal business of a peacetime military establishment—research, weapons procurement, budget, manpower policy, training—each chief heads a sizable and competent staff composed of officers from his own service. As a service chief he also has contacts on the Hill friendly to those who wear his color of uniform, as well as a number of well-connected retired officers and reservists who are sometimes so friendly that they trample folks in their enthusiasm.

For certain other "joint" functions, however, on which the president and secretary of defense seek and need an overall collective military judgment (e.g., SALT, overall defense budget questions, military operations in a crisis), each mighty service chief steps into a phone booth and becomes . . . Clark Kent. Wearing horn-rimmed glasses and a slightly dopey stare, he goes into "the tank," as the Joint Chiefs' conference room is called, a mild-mannered seeker of unanimity.

Ah, unanimity. The price of unanimity among all four military services in this beribboned committee has been, for 35 years, intellectual flab clothed in flaccid prose. True, much good military advice has been given—but ordinarily informally, not through the joint staff system. True, the Joint Chiefs system occasionally produces something useful—a testament to the caliber of some able officers assigned there who have been able to make bricks without straw. But generally it has worked as badly as, Jones reminds us, Dwight Eisenhower suggested it would 24 years ago.

Normally, as the interminable four tiers of their staff's committee meetings lumber on, the formal advice that the Joint Chiefs produce comes more and more to resemble the famous committee-designed camel.

The Joint Chiefs' force planning advice (the Joint Strategic Objectives Plan—say "jaysop") is the least-read document in the Pentagon. Adm. Bud Zumwalt, former member of the Joint Chiefs, wrote after his retirement that even he had never seen a copy. It's no wonder. Memorializations of bureaucratic logrolling that merely add up everyone's "requirements" and staple them together go to the bottom of anyone's inbox.

Bureaucratic stasis is no stranger to Washington, but on many issues the lack of a coherent overall military position—one that rises above individual service interests—is becoming dangerous. As Jones points out in his crisp recent statement of the problem, there is a tendency in each service to look inward and to perpetuate outmoded doctrines and thought patterns since "fresh approaches to strategy tend to threaten an institution's interests and self-image. . . ." We badly need, and have not had, a coherent overall military view about such matters as strategy and forces. Partly as a result, a gaggle of kibitzers has formed throughout government on these questions. Everyone from OMB budget examiners to the stray congressional staffer with a Bonaparte complex now believes himself to be the nation's premier strategist. The individual military services have clear stands on many of these issues, but an overall coherent military view has been conspicuous by its absence.

Such a view may not prove to be correct or persuasive on a good many questions, but it should at least have a chance to be heard in the debate. Clemenceau was absolutely right: war is indeed too important to be left to the generals. But people who have led troops all their lives, after all, do have a contribution to make to the discussion, and they should be permitted to put their most cogent case forward. It is not unimaginable that, seeing the difficulty today of obtaining political consensus behind large increases in defense spending, our senior military officers could think of some relatively inexpensive ways to increase our military effectiveness. They are the ones most genuinely and immediately concerned about prevailing in any hostilities—after all, they'll be the ones who have to fight.

But for years the only central voice in defense has been provided by the civilian staff of the secretary of defense. Lacking military expertise it has, largely, failed. For example, the Office of the Secretary of Defense has labored mightily and given us two decades of systems analysis, enabling us to have certain victory over an enemy only if each side is limited to bombing the other with old computer printouts.

Jones proposes a stronger role for the chairman of the Joint Chiefs and a reduction in influence, on joint matters, for the individual service chiefs. The latter would continue to head their individual military services and would advise the chairman, the secretary of defense and the president. But on strategy, military questions that relate to foreign policy and some aspects of carving up the defense budget pie, the chairman and a stronger central military staff would gain influence over the services. The chairman, for example, would have some control over the promotions of those assigned to his staff; this is not true today, and it is one of the main reasons the current system is so weak.

Some will caution against steps that, it will be contended, might lead to an all-powerful Prussian-style "General Staff." Piffle. We can afford to move several light years toward military staff centralization before we come within any distance of Prussianism. The United States is about as close to having a Prussian-style general staff today as it is to having a dictatorship of the proletariat.

By speaking out, Jones bequeaths to his successor a chance to make the system work. Like Joe DiMaggio, he is retiring with style.

[From the Los Angeles Times, Mar. 10, 1982]

SHORING UP THE JOINT CHIEFS: GENERAL JONES' PROPOSED CHANGES DESERVE A SYMPATHETIC HEARING

(By Philip A. Odeen)

Last month, Gen. David Jones, chairman of the Joint Chiefs of Staff, publicly stated what Pentagon insiders have known for years: that the Joint Chiefs organization simply doesn't work. Jones, who plans to retire this summer, called for badly needed changes that could well result in stronger military leadership and improve the quality of the advice being offered to senior civilian leaders of the government.

The cumbersome Joint Chiefs structure in existence today emerged as a compromise from the post-World War II debate over the establishment of the Defense Department. Because of opposition in Congress and within the military, proposals to create a strong, independent military chief to advise the President were rejected. Instead, a committee approach was adopted, preserving considerable autonomy for each military department. The chief of each service is a member of the Joint Chiefs; in addition, there is a chairman, who presides over meetings but has little independent power. Each chief devotes most of his time to the person-

nel, weapons and budget problems of his own particular service. His joint responsibilities are clearly a secondary concern.

The Joint Staff, which supports the Joint Chiefs, is also weak and ineffective. It consists of military officers who serve two- to three-year terms and then return to their services, where all assignment and promotion decisions are made. It should be no surprise, then, that able, ambitious officers usually avoid assignment to the Joint Staff, and that those who are assigned seldom take positions contrary to those favored by their service. Moreover, issues that come before the Joint Chiefs are handled via a slow, unimaginative bureaucratic process. Each service essentially has a veto over actions that conflict with its parochial interests. Not surprisingly, the result is lowest-common-denominator mush—no clear, hard-hitting military advice.

The Joint Chiefs, as a body, are incapable of giving advice on the allocation of resources among the services, the most difficult issue that the secretary of defense and the President must face. Melvin R. Laird, secretary of defense during the Nixon Administration, made a valiant effort to bring the Joint Chiefs into the budget process and failed, despite the sympathy of most military leaders. Because there are inevitably winners and losers when such questions are addressed, the committee structure of the Joint Chiefs simply couldn't cope with them. Also, the laws greatly limit the ability of the chairman to voice his views independently.

The Joint Chiefs structure functions almost as badly when advice is sought on military strategy and priorities. Each branch of the armed services has its pet strategic concepts, designed to emphasize its own role and forces. As a result, Joint Chiefs strategy papers incorporate all four service approaches rather than present the best choice or set priorities.

Presidents and Cabinet members need and will seek help in making difficult policy and resource decisions. In the absence of an effective military voice, they turn to the systems analysts, budget specialists, "think tanks" and consultants for help in setting military priorities and deciding on budget increases or cuts. Thus, individuals who don't have operational experience and who won't have to live with the consequences of their recommendations play a key role in developing strategy, planning future forces and making tough budget decisions.

In his proposal, Jones suggested three steps that would greatly enhance the effectiveness of the Joint Chiefs:

Let the chairman advise the secretary of defense and the President on resource-allocation issues based on his judgment and input from the Joint Staff and the field commands (Europe, Pacific, Strategic Air, etc.).

Eliminate the veto that the individual services exercise on most issues, and rely more heavily on the Joint Staff for support of the Joint Chiefs in all areas in which their advice is called for.

Provide better training for personnel assigned to the Joint Staff and take steps to reward those who accept such assignments. This would include giving the chairman power to influence assignments and promotions.

Jones' proposal is certain to be opposed on the grounds that it could lead to a "German general staff" with greatly enhanced powers. But Jones' recommendations would amount to only a modest increase in power for the chairman of the Joint Chiefs. Numerous checks would remain to ensure that the views of the individual services would be heard, both at the Pentagon and in Congress. Nevertheless, the individual branches can be counted on to protest the threat to their veto power over the chairman's views.

It may well be true that war is too serious to be left to generals. But leaving them out of key defense decisions makes even less sense. Jones' proposal to reform the Joint Chiefs of Staff would help ensure that our civilian leaders get clear and sensible military advice on the toughest issues that the nation must face. This is a real reform; it deserves a prompt and sympathetic hearing.

[From the New York Times, Feb. 25, 1982

Q. & A.: GEN. DAVID C. JONES: RETIRING CHIEF SPEAKS OUT ON MILITARY COUNCIL

(By Richard Halloran)

WASHINGTON, Feb. 23.—Gen. David C. Jones, who will retire as Chairman of the Joint Chiefs of Staff in June after having served with the Joint Chiefs longer than any other officer, has begun his valedictory by circulating a provocative set of proposals for reforming the nation's senior military council.

Rarely have military officers, bred in the tradition of keeping their own counsel except when asked by properly constituted civilian authority, undertaken so public a campaign for change.

General Jones, who served four years as Chief of Staff of the Air Force and another four as Chairman of the Joint Chiefs advocates greater authority for the Chairman and the development of a corps of strategic military thinkers. He elaborated on his proposals in a recent interview.

General, what are the fundamental problems in the J.C.S.?

A. The Chiefs have two overall roles. One is to give advice to the Secretary of Defense, to the President, to the National Security Council, to the Congress, to a very wide audience.

The other is to supervise the combatant commands. We don't command them, by law, but we supervise their readiness, their capabilities, their planning.

In advice, one problem is that we've never sired a Clausewitz. In our system, Clausewitz would probably make full colonel, retire at 20 years and go to work for a think tank. We need great commanders with innovation and imagination. But we also need great strategists and our current system doesn't develop that.

Q. Is it in the system or is there something peculiarly American about not developing strategists?

A. Someone once wrote that long-term planning is almost anti-American. We have not done as well as other countries in long-term planning. That's true in government, it's true in business, and it's true in the military.

But there are also specific institutional problems. There are few rewards for the people who step back and look at the problems from the global standpoint. Promotions are determined by a service, assignments are determined by a service, the basic move is up the service channel.

I'm not proposing a general staff of people who are in it for the majority of their careers. But the pendulum is too far one way right now. I'm not suggesting moving it the other way to an elitist group because that would be as bad as what we've got now. There should be something in the middle where there can be greater incentives for people who work beyond their own service's interest.

Q. What about the supervision of combat forces by the J.C.S., which is really a committee of four service chiefs and a Chairman?

A. Committees are useful in providing advice and even in a few policy decisions. But committees are notoriously poor at running things.

Therefore, I would have a more streamlined process. I would give the Chairman a much greater role in this regard, with greater authority. And I would give him a deputy, who would be a four-star officer, to help in this. Between them, they could discharge two very different, very demanding responsibilities—being in Washington to give advice on policy and strategy and getting out to the field to supervise combat readiness.

Q. Is this the main point to your proposals?

A. Yes, the key is to strengthen the role of the Chairman. Part of that is to give him a deputy. Part of it would be to delineate certain areas where the Chairman can act without going through the committee process. Part of it is to give him some influence in promotions.

But all of the combatant commands are under the Secretary of Defense. Therefore, strengthening the role of the Chairman doesn't end up with his having authority to go off on his own and alert forces or to take action with the forces or to get the United States committed.

Q. Should your successor have a new title that sounds more like a military commander than a corporate executive?

A. I think I would still call him, probably, Chairman of the Joint Chiefs. In my analogy or comparison with industry, the Secretary of Defense is the chief executive officer with the Chairman being the chief operating officer.

Q. The Chairman is not in the chain of command now; would you put him back into the chain of command?

A. Although I would like to see that done, I have not recommended it because it is not essential to make major progress. Even though philosophically I support it, it isn't so critical to the issue as to be worth the effort that would be required by me.

Q. Along the same line, General, you wear four stars; should your successor wear five stars to make clear that he is the top soldier in the United States?

A. I think there is a clear advantage to that. I would welcome it, but again I have not proposed it because it would probably be misread as giving the Chairman more power than is intended. My proposal doesn't make him the commander of all other military officers.

Q. How would you get the Chairman and the joint staff more involved in the defense budget?

A. The country's leaders need military advice on issues that cut across the services, that transcend the interests of any one service. But we need to be recommending and commenting on how to get an integration of effort. We are doing more of that already. For example, we formed the Command, Control and Communications Directorate a few years ago. I probably involved myself in the budget process in "C cube" more than on any budget issue.

We are not trying to come up with our own budget but at least to be able to say, here are some of the problems, here are some of the things that need to be done.

Q. General, why have you brought this up now?

A. Well, I guess part of it is that I was ready. Before, I wasn't. I have seen so many abortive efforts for change that I wanted to make sure that I was fully prepared. Also I would like to do it at a time when it didn't look like empire building and self aggrandisement.

Q. After you retire, would you like to become a consultant on this?

A. No, I don't believe in trying to stay around after you're through. I will continue to provide advice after I retire, whether welcome or not, because I think there is so much more that needs to be done.

I intend to continue to work, hopefully in a constructive way, but in a critical way, even beyond my retirement, and on questions broader than the reorganization issue that I have addressed.

We can do so much better.

JCS Reform—and More: A Long Overdue Initiative

(By Robert E. Ellsworth)

General David C. Jones has done the nation a great service in triggering the debate over how our senior military command should be organized. General Edward C. Meyer has made an equally important contribution by going further than General Jones could tactfully go, noting that much stronger central institutions are needed, and not simply a stronger Chairman. Both sets of recommendations are in our interest if we are to avoid seeing our military become bureaucrats in uniform. As I look out over the next few years, one thing this nation surely requires is military and strategic advice straight from the shoulder. Professional. Tough. And smart. One way to get it is to begin with reform of the JCS, as Jones and Meyer have suggested.

THE OBJECTIVES REFORM MUST SERVE

The objectives of such reform may be summarized as follows:

To give professional military expertise a central role in shaping the nation's military strategy:

To strengthen the role of military expertise in military operations: and

To channel military professionalism so that it can influence the nation's force plans, to create more effective deterrent and war-fighting capabilities for the money made available.

The nation's present Chiefs of Staff and Joint Staff are incapable of adequately meeting these objectives, not because of personal inadequacies but because of statutory institutional roadblocks. The nation's top commanders must now give strategic advice in spite of their Services. They must give it privately, and in the knowledge that Service differences undermine their ability to staff strategic planning from an overall perspective. Whether the issue is nuclear strategy or strategy for the Gulf, the person Joint Staff system tends to reduce military advice to a lowest common denominator of Service and branch biases. Civilians have not taken over strategic planning, but the military are blocked from providing it.

Similarly, it has been exceedingly difficult to get unvarnished professional military advice on military operations. The efforts of the Joint Chiefs to create a national command center in Washington have largely been a waste of time. It has been all too clear that the Joint Staff, which supports this command center, lacks the political sophistication needed to advise on operations, the practical experience in military operations and crisis management, and the ability to react quickly and effectively. On balance, the Joint Staff has become a Service-oriented filter between the nation's top civilians and the Unified and Specified Commands—while the nation's top policy makers have tended to bypass it because it lacks the expertise, flexibility, and competence to do the job.

Among the failures of the present system, moreover, is the inability of the nation's top military to properly influence force planning. While the sophistication of the Joint Staff has increased steadily since the time of former Defense Secretary Robert S. McNamara, the grim truth remains that no responsible civilian can fully trust its advice. The Joint Staff has many competent individual members, but it produces formal staff work that has aroused the dismay of every senior civilian who has been forced to read it. It is laborious, cumbersome, and hopelessly compromised. It ignores real-world resource constraints.

REFORMING THE JOINT CHIEFS AND THE JOINT STAFF

The answer to this is obviously to create a strong single chief of staff and a career joint staff. General Jones and General Meyer are absolutely correct in seeking this objective. Without such reforms, this nation's top military command institutions will continue to fall far short of what the nation needs. General Meyer is also correct in emphasizing the role of the commanders of Unified and Specified Commands. This nation no longer has a serious need for Service chiefs of staff, any more than it has a need for Service Secretaries. Our strategy, our military operations, and our force plans must be shaped to support national missions and to meet global needs involving joint operations. While there is a need for Service-oriented administrators at the major general and assistant third secretary level, such administrators are not the proper advisors to the JCS Chairman, the Defense Secretary, or the President.

REFORMING THE SERVICES AND JOINT COMMANDS

This of course means that reform must in fact go somewhat further than either General Jones or General Meyer has suggested. The time has come to firmly subordinate Service interests to area commands like CINCPAC, CINCLANT, CINCEUR, and Readiness Command, and mission-oriented joint task forces. This can be done by going one step further than General Meyer suggests and giving the major commanders a direct voice in reporting to the JCS Chairman. They should be part of a committee or council that is subordinate to the Chairman, but clearly superior in rank and authority to any committee with a membership that includes the senior, single Service staff officers.

The end result will be more than a stronger Joint Staff, or Chairman. It will be to limit the career path to high command to either operational command or joint command. It will make single Service staff commands at best steppingstones to serving in such a command. It will cut through the forest of uniformed civilians or bureaucrats that now make up the Service military staffs and, combined with a strong, centrally led Joint Staff, will give the nation's responsible commanders a direct voice in decision making.

REFORMING CIVILIAN PLANNING AND DECISION MAKING

These reforms must be supplemented by reforms within the civilian side of the Department of Defense (DoD) and within the Congress. First, with all due respect to General Meyer, the military are not going to reassert their roles as commanders, strategists, and planners unless they work directly with civilian resource managers and policy planners in shaping one coherent force plan that can be implemented with the manpower and defense resources the nation has available.

This means that the Joint Strategic Objectives Plan must vanish forever, and that it must be replaced with a joint policy, planning, programming, and budgeting effort that is jointly drafted, reviewed, and implemented by staffs that mix members from the new Joint Staff and the Office of the Secretary of Defense. As long as the military planner is segregated from the civilian resource manager, and as long as military planners focus on trying to live beyond their resources, the real defense planning in this country will always be done by civilian planners. The golden rule in defense planning is that he who has the gold rules. No reform of the JCS will have much meaning that ignores this reality.

Second, the revised policy, planning, programming, and budgeting system must be directed toward giving the major commands the forces they need to meet potential threats. No reform can survive, or meet the nation's needs, which continues to plan and program around Service-oriented "slices" of general-purpose forces; which prevents joint planning and programming of the nation's strategic forces across Service lines; and which segregates the nation's research, development, and acquisition effort from an explicit link to the forces that will be built in each mission area. The nation must refocus its defense planning and budgeting activities away from a Service-oriented structure. It must concentrate on key mission areas, and it must judge by outputs rather than inputs.

This requires a third reform as well. The nation's forces plans will never support effective military operations or the implementation of a meaningful strategy as long as the annual Congressional budget cycle focuses on Service-oriented or line item budgets; as long as it only looks one year into the future; and as long as it ignores how the mission capabilities being built up compare to those of the threat. Yet the planning effort within DOD is now focused on a budget review process that forces this inadequate and short-sighted approach to planning. Defense must submit plans and budgets to the Congress with a five-year time horizon, which are structured by mission area rather than by Service, and which involve explicit net assessments of U.S. capabilities, those of our allies, and those of the threat.

These are not minor reforms, and it is certainly necessary to begin with the efforts suggested by General Jones and General Meyer. The President and the Congress must, however, have no illusions about the results. Reforms of the Joint Chiefs will not be enough by themselves. They must be accompanied by broad reforms in the organization of the Department of Defense, in the way civilians operate within the Office of the Secretary of Defense, and in the way in which the Congress treats the nation's defense budget. Without such reforms, the nation is virtually certain to fail to create a

broad and sustainable public consensus around its true requirements.

[From U.S. News & World Report, May 24, 1982]

INTERVIEW WITH GEN. DAVID C. JONES, CHAIRMAN, JOINT CHIEFS OF STAFF: U.S. MILITARY ORGANIZATION "DOESN'T WORK WELL AT ALL"

Q. General Jones, as you prepare to step down as chairman of the Joint Chiefs of Staff, what is the major lesson that you will carry away from the Pentagon?

A. That there is an absolutely critical need to change this nation's structure of military leadership. The fundamental weakness in this area cuts across the whole spectrum of American military efforts—from military advice for grand strategy, for a coherent defense budget and even for management of weapons programs.

Historically, the United States has not paid attention to military organization until a catastrophe occurs. The Spanish-American War was a debacle. In World War I, our logistics system broke down. Pearl Harbor was a disaster. In each of these cases, the U.S. was forced to make radical changes after the conflict began or ended. This time, I hope we can take the needed steps before an emergency is upon us.

Q. What specific change do you have in mind?

A. To put it bluntly, the chairman of the JCS has to be given considerably more authority than he has today. Now he commands a desk—that's all. The chairman can have considerable influence, but he has little real authority. In my view, the chairman should become the President's principal military adviser, and the Joint Staff should be responsible to the chairman rather than to a committee staff. That would enable the chairman to address defense issues far more effectively. Today, we have all five members of the JCS trying to reach agreement on every issue. It doesn't work well at all.

Q. What's wrong with that system?

A. There are four basic, longstanding and very dangerous weaknesses.

One is diffused responsibility. As the 1970 blue-ribbon panel stated: "Everybody is somewhat responsible for everything, and nobody is completely responsible for anything." The JCS is a committee, and committees perform certain tasks well. But they're notoriously inept at running things.

Secondly, JCS advice is not timely or sharp; it's committee advice. The basic drive is for unanimity. So you end up with the lowest common denominator of advice.

Third, the chiefs represent institutions—the services—and they become advocates for their services. There's a built-in conflict of interest between service loyalty and loyalty to the good of the U.S. defense capability as a whole.

Fourth, military jobs are very complex today. A service chief doesn't have time to tend to his own branch and then put on another hat and try to manage joint operations of the entire defense establishment.

Q. What about the criticism that your plan could lead to something like the once all-powerful German general staff?

A. The misperception of the German general staff was that a single general had great overall power. I find it interesting that today many democratic nations have systems which give an individual military leader greater overall authority than the German military leaders had. I'm not proposing we go that far. There would still be individual service chiefs, and they would work for the service secretaries. Furthermore, any chief could appeal directly to the Secretary of Defense or the President if he were strongly enough opposed to the chairman's recommendation on an issue.

Q. How would this improve the management of the military?

A. Service chiefs would be able to spend more time on running their service—combat readiness, discipline and the management of weapon-systems procurement. This really has to come from the military. During the past 20 years, the 30 top Pentagon civilian positions have had people assigned with an average tenure of about 2½ years. They can't focus on all of the problems. Some problems just fester, and not enough is done over the years.

Q. If the system is not overhauled, what will be the likely consequences in the future?

A. Over the past 30 years, 90 percent of our major arms systems have suffered cost overruns even when you take out inflation. This is caused partly because there is great turmoil in our leadership—civilian and uniformed—and the military leaders of the services don't have enough time to do two jobs well. If we continue in that direction, we will not achieve the defense capability that we need and we'll squander our resources. If we are going to solve these problems, some fundamental changes have to be made.

Q. Turning to the dangers this country faces: In the past, you have expressed deep concern about adverse trends in the U.S.-Soviet military balance. Have we begun to reverse those trends?

A. We've reversed the perception of the adverse trends, and this has had a beneficial psychological impact. The world sees that the United States is finally deciding to do something about a deteriorating security situation. That is important.

But there's a lag time. Because of long lead times, the increases in this year's defense budget, for example, won't really translate into a substantial increase in military power for several more years.

Q. How great an impact will the massive defense budgets of recent years have on U.S. military capability?

A. They won't propel us toward superiority over the Soviets, but they will arrest the trend toward U.S. inferiority. No one should expect that higher defense spending will quickly create a no-risk world. In fact, in a lot of ways, it's going to get riskier in years ahead.

Q. What do you mean?

A. In this decade, we're going to see a new leadership group in the Soviet Union. It will be, in a likelihood, a leadership clique that is more willing to take risks.

This leadership group will probably be forced to travel one of two roads. One road is to decide to make painful, but necessary, internal changes in the Russian economy and social structure in order to head off over the long term a potential of a collapse of the Soviet state. A turn in that direction would be to our advantage, because it would siphon off resources that might otherwise be devoted to arms and divert their attention from external adventures.

The other road is for Moscow to attempt to solve—or divert attention from—its internal problems by using its military power against other countries. I'm not predicting war, but I think this second scenario is more likely.

Q. There is criticism that the administration has adopted an ambitious strategy that cannot conceivably be implemented by available forces. Does the Pentagon run the risk that, by trying to do everything, it will end up not doing anything effectively?

A. There is no option but to broaden the scope of U.S. military power. We have a requirement for a global strategy now, and that global strategy is more demanding than our old regional strategies. We used to have overwhelming strategic nuclear superiority. And the Soviets had very limited ability to project power beyond their own borders. We could afford to fight in Korea or Vietnam and not worry too much about the rest of the world. We knew the Soviets either wouldn't or couldn't move.

Now we don't dare turn our back and dedicate massive amounts of military power in one area without worrying about something happening in another area. The only way to overcome that is to steadily build our own military power to cover several areas. Solving this problem will take a long time, and we have only recently started up that hill.

Q. Does this mean the U.S. must be prepared to fight Soviet forces in all areas of the world simultaneously?

A. Not necessarily, but it's hard to envisage a war between the Soviet Union and the United States that's limited to one small part of the world. Whatever the cause for its expansion, it's hard to see our fighting the Soviets with combat divisions in Southwest Asia, for example, and yet be meeting with them in the United Nations or sailing our ships past their ships on the high seas.

Q. Are you saying that any conflict between Russia and the U.S. will automatically escalate to all-out war?

A. I didn't say that. I said it's hard to see how a war between the superpowers could be limited, confined to some specific geographical area, or to certain types of weapons. The Korean and Vietnam wars demonstrated we could fight limited wars against third parties, but it's hard to imagine how Americans and Soviets can ever start fighting each other without having a high likelihood that the war will spread. That's not all bad. The high probability that a war will spread is a powerful deterrent.

Q. Doesn't Secretary of Defense Caspar Weinberger go further by hinting that the U.S. may deliberately widen a war with the Soviets in retaliation for any Russian military aggression?

A. He didn't say we would do it; he said we have the option to do so. Part of deterrence is uncertainty—making the Soviets nervous about how we may respond. They are then forced to consider these uncertainties in their strategic calculations. Nothing could be worse than for them to know that there would be no penalty for an aggressive act somewhere in the world. They should know there would be a penalty but have no certain knowledge about what it may be. That may not prevent them from moving, but they are likely to consider the risks before they act.

Q. How important, in your view, are arms-control negotiations in U.S. strategy to contain Soviet power?

A. The Joint Chiefs have been supporters of arms control. I wouldn't want to have arms control for arms-control sake, where Washington strives to achieve some treaty regardless of its merits. But truly equitable and verifiable arms-control measures can add to our security.

The best way to achieve these agreements is to convince the Soviets that a continued arms buildup is not in their best interest—that they won't obtain an advantage and

that it will be a terrible strain on their economy. We're more likely to have a successful arms-control negotiation if they see we are prepared to match their efforts rather than if we exercise unilateral restraints with or without arms control. The latter, unfortunately, has been our tendency for the last 20 years.

Q. What lies at the root of the current strains between the U.S. and its allies.

A. Partly, it's a difference of opinion over détente. The Europeans believe that they go a lot out of détente—growing trade with the Soviet bloc, a lessening of war tensions on the Continent, greater social contacts between East and West Germany. We saw very little—if any—benefit. We saw the Soviet Union, despite détente, continue its massive military buildup and engineer Marxist military takeovers in Angola and Ethiopia and outright invasion of Afghanistan.

Between the U.S. and Western Europe, there are different interests. What we ought to do is try to minimize those differences. However, neither side should make every disagreement a litmus test on the fate of the alliance and claim, just because we can't agree on every issue, that the North Atlantic Treaty Organization is coming apart.

Q. How significant is the demand that is surfacing again to pull American troops out of Europe?

A. There's an isolationist streak in this country that says, "Let's bring our troops home." That would be catastrophic for the United Staes because our troops are there primarily to defend the U.S.; however, our security is inextricably linked. The best we can do is consult thoroughly with our allies, keep pushing them to undertake a greater military effort, continue to remind them of the Soviet threat and try to minimize our differerices. But we must recognize that we will never eliminate all differences and that picking up our marbles and going home clearly would not be in our best interest.

Q. Does the growing feeling in this country that Pentagon spending is out of control endanger the big military buildup?

A. Our consensus for increased military spending is fragile. There are lots of arguments lined up against it—that it will harm the economy, that our allies are not doing enough to share the defense burden, that major cuts can be made because of waste, fraud and mismanagement, that our nuclear modernization program is destabilizing and unnecessary and that we are "crying wolf" and exaggerating the Soviet threat. We have good answers to each of these allegations.

But I am concerned. I don't think the consensus for building a stronger U.S. military position is broken. However, it's much harder this year to get the support for the budget than it was last year.

BUDGET RECONCILIATION ACT

Mr. BURDICK. Mr. President, I voted against the fiscal 1983 Budget Reconciliation Act because agriculture gets short shrift again. I just do not see how we can have any faith in the future of agricultural States if we retreat further on farm policy.

We are facing the largest surplus carryover of wheat stocks ever. At the same time, the lack of clear, concise trade policies by this administration is costing us markets overseas.

The administration has not moved in any meaningful way to deal with the surpluses. And, farm income supports have been set at the minimum level permitted by the farm bill, which is not enough to allow wheat and feed grain producers to even recover their costs of production.

When the Budget Reconciliation Act was on the floor of the Senate last month, 63 Senators voted for our acreage reduction amendment—to provide a 15-percent voluntary set-aside and 10-percent paid voluntary diversion for 1983 wheat, and a 10-percent set-aside and 10-percent paid diversion for feed grains—and against the substitute contained in this Budget Act. The large vote showed clearly that the Senate finally wanted to put its own imprint on farm policy.

The amendment was not a bailout for farmers. But it could have helped halt the drift into deeper and deeper depression in the farm economy. But, in the face of pressure from the administration, House and Senate conferees on the Budget Act reduced the paid diversions to 5 percent.

It is important to point out that the House also passed a 10-percent paid diversion. Both the House and the Senate spoke clearly on this issue. But somehow, the conferees compromised the 10-percent House provision and the 10-percent Senate provision and came up with 5 percent.

It is also important to point out that by reducing the surplus and increasing market prices, as the amendment would do, Government costs would be reduced. Two studies, one by the Congressional Budget Office and one by a private consulting firm, looked at this amendment and said the increased market prices would save the Government money. By cutting the paid diversion to 5 percent, we not only prolong the depression in the farm economy, but we increase Government spending by an estimated $626 million.

The Senate Budget Committee chairman recommended earlier this summer that the USDA adopt the 10-percent paid diversion for its 1983 program. When the USDA failed to do that, the chairman voted for our amendment. Again, the amendment passed the Senate by a 2-to-1 vote, in spite of the fact that Secretary Block was standing in the hall twisting arms to get Senators to vote against it.

There are some good features in this Budget Reconciliation Act, and there are many things we could have done to cut deficits further. But, I did not vote for it because of this further retreat on farm policy.

THE DECATUR MIRACLE

Mr. PERCY. Mr. President, Americans are asking anxious questions about the future of free enterprise in our Nation. The United States has been the acknowledged leader in the development of new technologies, new resources, and new opportunities. But that status has been questioned in the face of a slumping economy, high unemployment, and increased competition from abroad.

I want to share with my colleagues in the Senate today the news of a startling and revolutionary innovation that gives me great confidence that the spirit of enterprise that made this Nation great is still at work in our land.

Imagine witnessing the moment when Henry Ford's first automobile rolled off an assembly line in Detroit; or the moment when Cyrus McCormick's combine first thrashed through a field of grain; or the moment when Thomas Edison closed a circuit to illuminate the first practical light bulb. If we had witnessed such events, we would feel like we had been a part of history that, in such a moment, changed our way of life.

I had that feeling last Saturday, August 14, as I was standing under a tent, surrounded by cornfields, on the farm of J. G. Waddell, near Latham, Ill. Latham is located near Decatur in the central part of my State.

With me at that ceremony were representatives of nations abroad, State and local officials, business leaders, reporters, farmers, and area residents, and—most important—the family and friends of a young man named Dale Edgecombe. All of them were there to join Dale in the realization of an innovative idea that may well revolutionize agriculture throughout the world.

To meet a man like Dale is to feel like one is meeting a young 20th century Ford, a McCormick, or an Edison. Dale has developed a new concept in mass food production called controlled environment agricutural systems (CEAS). This system has historic implications for changing the way mankind provides nourishment for himself.

I first met Dale when he was a high school student who led a delegation of the Future Farmers of America that visisted my office in Washington in 1971. To behold the technology he has created for food production as I did last weekend is to believe anew that American genius is still thriving. We are a nation of inventors that has nourished creativity, free thought, and individualism. Dale is a symbol of the kind of progress that will lead the United States into the future.

It is a special tribute to Dale Edgecombe's creativity that he was able to pull his project together during these troubled economic times. In the Decatur area the farm economy is in near depressionlike condition and unemployment stands at over 18 percent. I was heartened, not simply by the representatives of businesses that are sup-

porting Dale's enterprise, but by the dozens of citizens, Dale's family and neighbors, who helped him to build this demonstration project. Many of them worked full-time jobs during the day and spent their evenings and weekends helping Dale. In fact, much of the labor that went into constructing the facility was volunteer labor. That, alone, is a great tribute to the astounding confidence people have in Dale.

I can assure my colleagues and my fellow citizens that they will be hearing a lot more about Dale Edgecombe and the concept he has created.

CEAS takes the conventional greenhouse that is designed for human harvesting and downsizes it so that the structure barely clears the plants. This design allows for a considerable saving in energy. Using robotlike tractor devices that move on rails, computerized harvesting allows for a considerable saving in labor costs. Plants are grown under solar panels in a nutrition rich watery medium instead of soil. Air purity is regulated, eliminating the need for insecticides. Waste heat can be used in the system such as the heat created by industrial boilers and manufacturing processes—a graphic example of cogeneration of energy. In short, CEAS are closed growing systems in which all factors affecting plant growth are carefully regulated to maximize rapid, healthy plant growth. Seedlings will reach maturity in weeks instead of months.

This concept can be a major step in improving world health through introducing a vitamin-rich diet of vegetables that could otherwise never be grown locally or that would be too costly to import. With me in Latham were representatives for the nations of Nigeria, Canada, Norway, Venezuela, and France. These agriculture experts already see the potential to raise better crops, year round, using this concept. Further, the distinguished industrialist, Armand Hammer, who has a devoted interest in fighting world hunger, has taken a strong interest in this project.

CEAS can mean new sources of food in nations abroad, but it can also be used to grow crops during the winter months in northern climates. Enormous savings could be realized in eliminating the costs of transportation of vegetables from southern climates. The technology could be adapted for use in city neighborhoods. Food could be grown right where the market is located and new jobs could flourish in decaying city neighborhoods.

Most important for the people of central Illinois who have invested their faith in Dale Edgecombe: His project he estimates will initially create 300 new jobs in that part of the State with an annual payroll in excess of $7 million. Eventually, employment levels and the subsequent payroll are projected to reach 10 times that amount. The jobs are good paying jobs and average up to $20,000 annually.

As one who is ceaselessly interested in finding new export markets for Illinois products, commodities, and services, I see a vast potential in this concept. As founder of the Alliance to Save Energy, I am especially pleased by the implications this concept has to conserve our precious energy resources.

In conclusion, I want to underscore a dramatic highlight of this project. Not $1 of Federal money created CEAS. This project is an outstanding example of free enterprise at its best: A solid idea that wins the support and confidence of people who cannot be defeated by pessimism; people who are seeking the new opportunities that will keep America second to none.

I ask unanimous consent, Mr. President, that a description of the CEAS concept prepared by Dale Edgecombe, president of Edgecombe Enterprises International, Inc., be printed in the RECORD, along with the text of the proclamation signed by James R. Thompson, Governor of Illinois, declaring "Edgecombe Enterprises International Day" in Illinois.

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

SEEDS OF THE FUTURE

Welcome to a new era in food production technology. From current state-of-the-art techniques in nutrient flow farming, Edgecombe Enterprises International, Inc., has developed a new generation concept in mass food production . . . Controlled Environment Agricultural Systems (CEAS).

CEAS are closed growing systems in which all factors affecting plant growth are carefully regulated to maximize rapid, healthy plant growth.

They are more efficient growing systems, functionally designed to reduce the need for energy, labor and land; yet, for a given area of land, to produce more food, more often than any other food growing system available today. In an environment monitored, controlled and enhanced by sophisticated computer technology, products will grow from seeding to full maturity in weeks instead of months . . . and, through the use of automation, go on to harvest with a minimum involvement of manpower.

Controlled Environment Agricultural Systems will make it possible to grow products in areas where they have never been possible before. It means growing decorative foliage in arid deserts by using the cool subsands for temperature control . . . and enjoying "fresh fruit and vegetables in December, from a system heated by "waste" air or water from a local utility or manufacturing plant.

At Edgecombe Enterprises International, we're doing more than growing food more efficiently; we're sowing the seeds of a better tomorrow.

MORE FOR LESS

Man has been growing food for countless generations . . . and in each generation, he has gained knowledge that will help him improve productivity. Today, "open field" farming is the most efficient way to feed millions. But despite increasing investments in labor-saving machinery, land and energy, productivity still remains vulnerable to "uncontrollable" factors that affect plant growth . . . light, heat, insects, disease, poor soil conditions and even the length of the growing period itself.

Traditional greenhouse or "hothouse" farming offers far greater control of environmental factors, but at a great cost in efficient production. Labor-intensive, greenhouse systems require unnecessarily large investments in land and energy just to accommodate human tending, making the system impractical for large scale food production.

The EEI Controlled Environment Agricultural System is a blend of greenhouse and open field systems and more. Soilless farming techniques, labor-saving machinery, efficient land use, co-generation waste heat, plus the control of environment from greenhouse systems, combine to create a food production system of unparalleled productivity.

TOTAL ENVIRONMENTAL CONTROL

Because CEAS are constructed to provide plant growing area alone, they require up to 90 percent less growing volume and heating energy than traditional greenhouse systems.

The base structure is tailored to maximum plant height, serves as a buffer against the outside environment and a basin for the free-flowing water which heats/cools the system to optimum growing temperature. Baffles also make the system ideal for isolating plant populations for controlled genetic research.

CEAS can be adapted to tap diverse water sources, such as wells, geothermal springs, lakes, industrial "waste" water and oceans . . . and, depending on availability, to recycle water back into the system or discharge it into the natural ecosystem.

Hinged panels covering the base protect the system against outside factors such as inclement weather and also complete the containment of ideal growing conditions.

(1) Light Control . . . Growers can regulate the amount or intensity of light. Conversely, optional artificial lights can add light to extend the growing period to 24 hours a day.

(2) CO_2 Control . . . CO_2 levels in the growing atmosphere can be greatly enhanced through the use of CO_2-laden "waste" air from industrial plants and sparger lines located in the heating/cooling water. Sparget lines can increase CO_2 concentrations up to 100 percent for specified periods. Research has indicated that you can control insects by pumping the system with high levels of CO_2 for short periods of time.

(3) Air Temperature/Humidity Control . . . Exhaust fans complete the job of environmental control by removing excess humidity, heat and oxygen created by plant growth. System air is recirculated through dessicants and heated/cooled before its return to the growing tanks.

(4) Nutrient Control . . . The root systems of plants in the growing trays are supplied with a constant flow of liquid nutrients via nutrient trays. The nutrient solution is maintained at a constant termperature and pH balanced to insure maximum growth.

AUTOMATED EFFICIENCY

Just as they provide complete control over all plant growth factors, CEAS also provide one of the most labor efficient growing systems in the world.

Each growing system is constantly monitored to provide current information on growing conditions. When required, sophisticated computer software programs will automatically adjust levels of heat, light, humidity and CO_2 to provide the exact balance required for maximum productivity.

Planting and harvesting, the two most labor-intensive parts of the growing process, have been automated through the development of a unique tractor system which works outside the growing environment itself. This tractor enables one operator to plant and harvest the growing system without disturbing the growing environment. Lateral rail systems enable the tractor to move sideways; one operator and tractor can plant and harvest systems concurrently minimizing equipment and labor investments. Acreage per unit is a factor of the respective crops growing cycle.

From a closed cab, the operator can move over the growing tanks on rails embedded in the base. Sensing devices in the tractor signal when the operator is correctly positioned over a growing tank. In position, the operator can open each set of panels into the tractor, creating a seal which traps the growing environment within the system and the loading bay. Vacuum operated hoists lift trays into the loading bay and on to a storage area; when the tank has been unloaded, the doors swing back into position and the tractor moves on to the next tank.

When the storage area is full, the tractor moves back to the processing building, where it seals against the building to form an air lock. Storage area doors open to unload full trays and load newly planted growing trays.

By centralizing seeding and processing in an on-site building, CEAS can reduce per unit picking, handling and processing costs. And, in areas where food is largely imported, CEAS can also drastically cut retail prices by reducing transportation costs to a minimum.

TECHNICAL ASSISTANCE

Edgecombe Enterprises International, Inc., is the guiding force in an international consortium dedicated to the development of better food production systems. Each consortium partner is a recognized and respected member in a given field; in the aggregate, they represent a full spectrum of assistance in the conceptualization, design, financing, construction, coordination and managment of each individual Controlled Environment Agricultural System.

Their expertise assists EEI in offering the world a superior food production system that can grow any food product in any climate of the world more quickly than ever before . . . and by doing so, helping EEI sow the seeds of a better tomorrow.

PROCLAMATION

Whereas, the Governor's Economic Development Advisory Board, the Illinois Special Events Commission and the Illinois Department of Commerce and Community Affairs are officially recognizing Edgecombe Enterprises International Day on August 14, 1982; and

Whereas, this company's recent development of controlled environment agricultural systems, coupled with computer science and agricultural economics, have produced advances in automation of hydroponics as well as in automated marine life production systems; and

Whereas, the results of these achievements are the improvement of food production and the nutritional welfare of all people not only in Illinois but throughout the world; and

Whereas, such efforts are consistent with Illinois, Inc., the program of cooperative public and private sector activities that improve the quality of life for every Illinois citizen;

Therefore, I, James R. Thompson, Governor of the State of Illinois, proclaim August 14, 1982, as Edgecombe Enterprises International Day in Illinois, to further encourage Illinois companies to research and develop new ideas, techniques and products.

ECONOMIC CRISIS IN MEXICO

Mr. KENNEDY. Mr. President, I would like to draw the attention of my colleagues to the increasingly difficult economic situation facing Mexico, a friend and neighbor whose importance we must never underestimate.

External events have hit hard the recent efforts of the Government of Mexico to harness its oil and gas reserves through a diversified economic development program intended to raise overall living standards for its people.

The current glut in world oil markets has placed severe strains on the still fragile Mexican economy. Observers fear that revenues may drop to $12 billion in 1982, less than half of the previously projected sum of $27 billion. As with other countries in Latin America, economic growth has plummeted to virtually zero, in Mexico's case from a high of nearly 8 percent per annum.

Austerity measures were adopted and the peso was devalued earlier this year to respond to the economic crisis. Those measures, however, were undermined by an inflationary spiral which soared to 60 percent. Unemployment and underemployment are approaching 50 percent, and social programs are hard pressed to match the rising level of need, particularly at a time of fiscal cutbacks. Mexico's total foreign debt now exceed $80 billion—the highest in the developing world—and its debt repayments could amount to a staggering $18 billion in this year alone.

Within the last few weeks, the economic problems have come to a head. In the face of huge debt payments and a continuing slackness in exports, the Government announced on August 5 a system of multiple exchange rates, with the floating rate reaching 90 pesos per dollar. The foreign exchange market was closed and stringent capital controls were instituted to prevent capital flight.

Over the past weekend, Mexico received $2 billion from the United States—$1 billion in advance payments for oil and $1 billion in grain import credits. Finance Minister Jesus Silva Herzog announced that the Mexican Government would seek to restructure its debt with commercial banks and to conclude an early credit agreement with the International Monetary Fund.

The economic health of Mexico is vital to the United States, for two reasons. First, Mexico has long been an important friend of the United States, not only in this hemisphere but on a wide range of issues. It is the third largest trading partner of the United States—after Canada and Japan. Mexico plays an essential role in international economic affairs, including its important contribution to the energy security of the hemisphere, its support for just and peaceful solutions to the crisis we face in Central America, and its leadership in efforts to forge a meaningful north-south economic dialog. Mexico's economic health and progress is a major factor in that country's ability to make a positive contribution internationally, and to pursue social and economic progress at home.

Second, the issue of Mexican immigration into the United States is a familiar one here in the Senate. There can be no question that the economic crisis in Mexico will put even greater pressure on our border, as the unemployed come in search of food and work to the United States. The solution to these problems lies fundamentally not in immigration controls, but in reducing the economic pressures which drive Mexicans and other foreign workers to the United States.

We cannot underestimate the great problems that we face in the United States as a result of the administration's failed economic policies. At the same time, I urge the Senate to recognize that those policies—high interest rates and our own recession—exacerbate sharply the economic crisis in Mexico and other friends and allies of the United States. It is time to address at the highest levels of government ways in which we can cooperate with Mexico in taking actions to ease its present economic difficulties.

First, I support the short-term economic measures taken by our two governments to deal with this crisis. We should continue to do all we can to overcome the credit and currency emergency that we face.

Second, I join in urging the International Monetary Fund to respond quickly and effectively in helping to put the Mexican economy back on a sure footing, and making it possible to resume both equitable and substantial economic growth.

Third, I believe that our two governments should jointly seek to develop long-term solutions to the economic problems we both face. A high priority must be to resolve the trade and immigration issues between us.

In pursuing these matters, we must begin with the fundamental recognition that our bilateral relationship is of the highest priority; the attention

we give and the diplomats we assign must convey a recognition of that importance. We must recognize that the future of the American and Mexican peoples is increasingly intertwined. Our Nation has a deep interest in the restoration of the Mexican economy, in the well-being of the Mexican people, and the broadest possible range of cooperation between our two governments. The present crisis offers us a major opportunity to act on that interest, and we should not let this opportunity pass us by.

Mr. President, earlier this week the Senate adopted a bill that will have extraordinary implications on our Nation's immigration policies, especially as they relate to Mexico. The bill was promoted as a way of gaining control over illegal migration to the United States. I opposed that bill because I did not feel it constituted a fair or adequate course of action.

As I pointed out during our recent debate, the only real way to gain control over these migration pressures—particularly from Mexico—is if we join with Mexico in cooperative efforts to deal with the root cause of the problem, which is the state of Mexico's economy and its population growth.

If we are really interested in dealing with migration from Mexico, we should be pursuing true economic cooperation between our two nations—not circulating memorandums within the Department of State on how we can take advantage of Mexico's economic plight.

We must look to the longer term implications of Mexico's current economic problems for our bilateral relationship—a relationship that involves a range of political, economic, migration, and cultural issues. By looking only to the short term, as this administration has done—and as the Senate did this week in moving on an immigration bill without full regard for its implications for Mexico—is to mortgage our ability to address the fundamental bilateral problems affecting our two nations in the years to come.

PRODUCTIVITY—AMERICA'S MOST IMPORTANT ISSUE

Mr. PERCY. Mr. President, productivity is acknowledged by nearly everyone in this Chamber as the top economic problem facing us. So many of our other economic symptoms—inflation, unemployment and to a great extent, even high interest rates—can be traced to a slowdown in our productivity.

A number of organizations have appeared in recent years, addressing themselves totally to understand the productivity dilemma and recommend to government, business, and labor ways to improve that productivity performance. One of the most active of these organizations is Productivity, Inc., a small company in Connecticut which publishes a monthly newsletter that bears the same name. An increasingly important part of the American business world is the periodic productivity conferences this company holds around the country. It is an invaluable way for businessmen, labor, and Government officials to discuss their common interests in productivity and begin to take the reins into their hands.

Surely the productivity-enhancing tax cuts we passed last year will contribute to an improvement in productivity in the United States. But the major effort must reside daily in all businesses across the country. Tax policy alone cannot do it. It is a part, but the major thrust will come in ways the private sector can undertake only by itself.

These conferences, produced by Norman Bodek, president of Productivity, Inc., are excellent forums to examine the tools that have been so helpful in some companies. I was very pleased to have had an opportunity to speak to the most recent Productivity Conference which was held in Chicago from June 2 to 4.

Mr. President, I ask unanimous consent that my remarks delivered in Chicago on June 3 be printed in the RECORD.

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

PRODUCTIVITY—AMERICA'S MOST IMPORTANT ISSUE

(Address by Senator CHARLES H. PERCY)

ACKNOWLEDGMENTS

It is a pleasure to be here with so many business executives today. Before I begin my remarks, I would like to thank Norman Bodek, the sponsor of this conference and the publisher of PRODUCTIVITY newsletter. In a few short years, Mr. Bodek has created his own publishing business and moved to fill a gap in our communications network. He has in this initiative not only brought fourth a great resource in his newsletter, but also launched a new business in its own right. I congratulate him on these achievements and I think we all owe him our gratitude for bringing to the Midwest this excellent opportunity for an in-depth look at one of the most fundamental concerns for our economic future.

I noticed that my good friend Leon Skan preceded me on the dais this afternoon. No discussion of productivity in Chicago would be complete without reference to Leon Skan, who has been a knowledegable advisor on this subject for many years. He was instrumental in founding the American Productivity Management Association in the Chicago area seven years ago. The Association encourages productivity enhancement in both the private and public sectors. Through exchange of ideas and business methods, the Association is able to provide a tremendous service to its many business members. I am pleased that Leon is a participant in your program and know that he has much to offer.

Illinois—appropriate place for conference

In recent years, similar conferences sponsored by PRODUCTIVITY have been held in New York City and Washington, D.C. I know that they have been successful in communicating productivity experiences and the sites for the conferences are logical. After all, New York is a financial and commercial center—the source of much of our capital and managerial ideas. And, on the other hand, Washington has for many years stood as the antithesis of that. Taxes have been a drain on much of our investment capital and regulation has demanded more and more of the creative talents of business. I am pleased that Federal tax and regulatory policies have been changed to lighten these burdens and I will address them more fully in a moment. It is certainly our goal to make Washington more of a partner with business and less of an adversary.

This year, productivity selected Chicago as the site of its conference, and I congratulate you on that choice. Chicago offers yet another perspective on American business, one which might not have been emphasized in New York or Washington: namely, the critical importance to our economy of aggressively and creatively meeting the foreign economic challenge.

Meeting the foreign economic challenge

We have a business leader here today, who, as you may have noticed in today's Chicago Tribune, made what was probably the strongest statement ever made by an American bisinessman on the issue of Japan.

As a former businessman, I have always preferred to push for more open world markets as a response to the foreign economic challenge. The American market of 220 million people is very limited compared to four and one-half billion people out there who need and want our services and products. I've spent a good deal of my life leading the international division of Bell and Howell and as its Chief Executive Officer. For two decades I built up our business in other countries, and by so doing expanded our employment in this country. When I started we had 800 people; when I left we had 10,000 and eventually it reached 14,000 in the U.S. I have always believed that the ever widening market opportunities will be this country's greatest economic opportunity for the future. Only in an open system of trade will each country's strongest businesses expand rapidly and achieve economies of scale with commensurate productivity gains.

Yesterday, Bob Galvin, Chairman of the Board and Chief Executive Officer of Motorola, one of our great Chicago companies, singled out the Japanese as a major obstacle to free trade. We seem to be confronted with a trading partner that seeks to use the open trading system to its own advantage, without offering equal access to its market for foreign competition. This system of limited access to the Japanese market was permissible in the 1950s and early 1960s. When I built a factory over there, it was a time when we were helping to rebuild their economy, while taking advantage of their very low labor costs, their skills, and their hard work. But we doing that as a basis of repairing the damage of a war, and these conditions are entirely different today. Today, Japan's protectionist attitude is really threatening to undermine the entire economic system that has been forged over the last 30 years. It is time for us to come to grips with Japan's apparent unwillingness

to lower its barriers enough for American investment and products.

Yesterday in Massachusetts, Bob Galvin delivered a strongly worded speech focusing on what must be our response to Japan's trade and investment policies. Now I've known Motorola a long time—30 years—it is the type of company we are talking about today. They're innovative. They're creative. They're imaginative. They're bold. They're not unwilling to try new things. Motorola has put the resources into research and development that will give it the lead into the future. It is a quality and productivity leader in its field, in this country and throughout the world. It is known for its employee participation in management. In short, it is not the type of company that is quick to complain about foreign competition. Some companies blame all their internal problems on foreign competition—Motorola has never done that. Motorola has shown that it is willing to meet that competition head on and has made the productivity-enhancing investments necessary to do so.

Bob Galvin's speech yesterday painted an economic adversary armed with tools that American business would never have at its disposal: for instance, a series of laws that sanction the establishment of cartels. They sanction them! Our laws prohibit them, theirs sanction them. The Japanese system provides for concessionary loans allowing interest and loan forgiveness, collaboration among companies to fix export prices and ostracism of companies that do not play according to those rules. Bob points out that these policies are, and I quote, "supported by the interlocking financial structure of government, banks and manufacturers whose socialized method of financing provides funds on such a low risk basis that one can hardly sense the actions of a free market."

Over and over again in his remarks, Bob Galvin makes the point that Japan is preventing the free market from operating. It is a system, he says, at variance with our own market system.

Now Japan is moving toward a lowering of its barriers and just last week proposed another round of trade barrier reductions. I lauded their drive to remove barriers, but the steps Japan has taken are so few and limited that an economy governed by market mechanisms is still not even on the horizon. Tremendous barriers still exist against American business.

Congress is now in the process of drafting the most sweeping legislation in nearly a decade and Motorola's recommendations for action will be heard loud and clear in Washington. I can think of no other state that has made a greater effort than we have in Illinois to become an export oriented state; to be able to sell our products in free markets throughout the world. My test has always been "How many do we sell in Hong Kong?"—a completely free market. That ought to be the test we all have. Certainly, we all can do a great deal more.

A couple of years ago, I wrote a letter to Prime Minister Ohira. I talked a great deal about the closed nature of the Japanese market and pointed out that they expect us—30 years after the war is over—to hold a nuclear umbrella over them and to protect their sea lanes. They don't have enough anti-tank weapons, they don't have enough antisubmarine weapons, they don't have enough mine layers—all of which is allowed for in their constitution. They spend 8/10 of 1 percent on defense. We are spending better than 6 percent. It is *we* that are protecting the sea lanes and the Persian Gulf with an $11 billion dollar investment—and who is the first beneficiary?—*Japan.* They are almost totally dependent. They would be decimated if they were cut off from Mideastern oil. Yet we are the ones spending $11 billion to protect it. I suggested to Prime Minister Ohira that they should be helping to provide development assistance to Egypt and Somalia and other areas that provide bases for our common defense. Two weeks after I sent him my letter signed by 39 of my colleagues he unfortunately suffered a heart attack, but I have pursued this with his successors.

We have made a little progress since then, but we still must forcefully indicate that fairness is something that must be adhered to. We don't want to have protected markets. We don't want to start a wave of protectionism. We don't want to erect trade barriers. We don't want to raise tariffs. That route has been traveled before as many of us can recall the disastrous Smoot-Hawley Tariff Act of the 1930s. It embodied the highest tariffs in American history and helped to push the world economy even deeper into the deepest depression we have ever experienced. There are more creative ways to deal with the economic challenge from abroad and I can think of no other state that is more in the forefront of that effort to expand our exports and make American products more competitive overseas. Illinois is one of the top exporting states in the country and stands as the number one agricultural exporting state. International trade is a way of life in this state. Not only here in Chicago, the transportation hub of the country, with the Great Lakes, O'Hare Airport—busiest in the nation—and the rail center of the country, but also throughout the state. Employment in places like Peoria, Springfield and Decatur are heavily dependent on exports. In fact, in these downstate cities, as much as a quarter of the jobs depend on export trade.

Nationwide you have heard the statistics before: one of every eight U.S. jobs is export-related; one of every three dollars of U.S. corporate profits comes from international trade or investment; one of every three acres of U.S. farmland produces for export. You are seated today in the most export-dependent city in one of the most export-dependent states in the Union. Illinoisans know that their jobs on the farm, in the factory, at the bank, at the airport depend in large part on U.S. exports. I will never rest until we can go out to O'Hare and get on a United Airlines plane and fly nonstop to Tokyo. I've been working on that one for a year now. It is just a symbol of fairness. If Japan Air Lines can land in Chicago, we must be able to land in Tokyo. They ought to be able to stand a little competition. That's just an example of what I consider to be unfair trade practices and restrictive measures that create the tremendous imbalance we have in our balance of payments.

Now what role does productivity have in all of this? Just as we must expand our exports, we must protect our markets with economic power through productivity, not with political power. Political power—tariffs, quotas—that can always be pulled out from under you, but productivity and economic power cannot be.

Productivity and international competitiveness

I mention the importance of exporting because there is no question that our efforts to rebuild our productivity will influence and be influenced to a great extent by our efforts to compete effectively overseas. Competition in the world marketplace has become increasingly fierce in the past decade and there is no sign that it will let up. To the contrary, all the signals point to even greater competition in the future. We must be prepared to meet these twin challenges of productivity growth and international competitiveness. They are linked together almost like Siamese twins and their solutions are inextricably bound together, too.

At the risk of being accused of preaching to the choir, it may be helpful to sketch the dimensions of the productivity slowdown we face.

U.S. productivity—the record

During the 1950s and first part of the 1960s, our economy enjoyed substantial annual increases in productivity growth, amounting to about 2.5 percent a year. In fact, during the business cycle that ended in 1973, we were still enjoying productivity growth in the range of 2.5 percent. Since 1973, however, productivity has not increased at the historical post-World War II rates. From 1973 right through the first half of 1981, productivity grew at a rate of only 0.7 percent a year, about one third of our earlier pace. During each business cycle, of course, productivity went up and down with the relative health of the economy, but the trend is unmistakable: productivity growth since 1973 has deteriorated. In the years 1978 through 1980, we actually recorded productivity declines. These were not the first productivity declines we had experienced, but they were the only ones that were recorded during a period of relative economic prosperity. They are of great concern to business and government leaders, for they signal an erosion of our economic base.

As a Senator I have taken steps to further the much needed communication between business and labor. I've had both a business advisory committee and a labor advisory committee—65 CEOs on one side and 26 labor union representatives on the other. The first week Governor Thompson was in office I held a meeting of combined management and labor with the theme, "What can we do to grow and expand in Illinois?" It was the first time those labor leaders really heard what was driving business out of Illinois. Our high unemployment compensation, our workmen's compensation. Too high benefits cost far too high—we just were not competitive. For the first time we began to realistically look at what creates labor union membership and what drives people out of this state. Now, we are trying to become more competitive.

Now, every time we meet in the steel caucus with the heads of the steel companies, organized labor is sitting right in that room working together with management to rebuild that industry. That's what has to happen. Labor has to be brought in a partnership to see their companies through the eyes of management. They have to realize that they have a big part in restoring America's productivity.

The present recession has only intensified our concern over productivity. During the last quarter of 1981—and the first quarter of the present recession—productivity fell by 6.9%, the largest drop in any recession since World War II. Economists expected productivity to decline in the first part of the recession, but not so steeply. The gov-

ernment has released the preliminary data for productivity in the first quarter of this year and it is up slightly, by 0.3%. Despite this small uptick in productivity, the fundamental problems remain with us. We must search for ways to bring about a long-term resurgence in productivity.

Now that is a bleak picture if we look at these statistics. But statistics do not tell the whole story. These recent declines in productivity growth do not mean, of course, that we are no longer one of the most advanced and productive economies in the world. It simply means that we are not pushing as hard as we used to. If our productivity growth were to remain slack for years, we would eventually lose our competitive edge in the world marketplace and, in the absence of trade barriers, we would see a large influx of more efficiently-produced foreign goods and services.

Competitiveness of U.S. business

While we move ahead with plans to improve productivity performance, we need to keep one thing in mind. Namely, U.S. businesses still lead. Let me give you an example of what I mean. According to the Bureau of Labor Statistics, the level of productivity in Japan in 1960 was about 25 percent of the U.S. level. In other words, for every 100 items the U.S. worker produced 20 years ago, the Japanese worker produces only 25 in the same time, with the same resources. We are still outperforming the Japanese, but not as well. Last year, Japanese productivity was 66 percent of the U.S. level. So for every 100 units American workers produce today, Japanese counterparts produce 66 in the same time. These data show that our competition is gaining on us quickly.

There are many reasons for the decline in our productivity. Federal tax policies, excessive regulatory burdens, high labor costs, research and development expenditures and management decisions all have a major part. There is no doubt among economists that each of these played some role in the productivity slowdown.

I know from my own business experience that one of the first items cut back on by corporations in economic slumps are expenditures for research and development. This is always a short-sighted way to economize and these cutbacks have undoubtedly affected our overall productivity performance.

Although no single item is responsible for this slowdown in productivity, one conclusion can be drawn from the evidence. As productivity began its slide in 1973, inflation began its upward march. The rise in inflation and the drop in productivity led directly to the President's proposal for a concerted attack on Federal policies that contribute to them.

Federal efforts

Last year the Congress passed a tax reduction program specifically designed to increase savings and investment. The Accelerated Cost Recovery System, streamlining our antiquated depreciation system, is the core of the investment program. I have worked for modernization of the depreciation system since I came to the Senate in 1967. My years as President of Bell & Howell had convinced me of the need to redesign our tax laws to more adequately allow for new capital expenditures. Inflation only made this need more acute.

The new depreciation system is the most neutral one that Congress could devise. Rather than limiting it only to businesses with profits, the safe harbor leasing provision was added so that all companies could modernize and improve their productivity performance. Some of our key industries—like steel, autos and airlines—could have been hamstrung in their investment planning had there been no safe harbor leasing provision. Moreover, the absence of this incentive could have led to a great number of corporate takeovers and a decline in competitiveness here at home.

On the savings side, the tax bill has a number of specific provisions—like universal IRAs—to encourage less consumption and more savings. Moreover, the three-year individual tax cut will also spur savings. We have only had the smallest part of the tax cut—5% last October. The bigger cuts—10% next month and another in 1983—will be major incentives for savings. Had the government collected these revenues, we know all of it would have been spent. Instead, a great share of it will ultimately go into savings and from there into new productive investments.

In addition, the President has also put in place new research and development incentives and reduced new regulations by about half.

The Economic Recovery Program was ambitious from the start and has yet to prove itself. Enactment of this program does not, however, mean that we are automatically on our way to higher productivity.

Business efforts

The government has removed some heavy burdens and provided some new incentives, but the challenge lies—as it always has—in the private sector. Business must respond to these incentives and there is no question that job-creating investments will take time. Moreover, there is a great deal that management and labor must initiate themselves. As I look over your program at this conference, I see that the focus is properly on the role of business and labor in productivity-enhancement. The ball is now in your court and I know you will respond, as some companies are already.

Earlier this year, I asked Congress' General Accounting Office to look into private sector efforts to boost productivity. GAO has given me a preliminary report of their samplings and has found a number of promising cases. GAO zeroed in particularly on the productivity managers that are cropping up in many businesses. Certainly those of you here today are increasingly aware of this trend. The tasks of the productivity managers vary from company to company and range from technology improvement to quality of work life. GAO has been able to conclude that the companies they surveyed with productivity managers and with measurable goals for all managers to meet had a number of similarities, including: (1) a highly visible productivity manager; (2) a company-wide awareness of productivity's importance to management and employees; (3) an organization-wide productivity plan with specific goals for each manager; (4) a productivity measurement system designed specifically for that organization's needs; (5) repeated use of the productivity plan and measurements to hold employees accountable for productivity improvements; and (6) a mechanism for identifying productivity bottlenecks and their solutions.

GAO is still working on this study so it is premature to draw final conclusions at this time. A central theme of their report, however, has developed around the motivation of firms that have adopted productivity managers.

GAO found that the surveyed companies were led to this system not out of academic interests in productivity. Rather, they were confronted with international competition that prevented them from continually raising prices or increasing volume as they had in the past. Because of foreign competition, the surveyed companies looked inward for a change and found that they could reduce production costs and improve their productivity. It is no surprise that the companies questioned by GAO are among the leaders in their field. Most of the companies are older businesses that have made transitions before and are in the process of doing so again. This time, they are preparing for expanded world trade by taking a hard look at their productivity record and acting when the improvements become clear. Many of you have adopted such programs.

What underlies the GAO evidence is the fact that successful productivity management programs emphasize communication between management and workers. The highly-visible productivity manager, the well-publicized productivity plan and even the measurement system are all expressions of corporate communication.

An old friend of mine and expert on management has stressed this same theme recently and I am struck by the similarity of his findings and those of GAO.

Larry Appley in now Chairman Emeritus of the American Management Associations. The AMA is the group that I worked with in 1958 in sponsoring the Economic Mobilization Conference to pull us out of the recession. President Eisenhower was our featured speaker and he told me later that he viewed that conference as contributing significantly to the end of the recovery, which commenced the very next month. So Larry Appley's business experience goes back a long way.

I think you will be interested in his findings that excellence in productivity hinges in a large part on the ability of managers to communicate with their workers. In fact, AMA has even launched a "Communicating for Productivity Program" to focus management's attention on communicating for productivity.

The AMA productivity program is based on a belief that managers have not been trained extensively on what to communicate or how to communicate. Larry Appley says that in his opinion, this is the reason for the "pitiful productivity record of this nation."

Larry Appley goes on to point out that productivity problems can be related to a lack of skill in clarifying productivity subject matter between supervisors and workers or between managers and other managers for whom they work. Larry says, the productivity subject matter is: "the work to be done; how well it should be done; how well it is being done; and how it can be done better."

Frank Considine, President and Chief Executive Officer of National Can Corp. in Chicago has fully used this program, starting with top officer groups, including himself, and he fully endorses the program.

I cite Larry Appley's efforts to boost productivity because it reaffirms the statistical report of GAO and because it seems to be a workable way to increase this country's productivity.

These are important accomplishments on the part of the business community and they are central to a productivity revival. The government's tax cuts and regulatory relief are only part of the answer to declining productivity. The present recession may

obscure some of the efforts companies are making to get ready for a recovery that will ultimately arrive.

When our domestic economy does begin to recover, there is going to be a certain amount of pent-up demand that will look for the best goods at the lowest prices. The companies that will win in that market will be those that have streamlined their operations and improved productivity. This is the way—the American way—to prepare for stiff competition from Japan and Europe. Economists are now predicting that by the late 1980s and 1990s, the United States will be keeping pace with its foreign competitors and possibly even outstripping them in markets around the world. The U.S. and Japan, these economists say, will pull even.

CONCLUSION

That is almost a dream today, as we continually seem to try and catch up with Japan. It is a goal, however, that we can meet, if we put the effort behind productivity improvement. This route will put us on the track for another round in expanding world markets and prosperity. Productivity enhancement is the response to foreign competition that does not require import barriers and trade restrictions. Productivity growth is, in short, an important weapon in our arsenal of expanding and competing effectively in world trade. It is essential that we raise our productivity back up to the levels we knew only a decade ago. This is the challenge that has been given to you as business executives. It is the challenge that has been given to our nation as well.

MESSAGES FROM THE HOUSE

At 11:33 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 report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2248) to authorize appropriations for fiscal year 1983 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 supplemental appropriations for fiscal year 1982, to provide additional authorizations for fiscal year 1982, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6863) making supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 1, 3, 4, 5, 8, 10, 11, 12, 13, 15, 18, 19, 21, 22, 37, 44, 47, 49, 50, 51, 55, 57, 59, 67, 74, 83, 88, 89, 93, 96, 100, 103, 107, 108, 114, 120, 121, 123, 124, 126, 128, 135, 137, 140, 143, 145, 146, 151, 153, 166, and 178, and agrees thereto; it recedes from its disagreement to the amendments of the Senate numbered 2, 6, 17, 24, 41, 42, 43, 45, 58, 60, 62, 63, 64, 65, 66, 69, 84, 86, 91, 97, 98, 112, 117, 119, 132, 138, 149, 161, 172, 177, 180, 182, and 183, and agrees thereto, each with an amendment in which it requests the concurrence of the Senate; and that the House insists upon its disagreement to the amendments of the Senate numbered 115 and 150.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 167. An act for the relief of Juan Esteban Ramirez; and

H.R. 6530. An act to designate the Mount St. Helens National Volcanic Monument in the State of Washington, and for other purposes.

The enrolled bills were subsequently signed by the Vice President.

At 4:58 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, with an amendment, in which it requests the concurrence of the Senate:

S. 1894. An act to permit Indian tribes to enter into certain agreements for the disposition of tribal mineral resources, and for other purposes.

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 2577. An act to authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1983, and for other purposes.

The message further announced that the House disagree to the amendment of the Senate to the bill (H.R. 3663) to amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. HOWARD, Mr. ANDERSON, Mr. RODINO, Mr. CLAUSEN, and Mr. SHUSTER, be the managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, in which requests the concurrence of the Senate:

H.R. 2193. An act for the relief of Berendina Antonia Maria van Kleeff;

H.R. 2520. An act for the relief of Emanuel F. Lenkersdorf;

H.R. 6324. An act to authorize appropriations for atmospheric, climatic, and ocean pollution activities of the National Oceanic and Atmospheric Administration for the fiscal years 1983 and 1984, and for other purposes; and

H.R. 6811. An act for the relief of Alejo White and Sonia White.

At 6:43 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4961) to make miscellaneous changes in the tax laws.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H.R. 398. Concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 4961; and

H.R. 399. Concurrent resolution providing for an adjournment of the House from August 19 to September 8, 1982, and an adjournment of the Senate from August 19 or August 20, or August 21 to September 8, 1982.

At 7:25 p.m., a message from the House of Representatives, delivered by Mr. Gregory, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3239) to amend the Communications Act of 1934 to authorize appropriations for the administration of such act, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3126) to direct the Secretary of the department in which the U.S. Coast Guard is operating to cause the vessel *Sky Lark* to be documented as a vessel of the United States so as to be entitled to engage in the coastwise trade.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 1526) to amend the Accounting and Auditing Act of 1950 to require ongoing evaluations and reports on the adequacy of the systems of internal accounting and administrative control of each executive agency, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 6350) to amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to provide that Veterans' Administration nurses who work two 12-hour regularly scheduled tours of duty over a weekend shall be considered to have worked a full basic workweek, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 397. Concurrent resolution expressing the deep gratitude of the Congress to Special Envoy Philip Habib.

At 9:30 p.m., a message from the House of Representatives, delivered by Mr. Gregory, announced that the House has agreed to the amendment of the Senate to the bill (H.R. 6409) to provide for the participation of the

United States in the 1984 Louisiana World Exposition to be held in New Orleans, La. and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3663) to amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers.

HOUSE BILLS REFERRED

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

H.R. 2193. An act for the relief of Berendina Antonia Maria van Kleeff; to the Committee on the Judiciary.

H.R. 2520. An act for the relief of Emanuel F. Lenkersdorf; to the Committee on the Judiciary.

H.R. 6168. An act to amend title 18, United States Code, to provide a criminal penalty for threats against former Presidents, major Presidential candidates, and certain other persons protected by the Secret Service, and for other purposes; to the Committee on the Judiciary.

H.R. 6811. An act for the relief of Alejo White and Sonia White; to the Committee on the Judiciary.

HOUSE BILL PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 6324. An act to authorize appropriations for atmospheric, climatic, and ocean pollution activities of the National Oceanic and Atmospheric Administration for the fiscal years 1983 and 1984, and for other purposes;

HOUSE CONCURRENT RESOLUTION REFERRED

The following concurrent resolution was read; and referred to the Committee on Foreign Relations:

H. Con. Res. 397. Concurrent resolution expressing the deep gratitude of the Congress to Special Envoy Philip Habib.

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC-4096. A communication from the Secretary of the Interstate Commerce Commission, transmitting, pursuant to law, a request for an extension of the statutory time in Docket No. 38805, Railroad Cost Recovery Increase on Recyclables (other than iron and steel); to the Committee on Commerce, Science, and Transportation.

EC-4097. A communication from the Vice President for Government Affairs of the National Railroad Passenger Corporation, transmitting, pursuant to law, a report on total itemized revenues and expenses and revenues and expenses of each train operated by the Corporation for March 1982; to the Committee on Commerce, Science, and Transportation.

EC-4098. A communication from the Director of the Minerals Management Service, Department of the Interior, transmitting, pursuant to law, an application for refund of an excess royalty payment by the Koch Exploration Company; to the Committee on Energy and Natural Resources.

EC-4099. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report on rental charges for noncompetitive oil and gas leases, dated August 1982; to the Committee on Energy and Natural Resources.

EC-4100. A communication from the Deputy Administrator of the General Services Administration, transmitting, pursuant to law, proposed lease prospectus amendments; to the Committee on Environment and Public Works.

EC-4101. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the 1981 annual report on advisory committees under section 1114(f) of the Social Security Act; to the Committee on Finance.

EC-4102. A communication from the Acting Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to August 11, 1982; to the Committee on Foreign Relations.

EC-4103. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a copy of the report entitled "Projected Annual District of Columbia Obligations as of June 1982"; to the Committee on Governmental Affairs.

EC-4104. A communication from the Chairman and the Supervising Commissioner of the Federal Communications Commission, transmitting, pursuant to law, a report summarizing actions taken in the Commission's proceeding to revise its Uniform System of Accounts; to the Committee on Governmental Affairs.

EC-4105. A communication from the Chairman of the National Arthritis Advisory Board, transmitting, pursuant to law, a report covering the activities of the Board with specific reference to the implementation of the Arthritis Plan; to the Committee on Labor and Human Resources.

EC-4106. A communication from the Secretary of Education, transmitting a draft of proposed legislation to make certain amendments to the Act of September 30, 1950 (P.L. 874, Eighty-first Congress) and P.L. 93-380, and for other purposes; to the Committee on Labor and Human Resources.

EC-4107. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on the administration of sections 304-309 of the Public Health Service Act for fiscal year 1981; to the Committee on Labor and Human Resources.

EC-4108. A communication from the Secretary of Education, transmitting, pursuant to law, the report on the status of vocational education in fiscal year 1981; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PERCY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute, an amendment to the preamble; and an amendment to the title:

S. Res. 367. A resolution expressing the sense of the Senate with respect to recognition of the Red Shield of David of the Magen David Adom by the International Committee on the Red Cross.

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2420. A bill to protect victims of crime (Rept. No. 97-532).

By Mr. DOMENICI, from the Committee on the Budget, without amendment:

S. Res. 448. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 6409.

By Mr. DURENBERGER, from the Committee on Governmental Affairs, without amendment:

S. Res. 452. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2329; referred to the Committee on the Budget.

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 956. A bill to amend the Reclamation Safety of Dams Act of 1978 to authorize additional appropriations, and for other purposes (Rept. No. 97-533).

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

S. 2436. A bill to designate the Mary McLeod Bethune Council House in Washington, District of Columbia, as a national historic site, and for other purposes (Rept. No. 97-534).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Harry W. Wellford, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

By Mr. SIMPSON, from the Committee on Veterans' Affairs:

Everett Alvarez, Jr., of Maryland to be Deputy Administrator of Veterans' Affairs.

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

Ronald B. Frankum, of California, to be an Associate Director of the Office of Science and Technology Policy.

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

By Mr. PERCY, from the Committee on Foreign Relations:

James L. Buckley, of Connecticut, to be Counselor of the Department of State.

(The above nomination was reported from the Committee on Foreign Relations with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to

appear and testify before any duly constituted committee of the Senate.)

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

Bevis Longstreth, of New York, to be a Member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 1984.

By Mr. ROTH, from the Committee on Governmental Affairs:

Dennis M. Devaney, of Maryland, to be a Member of the Merit Systems Protection Board for a term expiring March 1, 1988.

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. 2856. A bill to amend the Sexual Exploitation of Children Act of 1977; to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD (for himself, Mr. HUDDLESTON, Mr. FORD, Mr. RANDOLPH, Mr. BRADLEY, and Mr. HEINZ):

S. 2857. A bill to establish a Customs Revenue Sharing Trust Fund for public works projects for the development and maintenance of the Nation's ports; to the Committee on Finance.

By Mr. DANFORTH (for himself, Mr. CHAFEE, and Mr. MOYNIHAN):

S. 2858. A bill to amend the tariff schedules of the United States with respect to the dutiable status of watches and watch movements from insular possessions of the United States; to the Committee on Finance.

By Mr. DANFORTH:

S. 2859. A bill to amend the tariff schedules of the United States to correct an anomaly in the rate of duty applicable to textile fabrics, articles and materials coated, filled or laminated with rubber or plastics; to the Committee on Finance.

By Mr. DANFORTH (for himself and Mr. CHAFEE):

S. 2860. A bill to eliminate the retroactive application of certain provisions of Public Law 96-364; to the Committee on Finance.

By Mr. DANFORTH (for himself, Mr. EAGLETON, Mr. BOSCHWITZ, Mr. BURDICK, Mr. DIXON, Mr. DURENBERGER, Mr. GRASSLEY, Mr. HUDDLESTON, Mr. JEPSEN, Mr. JOHNSTON, Mr. KASTEN, and Mr. PERCY):

S. 2861. A bill to authorize the construction of a lock on the Mississippi River in the vicinity of Alton, Illinois and Missouri, and to authorize appropriations to carry out certain programs for the Upper Mississippi River System, and for other purposes; to the Committee on Environment and Public Works.

By Mr. THURMOND:

S. 2862. A bill for the relief of Joseph E. Saleeby; to the Committee on the Judiciary.

By Mr. GRASSLEY:

S. 2863. A bill to amend title 28 to provide protection to all jurors in Federal cases to clarify the compensation of attorneys for jurors in protecting their employment rights, and authorizing the service of jury summonses by ordinary mail; to the Committee on the Judiciary.

By Mr. FORD (for himself and Mr. QUAYLE):

S. 2864. A bill to provide for a two-year Federal budget cycle, and for other purposes; read twice and held at the desk by unanimous consent.

By Mr. BIDEN:

S. 2865. A bill to reinstate the provisions relating to parental involvement in chapter 1 of the Education Consolidation and Improvement Act of 1981 relating to financial assistance to meet special educational needs of disadvantaged children; to the Committee on Labor and Human Resources.

By Mr. HELMS (for himself and Mr. EAST):

S. 2866. A bill to require the Secretary of the Interior to enter into an agreement with the State of North Carolina with respect to the repair and maintenance of a certain highway of such State located within Cape Hatteras National Seashore Recreational Area; to the Committee on Energy and Natural Resources.

By Mr. CHAFEE (for himself, Mr. STAFFORD, Mr. BAUCUS, Mr. GORTON, Mr. HEINZ, Mr. MITCHELL, Mr. PELL, and Mr. TSONGAS):

S. 2867. A bill to establish a program of grants administered by the Environmental Protection Agency for the purpose of aiding State and local programs of pollution abatement and control; to the Committee on Evironment and Public Works.

By Mr. HATCH:

S. 2868. A bill to amend the Federal Food, Drug, and Cosmetic Act and related statutes, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DURENBERGER (for himself, Mr. ABDNOR, Mr. BAUCUS, Mr. BURDICK, Mr. COCHRAN, Mr. CRANSTON, Mr. DANFORTH, Mr. DOLE, Mr. FORD, Mr. HATCH, Mr. HAYAKAWA, Mr. HEINZ, Mr. HOLLINGS, Mr. JACKSON, Mrs. KASSEBAUM, Mr. LEAHY, Mr. LEVIN, Mr. LUGAR, Mr. MATHIAS, Mr. MCCLURE, Mr. METZENBAUM, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. QUAYLE, Mr. SARBANES, Mr. WEICKER, Mr. ZORINSKY, Mr. GORTON, Mr. PROXMIRE, Mr. CHAFEE, Mr. D'AMATO, Mr. ROBERT C. BYRD, and Mr. KENNEDY):

S. J. Res. 233. Joint resolution to provide for the designation of the week beginning October 1, 1982, as "National Sudden Infant Death Syndrome Awareness Week"; considered and passed.

By Mr. GOLDWATER (for himself, Mr. ABDNOR, Mr. ARMSTRONG, Mr. BOREN, Mr. HARRY F. BYRD, JR., Mr. CANNON, Mr. COCHRAN, Mr. D'AMATO, Mr. DECONCINI, Mr. DENTON, Mr. DOLE, Mr. EAST, Mr. FORD, Mr. GARN, Mr. GRASSLEY, Mr. HATCH, Mr. HELMS, Mr. HOLLINGS, Mr. JOHNSTON, Mr. KASTEN, Mr. LAXALT, Mr. LUGAR, Mr. MATTINGLY, Mr. MCCLURE, Mr. MELCHER, Mr. MURKOWSKI, Mr. NUNN, Mr. RANDOLPH, Mr. SASSER, Mr. SCHMITT, Mr. STAFFORD, Mr. STEVENS, Mr. SYMMS, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, and Mr. WARNER):

S.J. Res. 234. Joint resolution to provide for the designation of the week commencing with the third Monday in February 1983 as "National Patriotism Week"; to the Committee on the Judiciary.

By Mr. HELMS (for himself, Mr. HUDDLESTON, Mr. ANDREWS, Mr. ARMSTRONG, Mr. BAUCUS, Mr. BENTSEN, Mr. BOSCHWITZ, Mr. BRADLEY, Mr. BUMPERS, Mr. BURDICK, Mr. HARRY F. BYRD, JR., Mr. CHILES, Mr. COCHRAN, Mr. DIXON, Mr. DOLE, Mr. EAGLETON, Mr. EXON, Mr. FORD, Mr. HATCH, Mr. HATFIELD, Mrs. HAWKINS, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HEINZ, Mr. HOLLINGS, Mr. INOUYE, Mr. JEPSEN, Mr. JOHNSTON, Mr. KASTEN, Mr. LAXALT, Mr. LEAHY, Mr. LONG, Mr. LUGAR, Mr. MCCLURE, Mr. MATTINGLY, Mr. MELCHER, Mr. MURKOWSKI, Mr. NICKLES, Mr. NUNN, Mr. PRESSLER, Mr. PRYOR, Mr. RIEGLE, Mr. SARBANES, Mr. SASSER, Mr. SCHMITT, Mr. STEVENS, Mr. SYMMS, Mr. TOWER, Mr. WALLOP, and Mr. ZORINSKY):

S.J. Res. 235. Joint resolution to proclaim March 21, 1983, as "National Agriculture Day"; to the Committee on the Judiciary.

By Mr. MCCLURE:

S.J. Res. 236. A joint resolution to designate the week of October 24 through 28, 1982, as "National Water Resources Week"; 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. DURENBERGER, from the Committee on Governmental Affairs:

S. Res. 452. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2329; to the Committee on the Budget.

By Mr. NUNN (for himself, Mr. MOYNIHAN, Mr. HOLLINGS, Mr. BOREN, Mr. HUDDLESTON, Mr. SASSER, Mr. JACKSON, Mr. LEVIN, Mr. COCHRAN, Mr. RANDOLPH, Mr. PELL, Mr. ZORINSKY, Mr. EAST, Mr. HATFIELD, Mr. HAYAKAWA, Mr. DURENBERGER, Mr. GOLDWATER, Mr. HELMS, Mr. D'AMATO, Mr. ABDNOR, Mr. KASTEN, Mr. THURMOND, Mr. TOWER, and Mr. CHILES.

S. Res. 453. Resolution designating the week of October 3 through October 9, 1982, as "National Productivity Improvement Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2856. A bill to amend the Sexual Exploitation of Children Act of 1977; to the Committee on the Judiciary.

(The remarks of Mr. SPECTER on this legislation appear earlier in today's RECORD.)

By Mr. ROBERT C. BYRD (for himself, Mr. HUDDLESTON, Mr. FORD, Mr. RANDOPH, Mr. BRADLEY, and Mr. HEINZ):

S. 2857. A bill to establish a Customs Revenue Sharing Trust Fund for public works projects for the development and maintenance of the Nation's ports; to the Committee on Finance.

(The remarks of Mr. ROBERT C. BYRD on this legislation appear earlier in today's RECORD.)

By Mr. DANFORTH (for himself, Mr. CHAFEE, and Mr. MOYNIHAN):

S. 2858. A bill to amend the tariff schedules of the United States with respect to the dutiable status of watches and watch movements from insular possessions of the United States; to the Committee on Finance.

REVITALIZATION OF WATCH ASSEMBLY INDUSTRY IN THE INSULAR POSSESSIONS

Mr. DANFORTH. Mr. President, I am today introducing legislation for the administration which would revitalize the watch assembly industry in the insular possessions of the United States by: Eliminating the existing foreign content limitations on watches assembled in the possessions, thus providing needed pricing flexibility to the industry; and providing for an additional incentive, based on actual wage payments in the possessions, to encourage quartz analog production in the territories.

The bill would also authorize the Departments of Commerce and the Interior to adjust the annual size of the benefits and require them to publish regulations designed to prevent pass-through operations.

The cost of the bill in 1983 is estimated to be approximately $1.5 to $1.8 million in lost revenues. About 500 jobs are expected to be maintained or restored in 1983, with the potential for additional employment in subsequent years. Without the bill, the entire industry in the Virgin Islands will be forced to shut down operations during 1983. The industry's demise would be a severe blow to the territorial economies particularly in the Virgin Islands, where the watch industry once provided almost one-fourth of all manufacturing sector employment. The bill will also indirectly benefit some domestic manufacturers of watch cases and bracelets having a traditional supply relationship with the insular watch industry.

Mr. CHAFEE. Mr. President, I am attaching my name as cosponsor to the bill introduced by my esteemed colleague from Missouri, Senator DANFORTH. This bill will not only revitalize an industry which is crucial to the Virgin Islands' economy, it will also benefit my constituents in Rhode Island.

The United States, which has been a leader in timekeeping technology since the turn of the century, no longer enjoys the employment fruit of its innovative genius. Very few jobs remain within the continental United States in the manufacture of watch movements and parts. Japan, Hong Kong, Switzerland, and the Soviet Union now dominate the world horological industry, even in the industry's electronic sector in which the U.S. semiconductor industry held a commanding technological advantage a short 5 years ago. The overseas flight of this technological edge and the virtual demise of the U.S. watchmaking industry have, of course, been a severe blow to U.S. manufacturers of watch cases, bracelets, dials, and hands. Accordingly, the relationship of these U.S. supplies with Virgin Islands watch assemblers has assumed greater importance for their long-term survivability.

Bulova's Providence, R.I., Case Manufacturing Division, as well as its Watch Casing Division in New York City, will benefit from enactment of this bill. These two sites alone employ about 750 people. If Bulova is forced to close its Virgin Islands facility, it will have little choice but to divert at least some of this production activity abroad. If the entire Virgin Islands industry closes down, there will be similar impact throughout the domestic watch-peripheral manufacturing industry. This industry now provides employment in Pennsylvania, Puerto Rico, and other locations in addition to Bulova's sites in Rhode Island and New York.

Mr. President, my colleagues and I are acutely aware of the need to assist regional economic development in the Caribbean. By enacting this bill, we will not only be responding to the development needs of our own citizens in the Caribbean but at the same time will be acting to prevent additional unemployment in the States we represent.

By Mr. DANFORTH:

S. 2859. A bill to amend the Tariff Schedules of the United States to correct an anomaly in the rate of duty applicable to textile, fabrics, articles, and materials coated, filled, or laminated with rubber or plastics; to the Committee on Finance.

DUTY APPLICABLE TO CERTAIN LAMINATED OBJECTS

Mr. DANFORTH. Mr. President. I am introducing today a bill intended to correct an anomaly in the rate of duty applicable to textile fabrics, articles, and materials coated, filled, or laminated with rubber or plastics.

The problem this legislation would correct results from two recent customs court cases which have overturned the intent of Congress and have the potential for damaging the American textiles and coatings industries and for causing significant losses of customs duties. Since the current Tariff Schedules of the United States were enacted in 1962, fabric coated with plastic materials has been classified in Tariff Schedule 3, the schedule pertaining to fiber, fabric and apparel. Recently, however, the customs court, in *U.S.* against *Canadian Vinyl Industries* and *U.S.* against *Elbe Products Corp.*, ruled that such products should be classified in schedule 7, which covers plastic materials. The U.S. Treasury strenuously, but unsuccessfully, opposed such a ruling.

When classified in schedule 3, these coated fabrics were subject to duties as high as 13 percent ad valorem plus 10 cents a pound. They also were subject to the provisions of the multifiber arrangement and any bilateral agreements negotiated under it. As a result of the court decisions, these fabrics now are subject to duties ranging between 3.7 percent and 5.3 percent and are not subject to the multifiber agreement. However, as classified in schedule 7, these products are eligible for the generalized system of preferences and subject to zero duty.

Coated fabrics are an important segment of the domestic textile industry, which already is beleaguered by imports. Coated fabrics include such products as tarpaulins, sports equipment, pollution and erosion control fabrics and safety equipment. Their domestic markets amount to about 460 million square yards a year. At an estimated value of $3 a yard, this market is worth more than $1.3 billion.

The attached bill would make certain that these coated fabrics would be classified as textiles, as Congress intended.

By Mr. DANFORTH (for himself and Mr. CHAFEE):

S. 2860. A bill to eliminate the retroactive application of certain provisions of Public Law 96-364; to the Committee on Finance.

WITHDRAWAL LIABILITY ON MULTIEMPLOYER PENSION PLANS

Mr. DANFORTH. Mr. President, today Senator CHAFEE and I are introducing legislation to rectify an unfortunate situation which has unexpectedly arisen as a result of an effective date provision in the Multi-Employer Pension Plan Amendments Act of 1980.

Provisions of that act, among other things, impose a withdrawal liability on employers who withdraw from multiemployer plans. This legislation, which was clearly well-intentioned, was enacted to protect the beneficiaries of multiemployer plans which were on shaky ground. To discourage employers from pulling out of these plans, the act imposes rather stiff penalties on those who do. The penalty is based on a share of the future benefits to which the participants of the multiemployer plan are entitled.

In the nearly 2 years since this law was enacted, it has become apparent that there are problems with its provisions. Labor leaders, business leaders, and pension fund administrators agree on that point. Senator HATCH has introduced legislation to revamp the act. The bill we are introducing today does not conflict with Senator HATCH's bill, nor is it intended to supersede it.

This bill deals with a very specific problem. Mr. President, this is an extremely urgent problem, and failure to address this issue could result in the bankruptcy of a number of companies around the country, which would be

disastrous not only for those companies, but for their employees and the very pension plans the 1980 act is intended to protect.

The provisions of the 1980 act were generally effective on the date of enactment, September 26, 1980. However, the withdrawal liability provisions were made effective retroactively to withdrawals which occurred after April 29, 1980, nearly 5 months prior to date of enactment. As a result, a number of companies who were forced to withdraw from multiemployer plans prior to the date of enactment were caught up in the net of this penalty.

Let me give you an example. A trucking company in my State of Missouri was forced, by economic conditions, to liquidate a subsidiary, which was also in the trucking business, in August 1980. Six months later, the company was notified by the Central States Pension Fund that it owed almost $17 million in withdrawal liability to the fund, under the 1980 act. This amount was nearly three times the total assets of the company before liquidation, and more than the company's total earnings in its 35 years of existence.

This resulted solely because of the retroactive effective date of this particular provision. Our bill would simply provide that those provisions of the Multi-Employer Pension Plan Amendments Act of 1980 which had a retroactive effective date will be effective on September 26, 1980, the date of enactment of that act, thereby eliminating any liability for withdrawals which occurred before that date.

Mr. President, this bill is supported by the Teamsters Union and the administrator of the Central States Pension Fund. The Labor Department is studying the bill. It would have no revenue effect. I hope my colleagues will agree with us that this is an important revision to the 1980 act, and pass this into law.

I ask unanimous consent that the text of the bill be printed in full in the RECORD.

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

S. 2860

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) any withdrawal liability incurred by an employer pursuant to part I of subtitle E of title IV of Public Law 93-406, or section 108 of Public Law 96-364, as in effect immediately before the amendments made by subsection (b), as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980, shall be void.

(2) Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer, less a reasonable amount for administrative expenses incurred by the plan sponsor in calculating, assessing, and refunding such amounts.

(b)(1)(A) Sections 4211 (b) and (c), 4217(a), and 4235(a) of Public Law 93-406 are amended by striking out "April 28, 1980" each place it appears and inserting in lieu thereof "September 25, 1980".

(B) Sections 4211 (b) and (c), 4217 (a), 4219(c)(1)(C) (iii), and 4402(e) of such Act are amended by striking out "April 29, 1980" each place it appears and inserting in lieu thereof "September 26, 1985".

(C) Section 4402(f)(1)(B) of such Act is amended by striking out "April 29, 1985" and inserting in lieu thereof "September 26, 1980".

(2)(A) Paragraph (4) of Section 108(c) of Public Law 96-364 is repealed.

(B) Section 108(d) of such Act is amended—

(i) by striking out "April 29, 1982" in paragraph (1) and inserting in lieu thereof "September 26, 1982"; and

(ii) by striking out "April 29, 1980" each place it appears in paragraphs (2) and (3) and inserting in lieu thereof "September 26, 1980".

(c) Section 108 of such Act is amended by striking out subsection (e) and redesignating subsection (f) as subsection (e).

By Mr. DANFORTH (for himself, Mr. EAGLETON, Mr. BOSCHWITZ, Mr. BURDICK, Mr. DIXON, Mr. DURENBERGER, Mr. GRASSLEY, Mr. HUDDLESTON, Mr. JEPSEN, Mr. JOHNSTON, Mr. KASTEN, and Mr. PERCY):

S. 2861. A bill to authorize the construction of a lock on the Mississippi River in the vicinity of Alton, Illinois and Missouri, and to authorize appropriations to carry out certain programs for the Upper Mississippi River System, and for other purposes; to the Committee on Environment and Public Works.

LOCKS AND DAM 26

Mr. DANFORTH. Mr. President, two great arteries of water-borne commerce come together above St. Louis, Mo.: The Upper Mississippi River and the Illinois River and Waterway. The first is a navigable waterway stretching north to Minneapolis; the second is a link to the Great Lakes and the St. Lawrence Seaway. Between their confluence and the uninterrupted water of the Lower Mississippi River stand two linchpins of the entire inland waterway system: Locks and dams 26 and 27. Together, they lock through more traffic than any other facility in the United States.

Locks and dam 27 consists of a 1,200-foot chamber and an auxiliary 600-foot chamber, constructed in 1963. But locks and dam 26 is no such modern structure. It was built in 1938 and has chambers only 600 and 300 feet in length. The facility is deteriorating and in frequent need of repair. Even when functioning properly, it is so undersized that barges must wait in line a day or more to pass through.

This situation could not long be allowed to continue, and in 1978, Congress recognized that fact by authorizing construction of a replacement lock—1,200 feet in length—at Alton, Ill. The need to have identical structures at 26 and 27 seems obvious: After all, both have to handle the same river traffic. And the need for a second lock appears equally obvious: At such a critical juncture in the river, a failure in the main lock could prove disastrous.

But Congress, in 1978, decided to dot every "i" and cross every "t"; before authorizing the second lock, it directed the Upper Mississippi River Basin Commission to prepare a comprehensive master plan for the management of the Upper Mississippi River system. The commission was directed, in part, to undertake a "specific analysis of the immediate and systematic environmental effects of any second lock at Alton, Ill.," as well as a "specific evaluation of the economic need for a second lock at Alton, Ill., and the direct and indirect systematic effects and needs for such a lock at Alton, Ill."

Congress further mandated that: "no replacement, construction, or rehabilitation that expands (the) navigational capacity of locks, dams, and channels shall be undertaken by the Secretary of the Army to increase the navigation capacity of the Upper Mississippi River system, until the master plan prepared pursuant to this section has been approved by the Congress."

Mr. President, on January 1 of this year, the Upper Mississippi River Basin Commission presented that comprehensive master plan to Congress. It examined the environmental effects of a second lock. It examined the economic need for a second lock. And its very first recommendation was: "That Congress immediately authorize the engineering, design, and construction of a second chamber, 600 feet in length, at lock and dam 26."

And so I rise today to bring that recommendation one step closer to fruition. Along with a bipartisan coalition of my colleagues, I am introducing legislation today to approve the master plan prepared by the Upper Mississippi River Basin Commission and to authorize a second lock at Alton.

This is not a project of interest to only one or two States, but a critically needed improvement in the commercial waterway system serving the entire Midwest. As the commission's report observed, "The Upper Mississippi River system is an integral part of a broad regional, national, and international transportation network. As such, it has played a key role in the economic growth and development of the upper Midwest and numerous river communities, including Minneapolis-St. Paul, the Quad Cities, Dubuque, St. Louis, Peoria, and Chicago. The river system provides an important link in the movement of goods both into and out of America's heartland."

In 1980, more than 126 million tons of commodities moved on the Upper Mississippi River system, including nearly 50 million tons of grain from Illinois, Indiana, Iowa, Minnesota, Missouri, South Dakota, North Dakota, and Wisconsin. Locks and dams 26 and 27 each handled twice the traffic of any other lock on the system, and traffic projections show each of them close to 100 million tons a year by 1990. Traffic delays during the summer of 1980 often ran from 3 to 5 days.

The commission's examination of the economic impact of a second lock at Alton, under a variety of scenarios, found an excess of benefits to costs ranging from $6 to $117 million a year. These benefits will be reflected in consumer prices throughout the Midwest and, indeed, in the prices of everyone who consumes Midwest grain.

Such findings are not surprising to anyone who has studied the bottleneck that is locks and dam 26: They merely corroborate what commonsense would tell us anyway. It does not make any kind of sense to have fully loaded barges stacked up and idle because they cannot get through a major lock. And so it is not surprising, either, that a consensus appears to be forming on the need for a second lock.

The U.S. Army Corps of Engineers considers a second lock to be its top priority for new construction in the entire country. The Governors of the five States bordering the Upper Mississippi River (Missouri, Illinois, Iowa, Wisconsin, and Minnesota) have unanimously endorsed construction of a second lock. And now the Upper Mississippi River Basin Commission, after 3 years of intensive review, has come to the same conclusion: We should build a second lock at Alton.

Commonsense dictates that we act. Fiscal prudence dictates that we act quickly. Construction has begun on the main replacement lock at Alton. Clearly, the most economical way to proceed will be to integrate construction of the second lock into construction of the first, as a smooth follow-on, rather than to disrupt the process and start it up again later. Such a disruption, the corps indicates, would add at least $25 million to the estimated $200 million cost of the second lock—a cost which itself pales by comparison with the $875 million price tag on the main replacement lock and dam. But in order to achieve the $25 million saving, the corps says it needs to have the project authorized and the initial appropriations approved by October 1983.

Mr. President, we must start moving toward that goal without delay. The legislation I am introducing today, along with my colleagues, represents the first step on that journey. It reflects the several recommendations of the Upper Mississippi River Basin Commission and presents a reasonable and equitable balance between the need for immediate navigational improvements and the concern about long-term enhancement of the river system environment as a whole.

I would like to draw particular note to the assistance I have received from the Senator from Minnesota (Mr. DURENBERGER) in striking this balance. He proved, as always, to be a forceful and convincing advocate in the preparation of this legislation. His arguments in favor of a strong environmental section carried great weight and are reflected in the bill.

This legislation confers congressional approval on the master plan prepared by the Upper Mississippi River Basin Commission, which formally went out of existence on January 1 of this year but which continues as an association. The Commission was entrusted in Public Law 95-502 with promulgating regulations for carrying out the plan; because the Commission no longer exists, this legislation amends Public Law 95-502 to strike that language, as well as other language that could be a cause of mischievous litigation.

This legislation also authorizes $53.95 million for four programs recommended by the master plan: a habitat rehabilitation and enhancement program; a long-term resource monitoring program; a computerized inventory and analysis system; and a recreational program. The Secretary of the Interior and the Chief of the Army Corps of Engineers are directed to review all of the recommendations of the master plan, including those authorized by the bill, and submit a proposal for further implementation by June 1985.

In this connection, I must emphasize that these four programs are completely separate and distinct from the authorization for the second lock. The legislation clearly states that the costs of these programs shall not be considered attributable to navigation.

Finally, the bill provides for an exemption from the National Environmental Policy Act of 1969. Ordinarily, I would not support such a proposal, but this case is in many ways out of the ordinary. It is not in any sense a new project, but rather is a follow-on to the first lock. A full-blown environmental impact statement was produced, at considerable time and expense, for construction of the first lock. That assessment subsequently was upheld by the courts after lengthy litigation—litigation that commenced in 1974 and concluded only last November. Second, the environmental impact of the second lock was one of the specific topics that the Upper Mississippi River Basin Commission was charged with examining in producing its master plan—again, at considerable time and expense. Further expenditures in this area, I believe, would not be a wise use of the taxpayer's dollars.

Mr. President, it is my fervent hope that the controversy surrounding construction of the first lock will not afflict this legislation. The need for a second lock is clear, and prompt enactment of this bill will enable construction to proceed in an orderly way, to minimize the impact on the budget and assure an orderly flow of commerce on the Upper Mississippi.

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

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

S. 2861

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for purposes of this Act, the term "Master Plan" means the Comprehensive Master Plan for the Management of the Upper Mississippi River System, dated January 1, 1982, prepared by the Upper Mississippi River Basin Commission and submitted to the Congress pursuant to the Act entitled "An Act to amend the Internal Revenue Code of 1954 to provide that income from the conducting of certain bingo games by certain tax-exempt organizations will not be subject to tax, and for other purposes", approved October 21, 1978 (92 Stat. 1693; Public Law 95-502), hereafter in this Act referred to as the "Act of October 21, 1978".

(b) The Congress hereby approved the Master Plan as a guide for future water policy on the Upper Mississippi River System. Such approval shall not constitute authorization of any recommendation contained in the Master Plan.

(c) Section 101 of the Act of October 21, 1978 is amended by striking out the last two sentences of subsection (b) and the last sentence of subsection (j).

(d) To ensure the coordinated development and enhancement of the Upper Mississipi River System, the Congress recognizes such System as a nationally significant ecosystem and a nationally significant commercial navigation system. The Congress further recognizes that the system provides a diversity of opportunities and experiences. Such System shall be administered and regulated in recognition of its several purposes.

SEC. 2. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide for the engineering, design, and construction, at an estimated cost of $200,000,000, of a second lock at locks and dam 26, Mississipi River, Alton, Illinois and Missouri. Such second lock shall be 110 feet by 600 feet and shall be constructed at or in the vicinity of the location of the replacement lock authorized by section 102 of the Act of October 21, 1978.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 3. (a) The Secretary of the Interior is authorized to undertake with respect to the Upper Mississipi River System, substantially in accordance with the recommendations of the Master plan—

(1) a habitat rehabilitation and enhancement program to plan, construct, and evaluate projects to protect, enchance, or rehabilitate aquatic and terrestrial habitats lost

or threatened as a result of man-induced activities or natural factors;

(2) the implementation of a long-term resource monitoring program;

(3) the implementation of a computerized inventory and analysis system for data storage and retrieval, and for use in the long-term resource monitoring program; and

(4) the implementation of a program of recreational projects.

(b) The Secretary of the Interior shall cooperate and consult with the Governors of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin in planning and implementing the actions authorized by subsection (a).

(c) There are authorized to be appropriated—

(1) to carry out paragraph (1) of subsection (a)—

(A) for the fiscal year 1984, $1,500,000;

(B) for the fiscal year 1985, $6,500,000; and

(C) for the fiscal year 1986, $13,000,000;

(2) to carry out paragraph (2) of subsection (a)—

(A) for the fiscal year 1984, $7,680,000; and

(B) for each of the fiscal years 1985 through 1988, $5,000,000;

(3) to carry out paragraph (3) of subsection (a)—

(A) for the fiscal year 1984, $40,000;

(B) for the fiscal year 1985, $240,000;

(C) for the fiscal year 1986, $1,220,000; and

(D) for each of the fiscal years 1987 and 1988, $975,000; and

(4) to carry out paragraph (4) of subsection (a), for each of the fiscal years 1984 through 1986, $500,000.

(d) None of the funds appropriated pursuant to the authorization contained in this section shall be considered to be attributable to navigation.

SEC. 4. The Secretary of the Interior and the Secretary of the Army, acting through the Chief of Engineers, in cooperation and consultation with the Governors of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, are directed—

(1) to review the recommendations contained in the Master Plan;

(2) to assign priorities to such recommendations; and

(3) to develop and submit to the Congress, not later than June 1985, a proposal for further implementation of those recommendations.

SEC. 5. (a) The Congress finds that there has been reasonable compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in the formulation of the Master Plan and the environmental impact statement on construction of the first lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri.

(b) The actions authorized in sections 2 and 3 of this Act are exempt from the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Mr. BOSCHWITZ. Mr. President, I am pleased to join my colleagues in sponsoring S. 2861, a bill to authorize the construction of a second replacement lock at locks and dam 26; and to also authorize a complementary program that funds a program for environmental rehabilitation and monitoring.

The Mississippi River provides a vital link to the Midwest's commercial waterway system. In 1981, the Upper Mississippi carried 30 million tons of cargo, 9 million of which were Minnesota farm products headed overseas.

The importance of this waterway to the future of Minnesota's agricultural exports cannot be overstated. Minnesota's agricultural exports, based on our percentage of national farm output, jumped 18 percent in 1981 for a total worth of over $2 billion. These export dollars are special. Every 1 dollar's worth of export sales brings in $1.05 in additional economic activity. This "multiplier" effect means the agriculture support industries such as transportation, financing, warehousing, and agriculture suppliers created another $2 billion for Minnesota's economy. This is real money, and our State cannot survive without it.

For Midwestern farmers, the river is proving to be one of the only stable methods of transporting grain. A quick look at the last few years bears this out:

In 1979, the State of Minnesota suffered a trucker's strike that crippled grain transportation. Later, a grain millers strike at the Port of Duluth/Superior further paralyzed grain shipping. By 1981, after President Carter's restricting grain embargo to the Soviet Union, steady movement of grain appeared to be an antiquated notion. Grain prices fell so low that Minnesota farmers lost $140 million in wheat revenue alone.

Today, farmers are again looking at a record crops; the solution must be to expand our export markets. To handle this needed expansion, we must also expand the ability of the Mississippi to move the grain. Locks and dam 26 is the key.

Locks and dam 26 is part of the overall lock and dam system of the Upper Mississippi. Constructed in the 1930's, the system allows uninterrupted navigation by assuring an even river depth. Locks and dam 26 is located in Alton, Ill., a strategic position only 15 miles south of the confluence of the Mississippi and Illinois Rivers. Together, the two rivers sent 70 tons of cargo through locks and dam 26 in 1981. Unfortunately, the practical capacity of No. 26 is only 65 million tons.

The Corps of Engineers is trying to correct this bottleneck by constructing a 1,200-foot replacement lock 2 miles south of the existing locks. The new lock will immediately increase the practical capacity to 85 million tons, but does not solve the long-term problem. Minnesota farmers are shouldering the burden of millions of dollars in excess cost when traffic is held up by the bottleneck, because transport costs are determined by the hour. Time means money, and a 2-day delay is not unusual.

The Corps of Engineers recognized the need for new locks at Alton, Ill., in 1969, but Congress did not authorize construction until 1978—and then only authorized one lock instead of two. That the second lock must be immediately authorized is clear.

First, it will take 10 years to fund and build the second lock and navigation projections show the second lock will be needed by the early 1990's. Second, substantial cost savings will occur if the second lock is built at the same time the first is being constructed; and third, a single lock system will stop all traffic if the one lock is damaged. With no auxilliary lock no river tows would move until repairs are completed. Locks and dam 26 will continue to be a barrier to foreign trade until the second lock is built.

The Upper Mississippi is a unique resource. It is the only inland river in the United States which is both a Federal commercial navigation project and a major national wildlife refuge. Because of that it has unique demands as well.

The wildlife refuge spans 560 miles, from Wabasha, Minn., to St. Louis. Along the banks of this refuge are 290,000 acres of wooded islands, waters, and marshes all largely untouched.

The value of this refuge system cannot be overemphasized. Not only is the Mississippi "flyway" vital to 75 percent of the Nation's migrating waterfowl, but the refuge also plays host to 270 species of birds, 50 species of mammals, 123 species of fish, and 35 species of reptiles and amphibians.

Unfortunately, the backwater areas which are the invaluable breeding areas, are slowly being destroyed by sediment deposits. The natural process of heavy rains, spring runoff, and snow-melts wash sediment from fields into streams and tributaries. At the same time, deteriorating riverbanks create more sediment. Eventually the sediment is deposited on the inside of river bends and the backwater areas. In fact, since 1939, sediment has changed 25 percent of the open backwater areas to marshland.

This bill begins the process of making these needed corrections. It establishes a 3-year habitat rehabilitation-and-enhancement program to begin cleaning out the backwater areas, plus we will continue to monitor the use of the river by setting up a 5-year resource monitoring program. I believe these programs are a positive first step. Congress must, however, take further steps to assist the Upper Mississippi. I will continue working with my colleagues to develop these preservation programs.

The Upper Mississippi is a special river with special needs. I feel this bill recognizes the multipurpose use of the river, and tries to set a balance. A balance which has been missing in the past. I urge my colleagues to give this

bill their support and their timely consideration.

Mr. DIXON. Mr. President, I am pleased to join with my distinguished colleague, Senator DANFORTH, in introducing legislation to authorize the construction of a second lock for the new locks and dam 26. The need for a second lock at the replacement facility for the current, deteriorating locks and dam 26 is indisputable.

The existing facility is the chokepoint for the entire Upper Mississippi River system. It passes more traffic than the Panama Canal.

The locks and dam is over 40 years old. It is becoming increasingly costly to maintain and is grossly inadequate to handle the traffic on the Upper Mississippi and the Illinois Rivers. It has a main chamber of 600 feet in length and an auxiliary chamber of 360 feet, while the next and final locks and dam, locks and dam 27, has a main chamber of 1,000 feet in length, and an auxiliary chamber of 600 feet. The result is that barges are often lined up for days at a time waiting to pass through locks and dam 26.

Congress has recognized the desperate need for a replacement facility. In 1978, it authorized construction of a new locks and dam with a single lock of 1,000 feet in length. At the same time, Congress authorized a comprehensive economic and environmental analysis of the entire Upper Mississippi River system. To insure that the analysis would be a useful tool for future congressional actions affecting the future of the Upper Mississippi River system, any capacity expanding construction was prohibited until the master plan that would be the final result of the analysis was approved by Congress.

On January 1 of this year, the Upper Mississippi River Basin Commission, the agency responsible for the development of the master plan, presented its recommendations. Its first recommendation was for construction of a second lock, 600 feet long, at the new locks and dam 26.

Mr. President, I think the case for this second lock is clear. Midwestern agriculture and other users of our waterway system will continue to suffer real economic damage until the second lock is in place.

The need to handle the greatly increased traffic now using our river system is not the only reason an additional lock is essential, however. Because locks and dam 26 is the chokepoint for the entire Upper Mississippi River system, we need to insure that it will be able to continue to handle river traffic even if one lock were to be out of service, due to damage or some other cause. We simply cannot afford to shut down the entire river system because a lock is damaged.

The new locks and dam 26 is now under construction. Now is the time to authorize and construct a second lock. Not acting now will add millions to the ultimate cost of the project. I urge my colleagues, therefore, to join with Senator DANFORTH, with me, and with the other cosponsors of this essential legislation.

The case for a second lock at Locks and Dam No. 26 is compelling. I am sure that a careful review of the merits of the project will convince all Senators of the need to enact the bill swiftly. No single project will be more important to the economic future of the upper Midwest.

AUXILIARY LOCKS IS NEEDED AT LOCK AND DAM NO. 26

Mr. EAGLETON. Mr. President, the 95th Congress ended the long and heated debate over replacing Locks and Dam No. 26 on the Mississippi River at Alton, Ill. The replacement project authorized in 1978 consists of a new dam and a 1,200-foot lock about 2 miles downstream from the old facility. The new lock and dam have been under construction since April 1980, and are expected to be operational by 1987.

While good progress is being made on the major portion of the replacement project, it is appropriate to consider the addition of an auxiliary lock. I am, therefore, pleased to sponsor legislation to authorize a second 600-foot lock at the Alton facility.

Situated as it is below the confluence of the Upper Mississippi and Illinois Rivers, Lock and Dam No. 26 are strategic to the movement of commodities up and down the rivers. Any disruption in the single-lock operation could bring shipping to a halt. Clearly, it will be necessary from time to time to close the chamber for routine maintenance, not to mention the possibility of unexpected emergencies that might occur in the main lock. An auxiliary lock, though smaller in size, would be capable of keeping traffic moving and minimizing delays.

The old facility, with its two locks of smaller capacity, experienced trafffic delays in the summer of 1980 of from three to five days. The average delay that year was about 20 hours per tow. Delays are costly, which is why we decided to replace the old structure. Locks and Dam No. 27 immediately below Alton consists of two chambers, one 1,200 feet long and one 600 feet long. Locks and Dam No. 26 should be of equal capacity if the system is to operate in a safe and cost-effective manner.

Public Law 95-502, which authorized the replacement project, also required the Upper Mississippi River Basin Commission to prepare a master plan for the management of the Upper Mississippi River. Among the questions the panel addressed was the need for a second lock at Alton. The Commission's master plan submitted to Congress in January of this year recommends construction of a 600-foot auxiliary chamber. Furthermore, the Corps of Engineers' own National Waterway Study, which took inventory of the condition of navigation facilities in the Nation, placed first priority on the additional lock at Alton.

We are fortunate in this country to have been blessed with a natural waterway transportation system that enabled this country to grow and prosper in its early years. George Washington wrote to a friend in 1783, "I could not help taking a more comtemplative and extensive view of the vast inland navigation of these United States . . . would to God we have the wisdom to improve them." We were foresighted enough to realize the hope of Washington. Today, the system we built carries 2 billion tons of cargo annually to foreign and domestic markets. Nationally, the waterway industry employs some 80,000 workers with an annual payroll of nearly $1 billion.

The importance of our inland navigation system cannot be understated, especially to the economy of St. Louis. As the "Gateway to the West," St. Louis played an historic role in our Nation's expansion. It is the leading inland port on the Mississippi River handling over 22 millions tons of cargo in 1978. A study of the Port of Metropolitan St. Louis made in 1977 by A. T. Kearney, Inc., found that over 2,000 full-time jobs were directly related to port activities and that an additional 43,000 manufacturing jobs indirectly depended upon the shipping industry. The annual value of cargo handled in the Port of Metropolitan St. Louis exceeds $5 billion.

In recognizing the importance of replacing Locks and Dam No. 26, Congress departed from the long established policy of free use of the rivers, and imposed a barge fuel tax. Those who ship on the inland waterway system paid the price to remove the Locks and Dam No. 26 bottleneck. The tax which began at four cents a gallon in 1980 will rise to 10 cents in 1985. The users will be sharing between 20 and 25 percent of the cost of the navigation facilities.

The Reagan administration has made it clear that it will not seek funds for new waterway projects until the users pay 100 percent of the costs associated with building and maintaining the navigation facilities. Their proposal goes far beyond the principle established in the 1978 law requiring the commercial users to share in the costs of the system. No mode of commercial transportation pays 100 percent of these costs because there are benefits that accrue to the public at large from investment in efficient transportation systems, whether they be rail, roads, or riverways.

In the case of the riverways, recreational boaters enjoy the pools created

by the lock and dam structures; river communities are protected from flooding; some navigation facilities even generate hydroelectric power, and studies are underway to see if this capacity can be increased. Moreover, bulk commodities are more efficiently transported by barge; a single barge carries as much as 15 freight cars or 60 trucks. The major part of our grain for export is shipped to port by barge, and in a national emergency, this capacity would be vital to our defense preparedness.

It would be shortsighted not to complete the Locks and Dam No. 26 facility by adding the auxiliary chamber. But the project should be considered on its own merits. It should not be tied to the Reagan admininstration's proposals for higher waterway user fees.

● Mr. DURENBERGER. Mr. President, it is a privilege to join in sponsoring this long overdue legislation, and I believe it merits the support of every Member of Congress. The introduction of this bill marks another step in Congress effort to carry out the provisions of Public Law 95-502. Section 101 of that act established the Upper Mississippi River Basin Commission and charged it with the responsibility of formuiating a comprehensive master plan for the management ofthe Upper Mississippi River system. Our actions today will help bring the recommendations of the Commission, reached on January 1 of this year, to fruition.

The most important component of our bill from the perspective of the Minnesota farmers and shippers who rely on the Mississippi to carry their products to the gulf, is the authorization of a 600-foot chamber to complement the 1,200-foot chamber at Locks and Dam No. 26. By making Lock and Dam No. 26 compatible with Locks and Dam No. 27, our proposal will streamline grain movements on the Mississippi and bring peace of mind to Minnesota's farmers.

It is impossible to overstate the importance of the Mississippi to Upper Midwest farmers, as the river provides them with a transportation system essential to the cheap, efficient, and orderly flow of agricultural products to national and international markets. In addition to these obvious and direct benefits, the river provides indirect benefits in the form of effective competition to the rates other modes of transportation charge farmers for the movement of agricultural commodities.

Over 40 million tons of agricultural commodities, representing 45 percent of all agricultural exports, move through the locks and dam on the Mississippi River. Demand for these commodities is projected to double by the year 2000, and at the very least, the river's share of this traffic will remain constant. Locks and Dam 1-25, in conjunction with the Illinois River, have the capacity to handle 115 million tons of traffic per year, and Locks and Dam No. 27 has the capacity to handle 125 million tons; Locks and Dam No. 26, with its limited capacity of 70 to 75 million tons, will become a serious obstacle to upper midwest farmers' ability to meet foreign demand for U.S. feed grains. Without the second chamber, it will be impossible for Lock and Dam No. 26 to accommodate any increase in barge movements on the upper Mississippi.

Another equally compelling reason to move ahead of the construction of the second chamber is security. Locks and Dam No. 26 is the only single-chamber lock on the Upper Mississippi River system. If that chamber were to become inoperable, we would need one 100-car-unit train, leaving every 12 minutes, 24 hours a day, to haul grain from St. Louis to New Orleans. From anyone's perspective, be it environmental or logistical, such an occurance would be an unmitigated disaster.

This bill acknowledges the Upper Mississippi River system as a major multipurpose water resource of national significance for both its rich ecosystem and commercial navigation system. Reflecting both areas of national significance, the bill authorizes the recommendations in the comprehensive master plan for management of the Mississippi River system by establishing programs for habitat rehabilitation and enhancement, long-term resource monitoring, computerized inventory analysis for data storage and retrieval, and a program for recreational projects.

It was my belief that handling the authorizations for the navigation system separately from the ecosystem programs would contradict congressional intent that this magnificent river be managed as a multipurpose resource. The bill encompasses both concerns and provides balanced support for both nationally significant systems.

It is of utmost importance that we move forward with the needed authorizations contained in the bill, and take action to implement the other recommendations in the comprehensive master plan for which authorization exists but which lack needed appropriations and agency direction.

EROSION CONTROL

The most pervasive and damaging problem for the Upper Mississippi River system is excessive sedimentation from upland and stream bank erosion in the watershed. Eroded material settles in the river backwaters, sloughs, and marshes. The natural erosion process has been intensified by agricultural practices and other land surface modification.

The master plan recommends that immediate action be taken to accelerate existing USDA and State programs to target present and increase future funds. The estimated $912 million total cost of the needed programs would be shared by Federal, State, local, and private concerns. Because no additional authorization is needed, this recommendation is not included in the bill.

Recommendations in the master plan concerning programs for system capacity analysis, dredged material productive uses and certain navigation programs do not need additional authorization and are also not included in the bill. It is expected that the appropriate agencies will review the master plan as approved by Congress and take the necessary action to include these programs in their agency budget requests.

AUTHORIZATION OF PROGRAMS FOR HABITAT REHABILITATION AND ENHANCEMENT, RECREATION PROJECTS, LONG-TERM RESOURCE MONITORING AND COMPUTER INVENTORY AND ANALYSIS

Mr. President, existing data and studies completed under the master plan conclude that the natural environment of the UMRS is degrading at a rapid rate as a result of a combination of man-induced and natural forces.

In order to provide for the reasonable development and use of the system without destroying the valuable environment which is unique to the system, the Commission recommended that a habitat rehabilitation and enhancement program be undertaken immediately.

Several studies have also indicated the need to commence work on the many river-oriented recreational projects in order to meet the anticipated growth in recreational demand for the use of the river.

In addition to the Commission's recommendation to initiate immediate implementation of projects to rehabilitate and enhance habitat areas, a long-term resource monitoring program to facilitate those projects and enhance the ability to understand complex and dynamic system relationships is urged. The master plan states that a long-term resource monitoring program (LTRM) is needed to enable decision-makers to measure ecological impacts attributable to a combination of natural and man-induced forces. Included in that program are specific actions to futher our understanding of the physical, chemical, and biological relationships in the system. The program would improve our understanding of future multipurpose management needs and help determine equitable management actions.

Establishment of a computerized inventory and analysis system for data storage and retrieval was also recommended for immediate authorization.

In drafting this bill, it was determined that it was urgent to proceed

immediately with the four programs included for authorization.

Section 3 therefore, provides a 3-year, $2.1 million authorization for habitat rehabilitation and enhancement and a 3-year, $1.5 million authorization for recreational projects. A 5-year, $2.8 million program is authorized for long-term resource monitoring and is facilitated by a 5-year, $3.5 million inventory and anlysis program. The bill also establishes priorities for funding of the programs authorized in the bill and the additional recommendations in the master plan. Section 4 specifies that the Secretary of Interior and Chief of Engineers, in cooperation and consultation with the Governors of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, are to utilize the additional information obtained in the habitat restoration and enhancement planning process as well as monitoring data to establish a list of priorities by 1985 for consideration by the Congress.

This approach for establishing priorities takes into account the need for additional information and allows the time needed to evaluate the recommendations proposed in the comprehensive plan.

Finally, the bill's exemption of the second chamber at lock and dam 26 from the National Environmental Policy Act of 1969, recognizes the urgent need to obtain authorization for the second chamber and the other programs included in the bill. The extensive studies conducted for the environmental impact statement on the first chamber and the Upper Mississippi master plan are determined to provide reasonable compliance with NEPA. This provision is not intended to serve as a precedent for congressional exemption from NEPA.

In conclusion, I urge the Senate to act promptly on this bill which is vitally needed to insure the balanced management of the Upper Mississippi River system and the economic vitality of the Upper Midwest.●

Mr. PERCY. Mr. President, I am very pleased to join my distinguished colleague from Missouri (Mr. DANFORTH,) in cosponsoring this measure to authorize the construction of the second lock at the new Locks and Dam No. 26 facility under construction at Alton, Ill. Throughout discussion and work on the authorization of the replacement of Locks and Dam No. 26 in the seventies, it was clear that a second lock would be necessary to adequately handle projected traffic and to prevent the possible shutdown of this essential facility located just below the confluence of the Illinois, Missouri, and Mississippi Rivers—the infamous bottleneck of the Inland Waterway System handling more water borne traffic annually than passes through the Panama Canal.

The possibility of a shutdown was magnified earlier this year when a barge accident at the existing facility halted river traffic for two 8-hour periods. With only one lock at the new facility, the risk of a possible accident or maintenace problem that could shut the river down completely is simply too great. I was delighted when the Upper Mississippi River Basin Commission also recognized how essential the second lock is as they prepared the Upper Mississippi River Basin master plan for Congress that calls for the immediate authorization of the second lock.

Since construction began in 1980, $200 million has been appropriated to finance grading the Illinois bank, building a coffer dam, and starting construction of the main dam. This facility, without the second lock, is now estimated to cost $776 million to complete. Timely authorization of the second lock is critical for coordinating engineering and construction schedules for this addition to the project. Taxpayers will be the beneficiaries of timely authorization of the $200 million second lock, with estimated cost savings of $20 to $50 million—a full 10 to 25 percent of the second lock cost.

The new locks and dam would then be designed to more efficiently handle the flow of river traffic projected through the remainder of this century with a 1,200-foot and 600-foot set of locks replacing the existing 600-foot and 350-foot set. This is the kind of facility that will speed the flow and lower transport costs of farm products, coal, and manufactured goods without endangering the river with tremendous growth in barge traffic that could adversely effect the environment of the river.

I am also pleased that this bill authorizes an additional $53.95 billion, over 3 years, for necessary environmental safeguards such as resources monitoring, computerized inventory, and analysis system for data storage and retrieval, river habitat rehabilitation and enhancement, as well as important recreation projects. Because of our concern for protecting this great natural resource, authorization for these measures will help insure its protection.

Because of projected traffic needs, the importance of having the insurance of a backup lock, and the savings to be accrued by taxpayers if the facility is integrated into the current construction schedules for Locks and Dam No. 26, I urge bipartisan support for this authorizing legislation. I know it is good for Illinois and the Midwest and, I believe, the Nation as well. Being able to move products for export helps strengthen our economy and greatly improves our Nation's balance of payments. We must act responsibly by authorizing this needed facility as soon as possible.

By Mr. GRASSLEY:

S. 2863. A bill to amend title 28 to provide protection to all jurors in Federal cases to clarify the compensation of attorneys for jurors in protecting their employments rights, and authorizing the service of jury summonses by ordinary mail; to the Committee on the Judiciary.

JUROR PROTECTION

● Mr. GRASSLEY. Mr. President, today I am introducing a bill that will provide equitable injury protection to all Federal jurors and imporve the administration of the jury system. As a package, the provisions of this bill will not only clarify and correct certain inconsistencies in the current law regarding jurors, but also establish a more efficient jury operation resulting in significant cost savings to the Government.

Among the three provisions of this bill is one which extends coverage under the Federal Employees Compensation Act to all Federal jurors. Current law provides compensation to jurors for duty-related mishaps only if they are also Federal employees. Due to jurisdictional problems, that law, Public Law 93-416 enacted in 1974, failed to extend such benefits to jurors who are private citizens. However, such coverage was expressly supported by the Senate Committee on Labor and Public Welfare as indicated in Senate Report No. 93-1081.

Problems have arisen prior to and since the enactment of Public Law 93-416 which illustrate the need to extend its application to all jurors. While fortunately juror mishaps are rare, a survey of the district courts reveals a number of juror injuries occurring during the performance of duty. Such was the case of a South Carolina woman who fell from the jury box and fractured her wrist. Another Minnesota juror sustained an arm injury while viewing an accident site and was forced to miss several days work. In both cases the injured jurors lacked eligibility for injury compensation on the basis that they were not Federal employees. While these injuries proved relatively minor in nature, the potential exists for a major or possibly disabling injury to befall a Federal juror who would be left without compensation.

Jurors render a valuable service to the Government in carrying out the constitutional guarantee of a right to a jury trial. The United States in turn should afford them the benefit of protection in the case of a duty-related injury. Without that protection, what begins as a high duty of citizenship could result in an economic catastrophe for the private sector juror.

The remaining two sections of this bill stem from studies conducted by the U.S. Judicial Conference, Committee on the Operation of the Jury

System. Both result in Government cost savings and a more efficient administration of the Federal jury.

The first section relates to the awarding of attorneys' fees for Government funded attorneys as well as privately retained attorneys when jurors are successful litigants against their employers. Under the Jury Systems Improvement Act, jurors are authorized to bring legal action against employers interfering with their jury service. This law also provides for the remittance of attorneys' fees to an employer who ultimately prevails in such an action. However, when the juror is represented by appointed counsel paid by the Government, the law does not require that Government be reimbursed.

This bill will appropriately clarify that attorneys' fees should also be paid be paid back to the court, and thus the Government, in such cases. I note that this same provision was passed by the Senate in 1980 but was unfortunately caught in a committee backlog in the House.

The second section of this bill is also a cost-saving measure for the Government, one that will likely save the court administration budget hundreds of thousands of dollars each year. This provision extends to the courts the option of using regular first-class mail for the delivery of juror summonses along with the current methods of personal service and registered or certified mail. In a survey of clerks to U.S. district courts, the Judicial Conference found overwhelming support for this provision which they estimate will reduce mailing costs, lessen the clerical burden and improve the delivery rate of jury summonses.

One Federal appeals circuit court predicts that allowing regular mailing of summonses will cut their delivery costs by nearly 90 percent. This savings estimated by the ninth circuit combined with those of the other 10 circuits represents a sizable portion of Government court funds retained. In the face of our current economic plight, any such economizing of public money is a welcome achievement.

In the event that any court faces a problem of voluntary compliance with the summonses delivered by regular mail, this provision allows the court to retain its discretion in selecting the means of service which proves most efficient.

I would like to thank the Judicial Conference for calling attention to these important and needed steps toward improving the efficiency and conditions of the jury system and I ask my colleagues to join me in supporting the expeditious adoption of this legislation.●

By Mr. FORD (for himself and Mr. QUAYLE):

S. 2864. A bill to provide for a 2-year Federal budget cycle, and for other purposes; by unanimous consent, read twice and ordered held at the desk.

BUDGET PROCEDURES IMPROVEMENT ACT OF 1982

Mr. FORD. Mr. President, on behalf of the junior Senator from Indiana (Mr. QUAYLE,) and myself, I send to the desk a new bill to establish a 2-year budget and appropriation cycle, and to make other improvements in the budget process.

I am pleased to say that this new bill is the product of a joint effort by Senator QUAYLE and me to eliminate the minor differences which exist in our earlier bills—S. 1683 and S. 2008—and to increase our chances of early enactment of a 2-year budget bill by this joining of forces.

The new bill is not, in substance, significantly different from either S. 1683 or S. 2008. If enacted, it will substitute a 2-year budget period for the present annual cycle which is clearly no longer viable.

By eliminating much needless duplication of effort—in Congress and in the executive branch—we will gain time to improve our budget planning, and to strengthen congressional oversight over existing legislation.

We will lengthen the periods of certainty for State and local government planning, which must take into account Federal decisions and inputs affecting their activities.

By lengthening the budget period, we will increase the chances of economic stability in both the public and private sectors. In my judgment, the less frequently we have to tinker with basic tax and spending issues, the more likely we are to level the peaks and valleys in our economy.

Mr. President, Senator QUAYLE and I have requested that this new bill follow the same referral path as S. 1683, and be jointly referred to the Budget, Governmental Affairs and Rules and Administration Committees. For this purpose, we have also spoken with the chairmen and ranking minority members of the Budget and Governmental Affairs Committees, and I have spoken with Senator MATHIAS, chairman of the Rules Committee, on which I serve as ranking minority member.

It is my hope that at the appropriate time, the majority leader will make the request for such joint referral, and I ask that the bill be held at the desk until such request can be made.

Mr. President, I yield to my distinguished friend, the Senator from Indiana, Senator QUAYLE.

Mr. QUAYLE. Mr. President, I thank the Senator for yielding.

I wish to concur with the Senator's remarks and to point out, Mr. President, that this legislation is a composite of ideas that the Senator from Kentucky and the Senator from Indiana have developed concerning the 2-year budget process.

I do not think there is any doubt about it—there are some fundamental problems with the current process. As a matter of fact, so far this year we have not had one—not one—appropriation bill from the House of Representatives. Not one has come over from the House of Representatives. Since the Budget Impoundment Control Act of 1974, we have had but 1 year when we adopted all the regular appropriation bills. We operate instead on continuing resolutions.

So let us face the facts, and face reality. There is no way that Congress can conduct its business of authorizations, appropriations, and a full budget process in 1 year.

What the Senator from Kentucky and I are trying to do is to take that 1-year process and spread it over 2 years. We will have, in the first year, a first budget resolution and authorization bills. During the second year, we will have a second resolution, reconciliation, and appropriations.

Therefore, this legislation will emphasize, Mr. President, what everyone in this Chamber says they want, and that is oversight. We need time to study what we have already enacted and to see what we can reform, modify, increase, decrease, or whatever the case may be. I think that this is a first step to real institutional reform.

I am a strong supporter of the budget process. In no way should this be interpreted as any kind of change of attitude toward the budget process that has served this institution well. But there are some fundamental reforms that need to be taken. Now that the Senate has passed Senate Joint Resolution 58, the constitutional amendment to balance the budget, it is essential that we move ahead expeditiously to strengthen our budget process.

It has been clear for some time that our current budget process, which requires two budget resolutions each year in addition to the required annual authorization and appropriations bills, is simply too time consuming. The current process leaves Congress with little time for needed legislative activity. Indeed, under time constraints embodied in the 1974 Budget Act, the system is in danger of complete collapse.

Since passage of the Budget Act, the first and second budget resolution deadlines have been met only twice out of 11 reporting dates.

Our record on the appropriations has been equally dismal. Since 1976, the first year in which the Budget Act actually went into operation, only once were all appropriations bills enacted by the beginning of the fiscal year. Even in that year a continuing resolution was needed to fund some programs. Over the past 5 years, 10

continuing resolutions have been enacted. Today, much of the Federal Government is still operating on the basis of a continuing resolution.

We clearly need more time for consideration of authorization and appropriation bills. Our authorization processes need to be strengthened so programs can effectively be reviewed and evaluated. The work of oversight committees needs to be integrated into the work of the appropriations committees as well as into the budget.

Only by providing all our committees with sufficient time and our full, undivided attention can we regain full control of our legislative, budget and appropriations process. Only then can the budget we pass be based on sound economic review of legislative proposals as well as the economic considerations of the moment.

The ability of Congress to gain control over the budget is today in serious doubt. The weight of prior-year obligations and automatic expenditures built into the budget is causing us to drown in a sea of increasing deficits. Mr. President, we face a budget crisis.

Unless we can correct this situation, we will have effectively lost our power to legislate in any meaningful sense. Government will continue to operate on a kind of automatic pilot, without meaningful evaluation of current policy by the legislative branch and with the budget heavily dominated by uncontrollable spending.

It is our responsibility to see that legislation is carefully considered and spending policies are brought under control. For these reasons, I believe it is essential that we move to a 2-year budget cycle as soon as possible.

With a 2-year budget cycle, we would see the results of first year decisions by the second year of the cycle and could make midcourse corrections as necessary. We would have the time to review the major Federal programs and to carefully consider the new ones.

Under the Quayle/Ford bill we will have twice the time we now have to make the necessary decisions on appropriations and budget.

The bill we introduce today:

Establishes a 2-year budget process. The budget for each 2-year budget period is considered and enacted throughout both sessions of the preceding Congress.

Requires that enrollment of all spending bills be withheld until action on the second budget resolution and reconciliation is completed.

Prohibits: (1) including reconciliation instructions in other than the required second resolution; (2) using budget resolutions to expand the congressional budget process to include additional aspects of Government operations; and (3) directing committees, in any budget resolution, to change legislation authorizing the enactment of new budget authority.

Requires that spending measures and budget reports include tables in which the estimates or recommendations are set forth in the same budget accounts used by the President, and requires the President to consult with committees prior to changing the budget accounts.

Strengthens the requirement for committees to conduct oversight investigations and to report their findings to their respective Houses during each Congress. Also strengthens the authority of committees to request assistance and information from agencies and from the General Accounting Office and other legislative staff agencies, while safeguarding the protection of confidential information.

A 2-year budget process is fully consistent with Senate Joint Resolution 58, the constitutional amendment to balance the budget. The constitutional amendment clearly directs Congress to pass enabling legislation which would put the constitutional amendment into effect. The detailed analysis of Senate Joint Resolution 58, contained in the report issued by the Senate Judiciary Committee, July 10, 1981, states clearly that the term "fiscal year," for purposes of balancing the budget, shall be defined by statute. The report states (p. 44): "The amendment does not require an immutable definition of fiscal year; other fiscal years could be defined without straining the intent."

Nothing in the constitutional amendment would require the Congress to change the fiscal year for all Government programs, if it chose to do so for purposes of the budget process. The amendment addresses only the budget process and the constraints under which it shall be balanced.

In addition, it is clear from the legislative history and the debate on the Senate floor prior to passage of the amendment, that its sponsors hoped to provide Congress with substantial procedural flexibility. In a colloquy on July 27, 1982, Senator DOMENICI proposed that the constitutional amendment be written so as to permit Congress to establish a multiyear base period for determining the rate of national economic growth, should Congress decide that is appropriate. Senator HATCH, floor manager of the constitutional amendment, spoke in support of Senator Domenici's amendment which was accepted by the full Senate. (CONGRESSIONAL RECORD, July 27, 1982, p. S9190). Senator THURMOND, Chairman of the Senate Judiciary Committee and one of the floor managers of the balanced budget amendment, unequivocably stated in a colloquy with Senator FORD, that "we know of nothing that would prohibit going to a 2-year cycle" (CONGRESSIONAL RECORD, August 3, 1982, p. S9681).

Congress must review the budget timetables now. Only by moving to a 2-year budget process can we reestablish our capacity to legislate.

Mr. FORD. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. FORD. Mr. President, I believe I should have made a unanimous-consent request that the bill be held at the desk until such time as the distinguished majority leader can make a motion that this legislation be jointly referred to the three committees. I make that unanimous-consent request.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

By Mr. BIDEN:

S. 2865. A bill to reinstate the provisions relating to parental involvement in chapter I of the Education Consolidation and Improvement Act of 1981 relating to financial assistance to meet special educational needs of disadvantaged children; to the Committee on Labor and Human Resources.

PARENTAL INVOLVEMENT IN SPECIAL EDUCATION

● Mr. BIDEN. Mr. President, today I am Introducing legislation to amend chapter I of the Education Consolidation and Improvement Act of 1981 to restore the parental involvement requirement previously contained in title I of the Elementary and Secondary Education Act.

I take this action, Mr. President, in recognition of the fact that, without the active and constructive input of parents, students are far less likely to attain a high level of educational performance. This fact is true, I believe, for students throughout the possible realm of economic circumstances; but is especially true for the disadvantaged students title I was written to help. Oftentimes, these children lack solid and effective role models, making parental involvement all the more crucial.

The justification for removing the parental involvement requirement from the law was based on a perception that the provision was being carried out with an excess of Government regulation and redtape and, therefore, should be discontinued. While I do not share the view of those who believe that programs carried out in such a manner should be wiped out automatically, believing instead that otherwise good programs can be streamlined in their administration; I am always concerned about instances of excess Federal involvement in our educational programs. Consequently, I stand ready to work with the Labor and Human Resources Committee, together with all other interested parties, to insure that criticism of the previous arrangement can be avoided.

I also recognize, Mr. President, that many noted authorities in the field of education have had problems with the use of Parent Advisory Councils as the instrument through which to channel the most effective parental involvement. As such, I also stand ready to discuss alternatives to the Councils with all parties concerned.

Basically, Mr. President, I am introducing this legislation to indicate my strong belief that parental involvement is vital to our compensatory education program, and to provide a vehicle for contructive and useful discussion of the matter. I hope my bill will receive a full and prompt public hearing, as a result of which we may move ahead to reaffirm the idea that parental involvement is a cornerstone of sound educational policy.●

By Mr. HELMS (for himself and Mr. EAST):

S. 2866. A bill to require the Secretary of the Interior to enter into an agreement with the State of North Carolina with respect to the repair and maintenance of a certain highway of such State located within Cape Hatteras National Seashore Recreational Area; to the Committee on Energy and Natural Resources.

MAINTENANCE AND REPAIR OF A CERTAIN HIGHWAY IN NORTH CAROLINA

● Mr. HELMS. Mr. President, I am today introducing legislation to authorize the Department of Interior to assist the State of North Carolina in improving and maintaining N.C. Highway 12, which lies within the confines of the Cape Hatteras National Seashore Recreational Area.

The Cape Hatteras National Seashore Park is a beautiful jewel in the necklace of barrier islands that stretch along the scenic coastline of North Carolina. Unfortunately, however, this jewel has a flaw—the highway through the park is in a state of serious disrepair.

Mr. President, the State built N.C. 12 primarily to serve the needs of its citizens who live in several villages that are now enclaves with the park. When the park was created in 1953, the State retained jurisdiction over the highway to protect access to these villages. Since that time, however, large numbers of visitors have been attracted to the area. N.C. 12 has had to bear much more traffic than it was designed and built for. Traffic in the park often numbers more than 5,000 vehicles per day. More than 85 percent of that volume is attributable to the park, and at least 50 percent of it is from outside North Carolina.

The State maintains the 21 miles of N.C. 12 within the park's boundaries that lie within the eight village enclaves. The State also provides ferry service connecting N.C. 12 across Hatteras Inlet and Ocracoke Inlet. But the U.S. Park Service is responsible for maintaining the park. Since the park attracts so much of the traffic on N.C. 12, the Park Service should at least assist in the improvement and maintenance of the highway through the park. This is what my proposed legislation would authorize.

Mr. President, Congressman WALTER JONES is sponsoring a bill in the House identical to the one I am introducing in the Senate today. This proposal has been developed with input from local, State, and Federal officials. I understand officials from the Deparment of the Interior and the U.S. Park Service want to help.

I urge my colleagues to support this bill.●

By Mr. CHAFEE (for himself, Mr. STAFFORD, Mr. BAUCUS, Mr. GORTON, Mr. HEINZ, Mr. MITCHELL, Mr. PELL, and Mr. TSONGAS):

S. 2867. A bill to establish a program of grants administered by the Environmental Protection Agency for the purpose of aiding State and local programs of pollution abatement and control; to the Committee on Environment and Public Works.

ENVIRONMENTAL PROGRAMS ASSISTANCE ACT OF 1982

Mr. CHAFEE. Mr. President, today I am introducing the Environmental Programs Assistance Act which would make permanent the current senior environmental employment pilot project—SEE. The Environmental Protection Agency would be authorized to employ and direct the efforts of older Americans to provide monitoring, and regulatory and technical assistance in several environmental programs. The act would be managed by the EPA with guidance from the Department of Labor at an authorized level not to exceed $250,000—a small amount to pay for the objectives of this program.

In the pilot project begun in 1977, SEE demonstrated the effectiveness of older Americans employed in jobs relating to the protection of environmental resources. For example, in Arkansas, 8 senior citizens conducted an EPA-mandated survey of open dumps within the State; in New Jersey, 21 older Americans were hired to gather followup information for an earlier survey of hazardous waste products generated by State industries; and in California, a project studied the extent to which migrant workers were exposed to dangerous pesticides while on the job. It is a rare occasion when the public derives such benefit from an investment as small as the amount expended for the senior environmental employment pilot program.

Retired, unemployed older workers have a wealth of talent and experience that should and must be used. At a time when Federal assistance for environmental programs is being reduced, additional resources are needed to help implement State and Federal programs.

The Environmental Programs Assistance Act will assist in accomplishing such projects as:

Air monitoring and emission testing; pesticides inventory and control; water quality and supply sampling and monitoring; technical libraries and public information projects; carcinogenic surveys and follow-up; hazardous materials routing surveys; health and screening in rural areas and among migrant workers; and noise abatement and control.

The bill requires that SEE participants not replace existing activities within a State. The participants must augment or improve existing programs. SEE will not displace EPA employees. This criterion in the pilot program has brought about ingenious uses of the senior environmental employment program. This trend will certainly continue should this worthy program be given permanent status.

An example of the original use of SEE is an EPA program which was spurred on by medical finding concerning the hazards of exposure to asbestos. In 1980, the EPA launched a program to help educators check school buildings for asbestos-containing materials.

The national manager of the asbestos control program, John Wilson of EPA, commended the program participants, and I quote,

> The great success of this program springs from each enrollee's unique combination of long work experience and enthsiasm to do what he can do to help people in need. We have thrown these people into some difficult situations, and in all cases they have been able to provide.

The SEE project is already a proven success based upon the pilot program. The legislation I am introducing today will give the SEE program a 3-year authorization at a level not to exceed $250,000 each year—a necessary step to insure permanence to a program that will provide many benefits. This legislation offers us the chance to more fully utilize the experience and energy of our senior citizens, and at the same time to enhance environmental programs.

Earlier this week the House, seeing the wisdom of this program, adopted similar language in an amendment to H.R. 6323, the Environmental Research, Development and Demonstration Act of 1983.

I encourage my colleagues to join with me in voting for this.

● Mr. STAFFORD. Mr. President, I am pleased to join with my friend and colleague, the Senator from Rhode Island (Mr. CHAFEE) in introducing legislation that deals with two of my major interests—the environment and the activities of senior citizens.

This legislation would establish a senior environmental employment

(SEE) program. It would be administered by the Environmental Protection Agency to assist State and local environmental programs to work better with the help of interested older Americans.

A 1977 SEE pilot project demonstrated how talented and effective many of our senior citizens are in dealing with protection of our natural resources.

Retired or unemployed older Americans can bring broad talent and experience to such tasks as air monitoring and emission testing; pesticides inventory and control, water quality sampling and monitoring, surveys of the way we transport hazardous materials, and a wide variety of other environmental activities.

At a time when the threat to our environment is growing and Federal budgets for environmental protection are failing to keep pace with the need, this program will help our efforts to protect the quality of our water, air, and land.

At the same time, the legislation makes it clear that no EPA worker may be displaced by any older American hired under this proposal.

This is one of those rare proposals that has only pluses for our Nation and for its citizens.●

By Mr. HATCH (by request):

S. 2868. A bill to amend the Federal Food, Drug, and Cosmetic Act and a related statute, and for other purposes; to the Committee on Labor and Human Resources.

FOOD, DRUG, AND COSMETIC AMENDMENTS OF 1982

Mr. HATCH. Mr. President, today I am introducing the Food, Drug, and Cosmetic Amendments of 1982.

This legislation would simplify the administrative procedures for establishing performance standards for medical devices, permit the labeling or advertising of marketed drugs and devices that have been approved under the Food, Drug, and Cosmetic (F.D. & C.) Act, and would repeal the obsolete Filled Milk Act of 1923.

Under current law, the present statutory procedures for developing and establishing performance standards for certain medical devices regulated by the Food and Drug Administration (FDA) are unnecessarily complex and cumbersome. They require, at a minimum, six separate publications in the Federal Register to establish a standard for a device. The procedures that are currently in place, if followed, will result in both governmental waste and unnecessary expense to affected persons participating in these procedures. The administration's proposal substitutes informal notice-and-comment rulemaking under the Administrative Procedure Act, with a stipulation that the Secretary of Health and Human Services consult with an appropriate advisory committee. Presently, section 301(l) of the F.D. & C. Act prohibits drug or device labeling or advertisements indicating FDA's approval of a new drug application with respect to these products. In other words, drug and device manufacturers which have received approval to market their products from FDA cannot advertise this fact during product promotions or marketing. Repeal of section 301(l) would permit drug manufacturers to provide pharmacists, health practitioners, and consumers with a means of readily determining which products have FDA approval by reference to labeling or advertisements.

Finally, the administration's bill proposes to repeal the obsolete Filled Milk Act of 1923 which prohibits shipment in interstate commerce of any milk, cream, or skimmed milk which has any added fat or oil other than milk fat. The Filled Milk Act was enacted by Congress in 1923, at a time when food technology was in its infancy. It sought to protect consumers from fraudulent products by prohibiting the interstate and foreign shipment of filled milk products which looked like milk but were actually a combination of dairy and nondairy products. This act was declared unconsitutional in 1972 and has not been enforced by the FDA since this date.

Mr. President, this legislation was submitted by the Department of Health and Human Services, and I ask unanimous consent that the text of the bill and the executive communication which accompanied the proposal from Secretary Schweiker, in which he thoughtfully articulates the purpose and rationale of this legislation, and a section-by-section summary of the bill be printed in the RECORD.

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

S. 2868

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 "Food, Drug, and Cosmetic Amendments of 1982".

REPEAL OF PROHIBITION ON USE IN LABELING OR ADVERTISING OF REPRESENTATIONS CONCERNING DRUG OR DEVICE APPROVALS UNDER THE ACT.

SEC. 2. Section 301(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(l)) (hereafter in this title referred to as "the Act") is repealed.

PROCEDURES FOR ESTABLISHING PERFORMANCE STANDARDS FOR MEDICAL DEVICES

SEC. 3. (a) Section 514(a) of the Act (21 U.S.C. 360d(a)) is amended by striking out the caption.

(b) Section 514(a)(4) of the Act (21 U.S.C. 360d(a)(4)) is amended—

(1) by striking out "and" at the end of subparagraph (B),

(2) by redesignating subparagraph (C) as subparagraph (D), and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) consider relevant safety and effectiveness data, and relevant voluntary standards developed by private organizations, and".

(c) Section 514(a) of the Act (21 U.S.C. 360d(a)) is further amended by adding at the end the following new paragraphs:

"(5) The Secretary may by regulation amend or revoke any performance standard prescribed under this section.

"(6) In promulgating, amending, or revoking any performance standard prescribed under this section, the Secretary shall consult with the appropriate panel or panels established under section 513.".

(d) The caption of section 514(c) of the Act (21 U.S.C. 360d(c)) is amended by striking out "Invitation for Standards" and inserting instead "Establishment of Standards".

(e) Section 514(c)(1) of the Act (21 U.S.C. 360d(c)(1)) is amended by striking out "a notice inviting any person" and all that follows and inserting instead "a notice of proposed rulemaking to establish a performance standard for the device.".

(f) Paragraphs (2) through (4) of section 514(c) of the Act (21 U.S.C. 360d(c) (2) through (4)) are repealed and replaced with the following new paragraphs:

"(2) A notice of proposed rulemaking for the establishment of a performance standard for a device published under paragraph (1) shall set forth proposed findings with respect to the degree of the risk of illness or injury designed to be eliminated or reduced by the proposed standard and the benefit to the public from the device.

"(3) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard, and after consideration of such comments and any report from the appropriate panel or panels established under section 513, the Secretary shall (i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (2), or (ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

"(4) Each regulation prescribing, amending, or revoking a standard shall specify the date on which it shall take effect which, in the case of any regulation prescribing or amending any standard, may not be sooner than one year or not later than two years after the date on which such regulation is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest and publishes in the Federal Register his reason for such finding, in which case such earlier or later date shall apply.".

(g) Subsections (d) through (g) of section 514 of the Act (21 U.S.C. 360d(D) through (g)), including the captions thereof, are repealed.

(h) Section 517(c) of the Act (21 U.S.C. 360 (c)) is amended in the second sentence by striking out "(2) or".

(i) Section 520(i) of the Act (21 U.S.C. 360j(i)) is amended by striking out "section 514(g)(5)(B) or".

REPEAL OF THE FILLED MILK ACT

SEC. 4. (a) The Act of March 4, 1923 (42 Stat. 1486), known pursuant to Fifty-seventh Statutes at Large, page 499 (1943) as the Filled Milk Act, is repealed.

(b) Section 902(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 392(c)) is amended by striking out "the Filled Milk Act of March 4, 1923 (U.S.C. 1946 ed., title 21, ch. 3, secs. 61-64);".

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C., July 14, 1982.

Hon. GEORGE BUSH,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for the consideration of the Congress is a draft bill "To amend the Federal Food, Drug, and Cosmetic Act and related statutes, and for other purposes." When enacted, it would be cited as the "Food, Drug, and Cosmetic Amendments of 1982".

The bill would reduce administrative burdens both for the Department and for regulated firms. The bill would simplify the administrative procedure for establishing performance standards for medical devices. It would permit the labeling or advertising of marketed drugs and devices that have been approved under the Act to include truthful statements concerning this approval. The bill would also repeal the obsolete Filled Milk Act.

The provisions of the bill are discussed in detail in the enclosed section-by-section summary.

We urge the Congress to give the draft bill its prompt and favorable consideration. We are advised by the Office of Management and Budget that there is no objection to the transmission of this draft bill to the Congress from the standpoint of the Administration's program.

Sincerely,

DICK SCHWEIKER,
Secretary.

Enclosures.

FEDERAL FOOD, DRUG, AND COSMETIC AMENDMENTS OF 1982—SECTION-BY-SECTION SUMMARY

SHORT TITLE

Section 1 would provide the short title of the bill. When enacted, it would be cited as the "Food, Drug, and Cosmetic Amendments of 1982".

Repeal of prohibition on use in labeling or advertising of representation concerning drug or device approvals under the act

Section 2 of the bill would repeal the prohibition on the use in labeling or advertising of representations concerning drug or device approvals under the Federal Food, Drug, and Cosmetic Act ("the Act"). The purpose of this amendment is to allow the labeling or advertising of marketed drugs and devices that have been approved under the Act to include truthful statements concerning this approval. The Secretary would retain his authority elsewhere in the Act to ensure that investigational devices (devices which have been approved only for limited experimental and investigational purposes) are not promoted.

Procedures for establishing performance standards for medical devices

Section 3 of the bill would repeal the present statutory procedures for developing and establishing performance standards for medical devices, and would substitute a procedure similar to the one presently in use for prescribing performance standards for radiation-emitting electronic products under section 358 of the Public Health Service Act. Under this procedure, standards would be set by informal notice-and-comment rulemaking under the Administrative Procedure Act, except that the Secretary would be required to consult with an appropriate advisory committee.

Repeal of the Filled Milk Act

Section 4 of the bill would repeal the Filled Milk Act. The Act, which bars interstate shipment of milk, cream, or skimmed milk which has any added fat or oil other than milk fat, was declared unconstitutional in 1972 and is not enforced.

By Mr. GOLDWATER (for himself, Mr. ABDNOR, Mr. ARMSTRONG, Mr. BOREN, Mr. HARRY F. BYRD, Jr., Mr. CANNON, Mr. COCHRAN, Mr. D'AMATO, Mr. DECONCINI, Mr. DENTON, Mr. DOLE, Mr. EAST, Mr. FORD, Mr. GARN, Mr. GRASSLEY, Mr. HATCH, Mr. HELMS, Mr. HOLLINGS, Mr. JOHNSTON, Mr. KASTEN, Mr. LAXALT, Mr. LUGAR, Mr. MATTINGLY, Mr. MCCLURE, Mr. MELCHER, Mr. MURKOWSKI, Mr. NUNN, Mr. RANDOLPH, Mr. SASSER, Mr. SCHMITT, Mr. STAFFORD, Mr. STEVENS, Mr. SYMMS, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, and Mr. WARNER):

S.J. Res. 234. Joint resolution to provide for the designation of the week commencing with the third Monday in February 1983 as "National Patriotism Week"; to the Committee on the Judiciary.

NATIONAL PATRIOTISM WEEK

● Mr. GOLDWATER. Mr. President, I am today introducing legislation for myself and more than 35 other Senators to designate the week of February 21 through 27 of 1983 as "National Patriotism Week." This week has been proclaimed by President Reagan twice before in 1981 and 1982, but the basic authorizing law must be renewed each year.

The idea originated with a young lady in Arizona, Miss Lori Cox, while she was a high school student. The unique nature of the week is that it is addressed to young persons especially.

The legislation would encourage, but not require, primary and secondary schools to use an appropriate curriculum for Patriotism Week. Numerous private organizations have already made commitments to assist schools voluntarily and financially in offering special activities each year during this week.

National Patriotism Week has served as a rallying point for the great majority of Americans who retain their confidence in our country, our lasting principles, and the Nation's future. In my opinion, there can never be enough patriotism.●

By Mr. HELMS (for himself, Mr. HUDDLESTON, Mr. ANDREWS, Mr. ARMSTRONG, Mr. BAUCUS, Mr. BENTSEN, Mr. BOSCHWITZ, Mr. BRADLEY, Mr. BUMPERS, Mr. BURDICK, Mr. HARRY F. BYRD, JR., Mr. CHILES, Mr. COCHRAN, Mr. DIXON, Mr. DOLE, Mr. EAGLETON, Mr. EXON, Mr. FORD, Mr. HATCH, Mr. HATFIELD, Mrs. HAWKINS, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HEINZ, Mr. HOLLINGS, Mr. INOUYE, Mr. JEPSEN, Mr. JOHNSTON, Mr. KASTEN, Mr. LAXALT, Mr. LEAHY, Mr. LONG, Mr. LUGAR, Mr. MCCLURE, Mr. MATTINGLY, Mr. MELCHER, Mr. MURKOWSKI, Mr. NICKLES, Mr. NUNN, Mr. PRESSLER, Mr. PRYOR, Mr. RIEGLE, Mr. SARBANES, Mr. SASSER, Mr. SCHMITT, Mr. STEVENS, Mr. SYMMS, Mr. TOWER, Mr. WALLOP, and Mr. ZORINSKY):

S.J. Res. 235. Joint resolution to proclaim March 21, 1983, as "National Agriculture Day"; to the Committee on the Judiciary.

NATIONAL AGRICULTURE DAY

● Mr. HELMS. Mr. President, on behalf of Senator HUDDLESTON, 48 other Senators and myself, I introduce today a joint resolution proclaiming March 21, 1983, as "National Agriculture Day."

The continuing observance of a special day commemorating agriculture is important so that all Americans, young and old, might understand and appreciate the contributions America's farmers and ranchers make to our economy. Adoption of this resolution now will allow planning for the event to move forward quickly and will alleviate time pressures next spring. A similar resolution is expected to be introduced today in the House of Representatives with bipartisan support.

Mr. President, agriculture is the foundation on which our Nation's hopes for economic recovery are based. The achievements and contributions of America's farmers are numerous and far-reaching. There are four major contributions which I would like to emphasize today: The increase in farm productivity, agriculture's impact on the overall American economy, agriculture's importance in export trade, and the values of the American farmer.

All Americans continue to have a more adequate and healthy food supply than anyone else in the world because farmers today produce over 76 percent more on the same number of acres than did their fathers. As populations expand and the need for food increases at home and abroad, the reliable American farmer meets the challenge of supplying these needs with an abundance of food.

When the family farmer intitiates his planting season, he starts a series of activities for which the economic impact extends beyond the farm to effect the urban population to a degree most Americans do not seem to understand. As President Reagan stressed in a recent address:

With all the miracles of modern day electronics, there is still no greater technological revolution than modern day American farming. . . . To produce effectively a farmer must have seed, fertilizer, fuel, chemicals, labor, machinery, and equipment—just to name a few items.

Agriculture creates jobs for over 23.7 million people—nearly 23 percent of the total available workforce. The total assets of agriculture are equal to 88 percent of the capital assets of all manufacturing corporations in the United States.

Farmers produce not only enough for their fellow Americans, but also enough to make large quantities of food available to insure a favorable balance of trade. Without the farmer's $45 billion contribution, our world export trade base would be horrendous.

All of these facts are certainly important, but they pale in comparison to the impact the strong spirit of the family farmer makes on the American character. Farm family life is one of high values, decency, honor, and dedication that spring only from living close to, and working with, the land.

For these reasons and many more, I would urge passage of this resolution to proclaim March 21, 1983 as "National Agriculture Day."●

● Mr. HUDDLESTON. Mr. President, I am pleased to cosponsor the joint resolution proclaiming March 21, 1983, as National Agriculture Day.

I think it is important to set aside 1 day each year to pay special tribute to the Nation's farmers and ranchers. Although the production of food and fiber is the foundation of our national economy, the important contributions of the Nation's farmers and ranchers are sometimes overlooked by Americans not involved in the production, processing, or marketing of agricultural products.

Today, each farmer and rancher produces enough to feed and clothe 75 Americans. In addition, because of the remarkable productivity of U.S. agriculture, Americans spend only about 15 percent of their disposable income for food—the lowest of any nation in the world.

National Agriculture Day will provide an opportunity for the Nation to focus on the agricultural segment of our economy, recognize its achievements, and get a better understanding of its problems.

I urge my colleagues to join me in sponsoring this joint resolution.●

By Mr. McCLURE:

S.J. Res. 236. Joint resolution to designate the week of October 24 through 28, 1982, as "National Water Resources Week"; to the Committee on the Judiciary.

NATIONAL WATER RESOURCES WEEK

Mr. McCLURE. Mr. President, as I have said many times on this floor before, I have been interested in the issues of water development, management, and control all of my professional life.

Such interest comes naturally, I suppose, for those of us who hail from the arid West where water is in short supply. It became clear to me early that the kind of life we are going to have—whether we are going to continue to grow and prosper or just stand still—depends on having an adequate supply of water. I think the basic truth of that statement is coming home to people in all parts of the country, since increased demand for water and the ensuant strains on water supplies has become a problem in eastern as well as western localities.

Water is not just a western concern, it is a national concern.

I believe it is important to elevate the issue of water to the high level of national concern and priority it deserves. We need to develop an understanding of these vital issues in the contexts of traditional forms of control, which differ between East and West. I am, therefore, introducing today a joint resolution to designate the week of October 24 through 28, 1982, as "National Water Resources Week."

This week coincides with the Golden Jubilee Convention of the National Water Resources Association, in Salt Lake City, Utah. For 50 years, this organization has been at the forefront of those who recognize the importance of water to our society, and who have encouraged the wise use and development of our Nation's water resources.

The National Water Resources Association—its membership and its outstanding executive director, Pat O'Meara—do a great service to this country and I am proud that I have been able to work closely with them through the years. I ask unanimous consent that the text of this joint resolution be printed in the RECORD at this point.

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

S.J. RES. 236

Whereas water is the fundamental resource upon which we rely for our social and economic activities, as well as for our health and well-being; and

Whereas water is the necessarey ingredient for the successful operation of every home, factory, city and farm; and

Whereas the continued growth and prosperity of this Nation is dependent on an adequate supply of water; and

Whereas development of needed sources of new energy will require further use of our water resources; and

Whereas expanded use of water for irrigation could increase farm production and hold down domestic food costs and provide additional commodities for export; and

Whereas without water, life itself is impossible; and

Whereas the National Water Resources Association has been an important and effective force in promoting the importance of our Nation's water resources and the wise and careful use thereof; and

Whereas 1982 marks the fiftieth anniversary of the National Water Resources Association: Now, therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the President of the United States is requested and authorized to designate, by proclamation, the week of October 24 through 28, 1982, as "National Water Resources Week," and urge all citizens in the States of the Union, the national and local governments, and groups and organizations, especially officials who are responsible for the collection, treatment, distribution, and disposal of water, to conduct educational programs and otherwise alert the citizenry of the vital importance of water to every American.

ADDITIONAL COSPONSORS

At the request of Mr. CANNON, the name of the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 894, a bill to exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act of 1976.

S. 1840

At the request of Mr. DURENBERGER, the name of the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 1840, a bill to amend section 170 of the Internal Revenue Code of 1954 to increase the amounts that may be deducted for maintaining exchange students as members of the taxpayer's household.

S. 2149

At the request of Mr. DECONCINI, the name of the Senator from Alaska (Mr. STEVENS) was withdrawn as a cosponsor of S. 2149, a bill to provide for deferrals on repayment, and a moratorium on foreclosures, of Farmers Home Administration farm loans for borrowers temporarily unable to make payments due to circumstances beyond their control.

S. 2189

At the request of Mr. THURMOND, the name of the Senator from Alabama (Mr. DENTON) was added as a cosponsor of S. 2189, a bill to amend section 1951 of title 18 of the United States Code, and for other purposes.

S. 2419

At the request of Mr. DECONCINI, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 2419, a bill to amend title 28, United States Code, regarding venue, and for other purposes.

S. 2580

At the request of Mr. MATHIAS, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2580, a bill to establish the Christopher Columbus Quincentenary Jubilee Commission.

S. 2585

At the request of Mr. HOLLINGS, his name was added as a cosponsor of S.

2585, a bill to provide that the Armed Forces shall pay benefits to surviving spouses and dependent children of certain members of the Armed Forces who die from service-connected disabilities in the amounts that would have been provided under the Social Security Act for amendments made by the Omnibus Budget Reconciliation Act of 1981.

At the request of Mr. CRANSTON, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Connecticut (Mr. WEICKER), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 2985, supra.

S. 2659

At the request of Mr. HOLLINGS, his name was added as a cosponsor of S. 2659, a bill to amend the Social Security Act to provide that disability benefits may not be terminated prior to completion of the reconsideration process including an evidentiary hearing, to provide that medicare entitlement shall continue through the administrative appeal process, and to require the Secretary of Health and Human Services to make quarterly reports with respect to the results to periodic reviews of disability determinations.

S. 2700

At the request of Mr. HOLLINGS, his name was added as a cosponsor of S. 2700, a bill to amend title XVI of the Social Security Act to exclude from resources burial plots and niches and certain funds set-aside for burial or cremation expenses for purposes of the supplemental security income program.

S. 2792

At the request of Mr. STEVENS, the names of the Senator from Florida (Mrs. HAWKINS), and the Senator from New Jersey (Mr. BRADY) were added as cosponsors of S. 2792, a bill to establish an ocean and coastal development impact assistance fund and to require the Secretary of Commerce to provide to States national ocean and coastal development and assistance block grants from moneys in the fund, and for other purposes.

S. 2801

At the request of Mr. JACKSON, the names of the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. BRADLEY), the Senator from Nevada (Mr. CANNON), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Florida (Mr. CHILES), the Senator from Maine (Mr. COHEN), the Senator from Missouri (Mr. DANFORTH), the Senator from Illinois (Mr. DIXON), the Senator from Connecticut (Mr. DODD), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Missouri (Mr. EAGLETON), the Senator from Nebraska (Mr. EXON), the Senator from Kentucky (Mr. FORD), the Senator from Washington (Mr. GORTON), the Senator from Colorado (Mr. HART), the Senator from Florida (Mrs. HAWKINS), the Senator from Pennsylvania (Mr. HEINZ), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. LEAHY), the Senator from Michigan (Mr. LEVIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Maine (Mr. MITCHELL), the Senator from New York (Mr. MOYNIHAN), the Senator from Georgia (Mr. NUNN), the Senator from Oregon (Mr. PACKWOOD), the Senator from Rhode Island (Mr. PELL), the Senator from Illinois (Mr. PERCY), the Senator from Arkansas (Mr. PRYOR), the Senator from Michigan (Mr. RIEGLE), the Senator from New Hampshire (Mr. RUDMAN), the Senator from Maryland (Mr. SARBANES), the Senator from Tennessee (Mr. SASSER), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Connecticut (Mr. WEICKER), the Senator from Delaware (Mr. ROTH), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New York (Mr. D'AMATO), the Senator from Virginia (Mr. WARNER), and the Senator from Ohio (Mr. GLENN) were added as cosponsors of S. 2801, a bill to withdraw certain lands from mineral leasing, and for other purposes.

SENATE JOINT RESOLUTION 174

At the request of Mr. LEAHY, the names of the Senator from Montana (Mr. BAUCUS), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. DIXON), the Senator from Connecticut (Mr. DODD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from Montana (Mr. MELCHER), the Senator from Rhode Island (Mr. PELL), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), the Senator from New Mexico (Mr. DOMENICI), the Senator from Illinois (Mr. PERCY), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Indiana (Mr. LUGAR), the Senator from Oregon (Mr. HATFIELD), the Senator from South Dakota (Mr. PRESSLER), the Senator from Vermont (Mr. STAFFORD), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Missouri (Mr. DANFORTH), and the Senator from Minnesota (Mr. BOSCHWITZ) were added as cosponsors of Senate Joint Resolution 174, a joint resolution to authorize and request the President to designate October 16, 1982, as "World Food Day."

SENATE JOINT RESOLUTION 213

At the request of Mr. TSONGAS, the name of the Senator from Delaware (Mr. ROTH) was added as a cosponsor of Senate Joint Resolution 213, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women.

SENATE JOINT RESOLUTION 226

At the request of Mr. COCHRAN, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Louisiana (Mr. JOHNSTON) were added as cosponsors of Senate Joint Resolution 226, a joint resolution to authorize and request the President to designate October 1, 1982, as "American Enterprise Day."

SENATE JOINT RESOLUTION 227

At the request of Mr. D'AMATO, the name of the Senator from Tennessee (Mr. SASSER) was added as a cosponsor of Senate Joint Resolution 227, a joint resolution to establish National Firefighters Week.

SENATE RESOLUTION 355

At the request of Mr. DECONCINI, the name of the Senator from New Jersey (Mr. BRADY) was added as a cosponsor of Senate Resolution 355, a resolution expressing the sense of the Senate with respect to the need to continue Federal funding for energy conservation and renewable energy resources.

SENATE RESOLUTION 444

At the request of Mr. DANFORTH, the name of the Senator from Colorado (Mr. HART) was added as a cosponsor of Senate Resolution 444, a resolution expressing the sense of the Senate that President Reagan should submit to the U.S. Senate a clear and comprehensive report on the administration's policy for minimizing the risk of nuclear war.

SENATE RESOLUTION 449

At the request of Mr. ARMSTRONG, the names of the Senator from Utah (Mr. GARN), the Senator from North Carolina (Mr. HELMS), and the Senator from Georgia (Mr. MATTINGLY) were added as cosponsors of Senate Resolution 449, a resolution expressing the sense of the Senate with respect to human rights violations in connection with the construction of the trans-Siberian pipeline.

AMENDMENT NO. 1906

At the request of Mr. CRANSTON, the names of the Senator from Oklahoma (Mr. BOREN), the Senator from Arkansas (Mr. PRYOR), and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of Amendment No. 1906 intended to be proposed to S. 2607, an original bill to amend and extend certain Federal laws relating to housing, community and neighborhood development, and related programs, and for other purposes.

AMENDMENT NO. 2016

At the request of Mr. QUAYLE, the name of the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of Amendment No. 2016 intended

to be proposed to House Joint Resolution 520, a joint resolution to provide for a temporary increase in the public debt limit.

SENATE RESOLUTION 452—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. DURENBERGER, from the Committee on Governmental Affairs, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 452

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. 2329. Such waiver is necessary because S. 2329 authorizes the enactment of new budget authority which would first become available in fiscal year 1983, and such bill was not reported on or before May 15, 1982, as required by section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

The waiver of section 402(a) is necessary to permit congressional consideration of statutory authority for an efficiency advisory roundtable to assist the Advisory Commission on Intergovernmental Relations in its consideration of proposals to rebalance the federal system.

S. 2329 authorizes such sums as are necessary to complete the work of the roundtable mandated by the bill. The Congressional Budget Office has estimated that appropriations of $300,000 over two fiscal years will be necessary for this purpose. The Committee on Governmental Affairs noted that ACIR is authorized to accept gifts and enter into contracts to finance programs similar to those mandated by the bill and made authorization for the roundtable conditional on an appropriation or other financing in advance of appointing the roundtable members. Thus, the authorization included in S. 2329 is only triggered when funds for the mandated purposes become available, and not expressly for Fiscal Year 1983.

The Appropriations Committees of the Senate and House have not yet considered legislation which would include appropriations for the Advisory Commission on Intergovernmental Relations and the roundtable in Fiscal Year 1983 and will therefore have adequate notice of this authorization. Thus, congressional consideration of this authorization will in no way interfere or delay the appropriations process.

SENATE RESOLUTION 453—DESIGNATING NATIONAL PRODUCTIVITY IMPROVEMENT WEEK

Mr. NUNN (for himself, Mr. MOYNIHAN, Mr. HOLLINGS, Mr. BOREN, Mr. HUDDLESTON, Mr. SASSER, Mr. JACKSON, Mr. LEVIN, Mr. COCHRAN, Mr. RANDOLPH, Mr. PELL, Mr. ZORINSKY, Mr. EAST, Mr. HATFIELD, Mr. HAYAKAWA, Mr. DURENBERGER, Mr. GOLDWATER, Mr. HELMS, Mr. D'AMATO, Mr. ABDNOR, Mr. KASTEN, Mr. THURMOND, Mr. TOWER, and Mr. CHILES) submitted the following resolution, which was referred to the Committee on the Judiciary:

S. RES. 453

Whereas the economic stability and growth of this Nation relies largely on the collective industry and endeavor of its working citizens;

Whereas the time-honored tradition of American leadership in work-related ingenuity and know-how has brought about great strides in productivity;

Whereas growth in productivity in turn improves the standard of living of United States citizens;

Whereas public awareness of the economic importance of productivity will promote individual and collective ideas and innovations for productivity improvement; and

Whereas a conscientious effort to improve productivity will foster a better standard of living for all citizens and reduce the level of inflation: Now, therefore be it

Resolved by the Senate of the United States of America in Congress assembled, That, for the purposes of providing for a better understanding of the need for productivity growth and of encouraging the development of methods to improve individual and collective productivity in the public and private sectors, the week of October 3 through October 9, 1982, is designated "National Productivity Improvement Week". The President is requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

Mr. NUNN. Mr. President, I am pleased today to offer a resolution on behalf of the American Institute of Industrial Engineers which designates a week in October as "National Productivity Improvement Week." A greater understanding of the effects of lagging productivity on our Nation's economy and of methods to increase productivity is necessary today as we face the great challenges of lowering inflation and achieving economic recovery. It is, therefore, my pleasure to submit this resolution, which designates the week of October 3 through October 9, 1982, as "National Productivity Improvement Week."

Traditionally, America has been the international leader in productivity growth since the machine age began. This growth has, however, slipped significantly during the past decade. Now other nations are closing the gap. Japan and Germany have surpassed United States productivity in many areas.

The 1981 tax cut bill made many important tax changes to encourage investment and plant modernization to help improve American productivity. Progress is also being made in the area of regulatory reform and the elimination of unnecessary Federal regulation and paperwork.

Increased productivity growth can play a major role in reducing inflation and at the same time create greater job opportunities and security for our workers. As wage rates increase but productivity decreased, labor costs become more inflated and it becomes necessary for the producer to pass along this expense to the consumer. Increased productivity on the other hand, creates more goods and services for the same capital investment guaranteeing the company a savings and stabilizing or lowering prices for consumers. As long as our Nation's industries can remain competitive through greater productivity, greater job security can be insured for our workers.

Productivity growth can be encouraged. A greater understanding of the serious effects of declining productivity growth will facilitate efforts to reverse this trend. Therefore, Mr. President, I am pleased that the American Institute of Industrial Engineers has continued their public information campaign to promote a better understanding of the critical aspects of productivity improvement. The members of the institute are actively engaged in efforts to enhance productivity through the management of plant design and engineering, systems engineering, energy conservation, operational research and production and quality control. The institute's public information campaign to promote a better public understanding of the need for productivity improvement are to be highly commended and encouraged. I am pleased to introduce this resolution designating October 3 through October 9, 1982, as "National Productivity Improvement Week." I am hopeful that the Senate will act expeditiously on this resolution.●

AMENDMENTS SUBMITTED FOR PRINTING

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

AMENDMENT NOS. 2041 AND 2042

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

Mr. HUMPHREY submitted two amendments intended to be proposed by him to the joint resolution (H.J. Res. 520) to provide for an increase in the public debt limit.

AMENDMENT NO. 2043

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

Mr. MOYNIHAN submitted an amendment intended to be proposed by him to the joint resolution House Joint Resolution 520, supra.

NOTICES OF HEARINGS

SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY

Mr. WEICKER. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Subcommittee on Energy Conservation and Supply to receive testimony on the Department of the Interior's Outer Continental Shelf 5-year oil and gas leasing plan. This oversight hearing will be held on

Wednesday, September 8, beginning at 9:30 a.m. in room 3110 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Subcommittee on Energy Conservation and Supply, room 3104 Dirksen Senate Office Building, Washington, D.C. 20510.

For further information regarding this hearing, you may wish to contact Mr. Gary Barbour of the subcommittee staff at 224-0613.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. McCLURE. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Committee on Energy and Natural Resources to receive testimony on the following bills: S. 2088, to require treatment of citizens of the Northern Mariana Islands as citizens of the United States of America for purposes of particular Federal statutes; S. 2089, to clarify the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands; S. 2090, to amend the application of the Clean Air Act to the Northern Mariana Islands; S. 2632, to authorize the government of American Samoa to issue bonds and other obligations and for other purposes; S. 2633, to amend the Organic Act of Guam and the revised Organic Act of the Virgin Islands to transfer the audit authority and related staff of the offices of the government comptrollers for Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa to the Office of Inspector General, Department of the Interior, and for other related purposes; S. 2729, to amend or repeal certain provisions of the organic acts applicable to the Virgin Islands, and for other purposes.

The hearing will be held on Monday, September 13, beginning at 10 a.m. in room 3110 of the Dirksen Senate Office Building.

Those wishing to submit testimony for the hearing record should write to the Committee on Energy and Natural Resources, room 3104 Dirksen Senate Office Building, Washington, D.C. 20510.

For further information regarding this hearing you may wish to contact Mr. Jim Beirne or Ms. Becky Tucker of the committee staff at 224-2564.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, August 19, at 10 a.m., to hold a hearing to consider acid precipitation and the use of fossil fuels.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. BAKER. 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 Thursday, August 19, at 9:30 a.m., to mark up amendments to the Clean Air Act.

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

Mr. BAKER. 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 Thursday, August 19, at 2 p.m., to hold a hearing on S. 2235, a bill to provide improved protection for foreign diplomatic missions.

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

ADDITIONAL STATEMENTS

ANNOUNCEMENT OF COSPONSORSHIP OF S. 2585, S. 2700, AND S. 2659

● Mr. HOLLINGS. Mr. President, I am pleased to be cosponsoring three important pieces of legislation today.

The first, S. 2585, restores the social security student benefit for the widows and children of members of the Armed Forces who were killed while on active duty or who died as a result of a service-connected disability.

As we all know, in last year's Budget Reconciliation Act phased out the social security student benefit. However, that change affected over 26,000 surviving spouses and 70,000 children of individuals who died while in the service or later as a result of service-connected disabilities. Of this group, 70,000 were the widows and children of soldiers who served during Vietnam.

Many people will ask why these widows and children should be treated differently from the survivors of other social security recipients. The answer, Mr. President, is that these student benefits, along with other Veterans' Administration programs, were part of a large package of benefits promised by the Department of Defense in documents provided to our servicemen. They were told by the Armed Forces that the social security student benefit, eliminated last year, would be there to help their families in the event they could not. And, through this combination of VA and social security benefits, they were promised that the needs of their wives and children would be met.

Mr. President, the survivors of those who gave their lives in service to this country are, in my opinion, one of our highest national responsibilities. To renege on a promise made to these people would be a terrible breach of our moral obligation. We would, in effect, be saying "Yes, we promised to provide for your family. And yes, you did make the ultimate sacrifice for your country. But no, we cannot keep our promise now because it is too expensive in 1982." That to me is bankruptcy of the worst sort—moral bankruptcy. This bill prevents it. I am proud to be a cosponsor.

The second bill I am cosponsoring today—S. 270—excludes burial plots and prepaid funeral arrangements from the supplemental security income (SSI) program assests test.

Mr. President, SSI provides income to the neediest of our elderly, blind, and disabled people. It is a needs-based program. Eligibility is determined by an assets test.

Under current law, several resources are excluded from the calculation of assets: a home, a car, property used for self-support, and reasonable amounts of life insurance. These exclusions are intended to insure that applicants need not dispose of essential items in order to qualify for SSI. Furthermore, these exclusions are intended to encourage people to provide for themselves as much as possible.

Burial plots and funeral plans are not currently included in the list of exclusions from assets. But those SSI recipients who plan ahead and are seeking some peace of mind in their later years should not be penalized. In addition, if the burial expenses are not excluded, the States and local governments will be forced to pick up the costs of the additional indigent burials.

It is absurd that we have, in many cases, forced the elderly to make a choice between giving up plans for a respectable internment or forfeiting benefits they need to stay alive. This bill eliminates that cruel choice.

Mr. President, the third bill is S. 2659, a bill to improve the new disability review process, which, in the year and one-half since its implementation, has become increasingly unmanageable.

In 1980, Congress enacted amendments that required the review of nonpermanently disabled recipients every 3 years. Regular review was thought to be necessary since evidence presented by the Government Accounting Office indicated that as many as 20 percent of the recipients on the rolls—over half a million people—were not truly disabled.

But, there have been problems in implementation of the review process, es-

pecially since the administration, in its quest for immediate savings, started the review process nearly a year before it was scheduled to begin.

The results were predictable. The States, understaffed and not prepared for the new regulations, were overwhelmed. Most recipients had their cases decided by physicians who never even saw them. Nearly one-half of the cases reviewed resulted in benefit terminations—only to have two-thirds of these decisions overturned in appeal.

The personal hardship of this merry-go-round has been devastating. The appeals process takes several months, during which time no disability benefits are received. Medicare coverage, often the most important benefit to the disabled, is also terminated, pending the appeal. Anxiety, poverty, and poor health are heaped upon those who are often the least able to handle them.

This bill makes three important changes to rectify this situation: First, it continues benefit payments for 6 months or until the first appeals hearing is held after notice of termination; second, it continues medicare benefits until the final administrative appeal has been decided; and third, it allows the recipient to be present at the first appeals hearing.

Mr. President, few in this body can doubt my resolve to have a financially sound income security system for the poor and elderly. In the past 2 years, I have offered several proposals to prevent the impending bankruptcy of social security. I also have supported the reconciliation bills to scale back our income security programs in those areas where they have gotten out of control.

But, this does not mean that I wear blinders, that good policy is no longer important. In our pell-mell rush to regain control of the income security function, we cannot forget what our objectives are. We cannot forget that we are dealing with the most vulnerable people in our society. And, we cannot forget that good budgeting works both ways—spending decreases and spending increases.

My support for these three bills in no way diminishes my resolve to see a balanced budget. But it will continue my resolve that good government can and does exist. Government can have its fiscal house in order while at the same time providing a home for the helpless in our society.

Mr. President, I submit for the RECORD an article by James J. Kilpatrick entitled "Mattie Dudley," and an editorial from the Washington Post.

The material follows:

[From the Baltimore Sun, Aug. 8, 1982]

MATTIE DUDLEY

THROUGH A HOLE IN THE SAFETY NET

(By James J. Kilpatrick)

CHARLOTTESVILLE, VIRGINIA.—The story that follows is a true story. It is not one of those events that reportedly happened to someone else in some other place. This story didn't happen once upon a time. It happened here, this week, to Mattie Dudley, 67, crippled since infancy, a little old lady in a wheelchair who peddles the Daily Progress on the streets of this university town.

As of August 1, her Medicaid benefits have been suspended for the next two years.

How come?

The government's welfare workers discovered that Mattie Dudley has assets—really, one asset—in excess of the maximum permitted by law. And what was this asset?

It was a $1,000 funeral certificate that she finally was able to purchase in 1979 from the savings of a lifetime. Possession of the certificate, guaranteeing her a funeral from the Hill & Wood Funeral Service, made her ineligible for benefits under the Supplemental Security Income program. In order to preserve her SSI benefits, she was compelled to give up Medicaid.

Charles Giametta, a reporter for the Progress, spelled out the infuriating facts in a Page One story last week. Mattie Dudley was born at Miller School in Albermarle county, where her father was a grounds keeper. A congenital condition caused her legs to shrivel and atrophy. She lives alone in a sparsely furnished basement apartment, but every day she is out on the downtown streets, a familiar figure in her canopied wheelchair, selling papers and talking to her customers.

Miss Dudley had been getting along, just barely, on her $280 a month in SSI benefits. This is a federally funded program that aids disabled or poor persons who are not covered by regular Social Security. Such benefits are limited to those persons whose assets do not exceed $1,500.

Purchase of the burial certificate in 1979 pushed her close to the limit. Now, along with a small savings account, interest on the burial certificate, amounting to $226.17, has pushed her over the top. As Mr. Giametta said in his newspaper story, she has dropped through a hole in the safety net.

When this calamitous overage first was called to her attention a few weeks ago, Miss Dudley transferred her burial certificate to a friend. The friend promised to bury her according to plan, in the gray dress in the gray casket that Miss Dudley had picked out. It turned out that mere transfer of the certificate wasn't enough. Mr. Giametta explains: "Because she did not sell the certificate and use the money to purchase necessities such as food or clothing, she violated state Medicaid rules."

Welfare workers summoned Miss Dudley to a conference in City Hall. They gave her three options: (1) She could reacquire the certificate, cash it in and spend the proceeds on approved necessities; (2) she could reacquire the certificate and keep it, and thus lose her SSI benefits; or (3) she could leave things the way they are and forfeit her Medicaid benefits for the next two years. Spinning the wheel of fortune, she picked No. 3. Goodbye, Medicaid.

"Maybe sometime I might need it," she told Giametta, "if I got sick and couldn't do for myself. But right now, I can do for myself. I ain't never sick much."

The welfare workers should not be cast as the wicked witches in this story. They were sympathetic with Mattie Dudley's plight, but rules are rules. "It's not what we want, it's the regulations we have to follow." Another local funeral home confirmed that a dozen other elderly pensioners have cashed in their pre-paid certificates in the past year in order to preserve their eligibility for welfare.

A proper story should have a happy ending. This one doesn't. Congressman Kenneth Robinson, who represents the Charlottesville area, boiled over when he learned of Mattie Dudley's case. He has introduced a bill to remedy the situation for all pensioners so situated, but the mills of the law grind slowly and for this little old lady in a wheelchair, time is running out.

[From the Washington Post, Aug. 3, 1982]

MATTIE DUDLEY'S TROUBLES

There is a lesson for budget-cutters in the story of Mattie Dudley, well told by James J. Kilpatrick on the opposite page today. It is this: there are important social values bound up in how a society runs its welfare programs, and these aren't always measured in the bottom line of a budget sheet.

Miss Dudley has been caught in one of those "welfare traps" that have proliferated in the welfare laws in the last few years. Her trouble comes from the fact that she is too much like other people—and not enough like that stereotypical wastrel whose image has guided recent developments in welfare law. Mattie Dudley wants to be productive, so, despite having been crippled from birth, she sells newspapers on the street. She knows she'll never be well-off in this life, but she thought she might at least provide herself with a decent burial.

The government, of course, could have none of that. Welfare recipients aren't supposed to have aspirations or dignity, and they are certainly not to be encouraged to accumulate any assets beyond the minimum needed for daily survival. So the welfare office threatened to take away her modest welfare grant unless she got rid of the $1,000 certificate guaranteeing her a funeral. When she gave the certificate to a friend, they got her on another technicality added to the welfare law in the budget process a year and a half ago. Because she disposed of an asset for less than fair market value, her Medicaid was cut off.

There are many such traps now built into welfare law—rules that reinforce dependency and destroy people's self-respect. The rule that we noted last week, for example, that now keeps poor youngsters from holding summer jobs lest their mothers lose all welfare aid. And the provisions that now make welfare families considerably worse off if they try to achieve independence by working.

Laws like these are corrosive in their effects on families and individuals. When they come to light in real cases, like Mattie Dudley's, they arouse the general sense of outrage. But somehow those feelings don't come forward in the cold, hard calculations of the budget process that now dominates all congressional consideration. So we'll make another argument more suitable to the times. Destroying peoples' sense of dignity and achievement doesn't save money for the taxpayer, it simply ensures that the problems of dependency will be with us for a long time to come.

There are provisions in the House Ways and Means Committee budget reconciliation bill—in conference with the Senate this week—that would dismantle some of these welfare traps. They're too late to help Mattie Dudley, but they could prevent more cases like hers in the future.●

SENATOR ROTH CONSPONSORS ERA

● Mr. ROTH. Mr. President, I rise today to announce that I have once again cosponsored the equal rights amendment.

I cosponsored this legislation in 1971, and was pleased that it passed the Congress the following year. I also sponsored an equal rights amendment in 1970 when I served in the House of Representatives.

The protection of equal rights is one of the most basic roles and responsibilities of government. That right should not be abridged in any way because of one's sex. In recent years, women have made tremendous strides in many fields and occupations previously thought limited to men.

But more needs to be done. Wage discrimination still exists. Equal pay for equal work is still not the uniform practice around this country. The equal rights amendment is designed to correct, through the highest law of our land, these remaining inequities.

However, I am concerned that the national debate over the past several years surrounding the equal rights amendment did raise certain questions as to whether the courts might be required to find that in the event of a military draft, women must be drafted. I urge the Judiciary Committee, in their consideration of the new ERA, to carefully study these sorts of questions which have been raised.

Mr. President, I hope Congress will move expeditiously on the amendment, and allow the States to once again consider its inclusion into our Constitution.●

TRIBUTE TO JAMES M. MORTON

● Mr. HOLLINGS. Mr. President, I rise on this occasion to praise the loyal service of James M. Morton (Rock Hill, S.C.), a dedicated Senate employee.

During his 4½ years of service as a Senate door attendant, Jim has endured many long evenings with his usual good humor and enthusiasm. He has become an indispensible member of the Senate family, who will be sorely missed.

Jim is leaving us to continue his education at the University of South Carolina Law School. We wish him good luck, and continued success, in his new endeavor.●

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 $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 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 August 16, 1982.

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., August 16, 1982.

Dr. HANS BINNENDIJK,
Professional Staff Member, 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 an American Republic country tentatively estimated to cost in excess of $50 million.

Sincerely,

WALTER B. LIGON,
Acting Director.●

PROPOSED ARMS SALES

● Mr. PERCY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 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 available to the full Senate, I ask to have printed in the RECORD at this point the notifications which have been received. The classified annex referred to in one of the covering letters is available to Senators in the office of the Foreign Relations Committee, room 4229 Dirksen Building.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 18, 1982.

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. 82-34, concerning the Department of the Navy's proposed Letter of Offer to Spain for defense articles and services estimated to cost $379 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

WALTER B. LIGON,
Acting Director.

TRANSMITTAL NO. 82-34

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Spain.

(ii) Total Estimated Value: Major defense equipment [1] $262 million; other, $117 million; total, $379 million.

(iii) Description of Articles or Services Offered: Twelve AV-8B aircraft with spares, related repair parts, and logistic support.

(iv) Military Department: Navy (SCA).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: See Annex under separate cover.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Included in report for quarter ending 31 December 1981.

(viii) Date Report Delivered to Congress: August 18, 1982.

POLICY JUSTIFICATION

Spain—AV-8B aircraft

The Government of Spain has requested the purchase of 12 AV-8B aircraft with spares, related repair parts, and logistic support at an estimated cost of $379 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Spain; furthering NATO rationalization, standardization, and interoperability; and enhancing the defenses of the Western Alliance by improving Spain's coastal defense. Such improvement will benefit the defensive posture of the southern flank of NATO and contribute to keeping the sea lanes open for supplying the U.S. military facilities in Spain which are important staging and reinforcement sites.

The purchase of the AV-8B aircraft will substantially improve the Spanish Navy's VSTOL capability and upgrade and modernize its air strike and support capabilities. These aircraft will be used by Spain to supplement and replace its existing AV-8A aircraft. The Spanish Navy will be capable of absorbing these aircraft within their inventory. Additionally, the Spanish Navy will be capable of performing the required maintenance of these aircraft without adverse impact on its current military capabilities.

The sale of this equipment and support will not affect the basic military balance in the region.

[1] As defined in Section 47(6) of the Arms Export Control Act.

The prime contractor will be the McDonnell Douglas Aircraft Corporation of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 19, 1982.

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. 82-80 and under separate cover the classified annex thereto. This Transmittal concerns the American Institute in Taiwan's proposed Letter of Offer to the Coordination Council for North American Affairs for defense articles and services estimated to cost $240 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,

WALTER B. LIGON,
Acting Director,
Defense Security Assistance Agency.

TRANSMITTAL NO. 82-80

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Coordination Council for North American Affairs (CCNAA), pursuant to P.L. 96-8.

(ii) Total Estimated Value: Major Defense Equipment,[1] $127 million; other, $113 million; total, $240 million.

(iii) Description of Articles or Services Offered: The Government-furnished equipment portion of 30 F-5E and 30 F-5F aircraft to be co-produced in Taiwan which includes 60 AN/ALR-46(V)3 Radar Warning Receiver sets, 60 AN/ALE-40(V)7 Chaff/Flare Dispenser systems, and 150 J-85-21 engines.

(iv) Military Department: Air Force (SFD).

(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: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: August 19, 1982.

POLICY JUSTIFICATION

Coordination Council for North American Affairs on Behalf of Taiwan—F-5E/F aircraft and related equipment

The proposed Letter of Offer and Acceptance (LOA) provides for the sale of the Government-furnished equipment protion of 30 F-5E and 30 F-5F aircraft to be co-produced in Taiwan which includes 60 AN/ALR-46(V)3 Radar Warning Receiver sets, 60 AN/ALE-40(V)7 Chaff/Flare Dispenser systems, and 150 J-85-21 engines at an estimated cost of $240 million.

The Taiwan Relations Act states that the U.S. will make available to Taiwan defense articles and services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability. The proposed sale of 60 additional F-5E/F is consistent with U.S. law and policy.

Improvement of its air defense is one of Taiwan's highest military priorities. The proposed sale would sustain Taiwan's air defense capability and thus contribute to both Taiwan's security and the maintenance of regional stability. The relative power balance in the Taiwan Strait area has not changed appreciably since normalization of relations between the United States and China. However, attrition of aging F-100, F-104, and F-5A/B aircraft between now and 1986 could degrade Taiwan's air defense capability. Accordingly, Taiwan relies increasingly on the F-5E/F and needs to procure additional aircraft to compensate for these projected losses.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Northrop Corporation of Hawthorne, California.

Implementation of this sale will not require the assignment of any U.S. Government personnel or additional contractor representatives to Taiwan.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[1] As defined in Section 47(6) of the Arms Export Control Act.

DEPOSITORY INSTITUTIONS AMENDMENTS OF 1982

● Mr. JEPSEN. Mr. President, this morning the Senate Banking Committee completed action on the Depository Institutions Amendments of 1982. I congratulate Senator GARN and the other members of the committee for resolving their differences so that the Congress can act on this important legislation this year. Following is a summary of the provisions of this legislation prepared by the Senate Banking Committee staff:

TITLE-BY-TITLE SUMMARY: DEPOSITORY INSTITUTIONS AMENDMENTS OF 1982

TITLE I.—DEPOSIT INSURANCE FLEXIBILITY

Part A.—FDIC amendments

The bill expands FDIC's powers to assist troubled banks by allowing either direct or merger-related assistance to prevent the closing of or to reopen any insured bank or when severe financial conditions threaten the stability of a significant number of banks or banks with significant financial resources and by expanding the forms of assistance. FDIC could also assist an FSLIC-insured institution or a bank or savings and loan holding company in acquiring a failing FDIC-insured bank.

This bill permits savings banks to covert from State to Federal charter and continue to be FDIC insured. The FHLBB would charter and regulate such institutions but FDIC, as insurer, would retain essentially the same powers over savings banks chartered under the bill as it retains over national banks.

The bill allows commerical banks and mutual savings banks with assets of $500 million or more which are closed or, in the case of mutual savings banks, are in danger of closing to be acquired. State consultation is mandated. Priority is given to acquisitions in-state first, contiguous states next, and other interstate acquisitions last. All bidders within 15 percent or $15 million of the highest first bid are given the opportunity to re-bid. The agency must give consideration to maintenance of local institutions along with the need to minimize financial assistance.

Part B.—Federal Home Loan Bank Board amendments

The bill expands FSLIC's powers to assist troubled thrifts by permitting assistance when severe financial conditions exist and by increasing the forms of assistance to include deposits in the institution and a purchase of its securities.

The bill provides for emergency acquisistions of insured institutions that are eligible for FSLIC assistance. Priority is given to acquisitions in-state first, contiguous states next, and other interstate acquisitions last. All bidders within 15 percent or $15 million of the highest first bid are given the opportunity to re-bid. The agency must give consideration to maintenance of local institutions along with the need to minimize financial assistance. In the case of a state chartered institution, written approval of the state regulator is required within 90 days after the state chartered institution has exhausted its net worth. The future branching capabilities of an acquired thrift are subject to national bank branching restrictions.

The need for FSLIC assistance for troubled mutual institutions will be reduced by a provision authorizing FSLIC to permit any mutual thrift to obtain a Federal stock charter, notwithstanding any other law, as long as that institution is in receivership, has contracted to receive FSLIC financial assistance or is under threat of instability because of severe economic conditions.

Another provision allows the Bank Board to waive the requirement that institutions set aside a portion of net earnings to a reserve account. FSLIC is also permitted to use its secondary reserve exactly in the manner it uses the primary reserve.

The Bank Board is allowed to appoint the FSLIC as conservator or receiver of a State chartered insured institution regardless of any state action, upon a determination that the institution is in an unsafe or unsound condition to transact business, has substantially dissipated its assets, or had assets less than its obligations. The Bank Board must seek written approval from the relevant state official prior to exercising its receivership authority, but may act without such approval if the state fails to act in a timely manner or FSLIC is appointed receiver by a public authority of an institution in default.

Part C—National Credit Union Administration amendments

The National Credit Union Administration is given flexibility and authority to handle certain emergency situations. NCUA Board can approve mergers or purchase and assumption transactions between two insured credit unions if one of the credit unions is insolvent or in danger of becoming so, if an emergency is found to exist, and if other reasonable alternatives are not available. The Board may also authorize a purchase and assumption arrangement between a failing insured credit union and any federally-insured financial institution. This authority exists without any restrictions as to field of membership or geographic area and permits other federally-insured financial institutions to purchase or assume the assets of a federally-insured credit union.

Additionally the NCUA Board is authorized to act as a conservator of an insured credit union in order to protect the interests of the members, the assets of the credit union, and the share insurance fund. In the case of federally-insured state chartered credit unions, the state credit union supervi-

sor must be consulted at least 24 hours prior to NCUA's exercise of this authority.

Part D—Sunset provision

The emergency provisions contained in Title I sunset 5 years after the date of enactment.

TITLE II—CAPITAL ASSISTANCE

This title establishes a program whereby Federally-insured financial institutions may exchange capital notes with the Federal insurance agencies to buoy up their net worth.

To qualify, institutions must (1) have net worth of less than 3 percent, (2) have incurred losses during the two previous quarters, (3) comply with the terms established by the insuring agencies (although no merger resolution may be required from an institution which after receipt of assistance will have positive net worth for at least nine months), (4) be solvent for at least six months, and (5) have at least 20 percent of their assets invested in residential mortgages or mortgage backed securities.

State consultation, as well as consultation with the appropriate Federal banking agency in the case of a commercial bank, will be required.

The initial formula will be as follows:

Net worth	*Level of assistance*
Less than 3 percent	30 percent of period loss.
Less than 2 percent	40 percent of period loss.
Less than 1 percent	50 percent of period loss.

The insuring agencies may change the formula but cannot provide more than 100 percent of period loss.

State law overrides (1) One provision ensures that the capital notes will be treated as net worth and that State chartered institutions can continue to operate and pay dividends. (2) As long as a qualified institution has notes outstanding, it will not be liable for any State or local franchise tax.

Statutory net worth for savings and loans is amended by deleting statutory minimum and requiring institutions to hold adequate reserves in a form satisfactory to the Federal Home Loan Bank Board.

TITLE III—DEPOSITORY INSTITUTIONS INSURANCE AND SERVICES

Part A.—Form of charter: demand accounts

Under this section, the Federal Home Loan Bank Board is authorized to charter Federal associations known as Federal Savings and Loan Associations or Federal Savings Banks. Their purpose shall be to provide thrift institutions for the deposit or investment of funds, and for the extension of credit for homes, and other goods and services. Existing limitations on the chartering of Federal Mutual Savings Banks and distinctions among Federal associations' investment authority are eliminated. Additionally, any institution that is a Federal Home Loan Bank member (or is eligible to become a member) is permitted to convert to a Federal Savings and Loan, a Federal Savings Bank, or a Federal Mutual Savings Bank. Conversion from stock to mutual form or mutual to stock form is also liberalized for institutions eligible to become Federal Home Loan Bank members.

Federal Associations are also given the authority to accept demand accounts from persons or organizations with an established business relationship. Additionally, the statutory 30-day notice-of-withdrawal period for savings accounts (including NOW accounts) is eliminated in order to enable S. & L.'s to be more competitive with commercial banks with respect to this account.

Finally, the existing prohibition against the issuance of capital stock by Federal S. & L.'s is deleted, and an explicit grant of authority to issue such stock is substituted. This will permit the Bank Board to authorize Federal stock S. & L.'s on a de nova basis.

Part B—Investments

Federal associations' investment authority is expanded as follows:

Overdrafts.—Overdraft loans could be issued with respect to any transactions account, rather than only NOW accounts.

Real property loans.—Existing loan-to-value ratios are deleted for residential property. Non-residential real estate lending is increased from 20 percent of assets to 40 percent of assets.

Time deposits.—Permits associations to invest in each other's time and savings deposits.

State securities.—Permits investment up to 100 percent of assets in state and local obligations.

Consumer loans.—Authorizes investment up to 30 percent of assets in consumer loans, including inventory and floor planning loans.

Personal equipment.—Invest up to 10 percent of assets in tangible personal property to engage in leasing activities.

Education loans.—Maintain 5 percent of assets limitation but broadens scope to include all educational loans.

Small Business Investment Corporations.—Restores investment authority up to 1 percent of assets.

Commercial loans.—Are phased in as follows: (1) for direct loans, up to 5 percent of assets of an S. & L. (7½ percent of assets of a savings bank) prior to January 1, 1984 and 7½ percent of assets of an S. & L. or savings bank thereafter; (2) for participations or purchases, 5 percent of assets of an S. & L. or savings bank prior to January 1, 1984 and 7½ percent thereafter.

Federal thrifts are made subject to antitying restrictions comparable to those applicable to bank holding companies. These provisions prohibit an association from conditioning and extension of credit on the purchase of a product from the association and authorize private law suits. With some limitations and grandfathering, interstate branching of Federal Associations is limited to those associations who qualify for the bad debt deduction. Further, the activities of single S. & L. holding companies would be restricted to only those permitted multiple S. & L. holding companies if the company's S. & L. subsidiary does not qualify for the bad debt deduction.

All interest rate differentials are to be phased out no later than January 1, 1985. However, any differential established after July 1, 1982 must be eliminated no later than January 1, 1984. The Depository Institutions Deregulation Committee is required to authorize a new account that effectively competes with money market funds not later than 60 days from enactment. Such account shall not be subject to transaction account reserves even though no minimum maturity is required if all transfers to third parties are prohibited and other transfers in excess of three per month are prohibited.

Part C—Preemption of due-on-sale prohibitions

Under this subsection, lenders could enforce due-on-sale clauses in real property loan contracts, notwithstanding state law, except for loans originated or assumed during a "window period". The "window period" begins on the date the state acted to restrict enforcement of due-on-sale clauses and ends on the date the federal preemption becomes effective. These "window period" loans would be subject to applicable state law for three years, and after three years the due-on-sale clauses would become enforceable, unless the state legislature acted to otherwise regulate such loans. The Comptroller of the Currency and the National Credit Union Administration would similarly be able to regulate "window period" loans originated by national banks or federal credit unions. Federal savings and loan associations and federal savings banks would be exempt from this "window period" restriction because they have had a due-on-sale regulation since 1976 whose application, in the face of inconsistent state law, was recently upheld by the Supreme Court. Nonbinding language would encourage lenders and borrowers to negotiate blended rates upon assumption of mortgages.

Nine circumstances are listed which restrict the lenders ability to enforce due-on-sale clauses. The Federal Home Loan Bank Board, in consultation with the Office of the Comptroller of the Currency, has the authority to write rules and regulations, and issue interpretations.

Part D—Miscellaneous

These provisions are largely technical. The Bank Board is given the authority to determine the appropriate security for advances, and it is made clear that courts may only assess attorneys' fees against the Bank Board when the agency loses the case. Obsolete requirements are deleted and authority is granted to compensate members of the Federal Savings and Loan Advisory Council.

TITLE IV—PROVISIONS RELATING TO NATIONAL AND MEMBER BANKS

Part A—General Provisions

The amendments to the laws governing national banks replace some of the rigid limitations imposed on national banks. They provide greater flexibility and the opportunity for more effective competition with less regulated institutions.

The lending and borrowing limits are amended. The amount a bank is permitted to lend to a single borrower is raised from 10 percent of unimpaired capital and surplus to 15 percent, plus 10 percent if the loan is fully secured. Real estate lending provisions are simplified. Rigid funding restraints are eliminated.

The bill provides for federal chartering of bankers' banks. Bankers' banks are limited charter institutions which provide services to, and are exclusively owned by, depository institutions.

There is a mechanism for the orderly disposition of unclaimed property in the possession of the Comptroller of the Currency. This property was acquired from receivers of national banks closed during the Depression and consists of the contents of safe deposit boxes. It also allows state unclaimed property administrators to examine National bank records.

Formal approval for a bank name change or relocation of headquarters to any already approved branch within the same city, town or village is eliminated. Any other move

would still require agency and shareholder approval, and would remain subject to a 30-mile limitation.

The special venue provision for national banks which permits a national bank to be sued only in the district in which its headquarters is located, is deleted, except with respect to closed banks or banks in receivership.

The bill increases the maximum allowable bankers' acceptances to 100 percent, or 150 percent if approved by the Fed. It also rewrites section 23A of the Federal Reserve Act in order to simplify it, close some loopholes and exempt transactions among sister banks.

The bill provides an exemption from reserve requirements for institutions with deposits of less than $5 million.

Part B—Financial Institutions Regulatory Act (FIRA) amendments

The Federal Financial Institutions Examination Council (FFIEC) has suggested that Congress amend certain provisions of FIRA. The agencies' several years of experience in implementing the requirements of FIRA have led them to recommend minor modifications to the law.

To provide greater flexibility, the dollar limitations on loans to executive officers for real estate and education are deleted. The $10,000 ceiling on loans for other purposes is replaced with a provision authorizing the bank agencies to determine an appropriate limit. The agencies are also authorized to set the threshold amount above which approval is required for insider loans. Certain reporting requirements are eliminated.

The bill permits a management official to be removed for a violation of the interlock prohibitions without the agency's having to prove financial loss or personal dishonesty. It also provides the Justice Department with a procedural mechanism for carrying out its responsibilities under the Interlocks Act.

The bill extends the prohibition against preferential loans to insiders of banks which maintain correspondent relationships to include the related interest of these insiders. The annual reporting requirement is also eliminated.

TITLE V—AMENDMENTS TO THE FEDERAL CREDIT UNION ACT

A large number of the credit union amendments in the bill relate to the internal operations of credit unions. As such, they are largely non-controversial and simply designed to afford credit unions and their boards of directors greater flexibility and authority in day-to-day operations.

Some amendments in this category would simplify the organizational process for credit unions by eliminating a requirement that subscribers gather collectively in order to certify their desire to form a credit union. Other amendments permit Federal credit unions to schedule annual meetings at any time during the year, chose their own titles for board officers, and convert from Federal to state charter based on a majority of those voting, rather than a majority of members.

A few amendments are designed to clarify and somewhat broaden the authority of credit unions to handle their own affairs. Boards of directors would be empowered to establish the par value of shares (although another amendment would protect consumers by insuring that the credit union pay dividends on all dollars over $5). The amount which directors and committee members can borrow without board approval is raised from $5,000 to $10,000.

Other amendments relating to internal credit union operations would make the establishment of a separate Credit Committee an option of the elected Board of Directors and would more clearly enumerate the powers of the Board of Directors.

Minor changes and clarifications in the real estate provisions of the Federal Credit Union Act account for five amendments in the legislation. These would give NCUA authority to allow first mortgage loans of more than 30 years, remove the "150 percent of media sales price" requirement, clarify the ability of a Federal credit union to refinance a mortgage, allow greater flexibility in second mortgage lending, and permit technical accounting changes in the way mortgage payments are collected.

Several amendments are aimed at clarifying or slightly modifying existing authority for credit unions. For example, one amendment makes clear that the definition of "member account" includes custodial accounts for insurance purposes and another clearly allows Federal credit unions to invest in investment funds whose portfolios are limited to permissible credit union investments.

In other provisions, credit unions are granted similar authority to savings and loans to invest in state and local Government obligation and to issue mortgage-backed securities. They also are given needed business flexibility by authorizing them to make deposits in any Federally insured, state chartered bank, rather than just state chartered banks located in the same state in which the credit union does business.

National Credit Union Administration activities and operations are addressed through a number of amendments. For instance, NCUA would be permitted to invest and receive the income from its operating fees. Another section would result in a GAO audit of NCUA on a fiscal year, rather than a calendar year, basis. This change is consistent with audits of other government agencies and has been supported by the General Accounting Office.

An amendment would provide for equal insurance treatment of state and Federal credit unions when both have funds deposited in a Federally insured credit union. Complex computations would be ended by another amendment eliminating partial year NCUA insurance premiums and rebates. Additionally the Board would be permitted to differentiate its regulatory treatment of corporate central credit unions (i.e. credit unions for credit unions) versus natural person credit unions.

The Central Liquidity Facility also would be granted the status of Agent of the Federal Reserve System. Lastly, the NCUA Share Insurance Fund would acquire the ability to borrow from the Central Liquidity Facility if necessary.

TITLE VI—PROPERTY, CASUALTY, LIFE INSURANCE ACTIVITIES OF BANK HOLDING COMPANIES

This title amends Section 4(c)(8) of the Bank Holding Company Act of 1956 to generally prohibit a bank holding company from providing insurance as a principal, agent, or broker. There are six exemptions to this general prohibition, resulting in the prohibition being principally applicable to the underwriting or sale of property and casualty insurance products. The exemptions establish a grandfather date (October 7, 1981) for the continuation of previously authorized insurance activities, such as selling credit related property and casualty coverages, and permit bank holding companies to engage in, among other things, credit life, disability, and involuntary unemployment insurance activities and general insurance agency activities in towns of less than 5,000 people.

TITLE VII—MISCELLANEOUS

This title contains two amendments to the Truth in Lending Act. One title exempts student loans from truth in lending. The other excludes "arrangers of credit" in order that the Act will not apply to real estate brokers.

This title makes industrial banks eligible for FDIC insurance and also qualifies state and local governments for NOW accounts. In addition, the bill resolves three specific situations that have arisen under the grandfather provisions of the Bank Holding Company Act and the International Banking Act.

FNMA is authorized to issue preferred stock and its statutory debt to equity requirements are eliminated. The grandfather date for phasing in reserve requirements is changed from July 1, 1979 to March 20, 1980.●

A COMMENTARY ON THE ADMINISTRATION'S PUBLIC LANDS POLICY

● Mr. LEAHY. Mr. President, I submit for the RECORD an excellent commentary on the Reagan administration's public lands policy by Senator EDWARD M. KENNEDY.

I commend the Senator for his superb statement.

The commentary follows:

[From the Christian Science Monitor, July 30, 1982]

A LEADING DEMOCRAT ON REPUBLICANS AND THE 'LAND ETHIC'

(By EDWARD M. KENNEDY)

As I travel in Massachusetts and the nation, I hear more and more complaints that the Reagan administration is selling America's common heritage of natural resources to a few powerful special interests. The founders of the Republic resisted such concentrations of power. The pioneers, homesteaders, and sodbusters of the last century recognized that America's greatest treasures are a free political system and a remarkable natural inheritance.

It is time to reaffirm their view and weave what has been called the "land ethic" into US national policy. That ethic reaffirms the self-evident truth that our natural resources are as much a shared inheritance as the right to vote.

The values that underlie the land ethic have always been part of our history. They have moved Americans to develop a unique treasure of national parks, wilderness areas, and urban parks in our cities. We have sought to preserve natural wonders and to conserve the bounty of our soil, waters, and coasts for our children's children and for generations of Americans to come.

Our success or failure in this continuing challenge is a measure of our democratic vitality. For democracy is strong only when citizens are willing to sacrifice some private gain for the greater good of the whole society. Democracy works best when our eyes are on the future and when we weigh our decisions on a scale that counts more than narrow and transitory advantages of the moment.

But at the center of national power today there prevails a fundamentally undemocratic ethic of selfishness directly opposed to the community spirit of the land ethic. Secretary of the Interior James Watt and Environmental Protection Agency Director Ann Gorsuch have put irreplaceable ecological resources on the auction block to be bought by the highest bidder. Their extremist and ideological version of private enterprise leaves very little, if any, room for a public morality of conservation and a priority on sound environmental management.

The President and Secretary Watt are now putting 50 million acres of public lands up for sale. This sale represents the biggest land grab in modern history; acreage as large as the entire state of Iowa will be gaveled over the exploitation. In a depressed market, it is likely the land will go cheap. In a recent sale of mineral rights to a billion tons of Wyoming coal, only 3 of 13 available tracts attracted more than one bidder.

It is a national tragedy that a Republican administration is abandoning the historic commitment of the Republican Party to the land ethic. Theodore Roosevelt would never have surrendered our natural legacy for a budgetary quick fix, let alone one as strikingly modest as this—a few million dollars to apply against hundred-billion-dollar deficits. President Reagan should know—and care—that the damage once done will be irreversible and that the stakes here are as lasting as the earth itself. The President says he wants an America in which everyone can be rich, but at the same time he is stripping away the natural riches which belong to all Americans.

Instead, we should remember and represent the Americans of the future when we make choices which will have ecological consequences that will reach far into the future. In this democracy, we cannot consign such major decisions exclusively to any elite group. Even our best experts cannot be certain that nuclear power is safe enough. Even our best scientists cannot predict the exact degree to which toxic wastes will damage our health and that of our grandchildren. There is no solution yet to the ecological disasters we are causing by the accelerating erosion of Midwestern farmland, the clearcutting of national forests, or the disappearance of three species a day from the face of the earth.

As citizens of this country, we should feel a special concern because America the beautiful is inextricably bound up with America the free. The first of our people determined, in the preamble of the Constitution, "to secure the blessings of liberty for ourselves and our posterity"—and the environment was part of that legacy of liberty which they fought and died to defend. In 1792, Thomas Paine wrote:

"As America was the only spot in the political world where the principles of universal reformation could begin, so also was it the best in the natural world. . . . The scene which the country presents to the eye of the spectator has something in it which generated and enlarges great ideas. Nature appears to him in magnitude. The mighty objects he beholds act upon the mind by enlarging it and he partakes of the greatness he contemplates."

Our heritage requires us to secure for posterity a natural legacy which nurtures liberty of thought and guarantees the clean air, water, and soils necessary for real long-term productivity.

There are Americans who will never have the opportunity to explore the Brooks Range in the Alaskan Rockies. Many others may never see Yellowstone or the Grand Canyon or experience the peace of a Cape Cod sunrise with sails full of the western wind. And yet I believe that these natural legacies, which are heritage of all Americans, expand the American spirit and give breath and life to our continuing experiment in democracy and equality. Before nature, we are all equal, and the wilderness and seashores and public lands we preserve remind us of this truth. "Such is the irresistible nature of truth," Thomas Paine said, "that all it wants and all it asks is the liberty of appearing."

Now as much as ever, and with the same dedication that the first Americans brought to their Revolution, we must defend the land ethic against special interests determined to convert our natural wealth into the coin of their own heedless profits. We must insist that our posterity, too, shall be able to see and sing of an America where "God shed his grace on thee—from sea to shining sea."●

SALUTE TO WALLACE R. GRAY

● Mr. SARBANES. Mr. President, it is particularly appropriate at this time, in the light of the debate which has taken place in this Chamber in recent days with respect to reform of our immigration laws, to bring to your attention to the outstanding record of achievement of Wallace R. Gray, who is retiring as Baltimore District Director of the U.S. Immigration and Naturalization Service. For more than 25 years with INS, he has served the citizens of this Nation with distinction. His career has reflected his commitment to service as an instrument for improving the public welfare.

A native of Springfield, Mo., Mr. Gray entered the Service in 1956 as a patrol inspector trainee with the Border Patrol at Yuma, Ariz. In 1960, he moved to Homestead, Fla., to assume responsibilities as a patrol inspector. Between 1966 and 1975 he devoted his energies toward similar duties at such diverse locations as Texarkana, Ark.; San Juan, Puerto Rico; Miami, Fla.; and Cincinnati, Ohio. For the last 7 years Mr. Gray has demonstrated thoughtful and vigorous leadership as Baltimore District Director.

As District Director, Wally Gray effectively steered the Baltimore office, which serves all of Maryland, through a period in which there was a dramatic rise in the number of applications for immigration benefits, at the same time as public attention was increasingly directed at the Service's administration and enforcement of our immigration laws. Marylanders have been extremely well served by his efficient management and his sensitivity in administering the law fairly and in a spirit of compassion.

Mr. President, Marylanders will soon be honoring Wallace Gray as he steps down as District Director. His friends and associates have organized a retirement dinner September 11 to recognize his distinguished record of public service. I ask my colleagues to join me in saluting this outstanding citizen.●

SEVEN VIEWS ON TAX REFORM

● Mr. GRASSLEY. Mr. President, despite wild and varied opinions on what is necessary to accomplish meaningful tax reform, the consensus is that major surgery is needed on the Tax Code.

Mr. President, I shall submit for the RECORD a series of articles from this week's U.S. News & World Report on seven different concepts of how to reform our tax system. These alternative tax systems range from a flat rate tax to a gross income tax to a value-added tax. Each of these systems seeks to add simplicity, lower tax rates, and a broader tax base to our present Tax Code.

The merits and drawbacks of these differing ideas should be understood and debated thoroughly. Although these articles only scratch the surface of the debate on tax reform, they serve as a good general overview of each concept.

Mr. President, I introduced a bill, S. 2376, earlier this year which would direct the Secretary of the Treasury or his delegate to conduct a study of the advisability of replacing the current Federal income tax system with an alternative broad-based, low-rate tax system.

I intend to offer this bill as an amendment to the debt extension bill, House Joint Resolution 520, currently pending before the Senate.

The bill was originally included in the tax reform package reported by the Senate Finance Committee to the full Senate on July 12. And then on July 23 it was included in the Tax Equity and Fiscal Responsibility Act of 1982, which passed the full Senate. But the measure was later taken out in the Senate-House conference.

I hope, Mr. President, that this body will once again display prudence by passing this act. As tax reform debate has progressed over the recent months, it has become increasingly evident to all those participating that any attempt at major tax reform will cause complications, dislocations, and transitional problems. These potential hazards must be identified, addressed, and overcome if we are to deal with this massive problem in a pragmatic way. Thorough and abundant analysis of the impact of tax reform is needed before we can begin to tackle the issue. That is what this amendment would provide.

Since tax reform is needed at once, we can lose no time in establishing the framework for reform, a job best handled by the Treasury Department. Secretary Donald Regan, testifying before the Budget Committee on August 4, indicated to me that a Janu-

ary reporting date is not unreasonable. I would urge my colleagues to support my amendment so that the Treasury can get on with this important task.

The articles follow:

WHAT TO DO ABOUT OUR TAX SYSTEM—SEVEN IDEAS

"A LOW, FLAT RATE" TO "REWARD" WORKERS

(By Robert E. Hall, Economist, Hoover Institution, Stanford University)

High income-tax rates are diverting economic resources from productive areas into maneuvers to pay less tax. A simpler income tax, levied at a low, flat rate but with few deductions, would reward people who work hard and don't worry too much about tax consequences.

It would eliminate almost all the incentive to engage in wasteful tax shelters. Many wealthy people who now pay little or not tax because of deductions and shelters would be forced to bear their share of the tax burden. At the same time, a low flat-rate tax gives relief to hardworking, straightforward taxpayers.

The plan proposed by Hoover Institution political scientist Alvin Rabushka and myself envisions an income tax that would be imposed only on employment earnings—wages and salaries. Other income, including interest, dividends and capital gains, aren't taxed when they are received by individuals. Instead, they are taxed as part of the business tax I will talk about in a minute.

Tax returns could be postcard-size. You list your compensation in the past year, and then subtract from that a personal allowance based on your marital status and family size. Currently, such an allowance might be about $6,200 for a couple filing a joint return and about $3,800 for a single person. In addition, there would be an exemption of about $750 for each dependent. The levels would be adjusted each year to reflect changes in the cost of living.

There are no other deductions. State and local taxes, interest, charitable donations—none would any longer be used as itemized deductions to reduce taxes.

A common tax rate of 19 percent would be imposed, regardless of income. Since that rate is applied after the family allowance, its impact is less for lower-income persons. The very poor end up paying no tax. Because of the substantially reduced tax rate, most middle-income people stand to come out ahead even though they have to give up a lot of deductions they can now take. But taxpayers who have been avoiding taxes, such as by aggressively using tax shelters, would pay more.

One complaint about a flat-rate tax is that it departs from the practice of imposing progressively higher rates on people as their income goes up. The fact is, we only pretend that we tax high-income people at very high rates. A family making $120,000 a year, for example, is typically paying nowhere near as much tax as the law says it should. These people have figured out ways to get large deductions and shelter income from tax. We reward people who are willing to spend the most time figuring out clever ways to avoid paying tax. I prefer a system that says, "We'll tax people at a fairly low rate, but then we'll really make them pay it."

People worry about removing the deductibility of home-mortgage interest, but remember, we also propose to exempt interest income from tax. Savers will thus demand a smaller return, and the resulting fall in interest and home-mortgage rates will offset the loss of the interest deduction.

A flat rate solves many problems. The marriage penalty, for instance, is cut to a minor amount because the tax rate is the same for everyone. Two working people are no longer bumped into a higher tax bracket when they get married.

The income tax on businesses can be simplified, too.

Our suggestion is to levy a flat 19 percent rate on all the earnings of a company after is expenses. The firm would list the value of its sales, then subtract such items as the compensation it has paid to its workers and the cost of the materials it has purchased. It also could deduct the cost of investments it made in the year. There's no stretched-out depreciation deduction; an entire investment is immediately deducted in the first year. The complexities of depreciation are eliminated, along with the investment tax credit.

This means a lower corporate tax rate than the current 46 percent; but the base upon which it is imposed would be larger. Interest payments, for example, aren't deductible.

Our overall personal-and-business-tax proposal generates more revenue than is now collected. Based on current assumptions about the federal budget and economic outlook, the plan could balance the budget in 1985. In addition, its simplicity will cut down the time needed to check returns and decide tax questions.

TAX ALL INCOME BUT "REDUCE TAX RATES"

(By Joseph Pechman, Director, Economic Studies, Brookings Institution)

Our tax system is today riddled with inequities and full of provisions that lead to economic distortions.

We should adopt a simplified comprehensive tax base under which all income is taxed and most deductions eliminated. We could then reduce tax rates across the board in all tax brackets, providing extra incentive to work and save and still raise the same revenues.

Because of deductions and exemptions, people with the same total income now pay vastly different amounts of tax, depending on the sources of their income and the expenses they can write off. I see no reason why people with the same income and family responsibilities should pay different taxes.

We create financial distortions by encouraging people to put savings in one form rather than another and by giving special breaks to certain economic activities. Tax-exempt industrial-development bonds, for example, funnel money into the particular forms of favored investment as against having the savings available for all enterprise. Likewise, the law encourages people to invest in tax shelters rather than in investments that yield ordinary incomes.

Special provisions complicate the tax law and the tax return to the point where most people can't understand them. That's an atrocity in a democratic society.

There are not many deductions that I favor retaining. I would keep a deduction for unusual medical expenses and casualty losses—say outlays in excess of 10 percent of income, compared with the 3 percent threshold for medical expenses under the law now.

I also back a deduction for state income taxes. Those rates vary a great deal, and a federal-tax deduction has the desirable impact of moderating the differences among states with respect to total tax burden.

If we want to encourage charitable giving, we could do it better in most cases by a subsidy rather than muddying the tax system with deductions. Nevertheless, I support a deduction for those who make an unusual effort—say people who donate more than 3 or 5 percent of their income.

For businesses, I'd allow deductions for actual expenses but would end the percentage depletion allowance, deferral of tax on export earnings, and investment credits. Depreciation write-offs that more closely reflect wear and tear on equipment would replace the overly generous rapid write-offs now allowed. As a result of all of this, the basic corporate tax rate could be lowered substantially.

On the income side, I want to eliminate all tax-exempt interest. I don't see why we should subsidize state and local governments through the tax system. If we want to subsidize them, we should do it directly.

Capital gains, under my plan, would be subject to the same rates as regular income.

I would include in the tax base all unemployment-compensation benefits, though the lowest-income people would be exempt. In addition, I would include a least half of Social Security benefits in the tax base. Though workers pay tax on their half of Social Security contributions, the half that is paid by employers now escapes tax.

My purpose is not to favor any particular income group. I want to broaden the tax base for all taxpayers and use the extra revenue to reduce tax rates at all income levels. My objective is to get rates down to a range of about 8 percent at the bottom to 28 or 30 percent at the top.

Though rates must come down, they should stay progressive. I am against a single flat rate for all income levels, because a flat rate would reduce the taxes of those in the highest income classes and raise them for low and middle-income taxpayers. Most people, I believe, support some degree of progression as appropriate. Paying an extra dollar of income as tax is clearly less of a burden for a millionaire than for a wage earner on the assembly line.

I propose generous personal exemptions and a big zero-bracket amount, commonly thought of as a standard deduction. These provisions protect people with incomes below the poverty line from being taxed. If this plan were in effect now, the amount of income excludable for a family of four would be close to $10,000—$2,600 higher than it is under present law.

Over all, taxpayers would end up about the same as now. The total tax take will not increase. Even the tax taken in each income class can remain the same, though how the burden is allocated in each class will shift. People won't be able to get away with murder because of big deductions, loopholes and a lot of tax-exempt income. People who now pay too much tax, including higher-income people with few deductions, will pay lower tax.

TAX CONSUMPTION, NOT SAVING OR INVESTING

(By David F. Bradford, Professor of Economics And Public Affairs, Princeton University)

Attempts to levy a tax based on income are causing unfair treatment of taxpayers and immense complications. One result is that people who save and invest are penalized. That's especially so in a time of inflation, when, for example, savings may lose

real buying power but still be taxed on their apparent growth.

Switching to a consumption-based tax would end the unfair and economically harmful traits of our current system. A consumption tax is closely related to an income tax with a big difference—it excludes from taxation all income put into savings and investment.

A deposit to a savings account, for example, is deducted from income subject to tax. A withdrawal is added to your taxable base. In a similar manner, investment in stocks and bonds is deducted; receipts from stocks and bonds are added.

There is flexibility as to the tax's structure. It could generally follow the current system's form or be different.

The levy, for example, could be at a single rate or at a series of progressively higher rates, as we now have. Personal exemptions, similar to the $1,000 allowed today, would presumably be retained, and, if desired, many of the present deductions could be kept. Deductions for charitable donations and state and local taxes, for example, are compatible with a consumption tax. But since money going into savings and investment isn't taxed, it wouldn't be appropriate to give deductions for interest expenses on borrowing.

By adusting rates, a consumption-based tax can be devised so that different income groups bear the same tax burden as they do now. What changes, however, is how the burden is distributed within each group. Within each class of people, savers are benefited and consumers are relatively more burdened. For instance, high earners who are saving for their children's education come out ahead. Those who are consuming heavily out of borrowed money come out worse.

The same consumption approach can be used for business. All purchases of assets would be deducted from the tax base, and all sales of assets or returns from assets would be included. Purchase of items for inventory, for example, are deducted; sales out of inventory are included. Businesses would immediately deduct the full cost of an investment in new machinery. It is written off all at once, instead of over a number of years.

One of the most important reasons for a consumption-based tax is that it simplifies the determination of tax liability. It's stunning how many smart people are involved in working out the complicated features of the tax code, most of which arise from an effort to define, measure and tax income instead of consumption.

Capital gains account for tremendous complexity. It's simple with a consumption tax—you don't tax them. Depreciation is also no problem—you don't have it.

A consumption tax eliminates the problem of levying a tax on income and profits that have been puffed up by inflation but haven't increased in real terms.

Some supporters of a consumption-based tax argue that it will increase savings and investment, but that's not the strongest argument for it. Simplicity and equity are the most important factors in its favor.

If we enact this sort of tax, revenue collections could fall because of the lack of tax on funds going into savings and investment. But it is wrong to regard that as a loss in tax liability. While every dollar put into savings or investment reduced current tax liability, a future tax liability is created for the time when the savings and investment are taken out for spending.

From an overall economic view, a consumption tax doesn't really penalize spending or promote savings. What's important is that it is neutral toward savings. It lets you decide whether you want to consume now or in the future.

ELIMINATE MUCH OF PERSONAL INCOME TAX

(By Jim Jones, Texas Businessman, Founder, J. H. Jones Company, Supplier of Industrial Equipment)

Many of the bookkeeping, enforcement and other problems in our tax system can be ended by doing away with much of the personal income tax and relying instead on a tax levied on the gross income of business firms. Such a gross-income tax, or GIT, would be imposed on a firm's revenue after deductions only for the cost of goods bought by the firm. A firm couldn't deduct labor or other operating expenses, and there are no depreciation write-offs or investment credits.

A shoe store, for example, deducts only the cost of the shoes it buys for resale. An auto maker deducts the cost of materials used in car making, as well as the cost of components bought from suppliers. Service firms, which generally buy little, may get no deductions. The tax will be at a single low rate between 4½ and 7½ percent, depending on how much revenue we want it to yield. These low rates would eliminate the need for deductions.

A GIT is levied on a company whether it makes a profit or not. Loss companies now don't pay income tax and can even sell the tax-saving benefits of their losses to profitable firms or carry over the losses to offset future profits. That increases the tax burden on profitable companies, who thus subsidize money-losing firms.

Individuals would be exempt from tax on wages up to $50,000 a year. Someone with compensation over $50,000, though, is treated as a business entity for that excess. There will have to be a transition period, but eventually wage levels would adjust to reflect the fact that the first $50,000 is tax-free.

Investment income will be taxed as gross business income, though for the sake of efficiency, I would exempt amounts under a certain level, maybe $5,000 a year. Deducted from the total subject to tax is the cost of the investment.

If you buy $10,000 of stock and sell it for $15,000, your gross taxable income is $5,000. Interest and dividends are fully taxed since there is no cost to deduct.

Behind my proposal is the view that business activity is the real generator of taxable revenue. By switching to a GIT, we levy tax closer to the source of that revenue.

A simple GIT, moreover, allows companies to make economic decisions rather than worry about the tax consequences of a move. Instead of maneuvering for tax purposes, firms ought to be figuring out how to make more money, sell more goods and increase their output.

"A VALUE-ADDED TAX" ON ALL TRANSACTIONS

(By Al Ullman, consultant, former chairman, House Ways and Means Committee)

The present high-rate income tax if offering the wrong economic incentives. The income tax penalizes additional work effort. It rewards spending and discourages saving.

The only reason our society can struggle along with high interest rates is because they are tax deductible, and high tax rates make those deductions more valuable. For people who pay tax at the top rate of 50 percent, the government, in effect, pays half of their borrowing cost.

To turn the incentive around, I would favor a significant reduction in income-tax rates. To make up the shortfall in revenue, I propose imposing a business-transaction tax imposed on added value. Although differing from the European version, most people would call it a value-added tax.

Under such a VAT, every business transaction is taxed. The tax is imposed on the value that a firm adds to the product or service it sells. A manufacturer is taxed on the difference in value between the raw materials it buys and the value of the manufactured product it sells. In the case of a firm providing a service, where there is no value at the start, the tax is levied on the total value of the service.

A VAT differs from a sales tax because a VAT is spread throughout the economy. A fabric maker pays tax on the difference in value between the raw materials used and the finished cloth. A dress manufacturer then pays tax on the value added when the cloth is turned into a garment. Later, a wholesaler pays tax on the difference between what it pays for the dress and what it sells it for. A retailer pays tax on the difference between the wholesale cost and the final consumer selling price.

It is an equitable tax that is easily collected.

My last formal proposal, in 1980, included a 10 percent rate with exemptions for food, shelter and medical care. By exempting necessities, you counter the claim that a VAT is a regressive tax that ultimately lands on the poor because of higher prices for the items such people buy most.

Higher-income people who spend a lot on nonnecessities would bear more of the burden. Of course, the more you save or invest, the less value-added tax you face.

Remember, I don't want to levy a VAT on top of the existing income tax, but rather as a supplement to a simpler and much lower income tax, preferably with few deductions and with only a few steps of increasing rates as income rises.

An important benefit of a VAT is that, under international agreement, firms exporting goods could get a rebate of the value-added tax on the items they export, while goods entering the U.S. would be subject to the VAT. That's what is done now in Europe, but because we don't have a VAT, our exports are penalized and imports to the U.S. get a break.

A VAT can also replace the existing corporate income tax, thus moving away from the concept of taxing a company based on its profits. Efficient companies are now penalized with higher taxes, and inefficient companies usually benefit from lower taxes.

You would clean up all the deductions companies now get and eliminate the economic distortions created by firms making business decisions with an eye on the tax law.

A company that produces with a minimum of added cost will pay the least amount of taxes. Or, if a company with low production costs adds in a large profit, that will be taxed as part of the value added to the product.

A VAT is geared to encourage efficiency. High-profit companies shoulder a relatively greater share of the burden. So do less efficient companies. It's the efficient companies that maintain a narrow profit margin on each sale that benefit the most.

CHANGE LONG-TERM CAPITAL-GAINS RULES

(By Samuel J. Foosaner, Federal-Tax Attorney, New Jersey)

Because of the way capital gains are taxed, millions of investors are now disposed to hold on to securities and other assets for longer than they otherwise would. That can mean missed opportunities if decisions are based on tax consequences rather than on economic and business factors. By changing the rules, we can encourage investing, stimulate the stock market and raise extra tax revenue.

Rather than requiring someone to hold an asset for more than a year to qualify for favorable long-term capital-gain rates, I propose letting them sell out earlier in exchange for paying a higher tax rate, though still less than the ordinary rate applied to regular income.

Under current law, which may change, if you hold an asset for more than a year and then sell it, 60 percent of the profit is not taxed. This means that the maximum tax rate on capital gains is 20 percent, instead of the 50 percent maximum tax rate which applies to ordinary income.

Being taxed at ordinary-income rates instead of at the long-term capital-gain rate discourages many taxpayers from selling or exchanging capital assets held short term, even where large gains may be involved.

What I am proposing is that we retain a 60 percent tax exemption for assets held longer than 360 days, but also allow lesser exclusions for shorter holding periods: 55 percent for from 271 through 360 days, 50 percent for from 181 through 270 days, 45 percent for from 91 through 180 days, and 40 percent for up through 90 days. For someone in the 50 percent bracket, these additional exclusions would translate into top effective rates of 22½, 25, 27½ and 30 percent, respectively. For people in lower brackets, their effective capital-gains rates change in a similar way.

This change in capital-gains treatment will encourage turnover of money and give the economy a shot in the arm. Americans like action. They like to buy and sell at a profit. This will satisfy their speculative desire. And, of course, if someone elects to sell out earlier at the higher rate, that means a bigger tax take for the government.

This is better than retaining the present tax and simply shortening the holding period for capital gains. That's a tax cut that will generate opposition. My plan is a tax-raising measure and, thus, should face less resistance.

"PAY OFF PUBLIC DEBT" WITH A TEMPORARY TAX

(By Charles W. Steadman, Chairman, Steadman Security Corporation, Washington, D.C.)

High interest rates are strangling the country, but rates are not going to come down until we do something about the national debt. Therefore, I propose levying a temporary 5 percent excise tax on the sales of manufacturers and on imported goods, with the revenue earmarked to pay off the public debt. Such a simple and easy-to-administer tax would be imposed at the final level of manufacture, with no exemptions whatsoever.

This arrangement would be similar to the Federal Highway Trust Fund, which collects gasoline and other taxes from users and spends revenue solely for development and maintenance of the nation's highway system.

As things now stand, the federal government is simply taking too much of the country's available savings for its own credit needs, forcing up interest rates. Businesses, as a result, face stiff competition for the capital they need, and consumers can't afford the loan rates charged to buy a house or a car. The strains on the federal budget are enormous. Interest on the public debt is the third largest item in the budget and, at the rate it is growing, will double in the next five years.

A special tax to repay the debt, now just over a trillion dollars, will reverse the trend. Based on 1981 figures, a 5 percent excise tax would yield about 113 billion dollars a year.

Of course, the yearly deficits themselves will have to decline, too, or it will be like pouring money into a bottomless hole. Thus, this plan ties in well with the various proposals to require a balanced budget and to put a cap on federal spending.

Though prices might rise as a result of the new tax, that impact will be more than offset by the benefits people gain from the reduction in interest rates.

I want to emphasize that this is a single-purpose tax. When the debt has been retired, the tax will self-destruct.

I think I'm addressing a popular desire. The country is in a no-growth pattern, and we won't change that until we can finance new plant and equipment. Taking understandable steps to deal with the public-debt problem will have a galvanizing effect on national psychology because people will see that something positive is being accomplished.●

RADIO MARTI

● Mr. JACKSON. Mr. President, to help clarify key issues in the current discussion of Radio Marti, I want to bring to the attention of my colleagues an editorial in today's Washington Post. This editorial evaluates a number of questions that have been raised as to the wisdom of establishing a station for broadcast to Cuba and concludes that "an effective Radio Marti could be of value to American foreign policy."

I ask that this editorial be printed in the RECORD.

The editorial follows:

RADIO MARTI'S HOUR

The administration-proposed Radio Marti, which would broadcast news of Cuba to Cubans, faces an evident do-or-die mark-up session in the Senate Foreign Relations Committee; it has already been approved in the House. For lack of an enthusiastic champion in the committee, the station could conceivably succumb to the prevalent atmosphere of doubt. This would be, we think, regrettable. An effective Radio Marti could be of value to American foreign policy.

The principal doubt about the station is that it represents a hard, intrusive line when the real need is for a moderate negotiating line. But broadcasts are not inconsistent with negotiations. Why not conduct both? Anyway, there need be no apology for a hard line if by that is meant offering Cubans an American-style alternative to the material put before them by their government-controlled media—as Radio Free Europe and Radio Liberty do for East Europe and the Soviet Union. Certainly, open broadcasts are a more acceptable expression of administration hostility to Fidel Castro than, say, another Bay of Pigs. In this administration there is undeniably a danger of the broadcasts' becoming propaganda broadsides; the experience with RFE and RL and the certainty of failing to gain or keep an audience constitute the best guarantees against such a turn.

The second area of doubt about Radio Marti concerns Cuban radio interference with domestic broadcasts in the United States and other countries of the hemisphere. The Cubans are threatening to step up the number and power of their international broadcasts if Radio Marti goes on the air. But wait a minute: Cuba is a mouse of a country with, already, an elephant's radio roar. Its radio interference and its refusal to be a good neighbor of the air waves long predated the announcement of Radio Marti. The latest Cuban threats recycle familiar and ambitious international broadcast proposals that Havana may or may not have the resources to deliver on. The correct response for the United States is to keep on insisting, with similarly aggrieved Latins, that Cuba accept the standard procedures for working out disputes over radio broadcasts.

The administration has misadvertised and over-sold Radio Marti as something like the beginning of the end for Fidel Castro. That's foolish. It is enough that it is a modest and potentially useful step to make available to interested Cubans a flow of information and opinion that Americans have routinely provided to other communist-controlled countries for decades and that Americans rightly take for granted for themselves.●

JOHN CHAMBERLAIN

● Mr. D'AMATO. Mr. President, nearly 35 years ago Henry Luce, founder and editor in chief of a publishing empire that included Time magazine and Life magazine, sent one of his top writers to New Haven to find out if it was true that the chairman and editor of the Yale Daily News was a conservative. Mr. Luce, a Yale grad himself, found this hard to believe, and in the context of the times his disbelief is understandable. But it was true. The editor was William F. Buckley, Jr., and the Luce journalist was his chief editorial writer, John Chamberlain.

That episode and many more are described in the foreword to "A Life With the Printed Word" by John Chamberlain to be published in mid-October by Regnery/Gateway. Interestingly, the foreword, preprinted in the August 20 issue of National Review, is by the same William F. Buckley, Jr., now editor of National Review, author, columnist, television personality, and a journalist of some note.

Because the man, John Chamberlain, is so unique in the world of journalism, I would like to insert Mr. Buckley's foreword in the RECORD. While John Chamberlain's biography modestly describes him merely as a staff writer, John Renssalaer Chamberlain is an editor, columnist, author,

book reviewer, tennis buff, skier, snorkler, family man, and for many years keeper of the conservative faith. His career spans more than 50 years going back to 1926 as a reporter for the New York Times and his work as book review editor for the Times in the late 1920's. He later edited Fortune magazine, taught news writing at the Columbia School of Journalism in the early 1940's—where his students included Marguerite Higgins, Edith Efron, and Elie Abel—was chief editorial writer for Henry Luce at Life magazine in the 1950's, helped give birth to the Freeman and National Review, wrote for Barron's and the Wall Street Journal, and for the past 20 years, he has commented on national affairs in his popular column, "These Days," syndicated by King Features Syndicate to nearly 175 daily newspapers. His book, "The Enterprising Americans: A Business History of the U.S.," is a classic and required reading in most university economics departments and schools of business administration.

I ask that the world of John Chamberlain as described by Bill Buckley in the August 20 issue of National Review be printed in the RECORD as a testament to a truly enterprising American.

The article follows:

INTRODUCING JOHN CHAMBERLAIN AND HIS WORLD

(By William F. Buckley, Jr.)

Late one afternoon in the fall of 1955, on the eve of the appearance of the first issue of National Review, something people more loftily situated would have called a "summit conference" was set in New York City, for which purpose a tiny suite in the Commodore Hotel was engaged. Tensions—ideological and personal—had arisen, and the fleeting presence in New York of Whittaker Chambers, who had dangled before us in an altogether self-effacing way the prospect that he might come out of retirement to join the fledgling enterprise, prompted me to bring the principals together for a meeting which had no specific agenda, being designed primarily to reaffirm the common purpose.

As I think back on it, two of the five people present at the outset were born troublemakers. To say this about someone is not to dimiss him as merely that: Socrates was a troublemaker, so was Thomas Edison. But troublemaking was not what was primarily needed to distill unity, and so things were not going smoothly, one half hour after the meeting began. And then, when it was nearly six o'clock and I thought I detected in Chambers a look of terminal exasperation, John Chamberlain came in, a briefcase in one hand, a pair of figure skates in the other. He mumbled (he usually mumbles) his apology . . . He had booked the practice time at the ice rink for himself and his daughters . . . The early afternoon editorial meeting had been protracted . . . the traffic difficult . . . No thanks, he didn't want anything to drink—was there any iced tea? He stole a second or two to catch up on Whittaker's family, and than sat back to participate in a conference—which had been transformed by his presence at it. When a few days later Chambers wrote, he remarked the sheer "goodness" of John Chamberlain, a quality in him that no man or woman, living or dead, has ever to my knowledge disputed.

At the time a sharp difference had arisen, not between me and John, but between Willi Schlamm and John's wife, Peggy (RIP). Schlamm viewed the projected magazine as a magnetic field, professional affiliation with which could no more be denied by the few to whom the call was tendered, than a call to serve as one of the Twelve Apostles. Poor Peggy would not stand for it: John was serving then as editor of Barron's magazine. Before that he had been with The Freeman, before that with Life, before that the Wall Street Journal, before that Fortune, before that the New York Times. In each of these enterprises he had achieved singularity. He had two daughters not yet grown up. How could anyone reasonably ask that now, in middle age, he detach himself from a secure position to throw in with an enterprise whose working capital would not have seen Time magazine through a single issue, or Barron's through a dozen, and whose editor-in-chief was not long out of school?

I like to remind myself that I did not figure even indirectly in the protracted negotiation, respecting, as I did, not only the eminence of John Chamberlain, but also the altogether understandable desire of his wife for just a little economic security. But Willi was very nearly (nothing ever proved that conclusively shocking to Willi) struck dumb with shock. That was one of the clouds that hung over that late afternoon discussion, in which Willmoore Kendall exploited every opportunity to add duel to the fire, principally by the device of suggesting that for some people security means everything; the kind of thing John did not wish to hear, among other things because it so inexactly reflected his own priorities—he was concerned not with security, but with domestic peace.

So it went, and in one form or another the tensions continued, though they never proved crippling. John settled the problem by moonlighting—as lead reviewer for National Review. But I learned then, during that tense afternoon, the joy of a definitively pacific presence. Ours might have been a meeting to discuss whether to dump the bomb on Hiroshima; and John Chamberlain's presence would have brought to such a meeting, whatever its outcome, a sense of inner peace, manliness, and self-confidence.

There are stories he does not tell, in this engrossing autobiography; stories about himself, and this is characteristic. Bertrand de Jouvenel once told me, in a luncheon devoted to discussing our common friend Willmoore Kendall, that any subject at all is more interesting than oneself. Actually, I am not sure that this is so, because some people know no subject thoroughly other than themselves, but with John Chamberlain self-neglect is not an attribute of manners, but of personality. When National Review started up, he would come in to the office every week (it was then a weekly) and, sitting down in whatever cubicle was empty, type out the lead review, with that quiet confidence exhibited by sea captains when they extricate their huge liners from their hectic municipal slips to begin an ocean voyage. After 45 minutes or so a definitive book review was done; and he would, quietly, leave, lest he disrupt the office.

In those days "the office" consisted of six or seven cubicles, each one with desk and typewriter. Most of NR's top editorial staffers, from the beginning on, have served only part-time—James Burnham, Willi Schlamm, Willmoore Kendall, Whittaker Chambers, Frank Meyer—so that although they would, week after week, always use the same office, at any given moment at least one cubicle was unoccupied, though seldom the same one. A young graduate of Smith, age 24, four or five months into the magazine's life complained to her classmate, my sister, that the repairman who came once a week to check the typewriters had not once serviced her own. No one was more amused on hearing this than John Chamberlain, the delinquent typewriter repairman, who that week, servicing the typewriter, had written a marvelously illuminating review of the entire fictional work of Mary McCarthy.

I never saw him, during the Thirties, slide into his chair at the New York Times to write his daily book reviews, many of them masterpieces of the form. Nor at Fortune, returning from two weeks on the road to write what he here calls a "long piece," which would prove the definitive article on this or that intricate problem of management or labor. Or at Life, presiding over the editorial page which was Henry Luce's personal cockpit, from which he spoke out, through John, to God and man in authoritative, not to say authoritarian, accents: but I decline to believe that in any of these roles, or in any of the myriad others—as professor at Columbia, as dean at the University of Alabama, as book writer, or columnist—John Chamberlain ever did anything more disruptive than merely to greet whoever stood in the way, and amble over to wherever the nearest typewriter was, there to execute his craft: maintaining standards as high as any set by any critical contemporary. Because John Chamberlain could not ever sing off key. And the combination of a gentle nature, and a hard Yankee mind, brought forth prose of which this book gives a representative sample. The voice of reason, from an affable man, unacquainted with affectation, deeply committed to the cause of his country, which he believes to be co-extensive with that of civilization; and certainly, with that of his two girls by his first marriage, and his son—a budding young poet—by his second, with the enchanting Ernestine, to whom he went soon after Peggy's untimely death.

In this book Chamberlain seeks to bring the reader quiety along, that he might reexperience the author's odyssey. He does this, characteristically, without pushing or shoving; as if to say that if—at any point—the reader desires to hew to a different turn in the road, why that is all right by Chamberlain; although the probability is that, if the reader will reflect substantially on the data, he will in due course come around.

The data!

We are all familiar with autobiographical accounts of ideological explorations, some of them wonderfully exciting. John Chamberlain's is surely the most soft-throated in the literature. As a young man who had demonstrated his prowess as a critic (William Lyon Phelps called him the "finest critic of his generation"), as a political thinker manifestly addicted to progress, he wrote his book Farewell to Reform, in which he seemed to give up on organic change, suggesting the advantages of radical alternatives. But his idealism was never superordinated to his intelligence, and in the balance of that decade of the Thirties, and following that of the Forties, Chamberlain never ceased to look at the data, which care-

fully he integrated in his productive mind. Along the line (he tells us) he read three books, so to speak at one gulp (how many books has he read, reviewed, during his career? Or better, Has anyone read, and manifestly digested, more books than John Chamberlain?)—and the refractory little tumblers closed, after which he became what is now denominated a "conservative," though Chamberlain prefers the world "voluntarist." The books in question, by the three furies of modern libertarianism—Rose Wilder Lane, Isabel Paterson, Ayn Rand—provided the loose cement. After that, as he shows us here, he ceased to be surprised by evidence, now become redundant; evidence that the marketplace really works, really performs social functions, really helps live human beings with live problems.

This book is a story of that journey. Its calmness and lucidity, its acquiescent handling of experience, free of ideological entanglement, provokes in the reader the kind of confidence that John Chamberlain throughout his life has provoked in his friends; that he is that to them—a friend—but that in no circumstances are the claims of friendship so to be put forward as to run any risk of corrupting the purity of his ongoing search, through poetry, fiction, economic texts, corporate reports—and, yes, seed catalogues—for just the right formulation of what may be acknowledged as the American proposition, by which an equilibrium of forces breeds the best that can be got out of the jealous, contentious, self-indulgent, uproarious breed of men and women that have made so exciting a world here, giving issue, in one of America's finest moments, to a splendid son, who here has given us his invaluable memoirs.●

ORGANIZED LABOR: "BUSY BEING BORN"

● Mr. KENNEDY. Mr. President, the eminent historian Henry Steele Commager once observed that Americans have customarily regarded change and reform as part of the natural order of things.

In the 1980's, the United States is entering a new economic epoch which will test once again the ability of the American people to adjust in new ways as our society continues to evolve.

No segment of our society will be more affected by these changing conditions than will the American labor movement. Fortunately, organized labor is keenly aware of the dramatic challenge that it faces.

I recently read a stimulating and perceptive article which discusses some of the ways in which the labor movement is already adjusting to these rapidly changing times. The article which was coauthored by Glenn E. Watts, president of the Communications Workers of America, is entitled "Organized Labor: 'Busy Being Born.'" It is also included in a new book, "Making It Happen: A Positive Guide to the Future," published by the U.S. Association for the Club of Rome.

President Watts' insightful article provides a wealth of information on the changing composition of the work force and emerging employment patterns which ought to be examined by anyone interested in finding a long term solution to our unemployment problems.

I ask that the text of the article be printed in the RECORD.

The article follows:

ORGANIZED LABOR: "BUSY BEING BORN"

(By Glenn E. Watts and Lou Gerber)

A period of reordering our priorities: The United States is entering a new economic epoch, and the American labor movement is alert to that fact. In the decades ahead, mastery over the physical environment will no longer guarantee growth in productivity and in employment.

We are already seeing a heightened interplay between technological development, the availability of vital resources, and changes in human values. The evolving recombination of these forces will form the DNA "building block" that will determine organized labor's role in the United States and in the world.

The traditional image of America has been of a cornucopia endlessly able to satisfy consumer appetites. But because of the transition that is now under way, that image is giving way to a new reality. As a consequence, the United States will now endure a period of painful readjustment, as we seek to cope with natural resources that are shrinking and a slower pace of economic expansion.

As America enters a post-affluent period of reordered priorities, this process of transformation will stand in marked contrast to the unparalleled economic uplift experienced by our nation's wage earners since the end of World War 2. Indeed, as working people in the decades ahead contend with what Buckminster Fuller has described as "more with less," they will experience a series of austere challenges.

One outcome will be a new ethic, which will significantly alter the landscape of human values. It will extol the virtues of recycling and conservation. It will rein in the impulse that drives us to acquire and consume material goods.

TECHNOLOGY AND JOBS

As new technologies flourish and others gradually disappear, the jobs of many wage earners are going to be eliminated or radically altered. And our country will confront the perplexing problem of providing these displaced wage earners with employment opportunities and suitable working conditions.

The development of efficient new machines may constitute "progress." But the evolution of useful inanimate devices can also be accompanied by the dark prospects of unemployment, personal alienation, and economic upheaval. It is understandable that workers dread and resist being simply cast aside as social driftwood before the onrush of technology.

Yet without the improved productivity that comes with the development or more efficient machines, America and the world may not be able to meet essential human needs. So, like Solomon, we face a dilemma as we try to balance adverse arguments, a dilemma that will demand our most creative thinking.

The telecommunications industry and its patterns of technological development are a case study of all this. New devices are rapidly coming into use which will significantly transform the composition of the telephone industry's labor force in the coming decades. In fact, massive changes are already altering job content and skill requirements. In particular, efficient electronic switching systems and broad-based computerization of operations are causing a decrease in labor requirements throughout the industry.

Examples of new instrumentalities of telecommunication that are being developed, with portentous potential impact on jobs, are glass fiber cables and a contrivance known as a millimeter wave guide. The glass fiber cables will transmit pulses of light in place of the electrical signals and radio waves now in use. The millimeter wave guide is an underground tube through which radio signals are transmitted.

It is not yet clear which of these evolving systems, waveguide technology or fiber optics, will be the primary telecommunications transmission medium of the future. But what is becoming unmistakably evident is that either or both could profoundly alter the composition of the industry's basic workforce.

Telephone operators have already been enormously affected by indoor developments in telecommunications. The switchboard, for example, has been replaced by an electronic console that automates most of the switching and billing tasks on previously operator-assisted and long-distance calls.

Intercept operators, who handle calls to disconnected or other nonworking numbers, are being supplanted by a machine that automatically handles such calls. This is done by means of computer-assembled voice reponse, explaining the cause of the interception and providing new number information.

An automatic coin telephone soon to be tried involves a further threat to telephone operators' jobs. This machine can monitor and compute charges on coin phone calls without any operator contact at all.

Jobs traditionally held by women have been adversely affected by these recent innovations and impending changes more than jobs traditionally held by men. Male employees in the industry have been engaged largely in construction, installation, and telephone maintenance occupations. In the future, however, technological change will also affect a wider variety of telecommunications employment, including the highly skilled craft positions that have been dominated by men.

A possible solution to this and similar problems in other American industries would be to require, as a component of technological advancement, careful examination of the implications of proposed industrial advances for job dislocation. Such an examination could be made a mandatory part of an overall assessment of a new product's value to society.

In any case, if the United States and other nations are to avoid creating a large class of dissident unemployed former wage earners, there will need to be a heightened awareness of the job dislocation prospects inherent in technological development. And it will be essential to have available job retraining programs and, if necessary, adjustment assistance to help displaced workers overcome job dislocation.

More generally, when a technological development threatens the well-being of large numbers of workers in any industry, the government should be required to conduct a human dignity or social impact study. This would parallel the requirement under the National Environmental Policy Act of 1969 that an environmental impact statement (EIS) be prepared before major public projects are undertaken.

Just as today the design of proposed bridges or dams must include an EIS about impacts and alternative ways to less endanger the environment, the effect of the implementation of technological changes on human dignity and social well-being should be an integral part of our technological progress and rational economic planning.

Technological change and job-induced stress: The notion of a human dignity impact study would also be relevant in another challenging area, that of the relationship between technological change and job-induced stress. Most research in this area has been centered on the "stress of success," the workaholic pattern among middle and upper-level management in business. In 1979, however, the Communications Workers of America (CWA) conducted a national "job pressures" day to sensitize the public to the stresses that workers are currently experiencing in coping with the modern worksite, impassive supervisors, and mechanization.

In the future, labor will emphasize the need for close scrutiny of the stress of adjusting to changing work roles. Examples of the many facets of this problem are compulsory overtime work in a leisure-oriented society, entrapment in dead-end jobs, and the feeling of many workers that they are treated like "machines" rather than people. Negative feelings arising from such work-related problems directly contribute to job dissatisfaction, absenteeism, and stress-related illnesses.

Technology affects working people not only by reducing the need for their services and by producing job-related stress, but also by changing the patterns of activity at the workplace. To assess the implications of technological change for working people, the Communications Workers of America recently held the first national conference sponsored by an American labor union to focus exclusively on helping workers adjust to new patterns of work.

A theme repeatedly emphasized by union delegates attending this conference was the need for continuing education and retraining to enable employees to keep abreast of new techniques and equipment. This need for the enhancement of old skills and the acquisition of new ones contrasted sharply with the situation in the past, when workers went to school or enrolled in apprenticeship and training programs that were expected to prepare them for lifelong careers.

To analyze further the present awkward relationship between the technology of tomorrow and future employment, the labor movement must continue to monitor all new developments and their potential impact on workers.

THE CHANGING WORKFORCE

Burgeoning technological developments may well revolutionize the way in which Americans live in the future, but human energy and skill will continue to be the United States'—and the world's—most precious resource. The nature of our national workforce is rapidly changing, however, and will soon bear little resemblance to the employment picture we know as recently as a decade ago.

In the coming years, the rate of growth of the domestic workforce will decline drastically as a result of the slowing increase in the number of working-age individuals. The Congressional Joint Economic Committee has projected the expansion of the labor force to be only two-fifths as rapid in the next decade as it was in the last one.

Moreover, as the post-World War 2 baby-boom generation approaches middle age, a major transformation will occur in the age of American jobholders. Persons in the 25-54 age group in the United States constituted 61 percent of the total workforce in the middle of the 1970s, but they will amount to almost 90 percent in 1990. Teenages and young adults (ages 16-24), who comprised 27 percent of the labor froce in 1975, will make up only 18.5 percent by 1990.

Despite the slowdown in the rate of growth of the workforce, the labor movement anticipates more and more young workers of both sexes will choose to benefit from collective representation. It is especially interesting for the future of the labor movement to note that the majority of union members today are under 40 years of age, and a substantial part of the majority consists of those under 30. The average age of union members is expected to decrease in the coming years.

Women in the workforce: This slowdown in the growth of the labor force will be somewhat offset by a continuing increase in employment participation rates among women. In 1970, 43 percent of women held jobs. Nine years later, a clear majority, 51.4 percent of women were employed.

Similarly, the actual number of women in America's workforce leaped in the same period by almost 40 percent, from 31.5 million to 44 million. The women who have entered the labor force in recent years were not, by and large, "liberated" women in quest of self-fulfillment. Instead, they were bringing home an essential second income necessary to put food on the table, buy shoes for their children, and pay the rent or make a mortgage payment.

As a result of the changing male/female composition of the workforce, only a small percentage of the country's 58 million families today consist of a father who works and a mother who remains at home, the pattern of a generation ago.

As a sidelight of this new social situation, one of the most illuminating statistics of our time is the fact that 8.5 million American families are now solely supported by women breadwinners.

Despite the growing number of working women, and the existence of equal pay laws, female workers earned only 59¢ for every dollar male employees were paid in 1979. By comparison, 40 years ago, in 1939, wages of female workers comprised 58 percent of male salaries, meaning that despite the recent emphasis on equal rights and affirmative action in the workplace, there has been a change of only one percent in four decades.

The low pay of these workers has resulted largely from the fact that women have been segregated into female job ghettos. For example:

80 percent of women in the workforce are found in the lowest-paying, least-skilled, least-unionized occupations.

One-third of all female employees are in clerical occupations, the same proportion as a decade ago.

98.6 percent of all secretary-typists, 97 percent of nurses, 91.5 percent of bank tellers, 90.7 percent of bookkeepers, and 86 percent of file clerks are women.

Despite the increase in the number of women in the American workforce, only 6.7 percent of all female wage earners carried a union card as of 1979. Between 1976 and 1978, however, the labor movement gained one-half million new female workers. Because of this sudden upsurge, women now constitute 27.4 percent of all organized American workers.

Eleven million more women are expected to enter the workforce by 1990. Many of these new women workers, along with those currently employed, will be motivated to join unions if the deplorable disparity between the pay of female and male wage earners is not corrected.

In the coming period, the labor movement will redouble its efforts to organize women, especially those in clerical, retail, and other traditionally female jobs. Labor unions will seek to raise women's consciousness so that they will become aware that there is no better road to economic equality in the workplace than via a union contract.

A related trend involving female members of the labor force is the goal of "equal pay for comparable work." Recently, with this goal in mind, the Equal Employment Opportunity Commission launched a study to determine whether procedures exist or can be developed to measure and evaluate women's jobs according to their "real worth."

The purpose of the study is to devise a means of ensuring that real progress will be made toward seeing that wages paid all workers reflect skill, effort, responsibility, and working conditions—without regard to the sex of the jobholder. Promotion of the concept of equal pay for comparable work was urged in a resolution adopted unanimously by the 105 affiliated unions at the AFL-CIO's convention in November, 1979.

College graduates entering the labor force: In addition to women, the number of college graduates entering the labor force will expand in the near future.

The National Planning Association projects that, by 1985, there will be an annual surplus of 700,000 college graduates relative to professional and technical jobs available. Estimates of the total oversupply of recent degree recipients in comparison to the positions open to them range as high as 6-8 million by 1990.

This gloomy prospect contrasts sharply with the expectations of college students, 68 percent of whom, according to a recent poll, will be seeking jobs in which they can express themselves and 77 percent of whom will be looking for a challenge in their employment.

The predictable clash of high hopes with harsh reality may trigger a traumatic reversal of the historical pattern in which successive generations of college graduates have obtained employment in work of a higher status than that in which their parents were engaged. Instead, many degree holders may be forced to accept jobs of lower status, although they will have received more education.

Disillusionment from this experience could result in a rise of alienation and the development in the United States of a class of dissident, underutilized intellectuals similar to those who form a chief ingredient in the seething cauldron of frustration that often erupts in emerging nations. A "Coxey's Army" of unemployed college graduates, however, could be avoided through the development of programs similar to the Federal Writers and Artists Projects undertaken in the 1930s.

Continuing shift to a "service economy": An additional prominent feature of the labor force in the years to come will be the continuing shift in the United States to a "service economy." America first became a service economy in the early 1950s, when more than half of the labor force became

employed in non-goods-producing industries. Indeed, during the quarter-century from 1950 through 1974, only a little over one million of 27 million new jobs added were in goods-related industries.

Early in the 20th century 3 out of every 10 jobs were in service industries. But by 1970 it was 6 out of 10. And by the mid-1980s, only 20 percent of the labor force will produce all of our agricultural and manufactured goods, while the remaining workforce will be concentrated in services.

WORKERS' VALUES CHANGING

As its physical resources dwindle, America is beginning to experience a stunning revival of neglected human values. Reflecting this humanistic reawakening, the range of workers' values in undergoing a rapid transformation.

Employees are placing a growing emphasis on attaining self-fulfillment at the worksite as a basic human need. As we approach the third millennium, "being rather than having" may become the ultimate value at the workplace as well as in other phases of life.

Because of this development, "self-actualization" may well be the psychological watchword of the future in labor-management relations and in industrial psychology. This term connotes improving one's opportunities for individual development, autonomy, and choice.

The United Auto Workers has pioneered in the emerging trend toward emphasis on the "quality of worklife." The UAW signed an agreement in 1973 with General Motors, which urged local management and employee groups to cooperate in experiments and projects designed to augment humanization of the workplace.

There are more than 50 such UAWGM programs under way. They have resulted in improvements in discipline and product quality as well as a diminution of absenteeism and worker turnover. CWA has also been active in the quality-of-worklife movement.

The principal achievements, however, have been the enhancement of human dignity, the strengthening of self-esteem, and the promotion of self-fulfillment at work. These have been the fundamental objectives of the trade union movement since the 19th century when it was in the forefront of the effort to humanize the workplace by fighting for restrictions on child labor.

Another idea that is part of the new thinking on the quality of worklife is a program of sabbatical educational and advanced training for all members of the workforce. Under such a program, employees would take leave from their jobs one year out of every seven, to go back to school, acquire new skills, improve existing skills, or pursue public service.

Some companies, in fact, have established a system of "Fulbright Fellowships," for people who want to take a year or two away from their jobs and engage in public service. Expanded implementation of this idea and similar plans would not only assist workers in preparing to develop new skills, but also improve the outlook and performance of those who have grown stale on the job.

Employers themselves would benefit from such a program. Among the rewards reaped by employers would be a reduction in job-hopping and the providing of management with a more stable, interested, and regularly upgraded workforce.

Reappraisal of material success: One of the most interesting examples of the revolution in values taking place in the workforce is the growing conviction among both white-collar and blue-collar employees that the "nose to the grindstone" way of life is too high a price to pay for material success.

This appraisal entails a dilution of the Puritan ethic, with its spartan precepts of hard work, unflinching loyalty to employers, and suppression of desires that conflict with "duty."

The drive to reach the top is being replaced by the need to keep one's life on a satisfying and relatively even keel. Success is defined in relative terms, achieving a rational balance between commitment to making a living and enjoyment of an enriched lifestyle.

In a development closely related to this, young workers especially evidence a preoccupation with finding a way of life that expresses the unique individuality of each wage earner. Indeed, the compelling appeal of the "human potential" movement is shown in a Yankelovich poll of workers under age 30. According to the survey, young workers—male and female, white and black, white collar and blue collar—want jobs that contribute to others or society, are challenging, and offer the opportunity to learn and grow.

Beyond GNP: One of the most striking ideas with regard to worker values is the notion that the gross national product will soon outlive—or may have already outlived—its usefulness and the basic index of America's national progress. To replace GNP, Dr. Preston Cloud of the University of California at Santa Barbara has proposed a new barometer of national well-being which he calls the Enhancement of the Human Condition [EHC]. Other efforts with a similar goal are being pursued elsewhere.

Dr. Cloud's formula for measuring the EHC involves adding together the positive indicators that reflect improvement in the quality of life, such as the number of jobholders, advanced educational degrees, protected land, and other desirable attributes, and subtracting such negative factors as joblessness, crime, poverty, unrecycled waste, and other components of the "misery index" in our society.

Work as self-expression: Finally, of special interest to social theorists, the growing emphasis placed on "quality of work" may even compel a sharp modification of the age-old assumption of manpower economists that people work to make money. This, in turn, may result in a redefinition of what we mean by the word "work."

The next generation may come to think of work as an essential human need for self-expression in the spirit reflected by Robert Frost in his poem "The Road Not Taken," in which he explained how he decided to make his avocation his vocation and why "that has made all the difference."

COLLECTIVE BARGAINING AGENDA

During the next 20 years, organized labor will expand its collective bargaining agenda to include several pathbreaking trends that are beginning to be evident.

One evolving practice provides hope for workers to satisfy their need for personal participation in the shaping of a world of proliferating complexity. This is the process of codetermination, the joint labor-management planning of a company's future. Already embraced in Western Europe, this concept may take hold in other nations as a means of giving wage earners a greater sense of partnership in guiding a business' destiny.

The Chrysler loan guarantee legislation signed into law by President Carter, for example, contains a provision requiring representation of the United Auto Workers on the board of the auto company. The results of this pioneering development will be closely scrutinized.

Akin to codetermination is another idea that gives working people an incentive to achieve prosperity for their employer. This concept involves the increased use of employee stock ownership plans, intended to give workers a direct stake in their company's financial health. The goal of these plans is to improve productivity in the workplace. This idea also would benefit business by providing much needed capital, the "mother's milk" of economic expansion in the private sector.

CWA and the American Telephone and Telegraph Company have recognized the rewards that this new idea promises for both management and working people. They have cooperated in the establishment of employee stock ownership plans.

Another emerging idea is the policy of indexing workers' wages in relation to the cost of living. The indexing concept as a means of fighting inflation has been endorsed by political economists spanning the spectrum from the late English Fabianist John Maynard Keynes to the contemporary University of Chicago conservative Milton Friedman.

Automatic inflation adjustment is a principal feature of the federal government's budget policy. Virtually all federal retirement and disability programs are indexed, as are many welfare benefits, including food stamps, child nutrition assistance, and supplementary security income payments. In the private sector, cost-of-living provisions were included in 26 percent of union contracts negotiated in 1979.

Along a different line, we may see a workweek shortened to 32 hours. Moreover, "flextime" programs, which are found in a number of collective bargaining contracts in European nations, may become more prevalent. Under "flextime," employees are permitted to select work hours that meet job requirements but also enable them to fulill their varied life activities more conveniently.

Perhaps the most difficult conflict in the collective bargaining arena in the coming years will be the struggle for the control of workers' pension fund assets. Indeed, the late Senator Philip Hart (Democrat, of Michigan), who chaired the Senate Antitrust Subcommittee, prophesied that the future battle for control of pension capital will "be the central structural and policy problem of America's economy for years to come."

Pension fund assets—the deferred wages of 50 million American workers—are now the largest source of investment money in the American capitalist system. They are now worth over $600 billion.

The pervasiveness of pension funds is reflected in the fact that they own an estimated 20–25 percent of equity in American corporations and 40 percent of corporate bonds. By the way of comparison, the total accumulation of workers' retirement assets in the United States is larger than the combined GNP of the United Kingdom and France. Given the present growth rate of pensions, which is about 10 percent a year, these assets will be worth $1.3 trillion by the end of this decade.

While retirement money represents the deferred wages of millions of workers, many large pension funds are not directly controlled by the workers who are their intend-

ed beneficiaries. Instead, management in such cases acts as the sole executor of workers' pension money rather than sharing the administration with employee representatives.

To many unions, management's exclusive control of workers' pension capital represents "investment without representation." To the labor movement, this calls to mind the similar slogan of America's founding fathers 200 years ago.

Ironically, the managers of pension funds sometimes invest workers' prospective retirement income in blantantly anti-union companies. In this way, they provide an invigorating transfusion of economic assistance to union-busting employers.

Moreover, such pension fund managers are not attuned to good investments that are also socially valuable. As a result, unions are now reexamining the current policy of management control of pension funds, with an eye toward attaining joint administration of this vast pool of venture capital.

TRANSNATIONAL UNIONS

Labor unions in the United States have observed with concern the unprecedented growth of U.S. companies with foreign affiliates or subsidiaries. During the last 10 years, such international corporations have grown so fast that their combined sales exceed the gross national product of every industrial country in the world except the United States and the Soviet Union. Several years ago, General Motors alone had annual sales that exceeded Switzerland's gross national product.

Many foreign nations provide a bountiful, cheap labor supply that will work under substandard conditions at less than American wage levels. For example, in Hong Kong alone, 60 percent of the adults work a seven-day week, and 40,000 children aged 14 or younger work at least 14 hours a day.

Taking advantage of these concentrations of low-priced labor, large multinational companies in effect have exported the jobs of millions of American workers. Furthermore, employment of foreign nationals in plants of U.S. companies abroad is predicted to increase at a rate more rapid than the employment of American wage earners at these companies' plants in the United States.

To cope with the problem of runaway plants and other vexing issues, American labor unions may well turn increasingly to existing international organizations, such as the ILO [International Labor Organization] and the 16 international trade secretariats composed of national unions from different countries with members working in related industries or occupations.

These structures may be utilized more in the future than they have been in the past. They can provide the institutional framework for promoting cooperation among unions of many nations seeking to counter the global threat of businesses that exploit employees.

FORGING NEW COALITIONS

Organized labor has long been an active participant and an agent for progressive change on our national legislative-political scene. Although the traditional emphasis of labor's trust was on bread and butter issues, unions are becoming more cognizant of the need to maintain an ecological balance and to preserve the environment from the ravages of pollution. Reflecting this awareness, they are more and more joining forces with other thoughtful groups in pursuit of a sustainable world.

To this end, the labor movement worked alongside environmentalists to obtain enactment of a landmark federal law outlawing strip mining. Similarly, environmentalists have joined with labor to defend the Occupational Safety and Health Administration, to demand the removal of carcinogens and other toxic substances from the workplace, and to protest the continued operation of textile plants in which workers have been stricken with brown lung disease.

Along the same line, an organization, Environmentalists for Full Employment, lobbied for the establishment of federal programs to achieve the purposes of the Humphrey-Hawkins Full Employment and Balanced Growth Act.

The emerging resolution of former differences between the labor and environmental movements is a hopeful sign of recognition that the human species is riding a precarious vehicle in its voyage on spaceship Earth, and that the planet's "supply depot" must be carefully utilized.

AN EVOLVING SOCIETY

Two hundred years ago the English statesman Edmund Burke wrote that "a nation without means of reform is without means of survival."

While America (plagued by high unemployment in the early 1980s) is not on the verge of becoming an economic paradise, neither does it appear about to fulfill the negative threat of Burke's warning by plunging into a national collapse. Instead, just as President Franklin Delano Roosevelt forecast in the 1930s that his generation of Americans had a "rendezvous with destiny," so the current generation of Americans appears fated to confront a dramatic challenge and a propitious opportunity to build a new and better world.

Organized labor has long perceived the American Revolution not as a finished product or a priceless antique to be polished and admired every July 4th and then placed back on the shelf, but as a dynamic, ongoing process, involving a never-ending drive toward improving the quality of life. The evolutionary character of our society will require unions to continue to put their shoulders to the wheel of history and provide a more fulfilling life for working people and their families.

Trade unionists are congenital optimists. We firmly believe in our ability to effect change for the better by facing up to the challenges and opportunities as we approach new frontiers of the future. The American labor movement is in step with a sentiment expressed by the contemporary poet Bob Dylan who, in a way different from that of Robert Frost, is in tune with the temper of his times. Dylan has written that "those who are not busy being born are busy dying."

The labor movement, along with other flourishing segments of our diverse, pluralistic society, is "busy being born" as it confronts an array of stimulating options. We see the future as a chance to seize the initiative for improving the quality of the life that was given to us and for ensuring that it will be lived with dignity in a sustainable world.●

POWER FOR ISABELLE

● Mr. D'AMATO. Mr. President, I rise to continue my efforts to educate my colleagues concerning the merits of the intersecting particle accelerator called Isabelle which is now under construction at Brookhaven National Laboratory on Long Island, N.Y. This particle accelerator is a vitally necessary scientific tool which will allow our high energy physics community to expand the boundaries of human knowledge about the way the universe works.

Contrary to public statements by officials of the Office of Science and Technology Policy, earlier difficulties with superconducting magnet design have been resolved. The new magnet design has been extensively tested and it works. OSTP officials have further stated that they anticipate difficulties in manufacturing these magnets on a production line basis. That argument is disingenuous and without merit. There are no unique or unexplored problems associated with establishing a magnet-manufacturing process. Personnel working on the Isabelle project at Brookhaven have had extensive experience with other particle accelerator construction projects. They have converted other products of research and development efforts to production line manufacturing processes. They will be successful again converting superconducting magnets from research and development products to production line products.

Recently, the development of the accelerator's power supply took a major step forward. The Isabelle Power Supply Group moved into the accelerator tunnel. They became the first people to be assigned to the facility on a regular basis. They are preparing for a major test of magnets and power supplies scheduled for next spring.

Anita Cohen, writing for the August 13, 1982, edition of the Brookhaven Bulletin, described their activities in a story entitled "Tunnel Has Powerful Tenants." I comment that article to my colleagues' attention.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

TUNNEL HAS POWERFUL TENANTS

The Power Supply Group of Project ISABELLE moved recently. And with that move, technical associate John Dunning, engineer Bob Edwards and technical supervisor Mike Iwantschuk became the first people to be assigned to the accelerator tunnel on a regular basis. "Lots of people are working out there," Edwards said, "but we're the only ones living out there."

The group moved to the Wide Angle Hall in order to facilitate completion of the power supply system needed for the full cell test scheduled for the spring. At that time, a string of prototype superconducting magnets—six dipoles and two quadrupoles—will be tested, along with many of their support systems.

Some of the power supplies that will be used in the full cell test are prototypes of those that will eventually be installed at 19 locations around the accelerator tunnel to provide two types of power for the superconducting magnets. First, the main magnet power supplies must be capable of ramping the magnet current up to 4,200 amperes at 600 volts dc (over 2.5 megawatts). When ramping is completed and the magnets level

off to steady-state operation, the supplies must hold the current to less than 10 parts per million. To prevent excessive ripple current, a phenomenon which can result in an undesirable increase in beam size, the main magnet power supply system has been designed for a maximum ripple current of one part in 10^7.

Overall, these specifications require a precision which, Edwards said, "is at least an order of magnitude tighter than the magnet power supplies at the ISR [intersecting storage rings] at CERN." These tight tolerances are necessary to control the working line and higher level resonances associated with a proton-proton colliding beam accelerator.

Early testing has shown that the main magnet power supply is reliable and stable over the short term to approximately one part in 10^6. Two of these supplies are being used to test superconducting magnets. While operating for the past 24 months and running 50 hours a week, these supplies are producing impressive performance statistics—averaging over 5000 hours without a failure.

In addition, the accelerator will require over 400 magnet correction coil power supplies with power ratings from 1000 to 50,000 watts, some with precision specifications similar to those of the main supplies.

By the time these power supplies are completed, the Group will have been joined in their headquarters in the Service Building by many other groups. But for now they are alone in the tunnel. With only a pocket pager for one-way communication with other parts of the Lab, they are looking forward to the day when telephones are installed and a real road winds its way to the Wide Angle Hall.

Still, the group members feel that being in the tunnel has many compensations. Dunning calls their unique setting "a new frontier" and finds that working at the accelerator site is "an adventure."

On the practical side, Edwards explained that moving the group to the tunnel "solved a space problem. Since we were preparing to set up the power supply system, it was a natural thing to move out here." Then he added, "And we wanted to be the first ones here anyway."●

GORDON RULE

● Mr. WARNER. Mr. President, Gordon Rule, dead at the age of 75, will be remembered as a husband, friend, a dedicated public servant, a watchdog who courageously pursued and identified waste in the Government—especially in the Department of Defense. His efforts often reached legendary proportions.

As Chief of the Navy's Procurement Control, Gordon dedicated himself to the implementation of sound procurement practices. With a keen vision he worked to insure that Government funds were not wasted. Oftentimes, his was the lone voice raised in opposition to procurement waste.

Gordon was not afraid to sound the alarm irrespective of the ramifications to him personally.

Moreover, Gordon was evenhanded. He was equally concerned about contractors doing business with the Government. He scorned the practice of Government officials supplying rosy cost estimates to Congress only later to admit that the costs would indeed exceed the estimates. He tried to insure that industry did not get bulldozed into signing contracts with hidden cost overruns.

Gordon earned his reputation of courage and honesty. This reputation was well-known to Members of Congress. They recognized and respected his expertise in and his opinion of Government procurement practices. He was called upon often to testify before congressional committees and to share his perspective on an issue with Members of Congress even after his retirement.

The Commonwealth of Virginia has lost an honorable citizen and our country has lost a dedicated patriot. Gordon Rule was a giant in our times. We all shall miss him and we will always remember him.●

HOW THE SENIOR COMMUNITY SERVICES EMPLOYMENT PROGRAM IS ADMINISTERED

● Mr. GRASSLEY. Mr. President, in recent weeks both Houses of Congress have passed resolutions endorsing the senior community services employment program, that part of the Older Americans Act known as title V. These resolutions provided a sense of Congress regarding the continued funding of this program within H.R. 6863, the general supplemental appropriations bill.

During the many laudatory floor statements submitted during the resolution colloquy, no mention was made of the way this significant program is administered.

The senior community services employment program is administered partially through State governments and partially through national contractors. This is specified in the 1978 amendments to the Older Americans Act and is reemphasized in the conference report on the 1981 amendments. It is important that this specific structure be maintained despite the report language of H.R. 6863 conferees; the efficient management of the program and the continued employment of older workers being served by the program is too important to do otherwise.●

INSTITUTE FOR DEMOCRACY

● Mr. MOYNIHAN. Mr. President, I would like, if I may, to bring to the attention of the Senate an important essay by the distinguished journalist William Safire, published just this morning in the New York Times. It concerns the proposal made by President Reagan, in the course of his celebrated address to members of the British Parliament on June 8, that the United States establish a nongovernmental Institute for Democracy to propogate democratic principles and practices abroad.

As Mr. Safire notes, informal discussions are now underway between various officials in the administration and certain officers of both the Republican and Democratic National Committees with respect to how the institute should be organized and what exactly its mandate should be. Senators will recall that it was agreed at the outset that the two National Committees would be the principal sponsors of the institute, in order that it might become an enterprise devoted to proselytizing American-style democratic practices rather than the particular policies of any given administration. It has been hoped that an institution designed to explain and demonstrate in the Third World the actual workings of modern democracy—party organization, trade unionism, a free press—might be established as an enterprise largely independent of government, even if it were to be financed in part by public moneys.

That this initiative will be most effective if separated from the usual bureaucratic process of government is explained by Mr. Safire in these words:

• • • (T)he organizers do not agree on the center of power: Is this to be primarily a State Department operation? That would guarantee incoherence; State's inclination is traditionally to soothe rather than upset foreign countries. A CIA front? That would get shot down here even before it had a chance to be discredited abroad. A foundation effort? That usually leads to philanthropoid mush.

It would be a mistake to center this much-needed activity in government, since that would invite constant hectoring about "destabilization" from overseas and from isolationists. The trick is to put the power of encouraging foreign party competition in the hands of the two American parties.

Certainly this should be the work of the two principal American political parties. Moreover, their respective chairmen, and their staffs, have demonstrated more than their willingness to handle the task; they have already demonstrated their aptitude and competence for this immense responsibility in the conduct of the informal negotiations to this point.

Charles Manatt, for the Democratic National Committee, and Richard Richards, for its Republican counterpart, have done an outstanding job in accommodating a broad range of views and interests relating to the Institute for Democracy, as they have moved the discussion ever closer to a consensus with respect to the vital questions involved. They have consulted with distinguished political scientists, accomplished organizers of free trade unions abroad, and elected officials of both parties.

I can state with particular knowledge that in my own Democratic Party, which earlier this year adopted rules allowing greater participation by

elected officials in our most major party decisions, Chairman Manatt's forthright and early solicitation of elected individuals' views on this matter has been greatly appreciated.

It is, of course, only proper that Federal legislators be consulted about a project of such magnitude. Later, when it comes time for appropriating an operating budget for the institute, their support will surely be needed. At the outset, their experience in foreign affairs and in American politics may enable them to offer constructive advice. Chairman Manatt understands this as few others would, and has masterfully engaged the cooperation of a broad range of Democrats—as I trust Chairman Richards has done among Republicans.

I am confident that this process of consultation will continue, and will be fruitful. I am grateful to William Safire for bringing the matter to the attention of a wider audience than as heretofore been able to witness these deliberations, for the publication of his column has provided this opportunity for me to reiterate my own belief that the Institute for Democracy can and should be a matter of the highest priority to this body. I look forward to further, more detailed discussion of it in the Senate and in the Congress.

Mr. President, I ask that the full text of William Safire's column in this morning's New York Times be printed at this point in the RECORD.

The column follows:

[From the New York Times, Aug. 19, 1982]

ORGANIZING "WORLD PAC"

(By William Safire)

WASHINGTON, Aug. 18.—Why aren't the world's television screens filled with protests about the way Communist East Berlin has expelled the organizers of the June 27 "peace workshop," and has called up peace activists for military duty—jailing those who refuse to serve?

Why hasn't the Vietnamese artillery captain who defected two months ago been brought back to a suitable communications center and asked about the chemical weapons supplied by the Soviet Union—being used as "yellow rain" by Vietnamese units in Laos even today?

And why has no campaign been mounted to publicize and condemn the war of slander and blackmail being waged by the Communists running Nicaragua against individual priests who refuse to cooperate—a war in which the Sandinists censor pastoral letters from the Pope?

Why no sustained counterattack on these offenses against humanity and its institutions? Not so much because the press is biased, or the offenses are not of top rank, or the democracies lack the capacity for outrage.

The reason is that we are not organized, as Communists usually are, to strike back in the field of mass persuasion. The invaders of Afghanistan sponsor nuclear freezes; the crushers of Polish freedom identify themselves with the "peace movement" around the world. The forces of tyranny get away with condemning the forces of freedom for supporting the right of the people of El Salvador to choose their own government.

To set this straight—to find a means to encourage democracy actively and to shine a light on the wrongs of totalitarianism—a speech writer in the State Department, Mark Palmer, came up with an idea that President Reagan expounded in his address to the British Parliament this summer.

The idea is to engage in an open political struggle with all those who seek to subvert the basic freedoms human beings tend to seek. The West Germans, through federally funded political institututes affiliated with their political parties, have led the way: in some third-world countries, they conduct political training and give money to democratic candidates. In Portugal, West German help made the difference when that country's democracy was in the balance.

Americans should stop being embarrassed about sharing our political know-how—money, mimeo machines and political action plans—with leaders and parties and institutions in beleaguered democracies; more than that, we should carry the banner of political consciousness-raising to third-world and even Communist countries. The A.F.L.-C.I.O. has been promoting a free labor movement abroad, as much as one organization could, for years. "This is not cultural imperialism," said Mr. Reagan, "it is providing the means for genuine self-determination and protection for diversity."

A group is now being organized to put the U.S. into organized political competition around the world. Not surprisingly, since it deals with politics, the embryonic "World PAC" has become embroiled in its own politics.

The Democratic and Republican national chairmen are working together fairly well on this, along with the American Political Foundation, a group brought in by Mr. Reagan's trade negotiator, Bill Brock. The N.S.C.'s Walter Raymond, I.C.A.'s Scott Thompson, Defense's Richard Stilwell, with State's Mr. Palmer, are the Government "honchos." All have agreed to offer the key part-time slot to a neo-conservative Democrat, Ben Wattenberg.

However, Mr. Brock and Under Secretary of State Larry Eagleburger also want the staff headed full time by a former Brzezinski aide. Alfred Friendly Jr.; Republicans advised by Richard Allen prefer Allen Weinstein, of the Georgetown Center for Strategic Studies. That impasse can be worked out in the textbook way, balancing the staff to reflect shades of opinion and party coloration.

More important, the organizers do not agree on the center of power: is this to be primarily a State Department operation? That would guarantee incoherence; State's inclination is traditionally to soothe rather than upset foreign countries. A C.I.A. front? That would get it shot down here even before it had a chance to be discredited abroad. A foundation effort? That usually leads to philanthropoid mush.

To get the politics out of Political Action, we must rely on politicians. It would be a mistake to center this much-needed activity in government, since that would invite constant hectoring about "destabilization" from overseas and from isolationists. The trick is to put the power of encouraging foreign party competition in the hands of the two American parties.

The time for this World PAC idea has come; the best way to avert military competition is to turn to economic and political competition. And in party politics, we should turn to the pols and labor skates: the public should fund international political competition, but the Government should not be in the driver's seat.●

PROGRAM

Mr. BAKER. Mr. President, so that I may state the program for tomorrow, may I say the Senate will convene at 9 a.m. After the recognition of the two leaders under the standing order, it is anticipated that the leadership will ask the Senate to proceed to the consideration of the supplemental appropriations conference report.

Mr. President, after that matter is disposed of, it is anticipated the Senate will resume consideration of the debt limit bill. I wish to say that I anticipate as well that a cloture motion will be filed tomorrow, and I will have a further statement to make on this and other developments in the course of the day.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. BAKER. Yes, I yield.

Mr. ROBERT C. BYRD. Can he indicate to the Senator what the cloture motion will be filed on?

Mr. BAKER. Mr. President, at this time the cloture motion will be filed against further debate, to limit debate, on the Helms amendment.

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

Mr. BAKER. The Helms abortion amendment.

Mr. LEVIN. Mr. President, will the majority leader yield for a question?

Mr. ROBERT C. BYRD. That amendment is in the second degree.

Mr. BAKER. I yield to the Senator from Michigan.

Mr. LEVIN. Does the majority leader intend to propound any unanimous-consent request tonight relative to the supplemental?

Mr. BAKER. Relative to the supplemental?

Mr. LEVIN. Yes.

Mr. BAKER. I do not. I am advised it would be the better part of discretion to wait until tomorrow.

RECESS UNTIL 9 A.M. TOMORROW

Mr. BAKER. Mr. President, I am prepared to take the Senate out unless some other Senator is seeking recognition.

Mr. President, does any other Senator seek recognition? If not, then, Mr. President, I move, in accordance with the order previously entered that the Senate stand in recess until the hour of 9 a.m. tomorrow.

The motion was agreed to; and the Senate, at 10:17 p.m. recessed until Friday, August 20, 1982, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 19, 1982:

DEPARTMENT OF STATE

William Schneider, Jr., of New York, to be Under Secretary of State for Coordinating Security Assistance programs.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 8036, to be Surgeon General of the Air Force:

To be surgeon general, USAF

Maj. Gen. Max B. Bralliar, xxx-xx-xxxx xxx-... FR, U.S. Air Force, Medical.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. John L. Piotrowski, xxx-xx-xx... xxx-... FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Philip C. Gast xxx-xx-xxxx FR, U.S. Air Force.

ARMY

The following-named officer, under the provisions of title 10, United States Code, section 3015 to be Chief, National Guard Bureau:

To be chief, National Guard Bureau

Maj. Gen. Emmett H. Walker, xxx-xx-xxxx xxx-x... Army National Guard of the United States.

The following-named Army National Guard of the United States officer for appointment to the grade of major general as a Reserve commissioned officer of the Army under the provisions of title 10, United States Code, sections 593(a) and 3385:

To be major general

Brig. Gen. Herbert R. Temple, Jr., xxx-xx-x... xxx-....

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be general

Lt. Gen. Roscoe Robinson, Jr., xxx-xx-xxxx xxx-... U.S. Army..

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Alexander M. Weyand, xxx-xx-x... xxx-... U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Emmett H. Walker, Jr., xxx-xx-x... xxx-x... Army National Guard of the United States.

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. LaVern E. Weber xxx-xx-xxxx, Army of the United States.

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Hillman Dickinson, xxx-xx-xxxx, (Age 56), U.S. Army.

IN THE NAVY

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be admiral

SECURITIES AND EXCHANGE COMMISSION

James C. Treadway, Jr., of the District of Columbia, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 1987.

IN THE AIR FORCE

Air Force nominations beginning Clayton B. Anderson, and ending Terrence P. Woods, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 10, 1982.

Air Force nominations beginning John S. Adams, Jr., and ending Allan V. Wexler, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 12, 1982.

IN THE ARMY

Army nominations beginning Robert O. Porter, and ending Robert A. Sharp, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 10, 1982.

Army nominations beginning Enrique Del Campo, and ending Richard Hagle, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 12, 1982.

IN THE MARINE CORPS

Capt. Truman W. Crawford, USMC, for appointment to the grade of major (temporary) while serving as the Director of the Marine Crops Drum and Bugle Corps in accordance with article II, section 2, clause 2 of the Constitution.

Marine Corps nominations beginning Robert L. Peterson, and ending Michael L. Zanotti, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 12, 1982.

IN THE NAVY

Navy nominations beginning Michael L. Arture, and ending Charles E. Johnston, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 4, 1982.

Navy nominations beginning Javier Arquimedes Arzola, and ending Patricia James Watson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 10, 1982.

Navy nominations beginning Bruce P. Dyer, and ending Joseph C. Wiley, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 17, 1982.

DEPARTMENT OF ENERGY

Oliver G. Richard III, of Louisiana, to be a Member of the Federal Energy Regulatory Commission for a term expiring October 20, 1985.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.